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Removals and Judicial Review 4

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On 26 July 2010, the High Court gave its judgment in the case of *R (Medical Justice) v Secretary of State for the Home Department* [2010] EWHC 1925 (Admin). This case concerns the notice that the UK Border Agency must give to someone before removing him or her from the UK. A copy of the judgment is available at:

<http://www.bailii.org/ew/cases/EWHC/Admin/2010/1925.rtf>

This information sheet gives information about the High Court's judgment, and the UK Border Agency's response.

Background information

The February 2010 information sheet on "Removals and Judicial Review 3" provides background information. It sets out the UK Border Agency policy on removals and judicial review as at January 2010. In the section on timescales, that information sheet explained the three days minimum notice period that must be given before someone is removed from the UK.

That section also set out exceptions to this minimum notice period. Under the UK Border Agency policy introduced in January 2010, someone could be removed from the UK with less than the minimum notice period being given or with no notice being given if the exceptions applied.

The High Court's judgment

The High Court considered the legality of the following exceptions to the minimum notice period:

- where the person is an unaccompanied child
- where the person is considered to be at risk of suicide or self-harm
- where the person is considered to be a risk to the health and safety of others (including other detainees, UK Border Agency officials and other staff)
- where the person has previously disrupted his or her removal, and it is considered he or she will do so again
- where the person has given written consent to the removal

The High Court decided that none of these exceptions was lawful. The reason for this was summarised in the judgment at paragraph 112:

"... the [] exceptions... failed to include provisions ensuring that there was access to the courts by those against whom [they are] invoked and would be invoked and there was no

safeguard for those subject to the [] exceptions so as to ensure that their right of access to justice was preserved.”

The High Court’s judgment explains that the right of access to justice includes access to a lawyer, and opportunity for that lawyer to take instructions and, if appropriate, bring the person’s case before the court. The UK Border Agency had previously accepted that the minimum notice period of three days was “*quite tight*” for ensuring the right of access to justice. The exceptions permitted this notice period to be shortened or no notice to be given at all. The High Court therefore ordered that the exceptions be quashed (i.e. the court said the five exceptions were unlawful and could not be used).

Effect of the High Court’s judgment

The UK Border Agency is no longer permitted to use the five exceptions rejected by the High Court. The UK Border Agency must, therefore, ensure that it gives a minimum notice period of three days to someone before he or she is removed from the UK. That three days period must include at least two working days. The last 24 hours in that three days period must include a full working day.

The High Court’s judgment did not affect the following two exceptions. These remain exceptions to the requirement of a minimum notice period of three days.

- where the person has just arrived in the UK and is to be removed immediately from the port at which he or she arrived (as long as the removal is not delayed by more than seven days)
- where an attempt at removal is abandoned and is reset to take place within 10 days (as long as the three days notice had been given of the original attempt)

The UK Border Agency response to the judgment

The High Court has given the UK Border Agency permission to appeal to the Court of Appeal. If the UK Border Agency pursues an appeal, it is still required in the meantime not to use any of the five exceptions rejected by the High Court.

After the judgment, the UK Border Agency revised its removals and judicial review policy. This is contained in chapter 60 of the enforcement instructions and guidance. The UK Border Agency has removed the five exceptions from this policy. However, if it appeals successfully to the Court of Appeal, the UK Border Agency could reintroduce these exceptions into that policy.

Chapter 60 of the enforcement instructions and guidance is available at:

http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter60_11012010.pdf?view=Binary