Chapter 60 – Judicial reviews and injunctions

Contents

Section 1: Judicial reviews explained

This guidance sets out the Judicial Review process in enforcement cases. There is more general guidance on the JR process in Chapter 27 of the Immigration directorate instructions.

Judicial review (JR) is the legal process that allows a person to challenge the lawfulness of a decision, action or failure to act of a public body such as a government department.

Immigration removal cases, where there has been an asylum or human rights claim, should not usually reach the stage of JR until after they have had access to the appeals system.

1.1 Event types subject to JR

Types of event that could be subject to JR are:

- A failure to act - such as a delay in issuing a document or making a decision
- The setting of removal directions – which usually means that the person believes their removal would infringe their rights (e.g. rights under the Refugee Convention, European Convention of Human Rights or European Community instruments)
- A refusal to accept that further submissions amount to a fresh claim
- A decision to certify a claim as clearly unfounded
- Detention

1.2 Pre-action protocol

The pre-action protocol sets out the steps that must be taken before commencing an application for JR. This procedure normally only applies where removal directions have not been set or removal is not imminent. A template response for a letter sent in an urgent case, where the pre-action protocol process is not appropriate can be found in section 2 of Chapter 27 of the Immigration directorate instructions.

In non urgent cases, a pre-action protocol provides you with an opportunity to consider these issues and to provide a response in the hope that this will resolve any concerns and rectify any errors before the need to start JR proceedings.

Where a claimant believes that a legal error has been made in the consideration of their case the claimant will be able to make representations in a standard format to the defendant. If you receive these representations, you must fully consider them and decide whether any action can be taken.

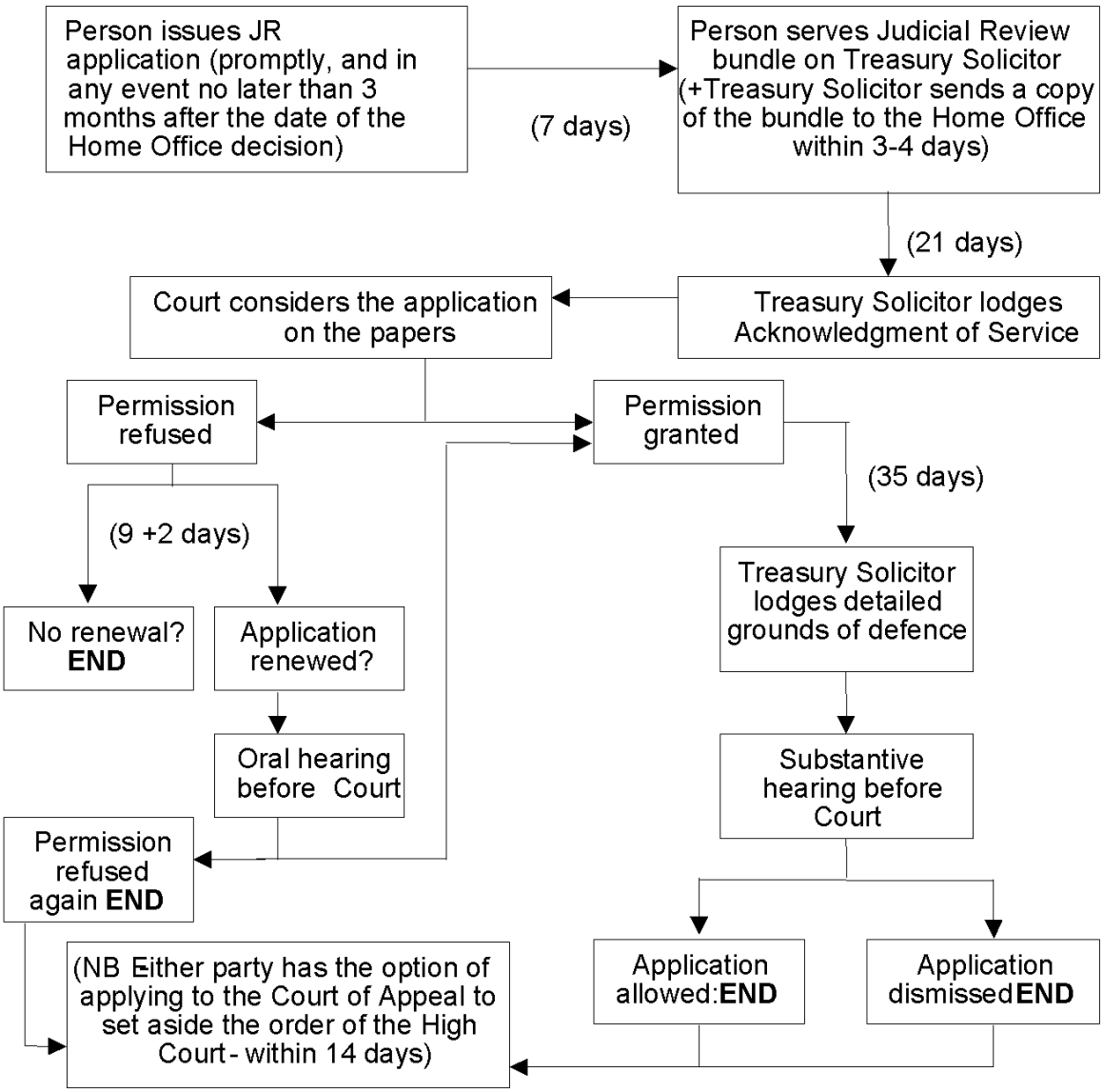
- If you decide the representations made have merit you must try to rectify the problem without the need of the JR process.

- If you decide the representations have no merit, you must use the opportunity to fully explain reasons for your decision and to answer any queries the claimant has made.

- If you decide that some of the claim has merit but others do not, your response must fully cover the reasons for this decision, with a full explanation of what you agree with and how you will rectify this and why you do not accept other claims. You will have 14 days to respond in full to the matters.

QUICK GUIDE TO JR PROCESS:

The below flow chart explains the JR process and the relevant timescales involved. For further written detail on the JR process please see Chapter 27 of the Immigration directorate instructions.



Section 2: Notice of removal

Notice of removal may be given in three different forms:

(i) Notice of a removal window. The person is given notice of a period, known as the *removal window*, during which they may be removed;
(ii) Notice of removal directions. The person is given notice of removal directions and thus knows the exact date of departure; or
(iii) Limited notice of removal. A more restricted version of the *removal window* form of notification.

Only one of the above forms is necessary in each case. In some cases the enforcement officer may have discretion as to which of the above forms of notice is considered suitable, in other cases removal may only be possible with one form of notice.

2.1 Notice of a removal window

Under this form of notice the person is given notice of a *removal window* during which removal may proceed without further notice. This form of notice is suitable for the following persons, subject to exceptions:

- Persons being removed under section 10 of the Immigration and Asylum Act 1999 as amended by the Immigration Act 2014. The person will be given a "Notice of Liability for Removal".

- Persons being deported under sections 3(5) and (6) of the Immigration Act 1971 or section 32 UK Borders Act 2007. The person will be given a "Deportation Decision Letter".

When "Notice of Liability for Removal" or "Deportation Decision Letter" is given, it starts the *notice period*. The person may not be removed during this period.

When the *notice period* ends, the *removal window* begins. A person may be removed during the *removal window*.

When does the *notice period* begin?	• When the notice is given in person, the period begins at the time notice is given. • When the notice is given by post, the period begins at 00:01h the day after it is received. Unless shown otherwise, the date of receipt is two working days after the date on which the notice was posted. • The notice may not be given to a person with leave to enter or remain, or during the period within which an in country appeal or an administrative review may be lodged in time or is pending.
When does the *notice period* end?	• The notice will specify the length of the *notice period*. The minimum length of the *notice period* must comply with the policy at paragraph 2.4 below.
When does the *removal window* begin?	• The *removal window* begins when the *notice period* ends.
When does the *removal window* end?	• The *removal window* will run for a maximum of three months from the time the "Notice of Liability for Removal" or

"Deportation Decision Letter" is served.

- If a *removal window* has not yet expired, it can be extended by way of reminder for a further 28 days. This can be done by way of a *removal reminder* (RED0004 extension) which will also remind the individual of their obligation to raise any further issues with the Home Office
- If the person makes an asylum, human rights or EU free movement claim, involving issues of substance which have not been previously raised and considered, or a further charged application for leave, the window ends.

The "Notice of Liability for Removal" or "Deportation Decision Letter" must include:

- the country of return;
- in relation to an asylum claim, details of the part of the country to which they will be removed;

Where a removal window has expired, or removal will be via a third country transit point which is not one of the safe countries listed in section 3.2 (Removal via a different route) and which was not notified in the original notice, a fresh removal window should be notified using form RED0004 (Fresh) and a new notice period will begin. A proposed third country transit point (or a range of potential transit points) may be notified using this form.

The "Notice of Liability for Removal" must be accompanied by:

- a casework decision of the type outlined in chapter 50.1.3 or a RED0001 notice; or
- an Immigration Factual Summary. (Further guidance on the Immigration Factual Summary is in section 18 of this guidance.)

The "Notice of Liability for Removal" or "Deportation Decision Letter" must be copied to any legal representative where the Home Office has details of any representative actively involved in the case, or where a person asks that a specified representative be sent copies.

If someone has been given notice of a removal window, they need not always be taken into detention overnight before removal.

If someone is detained/ arrested for removal later on the same day but states that their circumstances have changed or that they wish to access legal advice, make a further claim or challenge their removal via the courts, they will not be removed for at least 72 hours. They will be taken to an IRC if detention is appropriate (see chapter 55).

2.1.1 Persons not suitable for removal window

The policy described here in paragraph 2.1 may not be used to give notice of removal to:

- Family cases
- Where the person has no leave but has made a protection (asylum or humanitarian protections) or human rights claim, or appeal, pending
- Where the Home Office has evidence that a person meets one or more of the criteria for vulnerability listed in section 55.10 (persons unsuitable for detention).

It is possible that notice of a *removal window* may have been served on a person before it is established that they constitute a vulnerable group. If that has been done, the notice may not be

relied upon to enforce removal. Instead new notice of removal must be given under 2.2 or 2.3 below.

2.2 Notice of removal directions

Under this form of notice the person is given notice of *removal directions* which will specify the date of departure. This form of notice is suitable for the removal and deportation of all persons irrespective of the power under which they are being removed.

In most cases notice will usually be by service of form IS151D (or IS92 in port cases), with a copy of the removal directions in the case. The *notice period* (see section 2.4) runs from when notice is served up to the point of departure.

Persons being removed must be given adequate notice that removal has been scheduled. Where the person is detained, notice should ideally be given as soon as removal directions have been set. Where the person being removed is not detained but the removal is to be enforced and removal directions have been set, they should ideally be given notice as soon as possible after arrest. Where removal directions are being served on a person in an Immigration Removal Centre (IRC), you must ensure that a copy of the removal directions and all other relevant paperwork is faxed promptly to the IRC to serve on the individual. Unless exceptionally agreed with the Home Office manager at the IRC, the notice of removal will be served on the person the same day only where it is received by the IRC before 3pm.

When notice is given to a person being removed, it must be copied to their legal representatives where the Home Office has details of any representative actively involved in the case, or where a person asks that a specified representative be sent copies.

Notice of removal directions must also be accompanied by the Immigration Factual Summary (ICD. 2599). This must include a chronology of the case history, including details of whether any appeal rights were exercised and past applications for JR. Further guidance on the Immigration Factual Summary is in section 18 of this guidance.

2.3 Limited notice of removal

In cases where there is a risk to safety or a significant risk of disruption, the exact details of the flight and time of departure may be withheld and limited notice given using form IS151G. The individual or family should be informed that they will not be removed during the *notice period*, and no later than 21 days from when notice is given. In the absence of a copy of the removal directions, they should also be told the country to which they are being removed and the route. This may be notified as a range of possible routes; for example, that the flight will either be direct, or via one of the safe countries listed in section 3.2, or via any other named country you are considering as a transit point. See Chapter 45 for further details regarding the application of this policy in family cases. Section 2.5 of this chapter deals with its application in charter cases and where there are other special arrangements (where the minimum notice would normally be 5 days).

When notice is given to a person being removed, it must be copied to their legal representatives where the Home Office has details of any representative actively involved in the case, or where a person asks that a specified representative be sent copies.

Notice of removal must also be accompanied by the Immigration Factual Summary (ICD. 2599). This must include a chronology of the case history, including details of whether any appeal

rights were exercised and past applications for JR. Further guidance on the Immigration Factual Summary is in section 18 of this guidance.

2.4 The notice period

Where notice is given of a *removal window* under paragraph 2.1 of this policy the *notice period* is 7 calendar days if at the point notice is given the person is not detained.

Otherwise, **subject to certain exceptions** described in this guidance at section 3, the *notice period* must be of the following minimum time periods:

- Normal enforcement cases – minimum **72 hours** (including at least two working days)
- Third country cases and cases where the decision certified the claim (see section 2.4.3) - minimum **five working days** (unless the case has already been reviewed by JR: see section 3.1.3).

2.4.1 Normal enforcement cases (administrative removal and deportation)

Unless an exception applies, there are three rules to consider when calculating the minimum *notice period*:

(i) A minimum of **72 hours** must be given.
(ii) This 72 hour notification period must always include **at least two working days**.
(iii) The **last 24 hours** must include a working day unless the *notice period* already includes three working days.

The below table shows the latest times you can notify a person of their removal in normal enforcement cases, assuming you want to immediately remove at the end of the *notice period*, taking into account the minimum 72 hours notice period and the provisions in terms of working days. In summary, the notification times are as follows:

If removing on a Monday:

- If you wish to remove before 10am on a Monday, notice must be given by 10am on Wednesday. This is because the last 24 hours does not include a working day so the notice period must be extended to include three working days. Those you intend to remove between 10am and 5pm on a Monday will need sufficient time to access the courts on the Thursday and Friday of the preceding week so that they can challenge the decision to remove them if necessary. Those due to be removed after 5pm on a Monday will, however, have sufficient time to access the courts on the day of their removal, so removal directions can be set as late as 10am (when the courts open) on the Friday prior to removal.

If removing on a Tuesday:

- Individuals you intend to remove on a Tuesday may also need sufficient time to access the courts during the preceding week. Those due to be removed before the courts open on a Tuesday or between 10:00am and 5:00pm must be given sufficient time on the Friday before the planned removal to challenge the decision to remove them if they so wish. However, those due to be removed after 5pm on a Tuesday will have sufficient time to access the courts on the day of, and the day before, their removal, so you can serve removal directions as late as the same time on the preceding Saturday (72 hours before removal).

If removing on a Wednesday, Thursday or Friday:

- If you intend to remove a person on a Wednesday, a Thursday, or a Friday, unless there has been a bank holiday, the weekend is of no consequence when calculating the

minimum notice period. You must ensure when giving notice of removal that the person has at least two working days before their removal to challenge the decision to remove them in the courts if necessary.

If removing at the weekend:

- The courts are shut at weekends, so individuals you intend to remove then or before the courts open on a Monday must be given sufficient time in the preceding working days to challenge the decision to remove them if they so wish. Those due to be removed at the weekend or before the courts open on a Monday must therefore be notified of their removal on the Wednesday prior to the planned removal, so that they have three working days to access the courts if necessary.

This table does not take account of bank holidays which must be considered as extra non-working days.

Removal set for	**Notify by latest**
12:00am to 10.00am Monday	10:00am Wednesday
10.00am to 17:00pm Monday	Same time Thursday
17:00pm to 12:00am Monday	10:00am Friday
12:00am to 10:00am Tuesday	10:00am Friday
10:00am to 17:00pm Tuesday	Same time Friday
17:00pm to 12:00am Tuesday	Same time Saturday
Wednesday	Same time Sunday
Thursday	Same time Monday
Friday	Same time Tuesday
12:00am to 10:00am Saturday	Same time Wednesday
From 10:00am Saturday	10:00am Wednesday
Sunday	10:00am Wednesday

In addition to the above table and summary, you can use the removal notice calculator when considering the latest time you can notify a person of their removal in normal enforcement cases.

There are occasions where the standard 72 hour notification period is not required (see section 3 of this guidance) which you must consider before giving notice of removal.

Persons detained for removal must be given access to telephone facilities to enable instruction of and on-going contact with representatives.

2.4.2 Family cases

Since 1 March 2011, an end to end process has been in place for working with families with children (see guidance on family cases in Chapter 45). This new process provides families with greater support and advice when considering their options for voluntarily leaving the UK (Assisted Return). Where families are not prepared to return voluntarily they may be given the opportunity to leave under their own steam (Required Return) before enforcement action (Ensured Return) is considered.

As part of the Assisted Return stage of the new process, all families liable for return are given the opportunity to attend a Family Return Conference to discuss their options for returning home and raise any legal challenges or further submissions regarding their departure. Where necessary, families are then given a minimum of two weeks after their Family Return Conference to think about how best to go home before the Home Office consider setting removal directions.

In addition to the minimum two week Assisted Return reflection period, specific notification periods have been established for giving notice of removal at the Required Return and Ensured Return stages of the family returns process.

2.4.2.1 Notifying a family of their Required Return

In almost all cases, families who are not prepared to voluntarily leave the UK are given the opportunity to make a Required Return which means they leave under their own steam without any enforcement action. In these cases, the Home Office pursues a self check-in or assisted check-in return in which we give notice of removal with at least two weeks notice while they remain living at home.

2.4.2.2 Notifying a family of their Ensured Return

Families reach the Ensured Return stage of the new process only where the Assisted and Required routes of return have failed or, in exceptional circumstances, where we consider a Required Return is not appropriate. The standard notification times set out in 2.4.1 above apply to families subject to Ensured Return unless one or more of the exceptions in section 3 applies. If the family is subject to a limited notice removal, the standard notification period will be used to provide the time and date before which they will not be removed.

2.4.3 Third country and Non-suspensive appeal (NSA) cases

Cases certified under a) s.94, s.94B or s.96 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) and b) EEA Regulation 24AA , as well as third country cases do not attract a statutory in-country right of appeal. When you give notice of removal to a person in these cases, you must satisfy yourself that they have the opportunity to access the courts before their departure is enforced. If notice of removal is given at the same time as the NSA or third country decisions this is likely to be their first opportunity for legal redress. A minimum of **5 working days** notice must therefore be given between giving notice of removal and the removal itself (unless the case has already been reviewed by JR, or in some circumstances where the individual has received such notice previously: see section 3.1.3).

As the courts are shut at weekends, you will need to give notice of removal seven days before you intend to remove the person in most third country and NSA cases. Where you intend to remove an individual on a Saturday or a Sunday, you may, in some cases, actually need to give notice of removal as much as eight or nine days in advance of removal if, for any reason, you are not able to give notice of removal the preceding weekend.

The below table shows the notification times for NSA and third country cases. It does not take account of bank holidays which must be considered as extra non-working days.

Removal directions set for:	Notify by latest:
Monday	Same time the preceding Monday (7 days before)
Tuesday	Same time the preceding Tuesday (7 days before)
Wednesday	Same time the preceding Wednesday (7 days before)
Thursday	Same time the preceding Thursday (7 days before)
Friday	Same time the preceding Friday (7 days before)
Saturday	Same time the preceding Saturday (7 days before) or Friday of the previous week (eight days before) if you are not able to serve removal directions at the weekend
Sunday	Same time the preceding Sunday (7 days before) or Friday of the previous week (9 days before) if you are not able to serve removal directions at the weekend

In addition to the above table and summary, you can use the removal notice calculator when considering the latest time you can notify a person of their removal in third country and NSA cases.

There are instances where standard notification may not be required for NSA and third country cases (some family cases for example – see section 3.1.2 of this guidance), which you must consider before setting removal directions.

2.5 Special arrangements (including charter flights)

Individuals being removed by special arrangements (including charter flights) who wish to legally challenge their removal are normally required to seek injunctive relief as a JR application will not usually result in deferral of removal. (See section 6.1 for further detail on special arrangements). In these circumstances, the person will be given a minimum of five working days notice of removal so they have the opportunity to take legal advice. The purpose of this extended period of notice of removal is to minimise the number of last minute applications for injunctive relief to the High Court in England and Wales, the Court of Session in Scotland or the High Court in Northern Ireland and to encourage people to inform the Home Office at the earliest opportunity of any further submissions they want to make.

If individuals being removed by charter flight or special arrangements are not required to seek injunctive relief to challenge removal, a JR application will usually continue to result in a deferral of removal. In these circumstances, the standard 72 hours notice period applies rather than five working days.

To protect the safety of those on board a chartered aircraft to particular destinations it may be necessary, for security reasons, to withhold the exact details of departure. In these cases, all those being removed by that flight will be given limited notice of removal as referred to above at para.2.3 (ie they will still be given a minimum of five working days notice of removal but will be informed that they will be removed no sooner than five working days and no less than 21 days from the date where notice of removal is given)

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As well as referring to the tables at 2.4.1 and 2.4.3, you can use the removal notice calculator when considering the latest time you can notify a person of their removal in charter flight and other special arrangement cases.

Section 3: Where standard notification may not be required when giving notice of removal

This section details the circumstances in which you do not need to provide standard notification when giving notice of removal. Standard notification of removal does not need to be given where:
(a) an exception applies, or
(b) where a second period of notification is not needed following a failed removal.

3.1 Exceptions to standard notification of removal

Below we detail the following exceptions to standard notification of removal. These are:

- Port cases where removal occurs within seven days of refusal.
- Third country and NSA family cases subject to Ensured Return.

3.1.1 Port cases

In port cases, if removal takes place within seven days of refusal, you do not need to provide 72 hours notice. You must provide the standard 72 hours notification of removal in cases which are refused entry at port where removal does not take place within seven days of refusal.

If a human rights claim is raised in a port case where standard notification is not required, the Operational Support and Certification Unit (OSCU) may, where the claim falls to be refused, be able to certify the claim without deferring the removal directions. Such cases must be referred to OSCU who will decide whether such action is appropriate.

3.1.2 Third country and NSA family cases subject to Ensured Return

Families are liable for Ensured Return only where Assisted and Required Return have both failed or, exceptionally, where we consider a Required Return is not appropriate. Therefore, any family that reaches this stage of the family returns process will have already had opportunities following their Family Return Conference and, where appropriate, when they were given notice of removal at the Required Return stage, to make an application for JR, if they wanted to do so.

If a third country or NSA family case has reached the Ensured Return stage of the family returns process, you do not need to provide a minimum of five working days notice because they will not need this longer notification period to access the courts. Instead, you must provide standard notification (minimum 72 hours) of removal in these cases.

3.1.3 NSA cases already reviewed by JR or following a failed removal

Where an NSA decision has already been challenged by way of JR and either all JR proceedings have been concluded or the JR proceedings are no longer a legal barrier to removal (e.g. the court has made a finding of 'no merit' or that renewal will not be a bar to removal) any subsequent removal directions will only require the standard notice period of 72 hours, not five working days.

Where removal directions have been set for five working days in an NSA case and the individual either does not challenge the removal during that period or their challenge does not result in deferral of their removal, but the removal fails for other reasons (eg travel document issues or technical reasons), you should apply the ten days policy where possible (see section 3.2). Where this is not possible (eg travel documents take longer than ten days to obtain) removal directions may be reset with 72 hours notice rather than five days.

3.2 Where a second period of notification is not needed.

Where a person was given the required notice of removal but the removal fails or is deferred, it may not be necessary to give a further period of notice when rearranging removal for within 10 days of the failed or deferred removal.

Where a person has been given notice of a *removal window* or limited notice and an attempted removal fails, removal may be rescheduled without further notice if it is within the removal window or limited notice period which they have already been given, without the ten day policy being applied. This does not prevent the ten day policy being applied (if it is appropriate to do so) if a removal fails towards the end of the *removal window* or limited notice period.

When could I apply this?

The list below is not exhaustive and is subject to the circumstances outlined below at, 'When could I not apply this?'

- The flight cannot depart as scheduled due to a technical fault with the aircraft or transport difficulties with the relevant contractor including problems with the availability of aircraft, related aircrew or the scheduled departure slot.
- The scheduled departure time of the flight has had to change for other reasons such as adverse weather conditions, industrial action or other significant factors that can be reasonably deemed to be outside of the Home Office's control.
- The person has attempted to frustrate their removal by being non-compliant e.g. refusing to leave the immigration removal centre or board the vehicle.
- Where removal has been disrupted by another person's behaviour.
- Removal was deferred following a JR of removal which has been concluded or the judge has given a finding of 'no merit' or 'renewal should not act as a bar to removal' subject to the following conditions.

When could I not apply this?

Appropriate notice must continue to be given in cases where there has been more than 10 days since the initial deferral/cancellation or where there has been a significant change in circumstances, such as:

- We are re-setting removal directions to a different country;
- Further submissions (involving issues of substance which had not been previously raised and considered) have been received and refused since the earlier removal direction failed or;
- In certain circumstances if there has been a change of route, see below.

Removal via a different route

If for operational reasons it is required to change the route of return to **remove** a place of transit you do not need to allow a further period of notice when re-setting removal directions for within 10 days of the failed removal, providing the place of final destination remains unchanged. For example, the alteration is from a flight from London to Abidjan via Lagos to a direct flight from London to Abidjan.

If for operational reasons it is required to change the route of return to **insert or amend** a place of transit you must give a new standard notice period unless the new place of transit is in a safe country. A new standard notice period will not be required when the new place of transit is in Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, or Switzerland.

For example, if the original removal directions were set from London to Abidjan via Lagos, you may alter the place of transit (Lagos) to Paris without a new notice period. However, if you changed the transit point from Lagos to Nairobi, a new notice period would be required.

Section 4: Handling judicial reviews

It is not necessary to defer removal on a threat of JR, though it is important to satisfy yourself that the person concerned has had the opportunity to lodge a claim with the courts (particularly in certified or third country cases where there is no statutory in-country right of appeal).

The Home Office will only consider deferring removal if a JR application made in England and Wales is properly lodged with the Administrative Court in accordance with Practice Direction 54A Section II of the Civil Procedure Rules, or properly lodged with the Upper Tribunal in accordance with the Tribunal Procedures (Upper Tribunal) Rules 2008 (as amended).

4.1 Deferral of removal

The JR application, as received by the Home Office, may take the following forms:

1. Claim form issued with detailed grounds.
The Home Office will normally defer removal where a JR application made in England and Wales has been properly lodged with the Administrative Court or the Upper Tribunal in accordance with the relevant procedure rules. However, removal will not automatically be deferred where there has been less than three months since a previous JR or statutory appeal or the person is being removed by special arrangements (including by charter flight) (see section 6 of this guidance).

2. Claim form issued with statement of reasons for non-compliance with the Practice Direction.
In cases where the claim form has been issued and the person has provided a statement of reasons for non-compliance with the Practice Direction, the court will notify the Home Office and the matter will be placed before a judge for consideration as soon as practicable. In these circumstances the Home Office will defer removal if:

- The court decides that good reason has been provided for failure to comply (and gives a direction, e.g. that detailed grounds be submitted by a specified date), or;
- Permission to proceed to JR is granted, or;
- The court has not yet considered the matter by the time/date of removal. In such circumstances, it will be necessary to defer removal until the court has reached a decision.

3. Out-of-hours claims prior to lodging with the court.
Where it is not possible to file a claim due to the Administrative Court or Upper Tribunal office being closed, the Home Office may defer removal if provided with a copy of detailed grounds and subject to a consideration of the exceptions set out in section 6 of this guidance. The responsibility remains with the claimant to file the claim form as soon as possible on the next day the Administrative Court or Upper Tribunal office is open and to notify the Home Office that the claim form has been issued.

All JR applications received in respect of cases where removal directions have been set must be referred to OSCU who will consider on an individual case by case basis whether deferral of the removal directions is necessary.

JR applications relating to third country cases must be referred to the Third Country Unit (TCU) between 9am-5pm Monday to Friday. Deferral of removal directions will be considered by TCU on a case by case basis.

4.2. Withdrawing an application for judicial review

In some cases, a person with an outstanding JR application may ask to leave the UK. Where a person wishes to make a voluntary departure, you must ask them to sign a disclaimer (form

IS101). The person (or their legal representative) must also contact the courts to withdraw their JR application so that the court file is closed. This must be done before the person leaves the UK so that a Notice of discontinuance can be filed. Further guidance on voluntary departures is in Chapter 48.

Section 5: Threat of judicial review

Where there is a threat of JR, removal directions must remain in place until a Crown Office reference, Upper Tribunal reference or injunction is obtained in accordance with 4.1 above. However, even if a complete JR claim is submitted, removal directions can be maintained where certain exceptions apply and the JR would not be barrier to removal (see Sections 6 and 7). All threats of JR must be referred to OSCU who will consider whether it is appropriate to maintain removal directions.

In all removal cases, if a person is unable to file a claim because the Administrative Court or Upper Tribunal office is closed, you must still consider whether deferral is appropriate where a copy of detailed grounds is provided to the Home Office and lodged with the court or tribunal at the earliest opportunity. A decision on whether to defer in these circumstances will be taken by OSCU.

5.1 Special arrangements (including charter flights)

Where your case is scheduled to be removed by special arrangements, including charter flight, and a threat of JR is received:

- You must refer the case to OSCU immediately.
- OSCU will let you know if the removal can go ahead on a case by case basis.
- If OSCU decide not to defer removal, they will provide a letter for you to send to the person or his representatives of this decision and the reasons. The letter will explain that removal will continue unless an injunction is obtained.
- If an injunction is obtained, all enforcement action must be suspended immediately.

Port cases

In port cases where removal directions are set for a date within seven days of refusal, you must defer removal when a written threat of JR is received. The person must be given 48 hours to lodge their application with the Administrative Court or Upper Tribunal, so any removal planned for within this period must be re-scheduled. You must also inform the person that their removal will proceed if they do not properly lodge their application with the court or tribunal (as set out in section 4 above) within this period. The 48 hours begins when you receive the written threat of JR and must include at least one working day.

Section 6: Application for permission received

If an application for permission to JR is submitted and removal directions are in place, the application must be passed immediately to OSCU for consideration. They will provide advice on whether to defer removal. OSCU will normally advise to suspend removal when an application for permission to JR is made but there are exceptions to this.

OSCU must not automatically defer removal where a JR application is made with detailed grounds if:

1. there has been less than three months since a previous JR or statutory appeal has been concluded on the same or similar issues; or
2. there has been less than three months since a previous JR or statutory appeal has been concluded and the issues being raised could reasonably have been raised at that previous JR or statutory appeal; or
3. A stay on removal relating to the current JR has already been refused, and no subsequent application for a stay has been granted; or
4. the individual is being removed by special arrangements (including by charter flight).

In addition, OSCU will not automatically defer removal where a JR renewal application has been made but an application for injunction has already been refused in relation to that same JR application (see also section 12).

If OSCU decide that removal will not be deferred they will provide a letter for you to serve on the person or his representatives to let them know that the removal will go ahead unless they obtain an injunction preventing removal. If an injunction is obtained, all enforcement action must be suspended immediately.

If a decision is made not to defer removal, in line with the exceptions set out in points 1 to 4, but the removal fails for reasons unrelated to the JR proceedings, then removal directions may be re-set (or the ten day policy applied), provided that the reasons for the original decision that the JR should not suspend removal are still applicable. Removal should be suspended if an injunction is obtained or permission to proceed is granted.

If the circumstances in points 1 to 3 apply (for example, there has been less than three months since a previous JR or statutory appeal), a JR which is lodged before removal directions have been set is not an automatic bar to the setting of removal directions. You should consult OSCU about whether it will be appropriate to set removal directions, and any other requirements (e.g. to advise the individual of the need to obtain an injunction to prevent removal).
Applications for permission to JR in third country cases must be referred to TCU between 9am-5pm Monday to Friday.

6.1 Special arrangements (including charter flights)

Chartered flights are subject to special arrangements because of the complexity, practicality and cost of arranging an operation. For this reason a JR application may not defer removal. Special arrangements may also apply in other cases. For example, where complex medical needs require a significant number of medical escorts and special equipment. If you believe a case in which you are arranging removal should be treated as a special arrangements case, you should consult OSCU before setting removal directions.

Operational constraints will determine arrangements necessary for charter operations and other special cases. Details concerning these arrangements will be communicated to the High Court

by OSCU in advance of the date planned for the operation. The person being removed will also be notified of these arrangements and that removal will not necessarily be deferred in the event that a JR is lodged. Where removal is not deferred, the person concerned will be advised in a letter to be provided by OSCU of the need to obtain an injunction to prevent removal.

6.2 Family cases

As stated at 2.4.2 above and Chapter 45, families who enter the family returns process are given every opportunity at the Assisted Return and Required Return stages to raise legal challenges regarding their departure.

In almost all cases, families will be notified that if they do not seek to depart the United Kingdom voluntarily either at Assisted or Required Return Stages and an Ensured Return is pursued, a subsequent JR will not necessarily suspend removal.

Notification in writing will be provided at both the Assisted Stages and Required Return Stages. When notice of a self check in is provided at a Family Departure Meeting, the family will be informed again that should their Required Return fail and a subsequent JR be lodged, removal will not necessarily be deferred.

Where Required Return is not considered appropriate (see section 4, Chapter 45(b)), the family will be informed in writing of the need to raise any legal challenge from the Assisted Return Stage, as a JR following arrest will not necessarily defer removal. In such cases further confirmation of this notification will be served upon arrest.

Where notification has been served that a JR application does not defer removal at the Ensured Return stage, the family will be reminded in a letter of the need to obtain an injunction to prevent removal.

Section 7: Stayed cases

Where the grounds for the JR have been resolved in a 'lead' case, removal directions can be re-set where:

- the person's application for JR was stayed as a result of the lead case;
- the application in that lead case has been dismissed or permission to JR in that lead case has been refused;
- the person's grounds do not raise any issues additional to those which were the subject of the lead case.

Additionally, the Home Office must consider whether it is appropriate to pursue removals in stayed cases, taking into account:

- any relevant court order;
- time given to provide the lead case with an opportunity to appeal; and
- time given to provide stayed cases with an opportunity to amend their grounds.

7.1 Lead case has been resolved

Once a lead case is resolved, the unit dealing with the case will inform appropriate business areas of the outcome and implications. You must review your case against the lead case and decide whether the person's grounds raise any issues additional to those in the lead case.

If you decide they do not, you may contact the Treasury Solicitor (TSol) and ask them to write to the person to request that they either withdraw their JR or apply to amend their grounds, making clear that removal directions will be re-set immediately if there is no response. The person must be given at least 14 days to reply (or longer if necessary to comply with a relevant court order). The TSol will let you know the outcome.

If there is no application to amend grounds within the deadline, you may re-set removal directions to take effect no sooner than 72 hours has expired and write to the person and their legal representative informing them of the new removal directions.

You must instruct the TSol to inform the court or tribunal that removal directions have been set and removal will continue.

If an application to amend the grounds is received you must consider deferring removal directions and also consider whether the case can be expedited.

Section 8: Judicial review challenges other than to removal

You must not automatically defer removal directions in these cases. You must only potentially suspend removal when Article 6 (right to a fair trial) of the European Convention of Human Rights is cited and must decide this on a case by case basis (see chapter 21.7-21.14 for further details).

Section 9: Removal directions deferred

If removal directions have been cancelled and JR proceedings have started you can get more information on next steps from the following areas:

- Enforcement cases: Litigation Operations (Enforcement)(LOE)
- Third country cases: Third Country Unit between 9am-5pm Monday-Friday and OSCU at any other time.
- Deportation cases: Litigation Operations Criminality and Detention (LOCDI)

If a JR has been received and you have deferred removal directions you must inform TCU in third country cases or LOCDI in deportation cases. They will notify the TSol and instruct them on the grounds for defence (it is important that you ensure that the TSol can obtain instructions or they will not be able to get the case before a judge quickly). For enforcement cases, there is no need to notify LOE separately as OSCU pass enforcement cases to LOE once the decision has been made to defer RDs. LOE will consider if the case is suitable for expedition (see section 11).

Where summary grounds have been lodged and it is considered that the JR claim has no merit, the TSol must be instructed by the appropriate JR unit to notify the court of this, with a request that the application is expedited. Where possible, detention can be maintained pending the outcome of the JR. Further guidance on the expedited process is in section 11 of this guidance.

Removal directions must not be re-set until the appropriate JR unit has given authority to do so.

9.1 Preparing the judicial review documentation

Once instructed by the appropriate Home Office JR unit, the TSol will draft an Acknowledgement of Service setting out our argument. There are 21 days to do this once a claim has been issued. Under the expedited process, the JR caseworker will normally instruct the TSol to lodge our grounds of defence much earlier. The JR caseworker must make sure the file is ready and be prepared to provide additional information to the TSol.

The Acknowledgement of Service, summary grounds, and detailed grounds in JR proceedings are disclosable to third parties so in each case you must decide whether sensitive information or material is included or whether you make an objection to disclosure for example, where information is:

- sensitive on grounds of security, policy, or some other ground of public interest; and or
- contains personal information relating to a third party.

The JR caseworker must discuss this with the TSol who will be able to advise on the duty of candour to the court and tribunal.

Most applications are dealt with on the papers but the person may, if refused permission on the paper application without a finding that the case is totally without merit, renew their request for permission orally. If permission for a substantive JR is granted, the appropriate Home Office JR unit will consider if it is appropriate to continue to defend the case and if so, will need to provide further instructions and more information to the TSol. There are 35 days to submit detailed grounds of defence.

Section 10: Permission to apply for judicial review granted

If permission is granted either at the paper permission stage or oral hearing, the Home Office is required to lodge our Detailed Grounds of defence within 35 days. A full 'substantive' hearing is listed. LOE, TCU, or LOCDI as appropriate, in conjunction with the TSol (and Home Office Legal Advisers Branch in appropriate cases), will decide if the challenge is resisted.

If permission to apply for JR is granted:

- LOE, TCU, or LOCDI will inform the enforcement office/case owning team of the procedure to follow and the likely time scale involved - especially when detention is a consideration.
- All enforcement action must be suspended immediately and must not be resumed until the application is resolved. You must regularly review detention.

The TSol will instruct Counsel to represent the Home Office at the substantive hearing.

Section 11: Expedited process

If your case falls into one of the categories detailed below, it may be suitable for expedition and you must refer the case to LOE for enforcement challenges and LOCDI for Criminal Casework cases, to take a decision on expedition. They, along with the TSol, will let you know if the case is suitable to be put forward to the court to be dealt with quickly.

- The claimant is in detention
- The claim is from a family being managed to departure through the family return process
- The claim appears to be clearly without merit
- The claim is an abuse of process
- The issue of public safety arises
- The decision making process has previously been subject to accelerated timescales (e.g. NSA cases, Detained Fast Track)
- There is a risk of self-harm
- The claimant is or was to be removed as part of an enforcement operation (e.g. such as a special charter flight)
- For third country and CC cases expedition will be agreed directly with the TSol. The JR caseworker must notify LOE to ensure that the court's expedited quota is not exceeded)

The decision as to whether a case is expedited or not rests with the High Court.

11.1 How to refer a case for expedition

To enable LOE and the TSol to make a decision on whether a particular case is expedited you must ensure that the following key documents (if available) are included in your referral to OSCU for a decision in relation to deferral of removal:

- JR claim form and grounds
- Tribunal determination(s)
- Reasons For Refusal Letter (RFRL)
- Any supplementary refusal letters
- Any submissions from the claimant
- Any other documents you consider appropriate

LOE officers will update CID notes when a decision regarding expedition has been made and will provide reasons for rejecting any recommended cases from the expedited process. You must also ensure that the Home Office file (or complete dummy file) is available as a matter of priority. **Any delay in obtaining the file may lead to a case being rejected from expedition if further evidence from the file is needed to make a decision on expedition**. JR caseworkers will aim to lodge an Acknowledgement of Service and grounds of defence within seven days where expedition is deemed appropriate and the person is detained.

Where the Home Office has lodged grounds with a request to expedite, we can normally expect an outcome from the court or tribunal within two weeks (from the date of lodging grounds).

Cases must only be expedited where we are confident that we can complete removal quickly if the permission application is refused. Normally detention is maintained while a JR permission application is expedited as it is considered removal is still imminent. If you do not believe there is a real likelihood of a quick removal you must inform LOE (LOCDI in criminal cases) explaining why.

Section 12: Permission to apply for judicial review refused

If permission to apply for JR is refused and the court or tribunal decides that the application for JR is clearly without merit or that renewal is not a bar to removal, it will be made clear in the order refusing permission. In these circumstances, the appropriate unit (LOE, TCU or LOCDI) will advise whether removal action can proceed. The normal removal process must then be followed. You must apply the exceptions outlined in this chapter if appropriate to do so.

If further submissions have been received, OSCU will notify the person and their legal representative if it is decided that removal will not be deferred pending any application for oral renewal.

In other cases where permission on the papers is refused but oral renewal remains a possibility, LOE or TCU or LOCDI will update CID, but will usually advise you not to re-set removal directions until the time limit for oral renewal has passed unless there is a specific finding or order from the court or tribunal.

In the circumstances outlined in section 6 of this chapter (for example, where an application for injunction has been made and refused, or a JR was lodged within three months of conclusion of a previous JR or appeal), OSCU may advise that oral renewal or the possibility of oral renewal should not suspend removal.

Section 13: Application to the Court of Appeal or Supreme Court

The Home Office or the claimant can seek to appeal against the decision of the Administrative Court or the Upper Tribunal to the Court of Appeal and then to the Supreme Court.

If the claimant or their legal representative tells you that they intend to appeal to the Court of Appeal or the Supreme Court you must contact the appropriate unit (OSCU or TCU or LOCDI) immediately. They will let you know what to do next and advise whether or not to suspend enforcement action.

Where the application to the Court of Appeal or the Supreme Court concerns a challenge to a High Court or Upper Tribunal Judge's decision to refuse to grant permission to apply for JR then removal directions can be maintained in line with the judgment in **Pharis** - you must however refer these cases to OSCU in the first instance for their confirmation of the position.

Section 14: Injunctions in removal cases ▸

An injunction is an order issued by a court requiring a party to do something or to refrain from doing something. In removal cases, an injunction might be put in place to prevent the Home Office removing a person(s) from the United Kingdom.

Where it is alleged by a person that an injunction against removal has been obtained, you must try to confirm this with their legal representative (time permitting in writing or by fax). The written confirmation from the legal representative may be no more than 'At [time] this evening Mr Justice X has granted an injunction over the telephone barring removal – this is the phone number of the clerk of the judge who can be called to confirm the existence of the order'. Where there is written confirmation or a verbal confirmation from a Duty Judge that an injunction has been granted, this must be referred to OSCU immediately.

If there is any reason to believe an injunction may have been granted, you must contact OSCU who will check with the Duty Judge to confirm verbally that an injunction has been issued. OSCU is open 7am-9pm Weekdays and 7am-7pm at the Weekend. Outside of OSCU opening times, contact the Command and Control Unit (CCU).

The removal must be stopped if enquiries confirm that an injunction has been issued.

14.1 Injunction confirmed

If the removal is imminent (the person is en route to, or at, the port of embarkation) or is in progress (the aircraft is on the ground and the doors are still open), the case owner [or CCU out of hours] must immediately take all reasonable steps to ensure that the removal is stopped. In these cases, you must **not** wait until you have received written confirmation of the injunction before cancelling the removal. You must:

1. If the removal is escorted: Immediately notify the Detainee Escorting and Population Management Unit (DEPMU) that removal must be deferred. DEPMU will inform the escort officers.

2. If the removal is unescorted, immediately inform CCU

3. Confirm to the legal representative or the High Court that the removal has been stopped and or did not proceed.

You must clearly minute the file, CID records, and any other internal notes to confirm what action was taken to attempt to stop the removal.

14.2 Out of hours and urgent injunctions

Claimants are served the Immigration Factual Summary when notice of removal is given which advises them that any urgent application for an injunction preventing removal or order granting or refusing an injunction must be sent to the Home Office team handling their case. The Immigration Factual Summary provides the appropriate telephone and fax numbers to use. Outside of normal office hours (9am to 5pm weekdays) or during a public holiday, the urgent application or order must be sent to CCU.

If an urgent injunction is not sent to CCU, but another Home Office office, there is a risk that the information will not be actioned prior to the person's scheduled removal and they will be removed from the United Kingdom despite the injunction being granted.

You must keep OSCU updated of any developments on the case. Where an injunction is received but you are of the opinion that the removal must not be pursued for other reasons, you must still

inform OSCU that an injunction has been issued.

OSCU operate between 7:00am and 9:00pm weekdays and from 7:00am to 7:00pm at weekends. Between those hours you must forward any last minute challenges to removal to OSCU to deal with.

You must ensure that, outside of your usual working hours and during weekends or bank/public holidays, legal representatives know that urgent queries relating to any injunction against an imminent removal must be made to the emergency hot line at CCU.

All answer-phone and voicemail messages for all areas must be updated to include the following:

LEOs/LITs/ ICE teams	'This office is now closed and will re-open at (insert time), for out of hours assistance, please call the Command and Control Unit on 0161 261 1640'.
Other areas	'This office is now closed and will re-open at (insert time), for assistance with the service of injunctions or last minute judicial reviews please call the Command and Control Unit on 0161 261 1640'.

14.3 Injunction received, but it proves too late to halt the removal.
Where a removal has already taken place, because the injunction arrived too late to halt the removal (for example after the doors of the aircraft have closed):

- You must inform the Court and OSCU as soon as possible that the person was removed;
- If you are able to quickly trace or contact the person (perhaps through their legal representatives in the UK or, via DEPMU, any escorting officers who may be escorting them), you must make every effort to assist their return to the UK;
- If it is not possible to return the person quickly, due to difficulties in tracing and/or organising their return, you must continue to try to facilitate the return while ensuring that the court is kept aware of progress.
- You must update CID regarding all actions taken. This must include times of events, such as telephone calls from representatives, court staff, etc, so that we are able to show that the Home Office has acted in a timely fashion.
- The Grade 7 for the area that owns the case and has actioned it to the point of removal must notify the Director for that area of work, the Director of OSCU and the Rapid Response Team (RRT) of the removal immediately with all available information while further enquiries are being made and to put them on notice that an urgent submission to the Minister will be prepared.
- Immediately following the removal an urgent submission must be sent, via the relevant Director General, to the Home Secretary. This must contain a chronology of events, detailing the efforts made to halt the removal and why these were unsuccessful. It must also contain details of any efforts being made to facilitate the person's return.

14.4 Injunction received, but removal has already taken place
Where an injunction is received but removal was not prevented:

- You must inform the court as soon as possible that the individual was removed
- You must contact Treasury Solicitors and seek their advice
- You must inform OSCU

- The Grade 7 for the area that owns the case and has actioned it to the point of removal must notify the Director for that area of work, the Director of OSCU and the Rapid Response Team (RRT) of the removal immediately with all available information while further enquiries are being made and to put them on notice that an urgent submission to the Minister will be prepared.
- Immediately following the removal an urgent submission must be sent, via the relevant Director General, to the Home Secretary. This must contain a chronology of events, detailing the efforts made to halt the removal and why these were unsuccessful. It must also contain details of any legal advice received from Treasury Solicitors.

The case must be referred to LOE to review the full facts of the case to consider whether the order has been obtained without any merit. If LOE believe this to be the case they can apply for the Court order to be discharged, bearing in mind that a decision to make such an application must be made quickly and in consultation with the Legal Advisers Branch (LAB), and Treasury Solicitors (TSols). Note that you must continue to try to facilitate the individual's return whilst this application is being processed.

Where, despite all efforts made, it is not possible to return the individual to the UK, LOE must approach the court again to explain the full extent of steps taken, why return is not possible and to ask that the order is discharged. Any decision not to pursue return must be taken at SCS level.

14.5 Information that must be recorded on file

When handling allegations of injunctions, you must maintain a clear record of all the actions taken on both the file minutes and on CID. You must include the following details as part of your notes:

- Who informed you about the injunction and the time you were told/became aware.
- Whether the injunction was confirmed by the legal representative or the Duty Judge and, if so, the time confirmation was obtained.
- If no confirmation was received, the steps taken to confirm the existence or otherwise of the injunction.
- Details of other units or staff you contacted to cancel the removal in DEPMU or OSCU or CCU. Include the time these units were notified to cancel the removal and the time they confirmed removal was cancelled (if times are different).
- Where an unlawful removal has taken place, details of all actions that have been taken to trace the person and return them to the UK.

Section 15: Applications to the European Court of Human Rights

The Human Rights Act 1998 came into force on 2 October 2000, incorporating rights and freedoms guaranteed under the European Convention on Human Rights into domestic law. A decision under section 82 of the Nationality Immigration and Asylum Act 2002 can be appealed on human rights grounds. It is still possible for an application to be made to the European Court of Human Rights (ECtHR), in Strasbourg, but it is unlikely that such an application will be accepted until appeal rights have been exhausted.

An application made to the ECtHR does not in itself require the suspension of removal. However, when applying it is possible to ask the Court, in effect, to order the suspension of removal action as an interim measure to allow the Court to consider the substantive matter in full before removal takes place. The technical procedure to achieve this is by making a request under Rule 39 of the Court's Rules. In response to such an application request, the ECtHR will (where appropriate) give a 'Rule 39 indication' indicating that the person must not be removed. This must be treated in the same way as an injunction.

15.1 Rule 39 indications from the European Court of Human Rights

All enquiries relating to threats of, or applications for Rule 39 indications must be directed to the OSCU Duty Officer in the first instance. Ongoing litigation (should a Rule 39 indication be granted) will be handled by Litigation Operations.

A Rule 39 indication is similar to a High Court injunction but is made by the ECtHR. Where you have been notified that a Rule 39 indication has been made, you must:

- defer removal immediately;
- where the person is detained, make sure this development is considered in relation to any decision to continue with detention.

If a subject subsequently wishes to withdraw their Rule 39 application, that must be communicated to the Court, The Court may wish to confirm this with the applicant, and you must take no action to enable removal of a subject (including via voluntary departure) until you receive confirmation that the Court has accepted the application as withdrawn.

Section 16: Judicial review in Scotland

JR in Scotland is pursued by means of a petition to the Court of Session in Edinburgh. There are several differences in the way cases are handled in Scotland, not the least of which is the fact that there is no permission to apply stage. If the court accepts the petition for JR they will grant First Orders. The granting of First Orders allows the person bringing the case to serve the petition on the Office of the Advocate General (OAG).

Where a person has been granted First Orders and removal directions are in place, you must ask them for a copy of the court order (interlocutor) granting First Orders and their petition for judicial review. You must then immediately refer the case to Litigation Operations Scotland and Northern Ireland (Lit Ops SNI) or OSCU (particularly when referring the case outside of normal office hours) who will provide advice on whether to defer removal. Lit Ops SNI / OSCU will normally advise to suspend removal when a person has been granted First Orders, but there are exceptions to this.

Where a person has been granted First Orders, you must not automatically defer removal where:

- there has been less than three months since a JR (in Scotland or elsewhere in the UK) or statutory appeal has been concluded on the same or similar issues; or
- there has been less than three months since a previous JR (in Scotland or elsewhere in the UK) or statutory appeal has been concluded and the issues being raised could reasonably have been raised at that previous JR or statutory appeal; or
- An interim order to stay removal has already been refused, and no subsequent application for an interim order has been granted; or
- The person is being removed by special arrangements (including by charter flight).
- Removal is at the Ensured Return stage of the Family Returns Process (see 6.2 above)

This list is not exhaustive, so you must always seek advice from Lit Ops SNI /OSCU when you are considering whether to defer removal.

If an appeal is marked (called a reclaiming motion) against a decision of the Court of Session dismissing a petition for JR that will not of itself prevent removal directions being set. Removal directions can be set if, after consultation with the OAG, it is considered that an appeal is obviously lacking in merit. Generally, removal directions will not be set within the 21 days during which a reclaiming motion can be marked. If a reclaiming motion is marked and removal directions are subsequently set, the petitioner (via their legal representatives where applicable) must be advised that in order to have their removal cancelled they must seek and obtain from the Inner House of the Court of Session an interim order suspending those removal directions.

If you decide that removal will not be deferred, you must immediately notify the person or his legal representatives in writing that removal will go ahead unless they obtain an interim order preventing removal. If an interim order is granted, removal cannot take place until the petition is determined.

If a decision is made not to defer removal, in line with the exceptions set out in points 1 to 4, but the removal fails for reasons unrelated to the JR proceedings, then removal directions may be re-set (or the ten day policy applied), provided that the reasons for the original decision that the JR should not suspend removal are still applicable. Removal should be suspended if an interim order is obtained.

Section 17: Judicial review in Northern Ireland

JR in Northern Ireland is pursued by means of an application to the High Court of Justice. Leave to apply for JR is made on an ex parte basis setting out the relief sought and the grounds of review relied upon.

Applications for JR in Northern Ireland must be brought to the attention of the Crown Solicitor's Office (CSO) via the litigation team at Festival Court in Glasgow, who act on the Home Office's behalf in these cases, and who can provide advice on how to proceed. Criminal cases are dealt with by LOCDI.

Section 18: Completing the Immigration Factual Summary

The Immigration Factual Summary has a number of functions:

- It outlines to the person being removed all of the different actions which have been taken on their case which have led to the setting of removal directions;
- Should the person lodge an application for JR, their legal representative, OSCU, and the Administrative Court or Upper Tribunal rely on the information contained within the summary in order to make a quick and informed decision concerning the person's case for JR and whether it is appropriate to maintain or defer removal;
- Additionally, the ECtHR relies on the information contained within the summary to assess the merits of an application to them to impose interim measures under Rule 39 of the ECtHR's Rules of Court;
- It enables the Home Office to demonstrate to the court all of the steps that have been taken to address a claim to remain in the UK, and to demonstrate that removal is now the appropriate course of action.

The contents of the Immigration Factual Summary must be written clearly so that it can be understood by a person outside the Home Office. It must be completed in plain English and **without acronyms**.

All fields must be completed. Most fields are self-explanatory, however some guidance is provided below.

Basic data fields
In the field entitled **'Legal Rep Address'**, if the person does not have a legal representative 'No legal representative on record' must be recorded in that field and, where appropriate, 'The subject has been provided with a list of legal representatives'.

In the field entitled **'Removal Date', do not** record the date of departure if the person is being provided with only 'limited advance notification of removal'. Instead, you must record 'limited advance notice' in this field. The date and time of departure must not be mentioned in the 'Immigration History' section of the form, but the reason for giving 'limited advance notification of removal' must be stated in the 'Immigration History section'.

In the field entitled **'Other Litigation'** all previous applications for JR; injunctions; and applications for *interim measures* under Rule 39 to the ECtHR must be recorded. The Administrative Court or Upper Tribunal office reference number for each JR/injunction application must be recorded here in order to assist the Court. As an example 'The subject submitted an application for judicial review on dd/mm/yyyy (CO Ref: CO/00000/2011 or Upper Tribunal ref: JR/00000/2014). Permission was refused on dd/mm/yyyy.'

It is important that wherever possible all of the information needed to complete the summary is obtained directly from the Home Office file rather than from CID alone.

Immigration history
The more complete and accurate the immigration history the more able the Home Office will be to deal with litigation quickly and effectively. An accurate Immigration Factual Summary will also reduce the likelihood of the High Court granting last minute injunctions.

The Immigration History must be completed in chronological order.

The instructional text contained within the document will aid completion of the history and the guidance below provides further assistance.

Arrival in the UK

- Record the most recent date of arrival in the UK. Record the dates of any previous arrivals in the UK and whether entry was made on a valid visa etc. or if leave to enter was refused.
- Record any attempts at entering the UK illegally and method used (e.g. false passport, clandestine entry in a lorry).
- Record any documents served to the person at the point of entry and the date on which the document was served.
- Record any periods of Temporary Admission granted.
- Record if the person has re-entered the UK post-removal or was returned from a third country under the Dublin Convention.
- Note if the person has entered in breach of an extant Deportation Order.

Departures or Removals from the UK

- Record the date of any previous removals of the person from the UK.
- Record the date of any voluntary departures made by the person from the UK.

Details of any valid leave held

- Record the type and length of any previous leave held.
- If leave was curtailed, record the date of curtailment and the reason for the decision. Note any documents served to the person.

Claims made to the Home Office (asylum, human rights)

- Note the date that the person made the claim and the nature of the claim (e.g. asylum, human rights).
- Record the outcome of the claim and the date of decision (e.g. refused asylum but granted exceptional leave to remain (ELR), or certified as clearly unfounded under section 94 of the 2002 Act etc.).
- Record if the refusal carried a right of appeal to the Tribunal or whether and why the claim did not carry a right of appeal (e.g. claim certified under section 96 of the 2002 Act or refused under paragraph 353 of the Immigration Rules)

Applications for leave to remain

- Record the date of each application made to the Home Office and what type of application (e.g. Leave to remain as a spouse, Leave to remain outside the Rules etc.)
- Record the outcome of each application and, if appropriate period covered by the leave (e.g. Leave to remain granted from dd/mm/yyyy to dd/mm/yyyy).
- If the application was refused by the Home Office, state whether the refusal attracted a right of appeal and whether the appeal was 'in country' or only exercisable from abroad.
- State if the application was refused and certified under either s94 or s96 of the 2002 Act.
- Record the dates and outcome of any administrative review of a decision.

Appeals

- Detail the date of any appeals made and the date and outcome of each appeal.
- Detail all applications for permission to appeal to the First Tier Tribunal or Upper Tier Tribunal and the outcome. Prior to the existence of the Immigration and Asylum Chamber, applications for reconsideration were made to the Asylum and Immigration Tribunal and or to the High Court and this must be reflected in the Immigration Factual Summary if appropriate.
- Record the date on which the person exhausted their appeal rights. Also note if there are any remaining appeals which may be exercised from outside the UK (e.g. following a refusal under section 94 of the 2002 Act).

- If the person had a right of appeal but did not exercise that right, record this information along with the date on which they subsequently exhausted their appeal rights.

Further submissions

- Record the dates of all occasions when further submissions were made and the date of the outcome in each instance. This includes any submissions made by Members of Parliament.
- If the further submissions attracted a right of appeal, record whether or not the appeal was exercised and the outcome of the appeal.

Deportation Orders

- Record the date when the person was notified of their Liability to Deportation and documents issued.
- Record the date of Decision to Make a Deportation Order. Note whether the person exercised a right of appeal and the outcome of the appeal. Record the date on which they exhausted their appeal rights.
- Record the date that the Deportation Order was signed and served.
- If the person is subject to Automatic Deportation, record the date that the Decision to Make a Deportation Order was served and whether there was a right of appeal to the Tribunal, date of appeal and outcome. Also note if there was a human rights or asylum claim refused in the Decision to Make a Deportation Order which was certified under section 94 or section 96 of the 2002 Act.

Applications for JR and injunctions

- Record the date of any applications for JR and/or injunctions, and record the outcome of those applications together with the Administrative Court or Upper Tribunal office reference numbers.
- Record if no JRs or injunctions have been sought in the 'Further Litigation' field.
- If removal isn't being deferred in spite of a JR application state why (for example, there has been an appeal within the last three months; removal via charter flight etc).

Periods of detention and reasons for release

- Detail all previous periods of detention and the reason for release.
- Detail dates of service of IS96 and the reporting restrictions imposed.
- Detail all incidents of failure to comply with reporting restrictions and the action taken.
- Detail dates of all bail hearings and outcomes.

Dates of any periods of absconding

- Detail any periods where the individual has been classified as an absconder within the meaning defined in Chapter 19.

Removal directions

- Record the date of any removal directions previously set and the reason for the failure to remove (for example, the person was disruptive, illness, violence etc).
- Record the service date and time of removal directions. If less than standard notification is being provided, state why, but do not record the date and time of the removal.
- State whether self check-in removal directions have been set previously and the reason for failure.
- Where removal directions are set for removal by charter flight record the date that the assertive letter was served.
- Third county cases - state certified in accordance with third country legislation, claim to be considered by [member state].

Disclaimers

- Record the dates of any disclaimers signed by the person and the content of the disclaimer (withdrew a right of appeal, agreed to depart voluntarily).
- Include any issues of non-compliance by the person in obtaining the Emergency Travel Document (for example, failing to attend an interview or failing to complete documentation)

Assisted Voluntary Return (AVR) and Facilitated Returns Scheme (FRS)

- Record the date of when AVR was offered and how it was offered (e.g. face-to-face).
- If a family is being returned you must state the date of any Family Return Conference(s) conducted.
- State if an AVR application was made but later withdrawn.
- For individuals subject to deportation, record if they have applied for FRS and the outcome of the application.

Medical conditions

- Record any known medical conditions (when diagnosed).
- Record if the Home Office has provided the person with medication.
- Note any treatment they are currently receiving. Alternatively, state if treatment is not currently received.
- Record any provisions that the Home Office has made for the removal of the person (for example, medical escort, any additional medical equipment).

Risk of self-harm or suicide

- Note if there is a medical escort travelling with the person being removed.
- Record if there is any evidence that the person has previously deliberately harmed themselves or has attempted suicide.

Revision History

Date change published	Officer/Unit	Specifics of change	Authorised by;	Version number after change (this chapter)
		OEM Revision		1
8/4/2008	OEP	Insertion of new 60.1	Julia Dolby	60 v2
12/10/2012	OPRU	Section 14 updated to state actions to be taken when injunction obtained and when removal goes ahead despite injunction	Sonia Dower	V3
20/05/2013	Enforcement Policy	Minor changes to sections 2, 3, 4, 5, 9, 11, 16 and 18.	Sonia Dower	V4
17/10/2013	Enforcement Policy	Minor changes to section 16.	Kristian Armstrong	V5
27/11/2013	Enforcement & Returns Operational Policy	De-restriction of references to removal notice calculator at section 2.1, 2.3, 2.4, de-restriction of additional guidance for filling in the immigration factual summary at section 18. References to UK Border Agency and UKBA changed to Home Office throughout. Revision history included in external version.	Kristian Armstrong, Head of Asylum, Enforcement and Criminality Policy	V6
/7/2014	Enforcement Policy	Section 2: clarifying wider use of limited notice Section 3: notice requirements for NSA cases already reviewed by JR or following a failed removal; clarification of ten day policy (including updating of EEA safe country list) Section 6: clarifying circumstances in which JR will not suspend removal. Special arrangements include but are not limited to charter flights. Minor revisions and updating to sections 4,5, 7 and 9 – 18.	Kristian Armstrong, Head of Criminality and Enforcement Policy	V7
20/10/2014	Enforcement Policy	Section 6: clarifying circumstances in which JR will not suspend removal in family cases and cases where there has been a previous JR Section 19: amendments to reflect phased introduction of Immigration Act 2014 Minor consequential revisions to sections 2, 3, 4 and 16. References to LOCD changed to LOCDI throughout.	Kristian Armstrong, Head of Criminality and Enforcement Policy	V8
15/1/2015	Enforcement Policy	Section 19 temporarily removed (suspension of the policy effective from 9 January 2015 until a further version is published)	Kristian Armstrong, Head of Criminality and Enforcement Policy	V9
6/4/2015	Enforcement Policy	Section 2: notice may be given of a removal window as an alternative to RDs or limited notice; exceptions and where overnight detention will not be necessary. Minor changes/ clarifications to sections 3, 6, 12 and 18.	Rebecca Handler	V10