

If you are facing removal or deportation

If you don't have any leave to remain in the UK – if your application to stay in the UK has been refused, you had a visa/leave to remain but it has now expired, or you have never had leave to remain/immigration papers, you may be at risk of being removed from the UK by the Home Office.

You may hear this referred to as “**forced removal**”, or “**administrative removal**”.

If you have been convicted of a criminal offence and you are not a British citizen, you may be at risk of **deportation** from the UK. People often use the word “deportation” to mean any forced removal, but in the UK deportation has a specific legal meaning. It is the enforced removal of someone for what the UK Home Office calls “the public good”. This is usually after serving a criminal sentence in the UK.

This page looks at: forced removal from the UK, when you can't be removed from the UK, and challenging a removal. This page also looks at deportation after a criminal sentence; the immigration rules on deportation, and possible legal challenges to deportation. This includes legal challenges on the basis of human rights, for example if you have a child in the UK.

Removal from the UK

You are at risk of removal from the UK if you do not have any leave to remain (immigration status) and haven't applied for any. You are also at risk of removal if your asylum or immigration application has been refused. You are at risk of removal if you had limited leave to remain in the UK and this has now expired.

For information on **deportation** following a criminal sentence, see the section below.

Until 2015, when taking steps to remove someone from the UK, the Home Office would issue a document called “removal directions”. This document specified the date, time and flight number of the intended removal.

In 2015, the Home Office introduced a new policy of “**removal windows**”. This meant that they would notify you that you are liable to removal, and then you could be removed at any point during a three-month removal window. Because of a legal challenge, the removal window policy is currently *suspended*. The Home Office are now issuing removal directions again.

Notice periods

The Home Office have to give you notice that they are intending to remove you. If they issue you with removal directions, the date on which they say they are going to try and remove you should not be before that notice period has passed. The general notice period between formally notifying you they are going to remove you and the intended date of removal is **seven calendar days if you are not detained**, or just **72 hours if you are detained**. The 72 hours must include at least two working days. The last 24 hours must include a working day unless the notice period already includes three working days.

In **non-suspensive appeal cases**, a minimum of five working days' notice must be given between giving notice of removal and the removal itself. If a non-suspensive appeal case has already been challenged by judicial review, the Home Office only need to give 72 hours notice of removal. *Read more about non-suspensive appeal cases on the Asylum Screening Interview page of this guide.*

In cases of **charter flight removals**, the notice period is five working days.

The standard notice periods do not apply in port cases, for example non-asylum applications where a visa may have been applied for but entry to the UK is refused. In these cases, if removal is to take place within seven days of refusal to enter, the Home Office does not need to give 72 hours notice.

When you can't be removed

You should not be removed from the UK if you have an **asylum claim ongoing**. If the UK government has decided your asylum claim is "inadmissible" because you travelled through another country, you are not considered to have an asylum claim ongoing.

You should not be removed from the UK if you are **appealing a refusal of your application/claim**. This only applies if you have an appeal right within the UK. If your case has been categorised as a "non-suspensive appeal" case – see links for information on this above – you can be removed even if you have an appeal pending. *Also read: the Appeals page of this guide.*

You should not be removed from the UK if you have **submitted a fresh claim and a decision has not yet been made on whether it is a fresh claim or not**. You should keep proof of submitting a fresh claim. *Also read: the Fresh Claims page of this guide.*

You should not be removed from the UK if you have an **injunction** preventing removal. *Read more about injunctions on the Judicial Reviews page of this guide.*

There are situations when **judicial review proceedings** (apart from an injunction) may stop a removal taking place. *Also read: the Judicial Reviews page of this guide.*

You should not be removed from the UK if it would breach the UK's obligations under the Refugee Convention, or the European Convention on Human Rights. These rights still apply in the UK post-Brexit.

Challenging a removal

If you have been told you are going to be removed from the UK, check the information above to see if the Home Office are allowed to do this in your situation. If you are in one of the situations mentioned above, you or your lawyer need to provide evidence of this to the Home Office and request that the attempt to remove you is stopped.

If at the time of a decision to deport you, there are asylum or human rights grounds that mean you need to stay in the UK and you have not already informed the Home Office of these or made an application, you need to do so now.

Read the Asylum, Human Rights and If You Have Children pages of this guide to see if these may be relevant to you, and how to apply.

There may be other reasons you can challenge your removal, such as if other legal proceedings are ongoing in other areas of law, or if the proper procedure for removal has not been followed.

If there are legal reasons – such as those described in this section – that mean you should not be removed from the UK, and the Home Office has ignored or refused a request to cancel your removal you may need to consider an injunction to try and stop the removal from happening. *See the Judicial Reviews page of this guide to find out more about injunctions.*

See action box at end of document.

Deportation after a criminal sentence

If the Home Office have issued a deportation order in your case, you will be issued with **notice of deportation arrangements**. This should follow the rules of removal notice periods described in the section near the top of the page

The immigration rules are now weighted very much in favour of deporting a person after a criminal sentence.

The rules state that if you were sentenced for **more than 12 months**, your deportation is “conducive to the public good and in the public interest”. The rules also say that your deportation is “conducive to the public good and in the public interest” if your offending “caused serious harm” as determined by the Home Office, or you are a “persistent offender who shows a particular disregard for the law”, irrespective of how long you were sentenced for.

If you are liable to deportation, your spouse or civil partner and/or your child are also liable to be deported unless they have Indefinite Leave to Remain in the UK in their own right, or are British, or have been living apart from you.

If you were sentenced to **more than four years**, the Home Office guidance says you will

need to have “very compelling circumstances” in order for a deportation order not to be made or to be revoked. The courts, however, may have a different interpretation of what counts as those circumstances than the Home Office.

If you have been sentenced for **less than four years but more than 12 months**, or your offending is deemed to fall into the “causing serious harm” category described above, the immigration rules say that deportation would be proportionate except if deportation would be in breach of your Article 8 rights to family and private life, AND:

(1) you **have a child under the age of 18 in the UK**,

- you have a “genuine and subsisting parental relationship” with your child
- your child is a British citizen or has lived in the UK for at least seven years immediately prior to the decision to deport you
- it would be “unduly harsh” for your child to live in the country to which you will be deported, and
- it would be “unduly harsh” for your child to remain in the UK without you.

OR

(2) you have a “genuine and subsisting relationship” with a **partner** who is in the UK and has **British citizen or Indefinite Leave to Remain**, and

- the relationship was formed at a time when you were in the UK lawfully and your immigration status was “not precarious”; and
- it would be unduly harsh for your partner to live in the country to which you are being deported, because of compelling circumstances over and above very significant difficulties which would be faced by you and your partner in continuing your family life together outside the UK and which could not be overcome or would entail very serious hardship for you and your partner; and
- it would be unduly harsh for your partner to remain in the UK without you.

You **also** need to show that you have been lawfully resident in the UK for most of your life; and you are “socially and culturally integrated in the UK”; and there would be “very significant obstacles” to integration into the country to which you are being deported.

The Home Office guidance says that you must provide “original, independent and verifiable documentary evidence” of all of these factors. See the If You Have a Children page of this guide for ideas on how you evidence some of these factors.

The Home Office has a very restricted view on who meets the circumstances above. A judge in an appeal may find that even if you don't meet the requirements of the immigration rules, you would suffer a disproportionate breach of your Article 8 rights if you were deported. See below for legal challenges to deportations.

EEA nationals

If you are an EEA national and have Settled Status or Pre-Settled Status in the UK (or are eligible to apply), you could still be at risk of deportation from the UK if you are convicted of committing a criminal offence.

Also read: the EEA nationals page of this guide

If the criminal offence was committed before the end of 2020, the Home Office will need to consider the pre-Brexit rules on EU nationals. This means they would have to show that deportation is in the interests of “the public good, public health or public security”. The threshold for showing that deportation is in one or more of these interests was generally higher for EEA nationals than the “public good” arguments for deportation of non-EEA nationals. The threshold is also determined by the length and permanence of your residence in the UK – for example, the threshold is higher for those with the right to permanent residence in the UK.

If the criminal offence was committed after 2020, or you did not have or were ineligible for Pre-Settled Status or Settled Status, the normal rules on deportation will apply to you.

Challenging a deportation

There is no longer a right to appeal *the decision* to deport you itself.

If at the time of a decision to deport you, there are asylum or human rights grounds that mean you need to stay in the UK and you have not already informed the Home Office of these or made an application, you need to do so now.

Read the Asylum, Human Rights and If You Have Children pages of this guide to see if these may be relevant to you, and how to apply.

Around the time of the decision to deport you, you will have been issued with a “**one-stop notice**”. On this form, you must state any reasons for why you have not already told the Home Office why you need to stay in the UK. You need to make sure you send the form back by the date specified on the one-stop notice. If you miss the deadline, attach your reasons for why you are sending it late – but it is important for your case to try and send it back in time.

If your claim is based on a need for protection (asylum) or human rights is refused, you might have the right to appeal that refusal. *Also read: the Appeals page of this guide.*

If you do not mention asylum and human rights reasons you need to stay in the UK on the one-stop notice (see above), and then make an asylum or human rights application, the Home Office may certify your application, meaning you have no right to appeal a refusal.

If this happens to you, you may have the option of a judicial review. *Also read: the Judicial Reviews page of this guide.*

If your claim is based on **protection grounds or Article 3 human rights grounds**, you may be able to get **legal aid** representation. If your claim is based on Article 8 human rights grounds, you cannot usually get free legal representation under legal aid.

You may be able to apply for exceptional legal aid funding if you believe your human rights would be breached if you do not have legal aid. The Public Law Project provides information and assistance in some cases: www.publiclawproject.org.uk

Read BID's factsheet on appealing deportations: <https://www.biduk.org/pages/6-information-for-detainees#TK5>

ACTION SECTION

- **Airline campaigning**

This is a last-minute action if someone has been issued with a courtesy letter or removal directions that specifies the date/time of the removal/deportation flight.

Taking action for the right to remain cannot just be about stopping a flight – if contacting the airline successfully stops the flight, this may buy some time for other actions to be taken and for legal avenues to be pursued.

Read more here in the *Airline Campaigning* section of the Toolkit:
righttoremain.org.uk/toolkit/airline

- **Contact your MP**

This action is more likely to succeed if you are already in contact with your MP about your case. Your MP may be able to contact the Home Office directly (asking to speak to or meet with the Home Secretary or Immigration Minister specifically if necessary) and ask them to cancel the removal/deportation while important legal actions are taken.

Read more in the *Politicians* section of the Toolkit:
righttoremain.org.uk/toolkit/politicians