

Removal/deportation

Forced removal, sometimes called “administrative removal” is when the Home Office enforces your removal from the UK if you don't have any leave to remain: if your application for leave to remain (including an asylum claim) has been refused, or you did have some form of leave to remain/a visa but it has now expired.

Deportation, legally speaking in the UK, is the enforced removal of someone "for the public good", usually after serving a criminal sentence in the UK.

Removals and deportations are usually carried out either on a commercial airline (one person being removed/deported, usually escorted by security guards, and the other passengers are travelling for holiday or business) or by private charter flight (usually lots of people being removed/deported to the same country at the same time).

This section looks at: forced removal from the UK; the policy of removal windows; challenging removal; deportation after a criminal sentence; appealing a decision to deport; asylum and human rights grounds if facing deportation; and an action section if facing either removal or deportation.

Removals

You are at risk of removal if you do not have any leave to remain in the UK and haven't applied for any; if your asylum or immigration application is refused; or the leave you had has expired.

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

Removal windows

The removal windows policy is currently suspended! Read more here:

<https://righttoremain.org.uk/removal-window-operated-unlawfully-says-court-of-appeal/>

At the time of writing, the Home Office are once again issuing removal directions to people liable to being removed from the UK.

Since 2015, the Home Office has been able to inform someone they are *liable* to removal, and then remove that person at any given point during a **three-month removal window**.

This is a change to the former legal obligation of issuing "removal directions" which would specify the date, time and flight number of the removal. Although the Home Office may still in some cases issue "courtesy letters" containing this information, there is no legal obligation to do so apart from those cases where the removal window cannot be used (see below).

The Home Office must give you notice that you are liable to removal, and cannot lawfully remove you during this notice period. During this notice period, you may be able to legally challenge the removal (see below). Once that notice period is over, the three-month removal window begins and you can be removed, without notice, at any point during it. The removal window can be extended by 28 days if removal doesn't take place - for example because of a delay in receiving a travel document or booking escorts - and where the Home Office expects to be able to remove you within those additional 28 days.

The general notice period (during which you cannot be removed, before the removal window begins) 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 cases certified as "clearly unfounded" (**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 (unsuccessfully) by judicial review, the Home Office only need to give 72 hours notice of removal. Read more about non-suspensive appeal cases in the *Asylum Screening Interview* section of the Toolkit.

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.

Cases where removal windows can't be used

There are certain situations where Home Office policy is that removal windows should not be used. In these circumstances, removal directions (see above) will be issued.

A removal window should not be used in **family cases**. Read more about the "Family Returns Process" for family cases here.

People with independent evidence (meaning, other than self-declaration) that they are an **"Adult at Risk"** in terms of detention policy should not be subject to a removal window.

Challenging a removal

You should not be removed from the UK if you have **an asylum claim pending**. 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 pending.

You should not be removed from the UK if you have **an appeal pending in the UK** (either you have a hearing coming up, or if you have had a hearing but the decision has not yet been made). Remember not everyone has the right to appeal in the UK. See *Appeals* section of the Toolkit.

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. See *Fresh Claims* section of the Toolkit.

You should not be removed from the UK if you have an **injunction** preventing that removal. See *Judicial Reviews* section of the Toolkit.

There are also other cases where **judicial review proceedings** may suspend removal.

Home Office guidance brought in in November 2016 states that if judicial review proceedings are brought *within the three-month removal window*, this will not be enough to suspend removal, and an injunction will be required. (Read more in the *Judicial Reviews* section of the Toolkit).

You should also 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.

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

You may also be able to ask for a removal to be deferred, for example if you do not have a legal representative, if your legal representatives have changed during the removal window, or if you are detained and have not been able to access the legal aid surgery in time. Read more about that here: righttoremain.org.uk/deferral-of-removal-notice-period/

Deportation after a criminal sentence

If a deportation order has been made against you, you will be issued with **notice of deportation arrangements**, and this should be in keeping with the removal notice periods above.

To prevent your deportation, you need to prove that it would breach your rights under the Refugee Convention or the Human Rights Convention.

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 (if they are

under 18) 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. Remember, however, that a court may have a different (more generous) 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 citizenship or Indefinite Leave to Remain in the UK**, 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 *If You Have Children* section of the Toolkit for ideas on how you evidence some of these factors.

Remember that the Home Office is likely to take a very restricted view on who meets the circumstances above. A judge 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.

Appealing the decision to deport you

There is no longer an automatic right to appeal a decision to deport you.

You may have grounds, however, for a claim that does have the right of appeal if refused - a human rights claim based on Article 8 family life in the UK, for example. See Toolkit section *Human Rights*.

Generally, there is no legal aid available if you have the right to appeal while in the UK, unless the appeal is based on refugee grounds or Article 3 human rights grounds.

Read more in BID's factsheets on appealing deportations:

<http://www.biduk.org/pages/6>

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.

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.

Asylum or human rights claim

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* sections of this Toolkit 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 you do not mention asylum and human rights reasons you need to stay in the UK on the one-stop notice, 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.

Judicial review

If you do not have the right to appeal the deportation decision, and you have not yet made a human rights or asylum application that you need to make, you may have the option of applying for a judicial review (including an injunction to stop your deportation) particularly if your deportation is going to happen very soon.

Judicial reviews are very complicated, however, and very hard to do without a lawyer.

Read more in the *Judicial Review* section of the Toolkit.

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