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### 53 Extenuating circumstances

It is the policy of the Agency to remove those persons found to have entered the United Kingdom unlawfully unless it would be a breach of the Refugee Convention or ECHR or there are compelling reasons, usually of a compassionate nature, for not doing so in an individual case.

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## **53.1 Illegal entrants and persons subject to administrative removal action under section 10 of the 1999 Act**

Full account must be taken of all relevant circumstances before a decision to remove is taken on a case.

The factors to be considered are the same as those outlined in paragraph 395C of the Immigration Rules.

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### **53.1.1 Instructions on applying paragraphs 364 to 368 and 395C of the Immigration rules**

Before a decision to remove is taken on a case, the caseowner/operational staff must consider all known relevant factors (both positive and negative). Removal should not be considered in any case which qualifies for leave under the Immigration Rules, existing policies or where it would be inappropriate to do so under this policy.

Relevant factors are set out in paragraph 395C of the immigration rules and in the guidance below, **but this list is not exhaustive**. Additional factors to consider in relation to deportation / administrative removal of an individual as well as family members and civil partners are set out in paragraphs 365-367 of the immigration rules.

When considering cases involving children regard must be given to the duty imposed by section 55 of the Borders, Citizenship and Immigration Act 2009 with respect to safeguarding and promoting the welfare of children. This is set out in chapter 45 of the Enforcement Instructions and Guidance on family cases and further guidance on the children's duty is available:.

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### **53.1.2 Relevant factors in paragraph 395C**

The consideration of relevant factors needs to be taken **as a whole** rather than individually, for example, the length of residence may not of itself be a factor, but it might when combined with age and strength of connections with the UK.

◆ **Age:**

An unaccompanied child under the age of 18 would not normally be considered for removal unless there is evidence that satisfactory reception arrangements are in place in their home country. Cases must be assessed on their individual merits with reference to the future issues listed below. Chapter 26 deals with unaccompanied minors.

◆ **Length of residence in the United Kingdom:**

For those **not** meeting the long residence requirements elsewhere in the immigration rules, the length of residence is a factor to be considered. In general, the longer a person has lived in the UK, the stronger their ties will be with the UK. However, more weight should be attached to the length of time a child has spent in the UK compared to an adult.

**Residence accrued as a result of non-compliance by the individual**

Where there is evidence of an attempt by the individual to delay the decision making process, frustrate removal or otherwise not comply with any requirements imposed upon them, then this will weigh against the individual. (See also ['Personal History'](#))

**Residence accrued as a result of delay by UKBA**

Case law has established that there are particular contributory factors involving delay that need to be present before it is considered significant enough to grant leave (Court of Appeal judgement in HB (Ethiopia) & others v SSHD [2006] EWCA Civ 1713 refers)

These include cases where;

- an application has been outstanding for over 2 years; and
- no decision has been received from the UK Border Agency during that time; and
- the individual has been making progress enquiries during that time; and
- in the meantime the delay has meant that they have built up significant private or family life or the delay has resulted in considerable hardship:

In addition to the foregoing, provided that none of the factors outlined in [‘Personal History’](#) weigh against the individual, then caseowners should also place weight on significant delay in cases where, for example;

- An initial application or an ‘in-time’ application for further leave (an application made before the individuals leave to enter/remain had expired) was submitted some time ago. A significant delay in such cases considered as being between 3-5 years.
- ‘Family’ cases where delay by UKBA has contributed to a significant period of residence (for the purposes of this guidance, ‘family’ cases means parent as defined in the Immigration Rules and children who are emotionally and financially dependent on the parent, and under the age of 18 at the date of the decision). Following an individual assessment of the prospect of enforcing removal, and where other relevant factors apply, a 3 year period of residence may be considered significant, but a more usual example would be 4-6 years. Family units may also be exceptionally considered where the dependent child has experienced a delay of 4-6 years whilst under the age of 18.
- Any other case where delay by UKBA has contributed to a significant period of residence, Following an individual assessment of the prospect of enforcing removal, and where other relevant factors apply, 4-6 years may be considered significant, but a more usual example would be a period of residence of 6-8 years.

◆ **Personal history (including character, conduct and employment record):**

When considering an individual's character and conduct, regard must be given to whether;

- There is evidence of criminality that meets the Criminal Casework Directorate (CCD) threshold; or
- The individual has been convicted of a particularly serious crime (below the CCD threshold) involving violence, a sexual offence, offences against children or a serious drug offence; or

- There are serious reasons for considering that the individual falls within the asylum exclusion clauses; or
- It is considered undesirable to permit the individual to remain in the UK in light of exceptional circumstances, or in light of their character, conduct or associations, or the fact that they represent a threat to national security.

Caseowners must also take account of any evidence of deception practiced at any stage in the process, attempts to frustrate the process (for example, failure to attend interviews, supply required documentation), whether the individual has maintained contact with the UK Border Agency, as required, and whether they have been actively pressing for resolution of their immigration status. The caseowner must assess all evidence of compliance and non compliance in the round. The weight placed on periods of absconsion should be proportionate to the length of compliant residence in the UK. For example, additional weight should be placed on lengthy periods of absconsion which form a significant proportion of the individual's residence in the UK.

An individual's lawful employment history and how they have supported themselves and/or their family during their stay in the UK should also form part of the consideration.

◆ **Strength of connections with the UK:**

Family ties (including marriage/civil partnership and relationship akin to marriage) and other connections such as business or lawful employment must be considered. Where an individual has spent their formative years in the UK, consideration must be given to whether they have adapted to life in the UK and/or whether they can adapt to life outside the UK. In addition, the Home Office is required to take into account the impact of removal/deportation of an individual upon their spouses and/or children.

When an individual is married, in a civil partnership or a relationship akin to marriage with a person lawfully resident in the UK, a genuine and subsisting relationship will create further ties with the UK.

◆ **Domestic circumstances:**

Besides family ties (including adopted children), this includes aspects such as their housing (e.g. tenancy as well as ownership), whether they or their children are in education, or whether anyone in the UK relies on the individual for physical, financial or emotional support. All of these may increase the strength of ties between an individual and the UK, but will need to be weighed against any adverse evidence.

In addition, paragraph 365-366 of the immigration rules deal with the relationships of spouses, civil partners and children to the person being removed from the UK, depending on whether the spouse or civil partner is settled in the UK or living apart from the individual being considered for removal, and in the case of children whether they are no longer dependant on the parent(s).

Paragraph 367 sets out additional factors to be considered when looking at whether spouses, civil partners and children should be removed as dependants in their own right.

This covers:

- whether the spouse can maintain himself/herself and any children without recourse to public funds for the foreseeable future,
- In the case of a child of school age, the effect of removal on a child's education must also be considered.
- The practicality of plans for the child's care and maintenance in the UK if one or both parents are removed, and
- Any representations made on behalf of the spouse and child.

When considering relevant factors in cases involving children regard must be given to the duty imposed by section 55 of the Borders, Citizenship and Immigration Act 2009 with respect to safeguarding and promoting the welfare of children. This is set out in chapter 45 of the Enforcement Instructions and Guidance on family cases and further guidance on the children's duty is available.

◆ **Compassionate circumstances:**

Any compelling compassionate circumstances will be considered and given due weight. Examples of compassionate circumstances might include: ill-health, medical treatment, the inability of a person to look after himself/herself, and reliance upon residence in the UK. A person's age is not, in itself, a realistic or reliable indicator of a person's health, mobility or

ability to care for himself/herself. For ill health to be a barrier to removal on its own, it must reach the threshold as set out in the case of N v SSHD UKHL31.

◆ **Any representations received on the persons behalf:**

These must always be considered and given due weight. Individuals may raise other relevant factors not listed above. These should be fully considered on a case-by-case basis.

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### **53.1.3 Relevant factors in Deportation cases**

There will be cases where the person is liable to deportation where:

- a) A decision to make a deportation order against him was taken before 2 October 2000; or
- b) A valid application under the Immigration (Regularisation Period for Overstayers) Regulations 2000 has been made.
- c) The person is a spouse/ civil partners or child under 18 of a person ordered to be deported
- d) The Secretary of State deems the persons deportation to be conducive to the public good.
- e) A court recommends deportation in the case of a person over the age of 17 who has been convicted of an offence punishable with imprisonment.

#### **Decision to deport pre-19/07/06**

If the decision to deport was made on or before 19<sup>th</sup> July 2006 then case owners must seek to strike a balance between the public interest being served by deportation and any known relevant factors.

#### **Decision to deport post-19/07/06**

For cases where the decision to deport has been made on or after 20<sup>th</sup> July 2006, the presumption is that the public interest is met by deportation, all relevant factors in each case

must be considered to see whether this presumption is outweighed. However, it will only be in exceptional circumstances that the public interest in deportation will be outweighed.

### **Subject of a Deportation Order (DO)**

Where a person is subject to an extant DO, then the circumstances existing at the time the DO was signed must be taken into account. If it is considered that deportation is no longer appropriate, then the DO must be revoked before any grant of leave is made. Refer to IDI chap 13, section 5 – Revocation of a Deportation Order

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### **53.1.4 Concluding the case**

Decision makers must consider all relevant factors in the round and be able to demonstrate that full consideration has been given to paragraphs 395C and 364-367.

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### **53.1.5 Highly Skilled Migrant Programme (HSMP)**

In light of the HSMP Forum judgement of the 8<sup>th</sup> April 2008, Immigration Group staff must ensure that any Individuals currently being considered for removal and who fall within the scope of the judgement are **not removed** without their case being reconsidered under the terms of the judgement.

The judgement affects 3 groups of individuals already admitted to the HSMP as at 7<sup>th</sup> November 2006:-

- ◆ Those yet to apply for further leave.
- ◆ People who were refused an extension under the new rules.
- ◆ People who left the country rather than take the old test.

All cases which appear to fall into one of the above categories should be referred to HSMP and Employment LTR Casework Team in Sheffield for consideration.

## **53.2 Long residence**

Under the long residence rules, an individual must show continuous residence for either a period of 10 years lawful residence or a combination of 14 years lawful and unlawful or 14 years unlawful residence in the United Kingdom.

Applications for indefinite leave to remain under the long residence rules are charged applications. The onus is on the individual to apply on the correct application form and enclosing the required fee. A separate application and fee is required for each family member subject to immigration control.

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### **53.2.1 Procedures when detecting an individual who claims to have 14 years continuous residence in the United Kingdom**

If an individual is encountered during an operational visit an Interview under caution will be necessary in order to establish whether the person is an illegal entrant or subject to administrative removal action under section 10 of the Immigration and Asylum Act 1999.

If no papers have been served on the individual follow the instructions in Chapter 7 - service of notice of illegal entry or Chapter 51 - notice of administrative removal.

It has been established in the case of *Fadeyi v the Secretary of State* that the service of an illegal entry notice (IS151A) stops the individual accruing further time in the UK towards long residence. This is also known as “stopping the clock”. Any time accrued after the service of an enforcement notice does not count towards time taken into account for the purposes of the long residence rules. This also applies to section 10 and deportation notices. The length of residence is therefore calculated up to the date of service of any of the above mentioned notices.

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### **53.3 Procedures when a British spouse exercises Treaty rights in another EU country**

The European Court of Justice ruling in the case of *Akrich*, supports the UK's view that third country nationals who are illegally in the UK, and marry British citizens (who are not dual nationals of another EEA state), should not be able to use EC law to remain here. It will allow the UK to continue to apply its national immigration legislation in such cases.

If the British spouse of an offender states an intention to exercise EU Treaty rights in another Member State, and the offender intends to accompany them, they should be given every opportunity to apply for entry to that country. This may entail returning their passport and deferring removal directions.

Report the circumstances to the relevant casework section and monitor the progress of the visa application, which can take several months (although, in non-detained cases, removal directions should only be deferred for a month at a time).

Review detention, although the situation does not preclude detention. Each case should be assessed on its individual merits.

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#### **53.3.1 Non-EEA spouses of UK nationals who have exercised Treaty rights in another Member State**

As the result of the judgement of the European Court of Justice in the case of *Surinder Singh*, the non-EEA spouse (or other family member) of a British citizen who returns to the UK after exercising a Treaty right in another EEA state as a worker may be entitled to enter the UK under European Community law rather than the immigration rules. Non-EEA applicants who benefit from *Surinder Singh* are issued with a family permit endorsed "Family member of EEA national", valid for 12 months and their passport endorsed with an open date stamp. They are then advised to apply to the relevant casework section for a residence document.

If such a person is encountered and there are doubts as to their status, refer to the European casework group.

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## 53.4 Marriage to an EEA national

The EEA consists of the following countries:

Austria, Ireland (Eire), Belgium, Luxembourg, Denmark, the Netherlands, Finland, Portugal, France, Spain, Germany, Sweden, Greece, United Kingdom, Italy, Iceland, Norway, Liechtenstein, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia, Bulgaria, Romania, and Slovakia.

Marriage to an EEA national who is exercising Community rights gives a family member, such as a spouse, the same rights to live and work in the United Kingdom as the EEA national. This right to residence exists as a right; it is not necessary to hold a residence permit to prove this right.

The *Diatta* judgement held that a family member only loses this right to residence if the EEA national leaves the country permanently, or the EEA national no longer has a right of residence in the United Kingdom, or on divorce (not just separation).

The *Baumbast* judgement found that where children of EEA nationals have a right to remain in the Member State for the purpose of continuing their education, their third country national parent/carer also has a right to remain, if that is necessary for the exercise by the children of their rights. This means that the third country national spouses of EEA national workers in the UK would have the right to remain here following their divorce from the EEA national or if the EEA national ceased work here, provided that they were the principal carer of the EEA national's children in education here. That right would last until the end of the children's studies at secondary level

A non-EEA spouse who is party to a marriage of convenience has no right to be treated as a family member. A marriage of convenience is a sham marriage undertaken solely for immigration purposes. The couple have no intention from the outset of the marriage of living together as man and wife in a settled and genuine relationship. It is not enough to say that the couple are not living together at any given time; it must be proved that they never lived or intended to live together.

The right to residency should not be confused with leave to enter or remain. Residency is an automatic right upon marriage to an EEA national.

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### **53.4.1 Procedures when dealing with an offender who has married an EEA national**

If an offender who has already had notices served marries an EEA national, refer to the European casework group. Do not initiate removal action.

If it is suspected that the marriage is one of convenience, do not arrange a home visit or office interview unless requested by the European casework group.

The European casework group generally undertakes any marriage interview, but if a person attends an Enforcement Office for interview, or is encountered at a police station, marriage enquiries may be made of the person and the spouse, if present, if they are willing to be interviewed. (Notice of illegal entry/administrative removal may be served if the marriage is one of convenience, but always refer to the European casework group first).

We are unable to restrict the movement of the family member of a genuinely married EEA national by detaining them or requiring them to live at a given address.

In most cases it will be appropriate to release the subject from detention. Temporary release should not be authorised and reporting instructions should not be amended in this way unless we have seen:

- ◆ Evidence of the EEA sponsor's nationality
- ◆ Evidence of the relationship (e.g. marriage certificate, birth certificate etc)
- ◆ Evidence that the EEA sponsor is exercising a Treaty right

If any doubts exist as to what action to take, refer to the European casework Group.

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### **53.4.2 Procedures when dealing with an offender who has married a person with HP/DL/LOTR\*.**

- ◆ HP – Humanitarian Protection
- ◆ DL – Discretionary Leave
- ◆ LOTR – Leave Outside the Rules

There is a "family reunion" policy whereby an existing spouse can come to the United Kingdom to join his/her partner who is settled in the United Kingdom.

The "family reunion" policy does not apply to new spouses, i.e. the marriage must have taken place before the person granted asylum left the country of his/her former habitual residence in order to seek asylum. If the spouse of a person with leave is detected as a suspected illegal entrant or person subject to administrative removal action:

- ◆ Interview under caution. Serve notice if appropriate (IS151a);
- ◆ Establish when the couple met and when they married;
- ◆ Establish if there are any other compassionate circumstances to consider;
- ◆ Report the circumstances to the relevant casework section on form IS126e for authority to remove. Caseworkers will consider any Article 8 issues arising.

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### **53.5 DP2/93 & DP3/96**

**As from the 24 April 2008 the marriage policy DP3/96 and its related policy DP2/93 have been formally withdrawn.**

The following guidance will, however, still apply to;

- ◆ those enforcement cases where consideration under DP2/93 & DP3/96 had already been initiated prior to their withdrawal on the 24 April 2008.
- ◆ in appeal cases where the policies had already been applied and rejected prior to 24 April 2008.

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### **53.5.1 Procedures when dealing with an offender whose marriage (or common-law relationship akin to marriage) is considered under DP2/93**

The relationship must have been made known to the Department on or before 13 March 1996.

If the relationship pre-dates initial enforcement action, establish if it is genuine and subsisting, by way of a home visit or an interview. If satisfied that it is genuine and subsisting, it is not appropriate to serve notices. Report the circumstances on IS126e and send to the relevant casework section.

If the relationship is not considered to be genuine and subsisting, interview the person under caution and serve notices, if appropriate. The settled partner should not be interviewed under caution unless suspected of an offence. Establish the circumstances, including any other compassionate factors to be considered and send a comprehensive report to the relevant casework section on form IS126e.

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### **53.5.2 Procedures when dealing with an offender whose marriage falls to be considered under DP3/96**

DP3/96 came into force on 13 March 1996. Unlike DP2/96 it does not provide for the consideration of common-law relationships akin to marriage.

In considering DP3/96;

- ◆ Establish if the marriage post-dates initial enforcement action. If it does, it should not in itself, and in the absence of the most exceptional compassionate circumstances, avail the offender. Report the circumstances on form IS126 and send to the relevant casework section for authority to remove;
- ◆ Where marriage pre-dates enforcement action, establish whether the marriage is genuine and subsisting;
- ◆ Establish the circumstances of the settled spouse, the length of time in the UK and any close ties (and whether undue hardship would be caused if they accompanied their spouse on removal);
- ◆ Establish the presence here of any children of either partner, their ages, the length of time they have lived in the UK and whether another parent has regular access to them;
- ◆ Take note of any other information that the couple provides as evidence of compassionate factors to be considered;
- ◆ Take note of any criminal convictions;
- ◆ If the relationship is not genuine and subsisting, interview under caution and serve notices, if appropriate. Report all the circumstances to the relevant casework section.

Where the person has a genuine and subsisting marriage with someone settled here and the couple have lived together in this country continuously since their marriage for at least two years before the commencement of enforcement action, and it is unreasonable to expect the settled spouse to accompany him/her on removal, the marriage may avail him/her, as may the presence of children with the right of abode, or serious health problems. Report the circumstances on IS126 and send to the relevant casework section.

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## 53.6 Children - Children as dependants

The presence in the United Kingdom (UK) of dependant children under 18 years of age must be taken into account when deciding whether removal of an immigration offender is the appropriate action to take.

In all cases involving the children of a family the following must be established and reported to the relevant casework section:

- ◆ the children's age;
- ◆ ties with the natural parent; how often the children see their natural parent; whether any maintenance is paid towards the children's upkeep;
- ◆ whether the children could easily adapt to a life abroad; whether such a move would cause hardship or put their health at risk;
- ◆ whether the children have the right of abode; the nationality of the children.

The above factors are balanced against the parents' immigration history and any criminal record.

When considering relevant factors in cases involving children regard must be given to the duty imposed by section 55 of the Borders, Citizenship and Immigration Act 2009 with respect to safeguarding and promoting the welfare of children. This is set out in chapter 45 of the Enforcement Instructions and Guidance on family cases and further guidance on the children's duty is available.

Cases involving children who are British or have the right of abode here require the authority of a senior caseworker or HEO/CIO manager in the relevant section when such children are accompanying parents voluntarily (this may be at public expense).

If a decision is taken to split the family, please refer to chapter 45 of the Enforcement Manual which deals with splitting families and the appropriate levels of authority.

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### **53.6.1 DP5/96 (Seven Year Child Concession)**

From the 09 December 2008 the discretionary enforcement policy DP5/96 (also known as the Seven Year Child Concession), is formally withdrawn. All cases involving families with dependant children with long residence will now be considered under the Immigration Rules and Article 8 of the European Convention on Human Rights (ECHR) pursuant to the Human Rights Act 1998.

#### **Transitional arrangements**

There are likely to be existing cases where DP5/96 will continue to apply despite its withdrawal. These types of cases are:

- ◆ current appeal cases where the policy has already been applied (before its withdrawal) and rejected by UKBA and the appeal is either still pending with the Asylum and Immigration Tribunal (AIT) or has been allowed;
- ◆ appeal cases where the policy was not applied by UKBA (before its withdrawal) and where the AIT directs UKBA to consider DP5/96 in the context of an allowed appeal
- ◆ cases where UKBA are challenging an allowed appeal by either the AIT or an upper Court;
- ◆ where UKBA have acknowledged in writing that they have received an application which relies on DP5/96;
- ◆ enforcement cases where UKBA have initiated the process of considering DP5/96 prior to its withdrawal on 09 December 2008. \*\*

**\*\*** Examples of such circumstances are where a caseworker has already considered DP5/96 prior to its withdrawal and has written to the individual **and** the representative requesting further information / evidence in relation to the child's length of residence.

Any information / evidence requested will need to be submitted within 28 days of the date of request, for the policy to continue to be applied to that case. The same factors contained within the withdrawn policy will still continue to apply when considering cases under DP5/96.

From the 09 December 2008 consideration under Article 8 of the ECHR and the Immigration Rules will also be given to any outstanding further representations against removal which cite the withdrawn policy (for example pursuant to paragraph 353 of the Immigration Rules) which have not yet been considered.

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### **53.7 Elderly persons**

In terms of removal, Ministers have agreed that a person's age is not, by itself, a realistic or reliable indicator of a person's health, mobility or ability to care for himself/herself. Many older people are able to enjoy active and independent lives. Cases must be assessed on their individual merits.

The onus is on the applicant to show that there are extenuating circumstances, such as particularly poor health, close dependency on family members in the UK, coupled with a lack of family and care facilities in the country of origin, which might warrant a grant of leave.

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### **53.8 Medical problems**

If a person's medical condition is advanced as a reason for delaying or discontinuing removal:

- ◆ ascertain full details of the condition;

- ◆ obtain the person's signature on a ASL.3751 (DocGen) for access to his medical records, if necessary;
- ◆ obtain a medical certificate;
- ◆ obtain a doctor's or hospital letter outlining the condition;
- ◆ ascertain from a doctor whether the person is fit to travel, or when they will be fit;
- ◆ ascertain if the person has anyone in his home country to provide any necessary care;
- ◆ check with the relevant country officer in COIS the likelihood of treatment being available in the person's country of origin;
- ◆ refer to the relevant casework section.

Where a family member of an individual suffers from a medical condition and this is advanced as a reason for delaying or discontinuing with removal, ascertain the information above in respect of the family member.

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### **53.9.1 AIDS/HIV positive cases and other Article 3 (medical) claims**

This section has been withdrawn for updating.

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### **53.9.2 Inoculations and other preventative treatment (prophylaxis)**

**See also:** IDI, chapter 1 General provisions, section 8 Medical, part 5.

If a person claims that it would be a breach of their human rights or simply unreasonable to return them to a particular country without access to preventive treatment of this kind, or attempts to delay their removal on these grounds, the general principle is that individuals are responsible for safeguarding their own health and that of their children.

When someone is informed that their appeal rights are exhausted and/or they are otherwise liable to be removed from the UK, you should:

- ◆ remind them at the same time of their responsibility for minimising any health risks to themselves or their dependants in the country of return;
- ◆ advise them to consult a general medical practitioner about any preventive treatment needed before travelling; and
- ◆ that they may have to pay for it.

A limited number of people, e.g. pregnant women and children under 5, may be particularly vulnerable to infection and therefore may need inoculation or other prophylaxis in preparation for their return.

The time between notification that their appeal rights are exhausted and final removal should normally allow sufficient time for people to take medical advice from a general medical practitioner and arrange for, and complete, any recommended treatment.

A person subject to removal cannot in principle claim any entitlement to remain in the UK to benefit from medical treatment. However, requests to delay removal for a short period to allow for preventive treatment should be considered on their merits in the light of medical advice and standard operational procedures before removal. This is particularly important when pregnant women, young children or unaccompanied minors are involved:

- ◆ Obtain a doctor's or hospital letter outlining the treatment required;
- ◆ Ascertain from a doctor why the treatment is necessary prior to removal;

- ◆ Ascertain the duration of the treatment; and
- ◆ Ascertain from the person why the treatment could not have been completed earlier.

The presumption should be that removal will not be delayed unless a doctor has confirmed that the treatment is necessary prior to removal and the person can show good reasons why it could not have been completed earlier.

### **Assisted Voluntary Return (AVR)**

If a person falling within the above vulnerable categories is due to leave the UK under an assisted voluntary removal scheme requests, with the support of a doctor's letter, that inoculation or malaria prophylaxis be provided, the request should normally be granted.

### **Detainees**

People detained prior to removal have access to medical care and advice from healthcare professionals in immigration removal centres. Detainees are not charged for treatment.

Medical advice on preventive measures, including advice leaflets, should be made available to detainees as soon as possible and should, if possible, be given as appropriate in the initial medical examination or screening which all detainees receive within 24 hours of detention, and in any case when removal directions are set.

Where removal centre medical staff consider that preventive treatment is necessary and can be completed without delay to planned removal, removal directions may be set but for a date after the treatment is completed.

When setting Removal Directions, officers should consult the health care professionals, via the UK Border Agency team at the centre, on the appropriate minimum time lag between administering medication and removal taking place.

Caseworkers, those responsible for setting Removal Directions and UK Border Agency teams at removal centres should document case histories as thoroughly as possible. This is

because, if a JR is commenced, access to a claimant's medical records cannot be guaranteed. Accurate and up-to date minutes of treatment offered, taken or refused may make it easier to keep Removal Directions in place, and/or respond to any further representations.

### **Malaria Prophylaxis**

Preventive treatment for malaria is a special case in that medication must be taken shortly before travel. People detained prior to removal may not therefore be able to make the necessary arrangements for themselves.

Any malaria prophylaxis recommended as appropriate by the removal centre medical staff for pregnant women and children under 5 should normally be provided and **time allowed for it to take effect before removal.**

In the event of adverse side-effects, time should also be allowed to obtain and follow further medical advice.

Removal need not be deferred in any case where a detainee declines (on his or her own behalf or on behalf of a dependent child) to take malaria prophylaxis that has been provided on medical advice.

Further detailed information, including tables on **Countries and territories with malarious areas** and **Regimes for various types of treatment** can be found in IDI chapter 1, section 8, part 5.

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### **53.9.3 Tuberculosis (TB)**

The WHO guidelines "Tuberculosis and air travel: guidelines for prevention and control (second edition)" specify that "Physicians should inform all infectious TB patients that they must not travel by air until they have completed at least two weeks of adequate treatment. Patients with MDR-TB should be advised not to travel until proven by adequate laboratory confirmation (i.e. culture) to be non-infectious."

Removal of those with TB should therefore not take place until these conditions have been fulfilled, but should not be delayed thereafter on medical grounds.

Caseworkers should bring this information to the attention of persons liable to removal at the earliest opportunity as well as of healthcare staff.

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