Immigration Enforcement

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Dear Oludotun

Enforced returns to France and Italy by charter flight on Thursday 24 September 2020

The Home Office intends to operate a charter flight to France and Italy. The flight will have capacity for up to 20 third-country nationals. As this is a chartered flight the aircraft may have to close its doors and move away from the stand shortly before the allocated time to comply with the departure slot. This could be up to 30 minutes before the departure slot.

Those third-country nationals whom the Home Office intends to return will have been notified of their liability to be returned to France and Italy. All returnees to whom the special arrangements policy, set out below, will apply, will be served with an assertive letter no less than five working days prior to removal informing them that they are to be removed by charter flight and that the special arrangements policy applies.

The special arrangements policy will not be applied to returnees on the charter flight who have not been served with an assertive letter. Judicial reviews lodged by returnees not subject to the special arrangements policy will be considered under the Home Office's published Immigration Enforcement General Instructions (IEGI) on judicial reviews and injunctions.

INVESTORS IN PEOPLE

As the Court will be aware, where the authorities within the UK have determined, pursuant to Regulation (EU) No. 604/2013 (the "Dublin III Regulation"), that another Member State is responsible for examining an applicant's request for international protection, and that other country has accepted responsibility (or has been deemed to accept responsibility) for determining that individual's application pursuant to the provisions of Dublin III, the applicant is liable for removal to that country. The UK will determine which country is responsible under the provisions of the Dublin III Regulation. The UK has determined that, pursuant to the provisions of the Dublin III Regulation, France and Germany are responsible for the consideration of the applications for international protection of the applicants on the charter flight and the relevant Member State has accepted responsibility for determining their applications.

On 14 March 2019 Walker J granted Medical Justice an interim injunction in respect of their challenge to the removal windows policy. A copy of the interim injunction is attached to this letter. The key operative part of the Order provides that "No such person shall be removed unless and until removal directions have been served on that person, and the relevant notice period has thereafter expired, in accordance with those sections of the Defendant's guidance document 'Judicial Review and Injunctions' (version 20.0 dated 10 October 2019) which govern the service of removal directions". The Home Office can confirm that while the injunction is in place, all those subject to removal by Charter Flight will be served with removal directions.

The Home Office can also confirm that, all those subject to removal by the Charter Flight will be served with removal directions in compliance with the consent order signed on 25 June 2019, a copy of which is also attached to this letter.

Covid-19

In response to the Coronavirus pandemic (Covid-19), the Home Office have installed additional control measures at Immigration Removal Centres (IRCs) residential short-term holding facilities (RSTHFs), and during the conveyance of returnees from HMPs in line with current Public Health England (PHE) guidance. These control measures have been implemented to mitigate the impact of Covid-19 during the immigration detention, escorting and enforced removal of individuals to their country of origin.

For reference, measures that have been put in place in response to the Covid-19 pandemic are set out at Annex A below. The latest guidance for Home Office staff and supplier staff IRCs, RSTHFs, pre-departure accommodation and on escorting about the principles for managing COVID-19 in places of detention is available on the gov.uk website here:

https://www.gov.uk/government/publications/coronavirus-covid-19-immigration-removal-centres

Charter flights – rationale

The Home Office is committed to the voluntary return of those who have no legal right to remain in the UK and has a range of schemes to encourage and facilitate this. Where it is necessary to enforce removal, charter flights are an effective method of return. This may be because of a lack of routing to a destination or limited availability of scheduled flights. Additionally, charter flights are considered a cost effective option as they allow the Home Office to achieve high numbers of returns to countries from which asylum intake is high or where there are a significant number of foreign national offenders awaiting return.

Special arrangements policy

The special arrangements policy is set out at page 22 of the IEGI on judicial reviews and injunctions. Chartered flights are subject to special arrangements because of the complexity, practicality and cost of arranging them. It is essential that the flights are not disrupted or delayed by large numbers of last-minute applications for permission to seek judicial review. For this reason, the Home Office may, in cases where an assertive letter has been served at least five working days before departure, decide not to defer removal simply on receipt of a last-minute threat or application to seek judicial review. A full copy of the Home Office's guidance on judicial reviews and injunctions can be found at the following link:

https://www.gov.uk/government/publications/returns-preparation

Where last-minute representations are received stating an intention to make an application, or that an application has been made, to seek permission for judicial review, and the Home Office decides that removal should proceed, the Claimant or their representatives will be informed in writing that removal will not be deferred.

All such Claimants will be advised that they must seek an injunction if they wish to prevent their removal. If an injunction is obtained, the Court is asked to note that this should be notified to the Home Office's Operational Support and Certification Unit (OSCU) or the National Command and Control Unit (NCCU) as per the instructions to Immediates and Duty Judges, by telephone and if possible confirmed by email. It would also assist us if the Court could notify the Home Office of injunctions which have been refused in the same way.

It is respectfully requested that Immediates and Duty Judges take the above information into account when considering any applications made for injunctions to prevent the removal of those due to be returned on the flight. It is also respectfully requested that Immediates and Duty Judges bear in mind the findings of the High Court in **R (on the application of Hamid) v SSHD [2012] EWHC 3070 (Admin)** and **R (Madan) v SSHD [2007] 1 WLR 2891**.

If Immediates and Duty Judges, or their clerks, require further information or copies of documentation on individual cases, they may contact the OSCU Duty Officer between the hours specified in the accompanying email to this letter. NCCU will be available after these times.

It would be helpful if any urgent email communication is followed by a telephone call to the OSCU Duty Officer to confirm receipt.

I would be grateful if you could make both Immediates and Duty Judges aware of the situation and the reasons for following this course of action.

Yours sincerely

Adam Pompa
For the Home Office

Annex A – Example COVID-19 measures in place

The Home Office is fully aware of the impact of Covid-19 on returnees and is committed to ensuring that health and safety is paramount at all times whilst detained and throughout the removal process.

We are consistently reviewing our strategy to provide support to returnees during the removal process, in accordance with PHE guidance and advice as reflected by the arrangements set out below:

- The implementation of at least a 1 metre social distance from other individuals where possible.
- The provision of facemasks for detainees to be worn with consent.
- The implementation of physical barriers e.g. Perspex or glass screens during interviews.
- A rigorous cleaning regime for all equipment after use with antibacterial wipes or suitable antibacterial spray such as Selgiene Extreme Bacterial and Virucidal cleaners.
- If suspected of contamination, vehicles used to transport detainees to be taken out of circulation and cleansed by a specialist cleaning company.
- Premises to be vacated if suspected of contamination, and specialist cleaning undertaken to provide a deep clean of the area
- Ensuring that there is prominently displayed guidance for hand washing, and the availability of antibacterial and alcohol hand sanitisers for individuals.
- Strict segregation of symptomatic and non-symptomatic detainees during detention and transporting of detainees to avoid cross infection.
- Isolation of symptomatic detainees individually in a room, vehicle or confined location.
- In the event of severe or emergency cases, a specialist ambulance to be called to attend and escort the affected individual(s) to hospital.
- The conduct of Dynamic risk assessments on all detainees prior to carriage by coach or mini-bus, and the implementation of quarantine and shielding measures where needed.

In addition to these measures, FCO travel advice, commercial updates from airlines and information received from UK foreign missions or central foreign authorities have been taken into consideration leading up to the Charter.