Home Office

Detention: General Instructions

Version 4.0

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About this guidance

This guidance tells Home Office staff responsible for making initial detention decisions and decisions to maintain detention or release about Home Office policy on the use of immigration detention.

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors, then email Detention Policy.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Review, Atlas and Forms team.

Publication

Below is information on when this version of the guidance was published:

- version **4.0**
- published for Home Office staff on **27 June 2025**

Changes from last version of this guidance

This guidance has been amended to:

- reflect the changes to the IS91R (Reasons for Detention) form which provide people with further detail on the reasons for their detention.
- provide clarity on the detention of those with EU Settlement Scheme (EUSS) leave or a pending valid EUSS application which has not been finally determined
- update the sections on age dispute cases
- amend references to Biometric Residence Permits (BRPs) to reflect the transition to e-Visas.

Related content
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Policy

General

The power to detain must be retained in the interests of maintaining effective immigration control. However, there is a presumption in favour of immigration bail and, wherever possible, alternatives to detention are used (see Bail). Detention is most usually appropriate:

- to effect removal
- initially to establish a person's identity or basis of claim
- where there is reason to believe that the person will fail to comply with any conditions attached to a grant of immigration bail

To be lawful, detention must not only be based on one of the statutory powers and accord with the limitations implied by domestic and Strasbourg case law but must also accord with stated policy.

As well as the presumption in favour of immigration bail, special consideration must be given to family cases where it is proposed to detain one or more family member and the family includes children under the age of 18 (please see family returns process).

Similarly, special consideration must be given when it is proposed to detain unaccompanied children pending their hand-over to a local authority or collection by parents or relatives or by other appropriate adult carers or friends, or to escort such children when removing them. Section 55 of the Borders, Citizenship and Immigration Act 2009 (s.55) requires certain Home Office functions to be carried out having regard to the need to safeguard and promote the welfare of children in the UK.

Staff must therefore ensure they have regard to this need when taking decisions on detention involving or impacting on children under the age of 18 and must be able to demonstrate that this has happened, for example by recording the factors they have taken into account. Staff must also ensure detention is for the shortest possible period of time. Key arrangements for safeguarding and promoting the welfare of children are set out in the Statutory Guidance issued under s.55.

A properly evidenced and fully justified explanation of the reasoning behind the decision to detain must be retained on file in all cases.

Foreign National Offender Returns Command cases

Cases concerning foreign national offenders, dealt with by the Foreign National Offender Returns Command (FNO RC), are subject to the general policy set out above, including the presumption in favour of immigration bail and the special consideration in cases involving children. Thus, the starting point in these cases

remains that the person must be granted immigration bail unless the circumstances of the case require the use of detention. However, the nature of these cases means that special attention must be paid to their individual circumstances.

In any case in which the criteria for considering deportation action (the 'deportation criteria') are met, the risk of re-offending and the particular risk of absconding must be weighed against the presumption in favour of immigration bail. Due to the clear imperative to protect the public from harm from a person whose criminal record is sufficiently serious as to satisfy the deportation criteria, and/or because of the likely consequence of such a criminal record for the assessment of the risk that such a person will abscond, in many cases this is likely to result in the conclusion that the person should be detained, provided detention is, and continues to be, lawful. However, any such conclusion can be reached only if the presumption of immigration bail is displaced after an assessment of the need to detain in the light of the risk of re-offending and/or the risk of absconding.

Deportation criteria

Foreign nationals and their dependants will be considered for deportation if they meet the criteria set out in Non Conducive Deportation or Public Policy, Public Security or Public Health Decisions.

Further details of the policy which applies to FNO Returns Command cases is set out below.

Use of detention

General

Detention must be used sparingly, and for the shortest period necessary. It is not an effective use of detention space to detain people for lengthy periods if it would be practical to effect detention later in the process, for example once any rights of appeal have been exhausted if that is likely to be protracted and/or there are no other factors present arguing more strongly in favour of detention. All other things being equal, a person who has an appeal pending or representations outstanding might have relatively more incentive to comply with any restrictions imposed, if released, than one who does not and is removable in a reasonable timescale. (see also: Detention for the purpose of removal).

Foreign National Offender Returns Command cases

As has been set out above, due to the clear imperative to protect the public from harm, the risk of re-offending or absconding must be weighed against the presumption in favour of immigration bail in cases where the deportation criteria are met. In cases concerning foreign national offenders (FNOs), if detention is indicated, because of the higher likelihood of risk of absconding and harm to the public on release, it will normally be appropriate to detain as long as there is still a realistic prospect of removal within a reasonable timescale.

If detention is appropriate, an FNO will be detained until either deportation occurs, the FNO wins their appeal against deportation (see Detention after an appeal has been allowed for decisions which we are challenging), bail is granted by the Immigration and Asylum Chamber, or it is considered that Secretary of State immigration bail is appropriate because there are relevant factors which mean further detention would be unlawful (see Further guidance on deciding to detain in Foreign National Offender Returns Command cases).

In looking at the types of factors which might make further detention unlawful, case owners must have regard to limitations on statutory powers, factors influencing decision to detain, special cases and Adults at risk. **Substantial weight** must be given to the risk of further offending or harm to the public indicated by the subject's criminality. Both the likelihood of the person re-offending, and the seriousness of the harm if the person does re-offend, must be considered. Where the offence which has triggered deportation is more serious, the weight which must be given to the risk of further offending or harm to the public is **particularly substantial** when balanced against other factors in favour of granting immigration bail.

In cases involving these serious offences, therefore, a decision to grant immigration bail is likely to be the proper conclusion only when the factors in favour of release are particularly compelling. In practice, immigration bail is likely to be appropriate only in exceptional cases because of the seriousness of violent, sexual, drug-related and similar offences. Where a serious offender has dependent children in the UK, careful consideration must be given not only to the needs such children may have for contact with the deportee but also to the risk that granting immigration bail might represent to the family and the public.

Limitations on the Statutory Powers to Detain

In order to be lawful, immigration detention must be for one of the statutory purposes for which the power is given and must accord with the limitations implied by domestic and European Court of Human Rights (ECHR) case law. Detention must also be in accordance with stated policy on the use of detention. Different policy provisions apply to the detention of children (see: Unaccompanied young persons and Families with children) and to Adults at Risk and Detention of pregnant women.

Article 5 of the European Convention on Human Rights (ECHR) and domestic case law

Article 5(1) of the ECHR provides that 'everyone has the right to liberty and security of person'.

No one shall be deprived of his liberty save in the circumstances specified in Article 5(1) (a)-(f) and in accordance with a procedure prescribed by law. Article 5(1) (f) states that a person may be arrested or detained to prevent him effecting an unauthorised entry into the country, or where action is being taken against him with a view to deportation or extradition.

Article 5(4) states that everyone who is deprived of his liberty shall be entitled to take proceedings by which the lawfulness of his detention is decided speedily by a court. This Article is satisfied by a detained individual's right to challenge the lawfulness of a decision to detain by habeas corpus or judicial review in England and Wales, or by judicial review or an application to the Court of Session for suspension and liberation in Scotland.

To comply with Article 5 and domestic case law the following 4 principles must be taken into account when making any detention decision. These principles were set out in the case of Hardial Singh (R (Hardial Singh) v Governor of Durham Prison [1983] EWCH 1 (QB*)* and are:

> The relevant power to detain must only be used for the specific purpose for which it is authorised. This means that a person may only be detained under immigration powers for the purpose of preventing their unauthorised entry or with a view to their removal (not necessarily deportation). Detention for other purposes, where detention is not for the purposes of preventing unauthorised entry or effecting removal of the individual concerned, is **not** compatible with Article 5 and would be unlawful in domestic law (unless one of the other circumstances in Article 5(1)(a) to (e) applies).
>
> The detention may only continue for a period that is reasonable in all the circumstances for the specific purpose.
>
> If, before the expiry of the reasonable period, it becomes apparent that the purpose of the power (for example, removal) cannot be effected within that reasonable period the power to detain should not be exercised.
>
> The detaining authority (be it the immigration officer or the Secretary of State), must act with reasonable diligence and expedition to effect removal (or whatever the purpose of the power in question is).

Section 12 of the Illegal Migration Act 2023

Section 12 of the Illegal Migration Act 2023 replaces, in part, the above common law Hardial Singh principles with a statutory version of the second and third principles. As well as codifying, in part, the Hardial Singh principles, Section 12 also overturns the common law principle established in the case of R(A) v SSHD (2007) that it is for the courts to decide whether there is a reasonable or sufficient prospect of a person's removal in a reasonable timescale.

The above changes clarify that it is for the Secretary of State, rather than the courts, to determine what is a reasonable period of detention in order to enable the specific statutory purpose to be carried out (for example, to enable the examination, decision, removal or directions to be carried out, made or given), subject to any statutory limitations. This emphasises that the Secretary of State is the primary decision maker who is in possession of all the facts surrounding a person's detention.

Therefore, in reviewing any unlawful detention claims, the Courts should approach their task by examining the reasonableness of the Secretary of State's assessment, rather than by substituting their own assessment of the reasonableness of a period of detention.

Section 12 applies to all immigration detention powers, which are set out in:

- Schedule 2 to the Immigration Act 1971
- Schedule 3 to the Immigration Act 1971
- Section 10(9) of the Immigration and Asylum Act 1999
- Section 62 of the Nationality, Immigration and Asylum Act 2002
- Section 36 of the UK Borders Act 2007
- Regulation 32 of the Immigration (European Economic Area) Regulations 2016

Section 12 of the 2023 act does not change the basis on which the Home Office makes detention decisions, and all detention decisions, and reviews of continued detention, should be fully documented and contain a reasoned justification for the decision to detain or maintain detention. It remains the case that a person liable to detention may only be detained for such period as is reasonably necessary to enable the examination, decision, removal or directions to be carried out, made or given.

Although it is for the Secretary of State to determine what is a reasonable period to detain an individual for the specific statutory purpose, Article 5(1)(f) does not permit, periods of detention where there is no prospect of a decision or removal within a reasonable period of time. This change does not enable the Secretary of State to maintain detention where there has ceased to be any prospect of removal within a reasonable period of time, or where the statutory purpose of detention can no longer be achieved within a reasonable period of time.

However, Section 12 does clarify that the power to detain applies regardless of whether there is anything that for the time being prevents the examination or removal from being carried out, the decisions from being made, or the directions from being given. This recognises that there may be occasional circumstances where there is something that, for the time being, prevents a decision being made, or removal being carried out. For example, an individual may be temporarily prevented from being removed from the UK, for example, by virtue of the fact that they require short-term medical treatment, there is an upcoming appeal or there is a practical impediment to their removal, such as a short-term issue with flight availability. Detention will continue to be lawful so long as the obstacle in question can be overcome within a reasonable period of time, and this will be based on a case-by-case assessment. Where there is a longer-term barrier which prevents the examination or removal from being carried out, the decisions from being made, or the directions from being given, then detention may no longer be reasonable or justified, and release from detention on immigration bail should be considered.

Section 12 also clarifies that if the Secretary of State does not consider that the examination, decision, removal or directions will be carried out, made or given within a reasonable period of time, the person may be detained for a further period that is,

in the opinion of the Secretary of State, reasonably necessary to enable arrangements to be made for release that the Secretary of State considers to be appropriate. As per the current position, in making any necessary arrangements for release, the Secretary of State must set out the progress and steps being taken to make arrangements for release, and any period of time must be reasonable.

Article 8 of the ECHR

Article 8(1) of the ECHR provides that 'everyone has the right to respect for private and family life….'

Article 8 is a qualified right. Interference with the right to family life is permissible under Article 8(2) if it is (i) in accordance with the law; (ii) for a legitimate aim and (iii) proportionate. In family cases, the right extends to every member of the household and there must be consideration given to whether there is any interference with the rights of each individual and, if there is, whether it is lawful and proportionate to the legitimate aim.

It may be necessary on occasion to detain the head of the household or another adult who is part of the care arrangements for children, thus separating a family. Depending on the circumstances of the case, this may represent an interference with Article 8 rights.

It is well established that the interests of the State in maintaining an effective immigration policy for the economic well-being of the country and for the prevention of crime and disorder, justify interference with rights under Article 8(1). It is therefore arguable that a decision to detain which interferes with a person's right to family life in order to enforce immigration control and maintain an effective immigration policy pursues a legitimate aim and is in accordance with the law.

It is only by considering the needs and circumstances of each family member that a determination can be made as to whether the decision is, or can be, managed in a way so that it is, proportionate.

Home Office staff must be clear and careful when deciding that the decision to detain (and thereby interfere with family life) was proportionate to the legitimate aim pursued. Assessing whether the interference is proportionate involves balancing the legitimate aim in Article 8(2) against the seriousness of the interference with the person's right to respect for their family life.

The assessment must also have regard to the need to safeguard and promote the welfare of children. Even though the decisions may have been taken to avoid detaining the children with their head of family, or other adult who is part of their care arrangements, in the interest of their welfare, the impact of the separation must be considered carefully. Any information concerning the children that is available or can reasonably be obtained must be considered. The conclusion reached will depend on the specific facts of each case and will therefore differ in every case. Regular reviews of detention must consider proportionality with regard to each individual, including any new information that is obtained.

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Power to detain

The power to detain an illegal entrant, seaman deserter, port removal or a person liable to administrative removal (or someone suspected to be such a person) is in paragraph 16(2) of Schedule 2 to the 1971 Act (as applied by section 10(7) of the Immigration and Asylum Act 1999). Paragraph 16(2) states:

> 'If there are reasonable grounds for suspecting that a person is someone in respect of whom directions may be given under any of paragraphs 8 to 10 or 12 to 14, that person may be detained under the authority of an immigration officer pending a) a decision whether or not to give such directions; b) his removal in pursuance of such directions.'

The power to authorise the detention of a person who may be required to submit to examination, or further examination under paragraph 2 or 2A of Schedule 2 to the 1971 Act, pending their examination and pending a decision to give or refuse them leave to enter or cancel their leave to enter, is in paragraph 16(1) and (1A) of Schedule 2 to the 1971 Act. There is also a limited power to detain a person who is subject to further examination on embarking from the UK for up to 12 hours only pending the completion of the examination under paragraph 16(1B). These powers are not relevant to enforcement cases.

Section 62 of the Nationality, Immigration and Asylum Act 2002 introduced a free-standing power for the Secretary of State (i.e. an official acting on the Secretary of State's behalf) to authorise detention in cases where the Secretary of State has the power to set removal directions.

The power to detain a person who is subject to deportation action is set out in paragraph 2 of Schedule 3 to the 1971 Act, and section 36 of the UK Borders Act 2007 (automatic deportation). This includes those whose deportation has been recommended by a court pending the making of a deportation order, those who have been served with a notice of intention to deport pending the making of a deportation order, those who are being considered for automatic deportation or pending the making of a deportation order as required by the automatic deportation provisions, and those who are the subject of a deportation order pending removal. **Detention in these circumstances must be authorised at a minimum of higher executive officer (HEO) level in FNO Returns Command** (see Authority to detain persons subject to deportation action by Foreign National Offender Returns Command).

Detention can only lawfully be exercised under these provisions where there is a realistic prospect of removal within a reasonable period. Following changes introduced by the Illegal Migration Act 2023, it is for the Secretary of State, rather than the courts, to determine what is a reasonable period to detain an individual for the specific statutory purpose (for example, to enable the examination, decision, removal or directions to be carried out, made or given), subject to any statutory limitations on the period of detention where relevant. The decision to detain may have been taken under circumstances where an individual claimed to have a family life in the UK but there was no information reasonably available to allow independent

verification or consideration. In such cases, information must be gathered as soon as possible, and consideration given at the initial and subsequent detention reviews.

In cases where a family life in the UK is known to be subsisting and detention will result in the family being separated, the separation must be authorised by an assistant director on the basis of a written consideration of the welfare of any children involved.

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Decisions to detain

Decision to detain excluding criminal case work cases

When making a decision to detain the following points must be considered:

- there is a presumption in favour of granting immigration bail - there must be strong grounds for believing that a person will not comply with conditions of immigration bail for detention to be justified
- all reasonable alternatives to detention must be considered before detention is authorised
- each case must be considered on its individual merits, including consideration of the duty to have regard to the need to safeguard and promote the welfare of any children involved
- please also refer to the guidance in Detention of pregnant women, and in Adults at risk in immigration detention

Decision to detain – Foreign National Offender Returns Command cases

As has been set out above, public protection is a key consideration underpinning our detention policy. Where a foreign national offender meets the criteria for consideration of deportation, the presumption in favour of granting immigration bail may well be outweighed by the risk to the public of harm from re-offending or the risk of absconding, evidenced by a past history of lack of respect for the law. However, detention will not be lawful where it would exceed the period reasonably necessary for the purpose of removal or where the interference with family life could be shown to be disproportionate. Decisions to detain or maintain detention must also comply with the guidance in Detention of pregnant women, and in Adults at risk in immigration detention.

In assessing what is reasonably necessary and proportionate in any individual case, the caseworker must look at all relevant factors to that case and weigh them against the particular risks of re-offending and of absconding which the individual poses. In balancing the factors to make that assessment of what is reasonably necessary, the Home Office distinguishes between more and less serious offences.

More serious offences

A conviction for one of the more serious offences is strongly indicative of the greatest risk of harm to the public and a high risk of absconding. As a result, the high risk of public harm carries **particularly substantial weight** when assessing if continuing detention is reasonably necessary and proportionate. So, in practice, it is likely that a conclusion that such a person must be released would only be reached where there are exceptional circumstances which clearly outweigh the risk of public harm and which mean detention is not appropriate.

Caseworkers must balance against the increased risk, including the particular risk to the public from re-offending and the risk of absconding in the individual case, the types of factors normally considered in non-FNO detention cases. For example, if the person is mentally ill or if there is a possibly disproportionate impact on any dependent child under the age of 18 from continued detention.

Caseworkers are reminded that what constitutes a ‘reasonable period’ for these purposes may last longer than in non-criminal cases, or in less serious criminal cases, particularly given the need to protect the public from serious criminals due for deportation.

Less serious offences

To help caseworkers to determine the point where it is no longer lawful to detain, a set of criteria are applied which seek to identify, in broad terms, the types of cases where continued detention is likely to become unlawful sooner rather than later by identifying those who pose the lowest risk to the public and the lowest risk of absconding. These provide guidance, but all the specific facts of each individual case still need to be assessed carefully by the caseworker.

As explained above, where the person has been convicted of a serious offence, the risk of harm to the public through re-offending and risk of absconding are given substantial emphasis and weight. While these factors remain important in assessing whether detention is reasonably necessary where a person has been convicted of a less serious offence, they are given less emphasis than where the offence is more serious, when balanced against other relevant factors.

Again, the types of other relevant factors include those normally considered in non-FNO detention cases, for example, whether the person is mentally ill or whether their release is vital to the welfare of child dependants.

Factors influencing a decision to detain

All relevant factors must be taken into account when considering the need for initial or continued detention, including:

- what is the likelihood of the person being removed and, if so, after what timescale
- is there any evidence of previous absconding
- is there any evidence of a previous failure to comply with conditions of immigration bail (or, formerly, temporary admission or release)
- has the subject taken part in a determined attempt to breach the immigration laws (for example, entry in breach of a deportation order, attempted or actual clandestine entry)
- is there a previous history of complying with the requirements of immigration control (for example, by applying for a visa or further leave)
- what are the person's ties with the UK - are there close relatives (including dependants) here - does anyone rely on the person for support - if the

dependant is a child or vulnerable adult, do they depend heavily on public welfare services for their daily care needs in lieu of support from the person in detention and does the person have a settled address and / or employment
- what are the individual's expectations about the outcome of the case - are there factors such as an outstanding appeal, an application for judicial review or representations which might afford more incentive to keep in touch than if such factors were not present (see also Detention for the purpose of removal).
- is there a risk of offending or harm to the public (this requires consideration of the likelihood of harm and the seriousness of the harm if the person does offend)
- is the subject under 18
- is the subject an adult at risk - see the separate guidance in Adults at risk in immigration detention

For further information, see also:

- further guidance on deciding to detain in criminal casework cases
- detention procedures
- special cases
- adults at risk

Once detention has been authorised, it must be kept under close review to ensure that it continues to be justified.

Further guidance on deciding to detain in Foreign National Offender Returns Command cases

This section provides further guidance on assessing whether detention is or continues to be within a reasonable period in FNO Returns Command cases where the individual has completed their custodial sentence and is detained following a court recommendation or decision to deport, pending deportation, or under the automatic deportation provisions of the UK Borders Act 2007. It must be read in conjunction with the guidance in factors influencing decision to detain, with **substantial weight** being given to the risk of further offending and the risk of harm to the public.

Whilst, as a matter of practice, the need to protect the public has the consequence that FNO Returns Command cases may well be detained pending removal, caseworkers must still carefully consider all relevant factors in each individual case to ensure that there is a realistic prospect of removal within a reasonable period of time.

In family cases, each individual must be considered to see if there is interference with their Article 8 rights and, if so, whether it is proportionate. For example, thought must be given to whether it is appropriate to detain family members due to be deported or removed with the foreign national offender and, if so, when – please see family returns process for cases where one or more family member is under the age of 18. An up-to-date record of convictions must be obtained from the police national

computer (PNC) in order to inform decisions to detain or maintain detention in FNO Returns Command cases. Please also see detention reviews and Bail for instructions on managing contact where a FNO Returns Command case is released on immigration bail. Where a time served foreign national offender has a conviction for a more serious offence, **particularly substantial weight** must be given to the public protection criterion in factors influencing decision to detain when considering whether immigration bail is appropriate.

In cases involving these serious offences, therefore, a decision to grant immigration bail is likely to be the proper conclusion only when the factors in favour of release are particularly compelling because of the significant risk of harm to the public posed by those convicted of violent, sexual, drug-related and other serious offences. In practice, immigration bail is likely to be appropriate only in exceptional cases. This does not mean, however, that individuals convicted of offences on the list can be detained indefinitely and, regardless of the effects of detention on their dependants.

All relevant factors (see factors influencing decision to detain) must be considered when assessing whether there is a realistic prospect of removal within a reasonable timescale. See: factors influencing decision to detain in FNO Returns Command cases.

Any decision not to detain or to grant immigration bail to a time served foreign national offender must be agreed at grade 7 (assistant director) level and authorised at strategic director level. Cases must be referred using the referral of case suitable for contact management form which must cover all relevant facts in the case history, including any reasons why bail was refused previously.

If it is proposed to release a serious criminal to re-join a family including dependent children under the age of 18, advice must have been sought from the Office of the Children's Champion and it is likely that a referral to the relevant local authority children's service will be necessary.

Decisions to maintain detention where the FNO has provided evidence of a family life in the UK require a consideration of Article 8 issues and, if the decision results in a family separation (such as the rest of the family will not be reunited with the FNO in detention), it must be countersigned at grade 7 (assistant director) level. Similarly, decisions to release high risk offenders on welfare grounds must be subject to director level approval before a submission is sent to the strategic director.

Application of the factors influencing a decision to detain to Foreign National Offender Returns Command cases

Removability

In all cases, caseworkers must consider on an individual basis whether **removal is likely to take place within a reasonable timeframe.** If removal is likely to take place within a reasonable timeframe, then detention or continued detention will usually be appropriate. As a guide, and for these purposes only, removal could be

said to be likely to take place within a reasonable timeframe where a travel document exists, removal directions are set or could be set in the near future, where there are no outstanding legal barriers or it is considered that legal barriers can be resolved expeditiously.

Cases where removal is not likely to take place within a reasonable timeframe due to delays in the travel documentation process in the country concerned may also be considered for immigration bail. However, where the FNO is frustrating removal by not co-operating with the documentation process, and where that is a significant barrier to removal, these are factors weighing strongly against release.

Where a family has been separated and removal is likely to take place within a reasonable timeframe, consideration needs to be given to whether and, if so, how to reunite the family (see family returns process for cases involving children under the age of 18). If the reunification is to take place in the detention estate (that is that the remaining family members are to be detained), it must be planned in advance with welfare staff at the removal centre. If it is to take place at the airport, then the caseworker must plan the event with the escort staff to minimise upset to any children involved.

Risk of absconding

The caseworker must also consider the **risk of absconding**. Where the person has been convicted of a more serious offence, then this may indicate a high risk of absconding. An assessment of the risk of absconding will also include consideration of previous failures to comply with immigration bail. Individuals with a long history of failing to comply with immigration control or who have made a determined attempt to breach the UK's immigration laws would normally be assessed as being unlikely to comply with the conditions of immigration bail. Examples of this would include multiple attempts to abscond or the breach of previous conditions and attempts to frustrate removal (not including the exercise of appeal rights).

Also relevant is where the person's behaviour in prison or immigration removal centre (IRC) (if known) has given cause for concern. The person's family ties in the UK and their expectations about the outcome of the case must also be considered and attention paid to the requirement to have regard to the need to safeguard and promote the welfare of any children involved. The greater the risk of absconding, the more likely it is that detention or continued detention will be appropriate. Where the individual has complied with attempts to re-document them, but difficulties remain due to the country concerned, this must not be viewed as non-compliance by the individual.

Risk of harm

Risk of harm to the public will be assessed by Her Majesty's Prisons and Probation Service (HMPPS) unless there is no Offender Assessment System (OASYS) or pre-sentence report available. There will be no licence and OASYS report where the sentence is less than 12 months. HMPPS will only be able to carry

out a meaningful risk assessment in these cases where a pre-sentence report exists (details of which can be obtained from the prison) or where the subject has a previous conviction resulting in a community order.

Case owners must telephone the Offender Manager for an update in cases where the risk assessment has been obtained less than 6 months before (for example in a bail application). Where HMPPS can provide an assessment, it can be obtained directly from the offender manager in the Probation Service in the same way that information is obtained in bail cases and should be received within 3 days.

The bail process instruction includes details on how to contact the offender manager and identify the probation area's single point of contact (SPOC). The Request for offender management information on a foreign national prisoner form must be completed and sent by fax or email to the offender manager with a copy in all cases to the SPOC. A record must be kept of the date the form is sent and the date it is returned.

The completed form will be returned to the case owner by the offender manager once the assessment is complete. In cases of query, offender managers must be referred, in the first instance, to Probation Circular 32/2007 which includes a copy of the reference form and explains that FNO Returns Command may seek information when considering detention. Further reference to HMPPS will also be essential in cases where it is decided to end detention.

Individual cases of difficulty in obtaining licences, identifying offender managers or obtaining risk assessments which cannot be resolved by contact with the Prison Service (for the licence) or the Probation Service Single Point of Contact (for obtaining the risk assessment) must be referred to the team leader and/or the assistant director. If the problem cannot be resolved in the team, then the assistant director must refer the case to the process team using the process team inbox.

The process team will follow up queries centrally with HMPPS and provide advice on further action. In every case where the subject would have been the subject of a licence (sentences of 12 months or longer, sentences for shorter periods adding up to 12 months or longer, or offenders under 22 years or age) a risk assessment must be requested from the relevant offender manager and cases must not be taken forward without a reply from the offender manager being obtained.

Where HMPPS are unable to produce a risk assessment and the offender manager advises that this is the case, case owners will need to make a judgement on the risk of harm based on the information available to them. Factors relevant to this will be the nature of the original offence, any other offences committed, record of behaviour in prison and or IRC and general record of compliance. A PNC check must always be made. Where there is a conviction for a more serious offence, the nature of the offence is such that the person presents a high risk on the table below.

Such high risk offences must be given particularly substantial weight when assessing reasonableness to detain. Those with a long record of persistent offending are likely

to be rated in the high or medium risk. Those with a low level, one-off conviction and, with a good record of behaviour otherwise are likely to be low risk.

Where possible the HMPPS assessment will be based on OASYS and will consist of 2 parts as follows:

- a risk of harm on release assessed as low, medium, high or very high (that is, the seriousness of harm if the person offends on release)
- the likelihood of re-offending, assessed as low, medium or high

A marking of high or very high in **either** of these areas must be treated as an assessment of a high risk of harm to the public.

In cases marked medium or low in either or both category the following table must be used to translate the double assessment produced by HMPPS into a single assessment for our purposes, this gives greater weight to the risk (seriousness) of harm than to the risk of re-offending.

Seriousness of harm if offends on release	Likelihood of re-offending	Overall assessment
Very high	High	High
Very high	Medium	High
Very high	Low	High
High	High	High
High	Medium	High
High	Low	High
Medium	High	High
Medium	Medium	Medium
Medium	Low	Medium
Low	High	High
Low	Medium	Low
Low	Low	Low

Those assessed as low or medium risk must generally be considered for rigorous contact management. Any particular individual factors related to the profile of the offence or the individual concerned must also be taken into consideration and may indicate that maintaining management by rigorous contact management may not be appropriate in an individual case.

In cases involving more serious offences, a decision to release is likely to be the proper conclusion only when the factors in favour of release are particularly compelling. In practice, release is likely to be appropriate only in exceptional cases because of the seriousness of violent, sexual, drug-related and similar offences.

Where the HMPPS assessment is not based on an OASYS report HMPPS S will endeavour to provide other information on risk of harm and likelihood of re-conviction, stating their sources. The Offender Group Reconviction Scale (OGRS) may be one source of risk reconviction information provided. It estimates the

statistical probability that offenders, with a given history of offending, will be reconvicted of a standard list offence within 2 years of release if sentenced to custody. It does not define the probability that a named offender will be reconvicted.

OGRS uses an offender's past and current history of standard list offences only. There may be cases however, when offender managers are unable to provide any risk information - see risk of harm for action in these cases.

General additional considerations relating to bail applications

In cases where the individual has previously been refused bail by the Immigration and Asylum Chamber, the opinions of the immigration judge will be relevant. If bail was refused due to the risk of absconding or behavioural problems during detention, this would be an indication that the individual must not normally be released unless circumstances have changed. If bail was refused due to lack of financial condition supporters, the case owner might want to recommend a grant of immigration bail providing all the other criteria in this section indicate immigration bail is appropriate.

Where the caseworker thinks an individual, who has applied to the First-tier Tribunal for immigration bail, is appropriate for a grant of bail the caseworker must:

- refer to the strategic director for confirmation that the individual meets the criteria and should be granted bail
- not oppose bail
- prepare a bail summary explaining that the Home Office does not oppose a grant of bail but asking that condition be applied (electronic monitoring, curfew and reporting twice a week). For further information on how to prepare a bail summary see the FNO Returns Command bail process instruction

The above list of factors is not exhaustive and the caseworker must consider all relevant factors when deciding whether it is lawful to detain – whether removal will take place within a reasonable period.

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Levels of authority for detention

Although the power in law to detain an illegal entrant rests with the immigration officer (IO), or the relevant non-warranted immigration caseworker under the authority of the Secretary of State, in practice, an officer of at least chief immigration officer (CIO) rank, or a HEO caseworker, must give authority. Detention must then be reviewed at regular intervals (see Detention reviews). For cases involving the separation of a family refer to family separations.

The minimum level of authority to release an individual from detention is HEO/CIO. This does not prevent operational areas from increasing the minimum level if appropriate.

Authority to detain an illegal entrant or person served notice of administrative removal

An illegal entrant or person served with notice of administrative removal can be detained on the authority of a CIO or HEO (but see Authority to detain- special cases and Detention reviews).

Authority to detain persons subject to deportation action by Foreign National Offender Returns Command

The decision whether to detain a person, subject to deportation action, under Immigration Act powers is taken at a minimum of HEO level in FNO Returns Command. Where an offender, who has been recommended for deportation by a court or who has been sentenced to at least 12 months' imprisonment, is serving a period of imprisonment which is due to be completed, the decision on whether to detain them under Immigration Act powers (on completion of their custodial sentence) pending deportation must be made at HEO level in FNO Returns Command in advance of the case being transferred to FNO Returns Command.

A person should not be detained under immigration powers at the same time that they are detained under an order or sentence of a court. Therefore, the sensible course is for any immigration decision to detain to be expressed as taking effect once any existing detention ends. This is sometimes referred to as 'dual detention'. It is important in criminal cases to monitor the offender's release date for service of further detention or immigration bail forms at the appropriate time. FNO Returns Command staff should consider with prison and probation staff whether a prisoner has a substantive family life in the UK and if so, should follow the relevant procedure.

Authority to detain: special cases

Detention in the following circumstances must be authorised by an officer of **at least** the rank stated:

- sensitive cases: inspector or senior executive officer (SEO)
- spouses of British citizens: CIO or HEO (see special cases)
- unaccompanied young persons, under 18: initially, an inspector or SEO but as soon as possible by an assistant director the decision to detain in such exceptional cases will be taken in accordance with the policy set out in unaccompanied young persons
- unaccompanied children who are to be returned, in the case of both asylum and non-asylum applicants, to their home country: assistant director (see unaccompanied young persons for criteria for detaining in these exceptional circumstances)
- in FNO Returns Command cases, an FNO under the age of 18 who has completed a custodial sentence: ministerial authorisation and the advice of the independent Family Returns Panel on the safeguarding aspects of the case, see unaccompanied young persons for criteria for detaining in these exceptional circumstances
- families with minor children: In-country ensured returns and FNO Returns Command cases – inspector or SEO on the advice of the Family Returns Panel (see family returns process)
- EEA citizens:
  - for ICE officers (SEO)
  - for Detention Gatekeeper (Grade 7)
  - for FNO RC DART (SEO)
- detention in police cells for longer than 2 nights: inspector or SEO

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Detention forms

Written reasons for detention must be given to all detained individuals at the time of initial detention.

Thereafter people in immigration removal centres must be given further written reasons for their detention at monthly intervals (in this context, every 28 days). People in short-term holding facilities (residential STHFs or holding rooms) must be given further written reasons following **any** review of their detention which takes place whilst they remain detained in an STHF.

The principal detention forms are: IS 91RA 'Risk Assessment' ,IS91 'Detention Authority', IS91R 'Reasons for detention' and IS91M 'Movement notification'.

Form IS.91RA Risk assessment

Once it has been identified that the person is to be detained, consideration must be given to what, if any, level of risk that person may present whilst in detention. Immigration officers (IOs) or persons acting on behalf of the Secretary of State must undertake the checks detailed on form IS91RA part A 'Risk Factors' (in advance, as far as possible, in a planned operation or visit when it is anticipated detention will be required).

The results of these checks must be considered by the IO or person acting on behalf of the Secretary of State along with information available regarding other aspects of behaviour (as detailed on the form) which may present a risk, and the conclusions regarding each aspect identified.

Where, under the ensured returns process, it is proposed to detain any child under the age of 18 with their parents or guardians (see family returns process and families with children) the caseworker must actively search for any information relevant to the requirement to have regard to the need to safeguard and promote their welfare. Such a search is likely to involve a request for information from a local authority children services and a primary care trust. In health matters, the permission of the family is needed to access information. Any safeguarding or welfare issues relating to children under the age of 18 must be recorded on the family welfare form (see family returns process).

It is vital to the integrity of the detention estate that all potential risk factors detailed on the IS 91RA form are addressed, with the form being annotated appropriately. Conclusions must be recorded as to whether the individual circumstances may present a potential area of risk. Amplifying notes must be added in the 'comments' section as appropriate and the form must be signed and dated.

Once detention space is required the IS91RA must be faxed to the detainee escorting and population management unit (DEPMU). DEPMU staff will assess risk based upon the information provided on the IS91RA part A and decide on the

detention location appropriate for someone presenting those risks and/or needs. The issue of an IS91 'Detention Authority' will be authorised with the identified risks recorded in the 'risk factors' section of this form.

In cases where the potential risk factors cannot be addressed in advance they must be undertaken immediately and the IS91RA part A despatched as above. However, it may not always be possible to do this if the potential detained individual has, for example, been arrested by the police or picked up in the field and either an IO cannot immediately attend or the checks cannot be completed due to the lateness of the hour.

In such cases it will be appropriate to issue an IS91 to the police, as below, with the ‘risk factors’ section of the form completed as far as possible. However, in such circumstances the IS91RA part A must be completed and forwarded to DEPMU as soon as possible and, in all cases, no later than 24 hours after entry into detention at a police station and always before entry into the immigration detention estate is sought.

Risk assessment is an ongoing process. Should further information become available to the immigration compliance and enforcement (ICE) team or caseworker, which impacts upon potential risk (either increasing or decreasing risk) during an individual’s detention, that information must be forwarded to DEPMU using form IS91RA part C. On receipt of this form (which can also be completed by other Home Office or removal centre management, or medical staff) DEPMU will reassess risk and reallocate detention location as appropriate. Any alteration in their assessment of risk will require a new IS91 to be issued on which up-to-date risk factors will be identified. The ICE team or caseworker must fax this new IS91 to the detention location on receiving DEPMU’s reassessment of alteration in potential risk.

Form IS91 Authority to detain

Once DEPMU has decided on detention location they will forward an IS91RA part B to the detaining office detailing the detention location and the assessment of risk. This must be attached to form IS91 and served by the IO or person acting on behalf of the Secretary of State on the detaining agent. This allows for the subject to be detained in the detaining agent’s custody under Immigration Act powers. The IO or person acting on behalf of the Secretary of State must complete the first 3 sections of the form, transferring the assessment of risk as notified by DEPMU onto section 3, complete the first entry of section 4 transfer record and sign and date the form on page 1.

The detaining agent completes the further entries on section 4 of the form, the Transfer Record. The IO or person acting on behalf of the Secretary of State must staple a photograph of the detained person to the form and authenticate this by signing and dating it before handing the form, in a clear plastic pouch, to the detaining agent.

Detaining agents have been instructed not to accept individuals without the correct documentation. The only exception to this will be when there is no Home Office

presence at a police station or prison. In these circumstances, a copy of the IS91, complete with photograph, will need to be faxed or emailed. In such cases, DEPMU will advise as to where to send the original IS91.

In cases where the IS91 is faxed or emailed in advance of knowing whether the person in custody will be charged, bailed or released without charge, the IO or person acting on behalf of the Secretary of State must specify whether to serve the form irrespective of the outcome or only serve it in the event of a particular outcome. For example, if the intention is for the person to be detained only if the police or other agency plan to release them without charge, this must be made explicit. A request for the form to be destroyed unused if the person is charged or bailed must also be made explicit.

Form IS91 is issued once and only once for any continuous period of detention, irrespective of how many detaining agents there are during the course of a person's detention. The exceptions are where there is alteration in risk factors when DEPMU will authorise the issue of a new IS91, which must be sent to the detention location to be attached to the original form; and in FNO Returns Command cases if the IS91 is re-issued when a deportation order has been signed.

Where there is a change in the detaining agent, for example from the police to the escort contractor, it is for the first detaining agent to complete the Transfer Record on the form and forward it to the second detaining agent along with the detained individual. Form IS91 must be issued for each person detained including for each child or young person. The IO or person acting on behalf of the Secretary of State must complete all sections of the form as indicated. The completed form must then be handed to the detaining agent (for example, the escorting contractor). The detaining agent will not accept an individual without correct original documentation.

IS91s are to be returned by the final detaining agency to the Detention Cost Recovery Unit t (DCRU), Border Force Operational Logistics Directorate, Finance Team, 2 Ruskin Square, Level 5, Dingwall Road, Croydon CRO 2WF). Any IS91s that are returned to an ICE team at the end of a period of detention must be forwarded to DCRU without delay.

Form IS91R Reasons for detention

This form must be served on every detained person, including each child, at the time of their initial detention. The IO or person acting on behalf of the Secretary of State must complete all sections of the form.

The IO or person acting on behalf of the Secretary of State must specify the power under which a person has been detained, the reasons for detention and the basis on which the decision to detain was made.

In addition, there must be a properly evidenced and fully justified explanation of the reasoning behind the decision to detain placed on file in all detention cases. This must complement the IS 91R form, though is separate from it. The person must also be informed of their bail rights and the IO or person acting on behalf of the Secretary

of State must sign, both at the bottom of the form and overleaf, to confirm the notice has been explained to the person (using an interpreter where necessary) and that they have been informed of their bail rights.

It must be noted that the reasons for detention given could be subject to judicial review. It is therefore important to ensure they are always **justified and correctly stated by the IO or person acting on behalf of the Secretary of State who is completing the form**. A copy of the form (fully completed, signed and dated) must be retained on the caseworking file. If any of the reasons for detention given on the form IS91R change it will be necessary to prepare and serve a new version of the form. Again, any such changes must be **fully justified and correctly stated** by the IO or person acting on behalf of the Secretary of State who is completing the form.

It is important that the detained individual understands the contents of the IS91R. If they do not understand English, officers must ensure that the form's contents are interpreted. Failure to do so could lead to successful challenge under the Human Rights Act 1998 (Article 5(2) of the ECHR refers).

The 6 possible reasons for detention are set out on form IS91R and are listed below. The IO or person acting on behalf of the Secretary of State must tick **all** the reasons that apply to the particular case and as indicated above, ensure that a fully justified explanation is retained on file setting out why the reasons ticked apply in the particular case:

- you are likely to abscond if granted immigration bail
- there is insufficient reliable information to decide on whether to grant you immigration bail
- your removal from the UK is expected to take place in a reasonable timescale
- you need to be detained whilst alternative arrangements are made for your care
- your release is not considered conducive to the public good (where this box is ticked in FNO Returns Command cases, case owners must additionally indicate whether the offence was more or less serious)
- you are detained following your arrest for breach of immigration bail under paragraph 10 of Schedule 10 to the Immigration Act 2016

Seventeen factors are listed, which will form the basis of the reasons for the decision to detain. The IO or person acting on behalf of the Secretary of State must tick all those that apply to the particular case. Those factors are:

- you do not have enough close ties (for example family or friends) to make it likely that you will stay in one place
- you have previously failed to comply with conditions of your permission to stay / enter or grant of immigration bail
- you have previously absconded or escaped
- you have used or attempted to use deception in a way that leads us to consider that you may continue to deceive
- you have failed to give satisfactory or reliable answers to an immigration officer's enquiries

- you have not produced satisfactory evidence of your identity, nationality or lawful basis to be in the UK
- you have previously failed, or refused to leave the UK when required to do so
- your removal from the UK is expected to take place in a reasonable timescale
- you are a young person without the care of a parent or guardian
- your health gives serious cause for concern on grounds of your own wellbeing and/or public health or safety
- you are excluded from the UK at the personal direction of the Secretary of State
- you are detained for reasons of national security, the reasons are/will be set out in another notice
- your unacceptable character, conduct or associations
- I consider this reasonably necessary in order to take your fingerprints because you have failed to provide them
- it is suspected that you are failing or have failed to comply with the conditions of your bail and you are detained pending a decision as to whether that is the case
- it is believed that you are likely to fail to comply with the conditions of your bail and you are detained pending a decision as to whether that is the case
- you have failed, without reasonable excuse, to co-operate with removal or immigration processes

Form IS91M Movement notification

This form will only be used in very few cases where neither the detention nor the movement of an individual is being arranged via DEPMU. The form must be completed and used to notify both the detaining agent and the escorting service provider of the proposed move.

Related content
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Detention procedures

Procedures when detaining an illegal entrant or person served with notice of administrative removal

You must:

- obtain the appropriate authority to detain
- issue BAIL 403 (Immigration Bail Information) and advise the person of their right to apply for bail
- conduct 'risk assessment' procedures as detailed in section above about IS91RA Risk Assessment form
- complete IS91 in full for the detaining authority
- complete and serve form IS91R on the person being detained, explaining its contents to the person (via an interpreter if necessary)
- confirm detention to DEPMU as soon as possible and they will allocate a reference number
- complete IS93 for the port or immigration compliance and enforcement (ICE) team casework file
- always attach a 'detained' flag, securely stapled, to the port or ICE team casework file
- review detention as appropriate

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The Detention Gatekeeper

The Detention Gatekeeper (DGK) was introduced in June 2016 following the acceptance of Recommendation 20 of the Stephen Shaw review into the Welfare in Detention of Vulnerable Persons in January 2016.

From September 2016, the DGK operated as a Home Office immigration system function, working independently of both referring operational teams (for example Border Force, Immigration Compliance and Enforcement and others) and detained casework teams (National Returns Command, Foreign National Offenders Return Command and others) to ensure individuals only enter immigration detention where detention is for a lawful purpose and is considered to be a proportionate measure on the facts of the case. The team provides an independent and consistent application of the general detention and Adults at Risk in Immigration Detention Policies.

If the DGK is not satisfied that detention is lawful and proportionate, a referral can be rejected or returned for further information. This includes recommending pre-planning the removal of an individual, if there is evidence that detention would be injurious to their health making their return complex.

The team:

- provides an element of independence into the detention decision making process
- considers whether the decision to detain is both lawful and appropriate at the time it is taken
- protects potentially vulnerable individuals from being detained when it is not appropriate to do so
- reviews the detention of all individuals detained in the initial 24 hour period of detention
- where possible pre-verifies detention in advance of any enforcement action being taken
- ensures initial detention of an individual is allocated to the correct detained casework area
- considers ongoing detention or release for those claiming asylum from within detention

The DGK operates every day between 7am to 9pm during weekdays and 7am to 7pm during weekends and public holidays. The team also handles detention referrals outside these operating hours through an on-call process.

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Detention reviews and Case Progression Panels

Initial detention must be authorised by a CIO or HEO, or inspector or SEO (but see Levels of authority for detention). In all cases of persons detained solely under Immigration Act powers, continued detention must as a minimum be reviewed at the points specified in the appropriate table below. At each review, robust and formally documented consideration must be given to the removability of the person in detention. Furthermore, robust and formally documented consideration must be given to all other information relevant to the decision to detain.

Rule 9 of the Detention Centre Rules 2001 sets out the statutory requirement for people to be provided with written reasons for detention at the time of their initial detention and thereafter monthly (in this context “monthly” means every 28 days). The written reasons for continued detention at the one month point and beyond should be based on the outcome of the review of detention.

Reviews of detention should be conducted using the Detention and Casework Progression Review (DCPR) form, as detailed in the DCPR Operational Guidance. Additional reviews, also using the DCPR form, may also be necessary on an ad hoc basis, for example, where there is a change in circumstances relevant to the reasons for detention. Individuals in IRCs, hospitals, prisons/remand centres or Young Offender Institutions should be informed of the outcome of monthly reviews of detention using form IS 151F.

Rule 12 of the Short-term Holding Facility Rules 2018 sets out the statutory requirement for people in short-term holding facilities (STHFs) to be provided with written reasons for their detention at the time of their initial detention and thereafter following any subsequent review of their detention. This includes any reviews of detention taking place at the 24-hour review stage (all cases except those managed by FNO Returns Command), as well as any ad hoc review of detention taking place whilst the individual remains detained in an STHF. Individuals must be informed of the outcome of any such detention reviews using form IS 151F (STHF).

Where detention involves or impacts on children under the age of 18, reviewing officers must have received training in children’s issues (at least Tier 1 of Keeping Children Safe) and must demonstrably have regard to the need to safeguard and promote the welfare of children.

Apart from the statutory requirement above, detention must also be reviewed during the initial stages. This does not apply in FNO Returns Command cases where people come from prison, or remain there on completion of custodial sentence, and their personal circumstances have already been taken into account by the Home Office when the original decision to detain was made.

Detention reviews are necessary in all cases to ensure that detention remains lawful and in line with stated detention policy at all times. Detention reviews must be carried

out at prescribed points throughout the period a person remains detained under Immigration Act powers, whether the person is held in the immigration detention estate or elsewhere, for example, secure hospital or prison.

Table 1, below, sets out the minimum requirements in respect of the specific stages and levels at which reviews must be conducted.

Reviews due to be carried out during weekends or bank holidays may be completed early. However, this will have an impact on subsequent reviews as the interval between monthly reviews for individuals in IRCs and those detained under immigration powers in hospitals, prisons/remand centres or Young Offender Institutions must not exceed 28 days.

The review of detention involving FNO Returns Command cases are subject to different arrangements which are outlined in Table 2.

Table 1: Review of detention (non-Foreign National Offender Returns Command) cases

Review period	Review authorised by:
24 hours	Inspector/SEO
7 days	CIO/HEO
14 days	Inspector/SEO
1st monthly	Inspector/SEO
2nd monthly	Inspector/SEO
3rd monthly	Inspector/SEO
4th monthly	Inspector/SEO
5th monthly	Inspector/SEO
6th monthly	Grade 7
7th monthly	Grade 7
8th monthly	Grade 7
9th monthly	Grade 6
10th monthly	Grade 6
11th monthly	Grade 6
12th and subsequent monthlies	Grade 5

If there is a significant and/or material change in circumstances in between reviews during the initial stages of detention, an inspector or SEO must conduct a review. Where there is a significant or material change in circumstances during later stages of detention, a review must be conducted by the relevant grade for the review period at the point of the change.

Foreign National Offender Returns Command cases

There is no requirement for adult detention to be reviewed during the very early stages in FNO Returns Command cases if the individuals concerned are transferred to the immigration detention estate from prison before day 14 of their detention under

Immigration Act powers, whether they are transferring to the immigration detention estate or remaining in prison. Reviews should be conducted monthly (for review purposes this means every 28 days) at the levels indicated in Table 2, below.

For individuals managed by FNO Returns Command who are detained from the community, at port or as a result of enforcement action a 14-day detention review should be completed and authorised by an SEO/Inspector.

Table 2: Review of detention in Foreign National Offender Returns Command

Review period	Review authorised by:
14 days (individuals who have not been transferred from prison only)	SEO/Inspector
1st monthly	SEO/Inspector
2nd monthly	Grade 7
3rd monthly	HEO/CIO
4th monthly	SEO/Inspector
5th monthly	HEO/CIO
6th monthly	Grade 7
7th monthly	Grade 7
8th monthly	Grade 7
9th monthly	Grade 6
10th monthly	Grade 6
11th monthly	Grade 6
12th monthly	Grade 5
13th monthly	Grade 6
14th monthly	Grade 7
15th monthly	Grade 5
16th monthly	Grade 6
17th monthly	Grade 7
18th monthly	Grade 5
19th monthly	Grade 6
20th monthly	Grade 7
21st monthly	Grade 5
22nd monthly	Grade 6
23rd monthly	Grade 7
24th monthly	Grade 5
Post – 24th monthly	Return to cycle beginning 13 months

Please note that where a member of staff is covering a higher grade post on either Higher Responsibility Allowance (HRA) or Temporary Cover Allowance (TCA) they can authorise detention reviews as if they were of the substantive grade for which they are covering. This applies in relation to both tables above.

Case Progression Panels

In addition to monthly detention reviews, individuals also have the circumstances around their ongoing detention considered periodically at a Case Progression Panel (CPP). CPPs began to operate in February 2017 and consist of a chair, panel members and panel experts, who review the appropriateness of continuing detention in accordance with the policy and legal framework, adherence to the Adults at Risk in Immigration Detention policy, case progression actions and provide recommendations to the case work teams responsible for the management of ongoing detention.

CPPs assess individual detained cases at three-monthly intervals as a minimum. However, cases may also be referred outside of the three-monthly cycle, when it is felt that additional scrutiny might be useful. This can be at the request of any team or unit, including the casework teams, the Adults at Risk Returns Assurance Team, the Detention Gatekeeper, Detention Engagement Teams, the Strategic Director of Returns or at the recommendation of a previous CPP. Cases from all detained commands are reviewed together with the aim of ensuring consistency of use of detention powers, increasing the speed of case progression and reducing the length of time any individual spends in detention.

CPPs can make one of three recommendations; maintain detention, maintain detention with casework actions or recommend release. Detained casework units must give significant weight and consideration to any CPP recommendations, which must not be rejected without careful consideration. If recommendations are rejected there must be clear reasoning for this decision, which must be recorded on CID / Atlas and in the next Detention and Case Progression Review (DCPR) form.
The case progression panel process is administered by the Panel Team. See the full Detention Case Progression Panels guidance for further information.

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Rule 35 of the Detention Centre Rules 2001 and Rule 32 of the Short-term Holding Facility Rules 2018 – Special illnesses and conditions

Rule 35 of the Detention Centre Rules 2001 as amended by the Detention Centre (Amendment) Rules 2018 and the rule 32 of the Short-term Holding Facility Rules 2018 sets out reporting requirements for healthcare staff at removal centres and short-term holding facilities (STHF) with regard to any detained person:

- whose health is likely to be injuriously affected by continued detention or any conditions of detention
- suspected of having suicidal intentions
- for whom there are concerns that they may have been a victim of torture

Healthcare staff are required to report such cases to the centre or STHF manager and these reports are then passed, via the Home Office teams in removal centres or DEPMU in the case of STHFs, to the office responsible for managing and/or reviewing the individual's detention. The rule 32 reporting requirement applies only to residential STHFs. It does not apply to reporting centres or holding rooms.

Day-to-day healthcare in residential STHFs is provided by nurses, rather than doctors. As such, rule 32 reports made under the STHF Rules can be completed by nurses, as well as by doctors. Rule 35 reports (under the Detention Centre Rules 2001) can be completed only by doctors.

The purpose of rule 35, and the equivalent STHF rule 32, is to ensure that particularly vulnerable individuals are brought to the attention of those with direct responsibility for authorising, maintaining and reviewing detention. The information contained in the report is considered by the internal Home Office Rule 35 team (set up in consider and respond to Rule 35/Rule 32 reports) and a decision made on whether the individual's continued detention is appropriate, or whether to release them from detention, in line with the guidance in Adults at risk in immigration detention.

For the purposes of rule 35(3), as amended, and STHF rule 32 (3) 'torture' means:

'any act by which a perpetrator intentionally inflicts severe pain or suffering on a victim in a situation in which-
(a) the perpetrator has control (whether mental or physical) over the victim and
(b) as a result of that control the victim is powerless to resist.'

Upon receipt of a rule 35 report or rule 32 report, the internal Rule 35 team must review the individual's continued detention in light of the information in the report

(see detention reviews) and respond to the IRC or STHF, within 2 working days of receipt. For further guidance and information see Detention Services Order 9/2016 - Detention Centre rule 35 and Short-term Holding Facility rule 32.

The Rule 35 Team

The Rule 35 Team (R35T) was implemented on 8 September 2019 following the acceptance of Recommendation 16 of Stephen Shaw's second review into the welfare of those that have been placed into immigration detention published in 2018. The team is operated as a Home Office immigration system function, working independently of both referring operational (for example, Border Force, Immigration Compliance and Enforcement and others) and detained casework teams (National Returns Command, Foreign National Offenders Return Command and others) to provide consistent and objective assessment of 'Detention Centre Rule 35' and 'Short-Term Holding Facility Rule 32' Reports.

Following receipt of a Rule 35 or Rule 32 report (sub category 1, 2 or 3), the team will consider any concerns raised by the doctor with an IRC or healthcare professionals within a Short-Term Holding facility and are required to respond to this within 48 hours of receipt. If the Rule 35 team are not satisfied that ongoing detention is lawful or proportionate, a recommendation to release will be made, however where detention remains appropriate, they will ensure that the individual is brought under the protection of the Adults at Risk in Detention policy and notify the responsible detained casework command. The internally independent consideration and consistent application of the general detention and Adults at Risk in Immigration Detention Policies ensures that vulnerable individuals only remain detained when immigration compliance factors outweigh any acknowledged vulnerability.

The team:

- provides an element of independence into the detention decision making process through the making of Rule 35 and Rule 32 decisions
- reviews the detention of all individuals detained following receipt of a Rule 35 or Rule 32 response
- protects potentially vulnerable individuals from being detained when it is not appropriate to do so
- for cases involving a Foreign National Offender, seeks appropriate authorisation of release via escalation to the Strategic Director

The R35T operates on weekdays throughout the year between 9am and 5pm.

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Special cases

Detention of pregnant women

Pregnant women are covered by the Adults at Risk policy. Please also see the guidance on Detention of pregnant women.

Under section 60 of the Immigration Act 2016 a pregnant woman being detained for removal or deportation can only be detained for a normal maximum of 72 hours, though this can be extended to an absolute maximum of one week in exceptional circumstances subject to Ministerial authorisation for the extension.

Spouses or civil partners of British citizens: non-foreign national offender cases

Immigration offenders who are living with their settled British spouses or civil partners may only be detained with the authority of an inspector or SEO in the relevant caseworking section. Where strong representations for a grant of immigration bail continue to be received, the decision to detain must be reviewed by an assistant director as soon as is practicable. Where there are dependent children under the age of 18, special consideration must be given to the requirement to have regard to the need to safeguard and promote children's welfare in line with the guidance given above.

In FNO Returns Command cases, the fact that the FNO is the spouse or civil partner of a British citizen will not prevent detention.

Unaccompanied young persons

An unaccompanied child detained under paragraph 16(2) of Schedule 2 to the Immigration Act 1971 may only be held in a short-term holding facility (STHF) and in no other place, except either:

- during transfer to or from a short-term holding facility
- while being taken in custody for the purposes set out in paragraph 18(3) of Schedule 2 to the 1971 Act

An unaccompanied child may be detained under paragraph 16(2) of Schedule 2 to the 1971 Act in an STHF for a maximum of 24 hours and only while both of the following conditions, as set out in paragraph 18B of Schedule 2 to the 1971 Act, are met:

- directions requiring the child to be removed from the STHF within 24 hours of being detained in the STHF are in force, or a decision is likely to result in such directions being given

- the immigration officer who gave the authority to detain reasonably believes that the child will be removed from the STHF within 24 hours in accordance with those directions

If an unaccompanied child is removed from an STHF and detained somewhere else, they may be detained in an STHF again but only if, and for as long as, it remains within 24 hours of first being detained.

An unaccompanied child who is released following a period of detention under paragraph 16(2) in an STHF can be detained in an STHF again in line with the conditions outlined above.

Staff must note that the courts have found that if a person detained as an adult is subsequently either accepted or determined to have been a child during their period of detention, the Home Office will be liable for any period of detention that is not in accordance with the limited circumstances applicable to the detention of such a child. This is irrespective of what was believed when the person was detained, even if there was a reasonable belief that they were not a child. This means that any period of detention under paragraph 16(2) of such a person that is not in line with the limitations on the detention of unaccompanied children set out in paragraph 18B of Schedule 2 to the Immigration Act 1971 would be found unlawful. Therefore, while staff may continue to treat individuals as adults if their physical appearance and demeanour **very strongly suggests they are significantly over 18 years of age**, careful consideration must be given when assessing whether a person falls into this category.

In addition, if staff cannot satisfy themselves that an age assessment by a local authority assessing a person as being over 18 is Merton and further case law compliant, the individual must not be detained as there is a risk of unlawful detention.

As a general principle, even where one of the statutory powers to detain is available in a particular case, unaccompanied children (that is persons under the age of 18) must not be detained other than in very exceptional circumstances. If unaccompanied children are detained, it must be for the shortest possible time, with appropriate care. This may include detention overnight, but a person detained as an unaccompanied child must not be held in an immigration removal centre in any circumstances. This includes age dispute cases where the person concerned has been given the benefit of the doubt and is being treated as a child.

The very exceptional circumstances in which it might be appropriate to detain unaccompanied children are set out below. In all cases, the decision-making process must be informed by and take account of the duty to have regard to the need to safeguard and promote the welfare of children under section 55 of the Borders, Citizenship and Immigration Act 2009.

Alternative arrangements for care and safety

This exceptional measure is intended solely to deal with unexpected situations where it is necessary to detain unaccompanied children very briefly for their care and safety pending alternative arrangements being made. For example, collection by parents or relatives, by appropriate adult carers or friends, or by local authority children's services. It must not be used for other purposes. Efforts to secure alternative care arrangements in such cases must be made expeditiously.

Foreign National Offender Returns Command cases

In FNO Returns Command cases, detention of an FNO under 18 may be authorised where it can be shown that the FNO poses a serious risk to the public and a decision to deport has been taken. This is subject to ministerial authorisation and the advice of the Family Returns Panel in respect of safeguarding matters. The place of detention for these FNOs would be a Youth Justice Board facility.

Return to home country

Unaccompanied children who are to be returned to their home country may be detained in order to support their removal with appropriate escorts. Such detention will occur only on the day of the planned transfer or removal to enable the child to be properly and safely escorted to their flight and/or to their destination. The use of detention powers in such a case is solely for escorting purposes and will not involve overnight stays at IRCs or STHFs. Detention in such a case must be authorised by an assistant director.

An unaccompanied child must not be detained for any other purpose.
Where an individual detained as an adult is subsequently accepted as being aged under 18, they must be released from detention as soon as appropriate arrangements can be made for their transfer into local authority care or other appropriate care arrangements.

Place of safety

Unaccompanied children may only be detained in a place of safety as defined in the Children and Young Persons Act 1933 (for England and Wales) or the Children (Scotland) Act 1995 (for Scotland). For Northern Ireland 'place of safety' is defined as: a home provided under Part VII of the Children (Northern Ireland) Order 1995; any police station; any hospital or surgery; or any other suitable place, the occupier of which is willing temporarily to receive a person under the age of 18.

Individuals claiming to be under 18

The guidance in this section must be read in conjunction with the Assessing Age Asylum Instruction (even in non-asylum cases). You may also find it useful to consult Detention Services Order 2/2019 on managing age dispute cases in the detention estate.

The Home Office will accept an individual as under 18 (including those who have previously presented themselves as an adult) unless one or more of the following categories apply (this does not apply to individuals previously sentenced by the criminal courts as an adult):

- **A** there is credible and clear documentary evidence that they are 18 or over
- **B** a Merton compliant age assessment is available stating that they are 18 years of age or over and either:
  - the Home Office accepts the outcome of the assessment after carefully considering the findings alongside any other available sources of information (age assessments conducted by local authorities)
  - the outcome of the assessment is binding for immigration purposes (age assessments conducted by the National Age Assessment Board)
- **C** two Home Office members of staff (one of at least CIO or HEO grade, or equivalent) independently assess that the individual is an adult because their physical appearance and demeanour very strongly suggests they are significantly over 18 years of age and there is little or no supporting evidence for their claimed age
- **D** the individual (all of the following 7 criteria must apply):
  - prior to detention, gave a date of birth that would make them an adult and/or stated they were an adult
  - only claimed to be a child **after** a decision had been taken on their asylum claim, entry to the UK or immigration status
  - only claimed to be a child **after** they had been detained
  - has not provided credible and clear documentary evidence proving their claimed age
  - does not have a Merton compliant age assessment stating they are a child
  - does not have an unchallenged court finding indicating that they are a child
  - physical appearance and demeanour very strongly suggests they are significantly over 18 years of age.

As noted above the courts have found that if a person detained as an adult under paragraph 16(2) of Schedule 2 to the 1971 Act is subsequently either accepted or determined to have been a child, the Home Office will be liable for any period of detention that is not in accordance with the limited circumstances applicable to the detention of such a child. This is irrespective of what was believed when the person was detained even if there was a reasonable belief that they were not a child. It is also very important to remember that liability for detention rests with the Home Office. Therefore, the threshold for individuals to enter, or remain in detention following a claim to be a child is high and caution must be exercised in favour of avoiding the risk of detaining a person who is later determined to be a child.

If an individual claims to be a child in detention the decision on whether to maintain detention or release must be made as promptly as possible.

If one or more of the above categories apply, the following actions must be completed:

- form IS.97M must be completed, signed by the countersigning officer, served on the individual and a copy sent to DEPMU
- form BP7 (ASL.3596) must also be completed, signed and held on file
- the individual's date of birth within the 'Person Details' screen on CID must be updated to reflect the Home Office's assessed date of birth, not the individual's claimed date of birth, failure to complete this action will result in DEPMU refusing to allocate detention space in adult accommodation, for further guidance see Assessing age
- if officers receive relevant new evidence, they must promptly review any previous decision to treat an individual as an adult

Individual found to be a child
If none of the above categories apply, the individual must not be detained or must be released from detention into the care of a local authority and treated as a child, in accordance with the Processing children's asylum claims AI. Care must be taken to ensure the safety of the individual during any handover arrangements, preferably by agreement with the local authority.

Individuals previously sentenced by the criminal courts as an adult
Individuals previously sentenced by the criminal courts as an adult must be treated as over 18 years of age unless there is credible evidence to support their claim to be a child.

In non-immigration detained cases, if the unaccompanied claimant subsequently contests the Home Office determination of adult status, you may inform them that they can approach their local authority for an assessment as a possible child in need.

If an individual claims to be a child in detention but was previously sentenced by the criminal courts as an adult, refer to paragraphs 34 to 36 of Detention Services Order 2/0019 'Care and management of post detention age claims' for further information.

Recording the age assessment process

All responses from the individual, local authorities, National Age Assessment Board or legal representatives must be noted and retained on file, since these may have a bearing on future appeal hearings.

Assessing age detention policy

The assessing age detention policy has in-built protections to ensure it is compliant with section 55 of the Borders, Citizenship and Immigration Act 2009 duty. The threshold that must be met for individuals to enter or remain in detention following a claim to be a child is a high one and is only met if the benefit of doubt afforded to all individuals prior to any assessment of their age is made is then displaced because the individual has met one or more of the categories listed at the beginning of Individuals claiming to be under 18.

If an individual claims to be a child in detention they will be appropriately managed and a risk assessment of the individual including consideration of the facilities of the IRC (for example, only permitting limited observed contact with adults and/or segregating the individual from adults as appropriate) will be conducted whilst either:

- a prompt decision on their age is made
- arrangements are being made for their release into the care of the relevant local authority

It is necessary to appropriately protect individuals at this point in the process because it ensures they are not exposed to risks which might compromise their safety or welfare in the meantime. Officers must also refer to the 'Section 55 of the Borders, Citizenship and Immigration Act 2009' section of Assessing age.

Whilst this policy is set at a high threshold and compliant with the section 55 duty, the Home Office continually monitors the case details of individuals detained under this policy to ensure that, if necessary, the policy could be promptly amended to avoid the detention of children.

Families with children under the age of 18

Plans for the ensured return of families with children under the age of 18, including FNO Returns Command cases, must follow the ensured returns process set out in family returns process, including referral to the Family Returns Panel for advice. The options for ensured returns include, as a last resort, the use of pre-departure accommodation. Stays at pre-departure accommodation are limited to a normal maximum of 72 hours but may, in exceptional circumstances and subject to Ministerial authority, be extended up to a total of 7 days.

In some FNO Returns Command cases, mothers with infant children may, if appropriate and in line with advice from the Family Returns Panel, continue to be detained in a prison mother and baby unit at end of sentence and pending deportation. This is subject to the same time limits as above.

There may be **rare** occasions on which it would be appropriate to use Tinsley House Family Suite to accommodate a family instead of pre-departure accommodation. These are as follows:

Family presenting risks which makes the use of pre-departure accommodation inappropriate
Where a family presents risks which make the use of pre-departure accommodation inappropriate. Such a proposal would need to be referred to the Family Returns Panel for advice and would, in addition, require Ministerial authorisation. The same time limits as for pre-departure accommodation apply.

Female FNO and baby being returned from prison under Early Removal Scheme

Where FNO Returns Command is returning a mother and baby from a prison mother and baby unit during the early removal scheme (ERS) period, but it is not practicable or desirable, owing to time or distance constraints, to transfer mother and infant direct from prison to the airport for removal. Tinsley House may be used to accommodate the family on the night before their flight. This is because it would not be appropriate to separate mother and baby, and the mother cannot be moved to non-detained or pre-departure accommodation during the ERS period since she continues to be a serving prisoner who can only be released from prison for the purpose of removal. If Tinsley House is to be used in these circumstances, the FNO Returns Command case owner must liaise with the family returns unit (FRU) in good time before the proposed removal to ensure that accommodation is suitable and available. FRU will require a copy of the Family Welfare Form before the booking can be confirmed. Should the removal fail, the mother and child will be returned to the prison.

Single parent FNO being reunited with child at airport for removal
Where after reuniting a single parent foreign national offender with their child at the airport for removal, either straight from prison custody or immigration detention, the removal does not proceed. For this reason, the FNO Returns Command case owner must always seek to retain the involvement of the person who has been caring for the child until the flight departs so that they can step in to take care of the child again until the removal can be rearranged. However, where this is not possible and it is not appropriate to release the parent, the family suite at Tinsley House may be used to accommodate the parent and child until alternative, community-based arrangements for the care of the child are made (for example, with local authority Children's Services). Director level authority must be obtained before Tinsley House is used in these circumstances. The time limits above apply but, in most cases, the aim must be for the child's stay to be for no more than one night. As a contingency, FRU must be advised in advance of cases where FNO Returns Command is reuniting a family at the airport and it is possible that accommodation at Tinsley House may be needed should the removal fail.

The latter 2 categories of cases do not constitute ensured return for the purposes of the family returns process and do not therefore need to be referred to the Family Returns Panel for advice. However, FRU will report these cases to the Panel retrospectively to enable them to maintain broad oversight of the Home Office's use of detention in respect of families.

Forms IS91 (Authority to detain) and IS91R (Reasons for detention) (or their FNO Returns Command equivalents) must be issued for each person detained, including for each child.

Detention of EEA citizens or their family members who have a pending valid EUSS application or a pending appeal or administrative review against refusal of EUSS leave

Where a person has a pending valid EU Settlement Scheme (EUSS) application, they will be issued with a Certificate of Application (CoA). The CoA does not provide

immigration status in the UK or a right to enter the UK, rather, it confirms the temporary protection of their rights under the Withdrawal Agreement (or equivalent provisions in other Agreements) pending the outcome of their application and any administrative review or appeal in respect of that decision. Ordinarily, a person with a CoA will not be eligible for enforcement action, including detention, until their EUSS application or appeal has been finally determined.

EEA citizens and their family members who have not applied to the EUSS, who have applied but not had their application validated, or who have been refused EUSS leave and are appeal rights exhausted, may be considered for detention.

Where there is an open invalidated application and the caseworker deems it appropriate to detain a person, the caseworker must inform the DGK of the open application in their request for authorisation.

Where detention is authorised by the DGK, the DGK 'DB Acceptance Template' must be completed as standard. It must also include the PEGA UAN reference number of the EUSS application, in addition to confirmation that the detention was authorised prior to the application being accepted as valid and a CoA issued or rejected as invalid.

The DGK must refuse authorisation of detention to any individual who has been issued a CoA or has a pending appeal or administrative review. The caseworker must ensure they release any individual who is subsequently issued a CoA whilst in detention and cease all further enforcement action until the application is decided and all appeal rights exhausted.

Detention for the purpose of deportation of those with pending applications to the EUSS / pending appeals against refusal of EUSS leave

The Immigration (European Economic Area) Regulations 2016 (the EEA Regulations 2016) were revoked when the UK left the European Union (EU) at the end of the transition period at 11pm on 31 December 2020.

However, provisions of those regulations have been saved and modified by The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 (The Grace Period Regulations). These regulations apply to EEA citizens and their family members who were resident in the UK on 31 December 2020 and who made valid applications to the EUSS on or before 30 June 2021, and in respect of whom a decision on that application/appeal against a refusal of leave is still pending.

Deportation decisions may therefore be taken under the EEA Regulations 2016, as saved by the Grace Period Regulations where all the following apply:

- the person was lawfully resident in the UK in accordance with the EEA Regulations 2016 on 31 December 2020
- they made a valid application to the EUSS on or before 30 June 2021
- a decision on that application, or an administrative review/appeal against refusal of that application, is still pending

In this scenario the person may be deported under regulation 23(6)(b) of the EEA Regulations 2016, as saved, irrespective of when the relevant conduct occurred. They will have a right of appeal against deportation under regulation 36 of the EEA Regulations, as saved, which, if exercised, will prevent enforcement of any deportation order unless removal has been certified under regulation 33 of the EEA Regulations 2016, as saved. They may be detained in accordance with regulation 32 of the EEA Regulations 2016, as saved.

Where the person has a pending EUSS application, but the EEA Regulations 2016 do not apply, for example because they applied to the EUSS after 30 June 2021, deportation will proceed under the domestic framework (section 5 of the Immigration Act 1971 or section 32 of the UK Borders Act 2007). However, in order to ensure no breach of temporary rights under the Withdrawal Agreement, which persist while a decision on their application / administrative review / appeal is pending, the deportation may not be enforced until a decision on the EUSS application has been concluded. Deportation may only be enforced while an appeal against an EUSS refusal is in progress if removal has been certified under Regulation 16 of the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020. In such cases the person may be detained under powers in paragraph 2 of Schedule 3 to the Immigration Act 1971 or section 32 of the UK Borders Act 2007, as relevant.

When taking a decision to detain an individual who has a pending EUSS application / ongoing appeal which has not been certified, it will be necessary to consider carefully how long it will likely take for the application, appeal or administrative review to conclude, and therefore the likelihood that removal will be effected within a reasonable timeframe.

EEA nationals liable to detention under either regulation 32 of the EEA Regulations 2016 as saved, or paragraph 2(2) of Schedule 3 to the Immigration Act 1971 may be eligible for immigration bail. Further information can be found in the Immigration Bail guidance.

Detention for the purpose of deportation of those with EUSS leave The Immigration (European Economic Area) Regulations 2016 (the EEA Regulations 2016) were revoked when the UK left the European Union (EU) at the end of the transition period at 11pm on 31 December 2020.

However, provisions of those regulations have been saved and modified by The Citizens' Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020 (The Restrictions Regulations). These regulations apply to any person who has leave granted under the EUSS and who is being deported as a

result of conduct that occurred wholly or partially prior to 11pm on 31 December 2020.

Such individuals may be deported under regulation 23(6)(b) of the EEA Regulations 2016, as saved, and they will have a right of appeal against deportation under regulation 36 of the EEA Regulations, as saved, which will prevent enforcement of any deportation order unless removal has been certified under regulation 33 of the EEA Regulations 2016, as saved. They may be detained in accordance with regulation 32 of the EEA Regulations 2016, as saved.

Where a person with EUSS leave is being deported as a result of their conduct occurring exclusively after 11pm on 31 December 2020, their deportation will proceed under the domestic framework (section 5 of the Immigration Act 1971 or section 32 of the UK Borders Act 2007), and they may therefore be liable to detention under para 2(2) of Schedule 3 to the Immigration Act 1971. However, they will have a right of appeal against the deportation decision under Regulation 6 of the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020. A deportation order may not be made or enforced while such an appeal is pending, unless certified under Regulation 16 of the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2016.

When taking a decision to detain an individual with EUSS leave in respect of whom a decision to deport has been made, it will be necessary to consider carefully how long it will likely take for any appeal to conclude, and therefore the likelihood that removal will be effected within a reasonable timeframe.

Those with EUSS leave who are liable to detention under paragraph 2(2) of Schedule 3 to the Immigration Act 1971 may be eligible for immigration bail. Further information can be found in the Immigration Bail guidance.

Food and fluid refusal cases: consideration of possible release from detention

Caseworkers responsible for managing cases involving people refusing food and/or fluid must follow the casework guidance set out in the link below and the guidance set out in Adults at risk in immigration detention.

This section must be read in conjunction with DSO 03/2017 on the management of food and fluid refusal cases.

References in this section to the 'Strategic Director' relate to the Director of Returns.

Individuals who meet the definition of a food and/or fluid refuser as set out in DSO 03/2017 must have their detention reviewed when the case owner is first notified and thereafter in line with existing detention review schedules. Ad hoc reviews of detention are also likely to be required, in particular in response to any deterioration in the individual's condition.

Any case from across the business where release from detention is being considered as a direct result of food and/or fluid refusal must be referred to the Strategic Director.

Important: In the first instance, all cases which are BRAG rated as BLACK must be notified to the Strategic Director using Part 1 (Case Notification) of the standard food and/or fluid refusal template form to inform them in advance that a referral requesting authority for release from detention will be forthcoming shortly.

All cases in which release from detention is being proposed must be put to the Strategic Director for a decision using Part 2 (Release referral) of the same standard template form.

Although recommendations for release of food and/or fluid refusers from across the business are submitted to the Strategic Director it is for the line management chain within individual case working areas to ensure that caseworker guidance set out in DSO 03/2017 is adhered to within their respective area of the business.

Cases outside of FNO Returns Command, as well as FNO Returns Command non-criteria administrative removal cases, in which the food and/or fluid refusal is **not** relevant to a decision to release or is only a supplementary reason rather than principal one, can be authorised under current protocols and need not be referred to the Strategic Director for approval.

The Strategic Director takes the final decision on release in line with published detention policy. The Strategic Director must look at past criminality, the risk of harm to the public, risk of reoffending on release and the risk of absconding, together with information relating to the likelihood and timeframe to removal and weigh that against the available medical evidence. These risks may be less pronounced in practice than they may have been previously depending on the individual's current state of health but may, of course, revert to their earlier levels quite quickly depending on how fast the person is likely to return to reasonable health if eating or drinking is resumed and/or medical treatment accepted on release from detention. The risks may be unaffected by the individual's current state of health, or only minimally so. The higher the risk of harm, reoffending or absconding, the stronger the arguments against detention will need to be for release to be appropriate.

All factors arguing both for and against continued detention must be taken into account. The decision on whether to maintain detention requires a careful balancing of these factors. Decisions must ultimately be made in line with section 12 of the Illegal Migration Act 2023, that is, that there must be a realistic prospect of removal within a reasonable period of time and that if, at any time before the expiry of that reasonable period, it becomes clear that removal will not take place detention must not continue.

Cases of food and and/or fluid refusal will engage the policy contained within Adults at risk in immigration detention insofar as it relates to those considered particularly vulnerable to harm in detention because of serious medical conditions.

Cases of food and and/or fluid refusal may engage the policy contained within Adults at risk in immigration detention where a detainee is refusing food and/or fluid for any reasons other than as a form of protest, for example because of pre-existing psychiatric problems. Where this is the case they must be managed in line with safeguarding procedures and policies, including but not limited to: the Adults at risk in immigration detention policy, DSO 08/2016 Management of Adults at Risk in Immigration Detention and DSO 01/2022 ACDT.

In cases of food and/or fluid refusal the fact that someone may be refusing food and/or fluid in a deliberate attempt to secure release from detention and thereby suffers from a serious physical health condition as a consequence may engage the Adults at risk in immigration detention policy. An unwillingness on the part of a detainee to go to hospital for treatment is an additional factor that may be taken into account, provided the individual has the capacity to make an informed decision on this point (see 'Muhammad & Ors v SSHD [2013] EWHC 3157 (Admin)' paragraphs 50/1).

When considering whether to maintain detention in line with the Adults at Risk policy the strategic director must give very careful consideration to the extent to which doctors have been able to obtain an accurate picture of the person's state of health. Where appropriate, this may include consideration of factors such as whether the individual has been willing to undergo medical examinations and/or withheld consent to their medical information being shared with the Home Office such as to determine whether a serious medical condition exists. It should be borne in mind that, in certain circumstances, it may nevertheless be possible for doctors to determine the existence of a serious medical condition without such information being available.

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Adults at risk

The Adults at risk in immigration detention policy strengthens the presumption against detention for vulnerable people considered to be vulnerable to harm in detention. Under the policy an individual considered to be at risk will only be detained, or their detention continued, where the immigration control considerations that apply in their particular case (for example, the likelihood and timeframe to removal or public protection considerations) outweigh any risk identified.

Pregnant women are covered by the Adults at Risk policy but are also subject to the separate guidance on Detention of pregnant women.

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Criteria for detention in prison

Her Majesty's Prison and Probation Service (HMPPS) and the Home Office have a service level agreement governing the provision of bed spaces within prisons. Under that agreement, HMPPS make a number of bed spaces available for use by the Home Office to hold people under immigration powers. It is for the Home Office to determine how those bed spaces are used and the type of people who are held in them.

The normal expectation is that the prison beds made available by HMPPS will be used to hold time served FNOs who are assessed as unsuitable for detention within the immigration removal estate. Decisions to allocate specific individuals, whether time served FNOs or otherwise, to prison accommodation will be based on the presence of one or more of the risk factors or criteria below.

In the case of the following individuals, the normal presumption will be that they should remain in, or be transferred to, prison accommodation and they will be transferred to an IRC only in very exceptional circumstances:

national security – for example, where there is specific, verifiable intelligence that a person is a member of a terrorist group or has been engaged in or planning terrorist activities.

criminality – those individuals who have been involved in serious offences involving the importation and/or supply of class A drugs, very serious violent offences with sentences of 5 years or more and/or those convicted of sexual offending involving a minor.

specific identification of harm – those individuals who have been identified in custody as posing a risk of serious harm to minors, and those identified in custody as being subject to harassment procedures who have previous breach history or refuse to sign the non-contact disclaimer (that is, individuals subject to the formal procedures under Prison Service Order 4400, preventing them from contacting their victims whilst in custody).

In the case of the following individuals, they will usually be transferred to, or remain in, prison accommodation, subject to some exceptions:

criminality – those individuals who are subject to notification requirements on the sex offenders register, exceptions to this category would include individuals sentenced to less than 5 years for a sexual offence, who may be considered for transfer to an IRC on a case-by-case basis, or individuals subject to notification requirements on the sex offenders register who have otherwise been assessed by the Home Office as being suitable for transfer.

security – where the person has escaped from prison, police or immigration custody or escort, or planned or assisted others to do so

control – engagement in, planning or assisting others to engage in or plan serious disorder, arson, violence or damage whilst in prison, police or immigration custody

The following individuals may be unsuitable for transfer to an IRC and DEPMU staff must assess their suitability for transfer on a case-by-case basis:

behaviour during custody – where an individual's behaviour whilst in either an IRC or prison custody makes them unsuitable for the IRC estate. For example, numerous proven adjudications or intelligence/observations from prison officers whilst in prison for violence or incitement to commit serious disorder which could undermine the stability of the IRC estate or clear evidence of such conduct whilst in an IRC. People who were originally convicted of a violent offence may nevertheless be considered for transfer to an IRC depending on the nature of that offence and provided their behaviour whilst in prison custody has not given rise to concerns, subject to the criteria set out above.

health grounds – where an individual is undergoing in-patient medical care in a prison. Transfer will only take place when an IRC healthcare bed becomes available provided the individual is medically fit to be moved and their particular needs can be met at the IRC in question. Separately, to the issue of transferring individuals held in prison people held in IRCs who are refusing food and/or fluid may be transferred to prison medical facilities if this is considered necessary to manage any resulting medical conditions.

The existence of any of the above risk factors indicates that an individual must be held in prison accommodation rather than an IRC, but the list is not exhaustive and DEPMU risk assessment officers must also satisfy themselves that no other risks exist which would make it inappropriate for the individual to be held in an IRC, rather than a prison.

The normal expectation is that any remaining prison bed spaces made available under the agreement with HMPPS after allocation of prison beds to individuals presenting one or more of the criteria or risk factors above will be filled by time served FNOs not falling into the above categories. Subject to risk assessment, such individuals will be placed on a waiting list, operated by DEPMU, for transfer to an IRC but will remain in prison accommodation pending that transfer.

Any individual may request a transfer from prison accommodation to an IRC. Prompt and evidenced consideration must be given to such a request and, if rejected by DEPMU, the individual concerned will be given written reasons for this decision.

If DEPMU decide that a person currently held in an IRC or short-term holding facility is not appropriate for that accommodation they will refer them to the Population Management Unit (PMU) of HMPPS, who will consider their allocation to a prison. People will not be referred for transfer on medical or care grounds.

Time-served FNOs in Scotland and Northern Ireland will normally be transferred to an IRC, as appropriate, as soon as practicable after release from sentence. In some

cases, the individuals concerned may, if appropriate, and with the agreement of the Scottish Prison Service or Northern Ireland Prison Service, remain in prison for a short time to allow for any delay in transfers.

A person normally considered unsuitable for an IRC may, exceptionally, be detained in an IRC for a short period of time in order, for example, to facilitate their removal where a flight leaves early and the individual needs to be held close to the airport, or to facilitate an interview with a consular official as part of a documentation exercise. Such instances are subject to the agreement of a DEPMU SEO. Full details must initially be detailed on the IS91RA part A and entered on the 'risk factors' section of form IS91 served on the detaining agent (see Detention forms).

If this return should fail, the individual will be returned to a prison bed as soon as possible after the attempted removal. DEPMU will give consideration to the individual remaining in the immigration removal estate should flight availability allow for a short stay.

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Detention of those facing criminal proceedings

Detention of illegal entrants and those subject to administrative removal who are facing or have been convicted of criminal offences

Whilst detention on criminal charges does not affect a person's liability to removal as an illegal entrant or a person liable to administrative removal, it is not the practice to remove the person where criminal charges are extant. Officers must not seek to influence police decisions about whether or not to pursue criminal matters.

Where an illegal entrant or person subject to administrative removal is convicted of a criminal offence and recommended for deportation, this must be considered by FNO Returns Command before removal is enforced. In the event of an illegal entrant or person subject to administrative removal being convicted of a serious offence but not recommended for deportation by the Court, FNO Returns Command may wish to consider non-conducive deportation under section 3(5)(a) of the Immigration Act 1971.

There is no immigration power to detain where a person is already detained under an order or sentence of a court or is remanded in custody. Therefore, the sensible course is for any immigration decision to detain to be expressed as taking effect once any existing detention ends. Such a person is not exempt from the arrangements for release on temporary licence (home leave).

Detention pending criminal proceedings

There is no bar to detaining a person under Immigration Act powers where the person is on police bail pending enquiries and has not yet been charged. Such a person will cease to be eligible for detention under Immigration Act powers in practice if they are detained by a court in the criminal proceedings once charged.

Where an illegal entrant or person served with notice of administrative removal is granted bail by the court pending trial, there is no bar to continued detention under the 1971 Act, but full account must be taken of the circumstances in which bail was granted and an inspector or SEO must authorise such detention.

Where an illegal entrant or person served with notice of administrative removal is remanded in custody awaiting trial but it is not necessary to detain them under immigration powers, serve 'Notification of Grant/Variation of Immigration Bail' (BAIL.201) granting them immigration bail to the place of detention.

Immigration detention in deportation cases

Paragraph 2(1) of Schedule 3 to the Immigration Act 1971 provides that a person who is the subject of a court recommendation for deportation, who is not otherwise subject to the sentence or order of a court, may be detained on the completion of the custodial component of their prison sentence, pending the making of a deportation order.

Paragraph 2(2) of Schedule 3 provides the power to detain a person who has not been recommended for deportation by a court, who is not otherwise detained pursuant to the sentence or order of a court, and who has been served with a notice of a decision to make a deportation order (an appealable decision) in accordance with section 105 of the Nationality, Immigration and Asylum Act 2002, pending the making of a deportation order.

Under paragraph 2(3) of Schedule 3 to the 1971 Act, where a deportation order is in force against any person, they may be detained pending their removal or departure from the UK.

Under section 36 of the UK Borders Act 2007, a person may be detained while consideration is given to whether the automatic deportation provisions of the Act apply and, if they do apply, pending the making of the deportation order.

However, a person must not be detained under immigration powers at the same time that they are detained under an order or sentence of a court. Therefore, the sensible course is for any immigration decision to detain to be expressed as taking effect once any existing detention ends. It is also important in criminal cases to monitor the offender's release date for service of further detention or restriction forms at the appropriate time.

There is no bar to detaining a person under Immigration Act powers where the person is on police bail pending enquiries and has not yet been charged. Such a person will cease to be eligible for detention under Immigration Act powers in practice if they are detained by a court in the criminal proceedings once charged.

Where a person subject to deportation action is granted bail by a court pending trial for a criminal offence, there is no bar to detention under Immigration Act powers. However, full account must be taken of the circumstances in which bail was granted and an inspector or SEO must authorise such detention.

Where an FNO to be transferred to immigration detention has been the sole or main carer of children and has been separated from them through a custodial sentence, careful consideration needs to be given to how, when and where the FNO will be reunited with the children if the children are also subject to deportation as dependants or are to accompany the deportee on deportation.

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Co-ordination of detention

Detention space is allocated via regional detention gatekeepers through the detention co-ordinators based at DEPMU which is staffed 24 hours a day.

The DEPMU CIO or HEO has the authority to:

- refuse to accept any person or family for detention in the immigration detention estate
- refuse to accept any person for transfer by the escorting contractor
- arrange for a person to be moved in order to meet local demands or to provide more secure accommodation
- decide on the priority of tasks to be handled by the escorting contractor

Ports and ICE teams must initially approach their local business area detention co-ordinator for approval to use one of the ring-fenced beds. When this approval has been given, DEPMU must be faxed the following information:

- IS89 Request for Detention form, including the person's full name, with family name in Capital letters
- all risk factors on form IS91RA, part A
- any relevant references – port or ICE team, Home Office, prison, immigration and asylum chamber, previous removal centre
- a contact name and telephone number so that DEPMU can inform the port or ICE team of where the individual has been placed

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Detention after an appeal has been allowed

If a person wins an appeal, but the Home Office wishes to challenge the immigration judge's decision, it is sometimes considered necessary to maintain detention until the challenge is heard. While it may be justifiable to continue detention in the short-term pending such a challenge, especially if there is considered to be a risk of the person absconding or a risk of harm to the public, care must be taken to ensure detention on this basis does not continue beyond a reasonable time period.

Detention after an appeal has been allowed is not automatic and immigration bail must always be considered. Any decision on what constitutes a reasonable period of time must be on a case-by-case basis. As with any case, detention and associated risk factors must be reviewed regularly to decide whether the person's circumstances have changed, and whether the person still presents a risk of absconding.

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Places of detention

Persons detained under Immigration Act powers may be detained in any place of detention named in the Immigration (Places of Detention) Direction 2021. This includes police cells, immigration removal centres, prisons or hospitals. Unaccompanied children or young persons under the age of 18 may only be in held in a place of safety (see Unaccompanied young persons). As a matter of policy, families with children under the age of 18 may be held in non-residential short-term holding facilities (holding rooms), pre-departure accommodation and the family suite at Tinsley House immigration removal centre.

Some facilities, such as police cells (but see detention in police cells) are only suitable for detention for up to 5 days continuously (7 if removal directions are set for implementation within 48 hours of the 5th day). The Immigration (Places of Detention) Direction 2021 does not prevent a person already detained for the specific period in time-limited accommodation from being re-detained, but this must never be used as a device to circumvent the time limits on the use of short term holding facilities.

Present accommodation

The immigration detention estate (which is a general term covering immigration removal centres, short-term holding facilities, pre-departure accommodation and holding rooms at reporting centres, ports and airports) currently includes places at the following locations:

Immigration Removal Centres (IRCs)

Centre	Population
Brook House	Males only
Colnbrook	Males and females
Derwentside	Females only
Dungavel	Males, females, families with no children under the age of 18
Harmondsworth	Males only
Tinsley House	Males, families, including those with children under the age of 18 may be held in the Border Family Unit only
Yarl's Wood	Males and females

Residential Short-term Holding Facilities (STHFs)

Residential short-term holding facilities are located at:

- Larne House, Northern Ireland
- Manchester Short-term Holding Facility
- Yarl's Wood, Bedfordshire

Pre-Departure Accommodation (PDA):

- Gatwick PDA

Northern Ireland

Adults who are detained in Northern Ireland are normally moved immediately to Larne House STHF or, when a police and criminal evidence (PACE) Act arrest and detention in a police cell has been necessary, as soon as practicable after the person is released from police custody. Individuals may be held in police cells until transfer to Larne House can be effected.

Individuals may be held at Larne House for up to 7 days when removal directions have been set to take place within that period and, whenever possible, will be removed directly via Northern Ireland airports within this period. Where removal will not take place within 7 days of a person being detained at Larne House, the maximum stay at Larne House will be up to 5 days, during which time the person will be moved to an IRC in Great Britain if their detention is to continue.

FNOs who have been released from sentence in Northern Ireland will normally be moved to a Home Office immigration detention facility or HMPPS accommodation, as appropriate, within 24 hours of their release, or as soon as practicable thereafter.

Prison Service accommodation

See Criteria for detention in prison.

Detention in police cells

People should preferably only spend one day in police cells, with a normal maximum of 2 days. In exceptional cases, a person may spend up to 5 days continuously in a police cell (7 days if removal directions have been set for within 48 hours of the fifth day) if, for instance, the person is awaiting transfer to more suitable Home Office or Prison Service accommodation **and** the police are content to maintain detention. Such detention must be authorised by an inspector or SEO, who must take into account the Home Office duty of care for detained individuals and the likelihood that police cells do not provide adequate facilities for this purpose in the long term.

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Detention for the purpose of removal

In cases where a person is being detained because their removal is likely to take place within a reasonable timeframe, the lodging of a suspensive appeal, or other legal proceedings that need to be resolved before removal can proceed, will need to be taken into account in deciding whether continued detention is appropriate. Release from detention will not be automatic in such circumstances: there may be other grounds justifying a person's continued detention, for example a risk of absconding, risk of harm to the public or the person's removal may still legitimately be considered likely to take place within a reasonable timeframe if the appeal or other proceedings are likely to be resolved reasonably quickly.

An intimation that such an appeal or proceedings may or will be brought would not, of itself, call into question the appropriateness of continued detention (see: Judicial Review guidance).

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Detention in national security cases

When contacted by the relevant unit that deals with national security cases (see below) with a request to detain, staff will be provided with a copy of the notice sent to the person saying that they will be detained and setting out the reasons for their detention. This notice will alert staff to the fact that the person is being detained in the interests of national security and is therefore to be detained in HMPPS accommodation. Staff must ensure that Section 3 of form IS91 is completed when issued to the Prison Service authorities and that in addition to any other information put on this form, the following wording is inserted:

> ‘(Name) has been detained under powers contained in the Immigration Act 1971 and the Home Secretary has personally certified that their detention is necessary for reasons of national security. (Name) must not be transferred from HM Prison (name of place of detention) to another Prison Service establishment or place of detention without prior reference to the Home Office section named on this form.’

Should the Prison Service contact the ICE team because they are considering transferring the person to another prison, that office must advise the prison authorities to contact the population management unit of HMPPS indicating that they, in turn, must consult the caseworking officer from the relevant unit (see below) for background information, before the person is moved.

These cases are particularly sensitive and it is essential that the above procedure be followed.

Official – sensitive: start of section

The information in this section has been removed as it is restricted for internal Home Office use.

Official – sensitive: end of section

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Incidents in the detention estate

DEPMU must be kept informed of all serious incidents in any removal centre, short-term holding facility, holding room or under escort, such as deaths, incidences of self-harm, escapes, attempted escapes, food and/or fluid refusals and any other potentially high-profile occurrence. Home Office immigration enforcement staff at all removal centres are responsible for reporting such incidents to detention operations. DEPMU staff are responsible for providing reports in respect of incidents which take place whilst under escort, at short-term holding facilities and holding rooms.

In centres holding children, special care must be taken to report incidents because of their vulnerability. Any such incidents must be dealt with appropriately and swiftly, following the procedure set out in local safeguarding policies.

Detailed instructions on the reporting of incidents to detention operations are issued separately to staff at DEPMU and at all removal centres.

Additionally, consideration must be given to whether such actions may prompt reassessment of potential risk in which case form IS91RA part C must be sent to DEPMU. See Form IS.91RA Risk assessment.

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Bed guards

All requests for bed guards must be made to the DEPMU CIO or HEO.

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Notification of detention to High Commissions and Consulates

All persons who are detained must be asked, by the Home Office detaining officer (including when the individual has been detained initially by the police), if they wish to contact their High Commission or Consulate. Those who wish to do so must be given the appropriate telephone number. When a person is likely to be detained for more than 24 hours they must be asked if they wish their High Commission or Consulate to be notified of their detention. If they do, then form IS94 must be sent by email or fax to the appropriate representative of the High Commission or Consulate. Contact details are available in the London Diplomatic List, accessible via the following link to the Foreign & Commonwealth Office website.

Caseworkers must ensure that ATLAS is updated to record that the notification has been sent.

Notification of detention to High Commissions and Consulates is the responsibility of the detaining officer at the ICE team or port.

The UK has a bilateral consular convention relating to detention with a number of countries (listed below). The convention imposes an obligation on detaining authorities to notify the consular representative of a person in detention even if the person has not requested this. When a national of such a country is likely to be detained for more than 24 hours, **and there is or has been no asylum claim or suggestion a claim might be forthcoming**, the appropriate High Commission or Consulate must be notified by the detaining officer, on form IS94 sent by email or fax. The person must be notified of this disclosure.

A consular representative must, if the person detained agrees, be permitted to visit, converse privately with and arrange legal representation for them.

Communications from the person detained to their High Commission or Consulate must be forwarded without delay.

List of countries with which the UK has bilateral consular conventions relating to detention

Please see the link below to the Foreign and Commonwealth Office list of countries with which the UK has bilateral treaties covering mandatory consular notification when a foreign national has been arrested or detained.

Table of consular conventions concerning mandatory notification of detention

Austria
Belgium
Bosnia-Herzegovina

Bulgaria
China
Croatia
Cuba
Czech Republic
Denmark
Egypt
France
Germany
Greece
Hungary
Italy
Japan
Kosovo
Mexico
Mongolia
Montenegro
Netherlands
Norway
Poland
Romania
Russia
Serbia
Slovakia
Slovenia
Spain
Sweden
Ukraine
USA

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Home leave (release on temporary licence) for prisoners subject to removal action

The grant of home leave (release on temporary licence) for a person serving a custodial sentence is normally at the discretion of the Prison Governor.

When a Governor wishes to allow a prisoner home leave, but the individual is subject to ‘dual’ detention under Schedule 2 of the 1971 Act, they must contact a CIO or HEO at the port or ICE team that authorised detention, giving 10 days’ notice of the decision to allow for any representations to be made as to why the prisoner must not be released. However, as the person is still a serving prisoner, the final decision rests with the Governor, even if an IS91 has been served.

Where a prisoner has been court recommended for deportation, has already been notified of a decision to make a deportation order, or may be liable to automatic deportation, the Governor requires the permission of FNO Returns Command for the person to be released. Prisons should make such requests directly to FNO Returns Command but any received by ports or ICE teams must be forwarded for the attention of a senior caseworker.

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Search and seizure powers for nationality documents of persons in detention

Search for nationality documents by detainee custody officers

Section 51 of the Immigration Act 2016 allows the Secretary of State (for example, Foreign National Offender Returns Command (FNO RC) and National Returns Command (NRC) caseworkers, onsite Home Office Immigration Enforcement (HOIE) team and immigration officers (IOs)) to direct detainee custody officers (DCOs), prison officers (POs) and prisoner custody officers (PCOs) to require a person in custody to hand over or to search for, take possession of, inspect, seize and retain nationality documents, but only where the Secretary of State has reasonable grounds to believe that relevant nationality documents will be found in the detained person's possession. This means that to direct a search there must be knowledge which is objective, clear and based on specific facts, information or intelligence.

For persons liable to deportation, FNO RC staff must speak to the FNO RC Investigations Team before instigating this search power.

For those in immigration detention, a direction must be given in writing by the NRC caseworker, IO or onsite HOIE manager or deputy manager.

The notes field on CID must be updated to with details of the search and the seized document.

Only relevant officers (DCOs, POs and PCOs) can exercise this search power. IOs and other immigration officials may **not** use the power of search etc themselves.

This affects the following persons in:

- immigration removal centres (IRCs) or short-term holding facilities (STHFs):
  - those held under immigration powers
- prisons or young offender institutes (YOIs), those who:
  - have been recommended for deportation by a court under section 3(6) of the Immigration Act 1971
  - are subject of a deportation order under section 5(1) of the Immigration Act 1971
  - must be deported under section 32(5) of the UK Borders Act 2007
  - have been given a notice of a decision to make a deportation order

It may not be used on children under the age of 10 years.

The power allows officers to search:

- the person
- anything the person has on them
- the person's accommodation in the facility
- any item of the person's property in the facility

This power is for the purpose of finding documents which might establish a person's identity, nationality or citizenship, or indicate a place from which the person has travelled to the UK or where they are proposing to go. This will include documents such as a passport, an identity card, birth certificate, Home Office Travel Document, e-Visa, Immigration Status Documents and such like.

Documents are only relevant if they relate to a person who is liable to removal (including deportation) from the UK in accordance with the Immigration Acts. It will be for the relevant FNO RC or NRC caseworkers, IOs or onsite HOIE team to advise the searching officers if documents which are found are ones which may be of use in facilitating a person's removal from the UK.

Officers must pass relevant nationality documents to the Secretary of State (for example, the person or team that has directed the search) as soon as is reasonably practicable.

Caseworkers, IOs or (where present) the onsite HOIE team may retain a relevant document whilst the person to whom it belongs may be liable to removal (including deportation) from the UK and the retention of that document may facilitate the removal. If the person is not liable to removal and/or the document does not facilitate the removal, then they may arrange for it to be returned to the person who previously possessed it or to the location where it was found. If it is not appropriate to return the document (for example, it is a forged or falsely held document) then they must dispose of it as appropriate (for example, pass to National Document Fraud Unit (NDFU) or to the issuing authority).

Seizure of nationality documents by detainee custody officers and other identity documents

Section 52 of the Immigration Act 2016 provides a power for DCOs, POs and PCOs to seize nationality documents found in the course of a routine security search, but this does not include the search power in section 51 of that Act. It applies to anyone who may be subject to a search by a relevant officer under existing search powers. This includes visitors to the place of detention, short-term holding facility, prison or young offender institute, but documents relating exclusively to the visitor must not be seized.

Nationality documents are defined as those which might establish a person's identity, nationality or citizenship, or indicate a place from which the person has travelled to the UK or where they are proposing to go. This will include passports, identity cards, birth certificates, Home Office travel documents, e-Visa, immigration status documents and such like.

The **consent** of the Secretary of State (for example, FNO RC and NRC caseworkers, onsite HOIE team or IOs) must be obtained in order to retain the document and, if this is obtained, documents must be passed to the relevant caseworkers or IOs as soon as is practicable. Those giving consent must decide if the document is relevant, (whether the person to whom it belongs may be liable to removal (including deportation) from the UK and whether the retention of that document may facilitate the removal).

For persons in IRCs or STHFs, the onsite HOIE team officer may give verbal consent to retain the document. The document must then be provided to the onsite HOIE team as soon as possible who will update the notes field on CID with details of the seized document and will securely send the document to the Home Office caseworker for action.

For persons in prisons and YOIs officers must seek consent from the HOIE FNO Returns Command Investigations Team who will provide advice on where to send the document.

If consent to retain the document is not given, the caseworker, onsite HOIE team or IO must direct the relevant officer to return the document to either the person who previously possessed it or to the location where it was found. If it is not appropriate to return the document (for example, it is a forged or falsely held document) then the caseworker, onsite HOIE team or IO must dispose of it as appropriate (for example, pass to NDFU or to the issuing authority).

If the person is not liable to removal and/or the document does not facilitate the removal then the caseworker, onsite HOIE team or IO may arrange for it to be returned to the person who previously possessed it or to the location where it was found. If it is not appropriate to return the document (for example, it is a forged or falsely held document) then they must dispose of it as appropriate (for example, pass to NDFU or to the issuing authority).

Criminal offences

Section 53 of the Immigration Act 2016 amended the existing offences of assaulting or obstructing a DCO so that they are extended to include where officers are conducting a search using section 51 of the 2016 Act (for nationality documents). The reference to DCO in this context also includes Prison Officers (POs) and Prison Custody Officers (PCOs).

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