

## Chapter 5 – Index

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### 5 Entry in breach of a deportation order

Under section 33(1) of the 1971 Act, a person who enters or seeks (awaiting chapter 1.3 update) to enter or has entered in breach of a deportation order is an illegal entrant.

Under section 5(1) of the 1971 Act, a deportation order against a person invalidates any leave to enter or remain in the United Kingdom given to him before the order is made or while it is in force. Persons who enter in breach of a deportation order are therefore illegal entrants, notwithstanding any purported grant of leave to enter or remain (however, see 5.2).

Part 5 of the 2002 Act simplifies the appeals system by including almost all appeal rights into one section (82) and grounds of appeal into another (84).

#### 5.1 Procedures when detecting a person who has entered in breach of a deportation order (DO)

Interview under caution. If a person admits entry in breach of a deportation order, serve notice of illegal entry (IS 151a).

If no admission is made, you must prove that the person is the subject of the deportation order, either from Home Office records or from further enquiries.

If the person has already been treated as an illegal entrant in another category that notice of illegal entry does not have to be withdrawn. **See also:**

- ◆ Service of notice of illegal entry – Procedures
- ◆ Appeal rights for illegal entrants/seamen
- ◆ Removal of illegal entrants

#### 5.2 Deportation orders that have been revoked

If a person has entered in breach of a deportation order which has subsequently been revoked, that person is still an illegal entrant. However, if leave to remain has been granted after the revocation, it is not invalidated by section 5(1) and would preclude removal unless the leave to remain was obtained by deception or in continuation of a deceptive leave to enter.

It is an offence under section 24A of the 1971 Act to obtain or seek to obtain by deception leave to enter or remain and administrative removal action under section 10 of the 1999 Act may be appropriate. **This applies to cases where leave to remain was granted after 1 October 1996.**

### **5.3 EEA nationals in breach of deportation orders**

Every case must be referred to CMU Gen 1 (G1 or G2) before notice of illegal entry is served.

Ascertain:

- ◆ whether the person is, or has been, exercising Treaty rights;
- ◆ if there is a serious criminal history;
- ◆ on what basis the original deportation order was made;
- ◆ Whether a full right of appeal was exercised when the order was made.

Removal should not be enforced without reference to European Policy Directorate, Apollo House.