

Detention and Case Progression Review (DCPR)

Version 2.0

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About this guidance

This guidance outlines the principles and processes that must be followed when completing an ICD 3469 Detention Case Progression Review (DCPR) form. Reviews of detention are necessary to ensure that detention remains lawful and in line with detention policy.

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 Rules and Forms team.

Publication

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

- version 2.0
- published for Home Office staff on 28 September 2023

Changes from last version of this guidance

Amendments have been made to reflect the commencement on 28 September 2023 of section 12 of the Illegal Migration Act 2023 which places 2 of the 4 immigration detention principles set out in R(Hardial Singh v Governor of Durham Prison [1983] EWHC 1 (QB) on a statutory footing.

A number of the links contained in this document have also been updated.

Related content

<u>Contents</u>

Considering detention

The purpose of the Detention Case Progression Review (DCPR) form is to provide an accurate factual summary of the history and current circumstances of an individual who is held or proposed to be held under immigration detention powers. The DCPR form acts as a transparent record of the narrative and rationale behind each decision to detain and records regular consideration of continued detention to ensure that detention remains appropriate at all times.

The Detention General Instructions is the Home Office policy guidance to all staff dealing with immigration enforcement. It explains that in all cases of persons detained solely under Immigration Act powers, continued detention must be reviewed at prescribed points during the detention period and at each review, robust and formally documented consideration should be given to all information relevant to the decision to detain, including the removability of the person. Additional reviews, also using the DCPR form, must also take place on an ad hoc basis where there is a change of circumstances relevant to the reasons for detention. For further information see the Detention General instructions

DCPRs need to be completed on time, consider all the relevant information and be uploaded onto the Casework Information Database (CID) and Atlas, with appropriate authority and any comments from the authorising officer. Failure to complete a DCPR form in line with policies and guidance and taking individual case factors into account poses litigation risks which may result in judicial reviews, reputational damage and significant financial costs were detention to be found to be unlawful.

Caselaw

The Hardial Singh principles, derived from the 1983 case R (Hardial Singh) v Governor of Durham Prison, outline the key factors to consider when making any detention decision, and determining whether to maintain immigration detention. The principles 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)

The Hardial Singh principles underpin our decision making when considering immigration detention. The DCPR form is used to demonstrate that we have taken account of these principles at each stage of the detention review process. To be lawful immigration detention must only be exercised when there is a realistic prospect of an individual's removal (or the alternative statutory purpose) within a reasonable timeframe. Failing to adhere to the Hardial Singh principles is frequently raised in litigation surrounding detention.

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.

Vulnerability and case progression

The adults at risk in immigration detention policy (AAR) strengthens the presumption against detention for individuals considered vulnerable to harm. The AAR policy sets out that certain categories of people are inherently more at risk of harm within immigration detention due to their physical state, mental health or past experiences. Evidence of a vulnerability listed in the AAR policy must be balanced against the immigration factors that apply in a person's particular case and vulnerable people should be detained (or their detention continued) only when the evidence of vulnerability is outweighed by the immigration considerations. Refer to the separate guidance in:

- Adults at risk in immigration detention
- Adults at risk Detention of victims of modern slavery

Related content

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Completing the DCPR form

This section tells case owners how to complete the Detention Case Progression Review (DCPR) form and highlights the key factors to consider at each stage of the review.

Data protection

It is imperative that sensitive personal information is stored and handled in line with the General Data Protection Regulation (GDPR) and <u>Data Protection Act 2018</u>.

DCPRs contain highly sensitive information and should only be saved in doc gen on CID or Atlas. Authorising officers will need to access CID or Atlas to add authorising comments. DCPRs must not be shared by email or saved in local drives.

Any mishandling of personal data can lead to a security incident or breach. For further information, contact your local data protection practitioner.

Accuracy and standards of presentation

The DCPR form is an internal document and provides a structured narrative of our detention considerations. It is disclosable and can be used by external parties as a basis to understand the factors taken into account when reviewing detention. It is therefore essential that the document is completed to a high standard of accuracy and professionalism.

Anyone completing a DCPR must adhere to the following:

- all information must be accurate, case specific and up to date
- the individual should be referred to by name and title. Referring to a 'detainee' or 'subject' is not appropriate
- ensure spelling and grammar is checked prior to submitting to the authorising officer. Minor errors (for example 'he' instead of 'she' or stating the wrong country) can suggest that detention has not been considered carefully enough
- do not include any personal opinions or colloquialisms
- keep text clear and concise use short, simple sentences and avoid abbreviations - the form needs to be fully understandable to a reader who may not have extensive knowledge of detained casework - avoid using inconsistent or illegible font sizes and styles
- read the guidance text (shown in blue) within each section of the form the text will assist case owners in understanding what information is required

It is imperative to create a new DCPR form when conducting a review. Using a new document encourages the objective evaluation of each area of the form. It also mitigates the risk of factual inaccuracies carrying over into subsequent reviews.

It is strongly recommended that text from earlier DCPRs is not copied and pasted into a current review, however it is recognised that this may be impractical in some

instances (for example an extensive immigration history). Reviewing officers who choose to copy segments of previous reviews need to ensure that the content is relevant and applicable. What was a key action in one month's review may require less detail or have less significance with the passing of time. It is **vital** that removal timescales are re-assessed in each review and take account of any changes in circumstances.

It remains important that the reasons for an individual's continued detention are fully justified and documented on the DCPR form.

Personal information

The first section of the DCPR contains the individual's personal details including name, date of birth and application reference numbers. Most of the personal details will automatically populate from CID or Atlas. You must check that these details are correct using other information sources, such as the Home Office file or available identity documents and make amendments to the summary if necessary.

Individuals may hold, or claim to hold, dual nationality or claim to be stateless. In all cases where this is claimed or evidenced, the information should be added within the alias nationality section and form part of the review of detention.

Legal basis of detention

The section addresses the legal basis of detention and requires case owners to document the circumstances of a person's initial detention and provide a clear summary of progress with the setting of removal directions. This emphasises the overarching principle of detaining for the purpose of removal and demonstrates that we are conscious of pursuing removal actions whilst a person is in immigration detention.

The legal basis of detention must demonstrate which power to detain is enforced for the purpose of the individual's detention. Powers of detention are set out in statute and detention must be in line with one of these powers. Use the list available on the form to select the relevant option.

Monthly progress report (IS.151F)

It is important to check that the detention location is current and amend the date of the last IS.151F (Monthly Progress Report) service if applicable. Circumstances for initial detention must include details on whether this was a pre-planned detention or an enforcement encounter and the circumstances around the detention.

Immigration bail

An automatic referral for consideration of immigration bail (auto bail) must be made to the First-tier Tribunal 4 months after the beginning of the person's detention (unless the Tribunal has considered a bail application in respect of the person in the interim period) and every 4 months thereafter. The duty to arrange consideration of

bail before the Tribunal does not apply to those detained pending deportation under paragraph 2(1), (2) or (3) of Schedule 3 to 1971 Act or section 36(1) of the UK Borders Act 2007. The most recent bail referral outcome and next automatic bail referral date must be entered in the relevant boxes to demonstrate that we have adhered to Paragraph 11 of Schedule 10 of the Immigration Act 2016, which stipulates our responsibility to arrange bail consideration referrals to the Tribunal.

For further information regarding immigration bail, refer to the Immigration bail guidance.

Case progression actions

The purpose of the case progression actions section is to evidence what actions have been completed since the last review and ensure that relevant steps are being taken to expedite removal. It is important to provide a clear summary in bullet point format of all actions taken. Refer to the previous review and identify if any actions within the action plan or previous authorising comments have been completed. Include all steps that have been taken to resolve outstanding barriers to removal.

If this is the first review, list any casework actions taken from the point of initial detention to facilitate removal.

Case history

Brief summary of individual's case

You must provide a clear and concise overview of the individual's immigration history. The information must include key dates, be based on fact and presented in chronological order. The level of information required will depend on the nature of the case, however the summary should not include internal casework tasks or steps to resolve outstanding barriers as this should be documented within the Case Progression Action section. Note the date of any applications which may lead to leave to remain: for example asylum, human rights, further submissions, leave to remain outside of the rules and the decision made within these applications. If a grant of leave was given, note when the leave is due to expire. Include details of any appeals or Judicial Reviews made and the outcome of these.

The case summary should detail all events linked to the individual's actions since entering the UK. Include the last date of entry into the UK, the history of compliance with immigration controls and behaviours upon any encounters with the Home Office.

Consider whether the information within the summary section is up to date, relevant to current circumstances or duplicated within the form. Do not use extracts from previous reviews unless you are satisfied that the content is directly applicable to the current review.

Travel documentation

A form of travel documentation is required in all cases to pursue removal and this section details whether a valid travel document is held or the steps that are being taken to obtain one. Examples of a travel document can include a passport, Emergency/Electronic Travel Document (ETD), UK letter (UKL) and Laissez Passer. Each type of travel document has its own application timescales, and the Country returns guide should be used as a basis for timescales.

If a document is held, it is important to note where it is located and the expiry date. Conversely, if no document is held, state the actions being taken to obtain one. This should include when it was applied for and whether there are supporting documents such as a previous visa application, expired passport or ID card. The timescale for issuing of the document (including revalidation) must be provided. If a UKL is required, note if bio-data, supporting evidence and photos are available. It should be stated if an ETD has not been applied for. In addition, consider whether the information is up to date and remains relevant, for example if an ETD was applied for in January and subsequently issued in March it may no longer be relevant to refer to the January application within the review.

Assessment of removability

An estimated removal timescale is required **for all reviews**. This is in accordance with the fundamental principle that immigration detention should only be maintained in order to facilitate removal and that removal must take place within a reasonable timescale.

The timescale can be an approximate of when we expect to return based on the current circumstances at the time of the review and should be amended in subsequent reviews if conditions change. The timescale must be provided in days, weeks or months. Include any litigation barriers and unsuccessful removal attempts. If removal has recently failed, include the timescales for re-arranging removal. Detail any difficulties encountered with receiving countries, flight bookings or escort availability.

It is not acceptable to leave this section without a tangible timescale for removal as this suggests that the likelihood of removal has not been adequately considered as part of the detention decision-making process. If, based on the individual circumstances of the case, there is no realistic prospect of removal within a reasonable timeframe, a further period of detention under immigration powers should not be recommended.

Known or claimed medical conditions and vulnerability issues

Reviewers should detail any information relating to medical conditions or vulnerability issues and associated casework actions that have been undertaken.

All vulnerability concerns must be recorded. Note any claimed medical condition or supporting medical reports and the dates that these were raised or submitted.

Clearly state any actions that have been taken by casework teams in response to a medical condition or vulnerability, ensuring that the most up to date information on these concerns is recorded.

It is important to consider a person in detention's mental capacity and whether any of the evidence provided indicates that they may have difficulty in understanding the situation they are in or making decisions. For further guidance, refer to the DSO – 04-2020 Mental vulnerability and immigration detention - non clinical guidance.

The Adult at Risk (AAR) level must be stated and the correct box ticked. Check that it is consistent with other information (for example CID special conditions screen or Atlas records) and that all associated actions have been carried out. If a person in detention is considered an adult at risk, the consideration rationale needs to be evidenced. For further guidance regarding adults at risk refer to:

- Adults at risk in immigration detention
- Adults at risk Detention of victims of modern slavery

Offence details and offending history

The offending history includes criminal and immigration offences and is relevant to both deportation and administrative removal cases. If the person has no offending history, mark this section as not applicable (N/A).

Refer to PNC traces and include details of any criminal history including sentence length and offence type. Avoid listing arrests or charges that did not result in a formal warning, caution or conviction. When providing a description of offences committed, do not refer to any criminal associates or include personal opinions on the individual's offending history.

Risk of absconding, harm and re-offending

This section balances the risk of non-compliance with immigration conditions, harm to the public and likelihood of criminality. You must provide an assessment of each along with clear reasoning and evidence.

The assessment for absconding should be based on an individual's **factual** history of non-compliance with reporting restrictions or other conditions of release. Individuals with a long history of failing to comply with immigration controls or who have made a determined attempt to breach the UK's immigration laws would normally be assessed as being unlikely to comply with bail conditions. It is important to note if the individual has previously absconded or attempted to frustrate removal. Where an individual has complied with immigration procedures but difficulties in removal remain, this should not be viewed as non-compliance. This includes exercising appeal rights. Consider previous bail applications and particularly cases where an immigration judge has refused bail due to a high risk of absconding or a history of non-compliance.

For individuals with criminal convictions the assessment of harm and re-offending should be made using information directly obtained from the offender manager. Where this is not possible, you will need to make the judgement on the risk of harm with the available information. Relevant factors include the severity of the offences committed, record of behaviour in prison or IRC and general record of compliance. Individuals with a long record of persistent offending are likely to be rated in the high or medium risk. Those with a low level, isolated conviction and with a good record of behaviour otherwise are likely to be low risk.

The risk of re-offending relates to both criminality and immigration offending. Consider PNC traces if applicable and refer to information obtained by the offender manager in cases where there are criminal convictions. It must be stated when the assessment is based on immigration offences only.

Compassionate circumstances or any other circumstances relevant to the detention decision

Compassionate circumstances include any factors relevant to family ties, private life, family separations or MP interest. This section evidences that we have made a proportionate decision whilst balancing the impact on the individual's personal life.

It is important to recognise Article 8 of the European Convention on Human Rights (ECHR) which provides that everyone has the right to a private and family life. If an individual submits evidence that detention and/or removal would interfere with their private or family life, you must include a detailed description of any information that may be relevant to the detention decision and provide timescales for resolution if there are barriers to removal. If no evidence has been submitted to date, provide a clear note to reflect this. It is not appropriate to use 'not applicable' or 'N/A' as compassionate circumstances must be considered in every case.

If a family separation has been authorised, you must specify whether this was for the purpose of removal or detention. For further information on family separations refer to Family separations guidance.

It is important to take account of the statutory duty to safeguard and promote the welfare of children. This includes considering the implications of detaining a person who has sole or shared caring responsibilities. Any information concerning children must be included in the form and carefully considered in accordance with <u>section 55</u> of the Borders, Citizenship and Immigration Act 2009.

Voluntary departure offers

Voluntary departure refers to any non-enforced departure of an immigration offender from the UK to their country of return. Information about voluntary returns must be provided to individuals throughout the progression of a case.

In this section you must detail when voluntary departure was offered and in what form. It is important to record any applications for voluntary return (for example the facilitated returns scheme) and the outcome of these applications. Include instances

where voluntarily return has been offered and rejected. If it is apparent that the offer of voluntary departure has not been made, ensure that this is raised with the relevant team.

Where an individual whose case is being dealt with by the criminal casework team (CCD) advises that they wish to voluntarily depart (at their own expense), the voluntary returns scheme (VRS) will contact CCD and decide to either continue pursuing deportation actions or agree to the voluntary return.

For further information regarding voluntary departures, refer to guidance in Voluntary and assisted returns.

Case progression panel information

This section should set out what actions have been taken since a case was presented to a detention case progression panel (CPP). CPPs are an internal safeguard providing independent scrutiny of detention decisions to minimise the likelihood of unlawful detention.

If a case has been presented to a CPP, the information (including dates and recommendations) will be placed on Atlas and in CID notes. It is important to list all the occasions that a case has been presented to a CPP and details of the latest recommendation within this section. Provide details of all actions taken in response to recommendations and include relevant dates.

Significant weight must be placed on the recommendations of a CPP and recommendations should not be rejected without thorough consideration and clear reasoning. If a CPP recommendation is disagreed with or rejected, there needs to be an auditable account setting out the reasons why the recommendation or case progression actions are not to be followed. For example, where there has been a change in circumstances, it is important to clearly detail any new information that has come to light and how this information has influenced the decision to reject the CPP's recommendation.

Where a recommendation to release is disagreed with or rejected and additional case progression actions are to be undertaken which would improve removal prospects, the case should be re-referred to the next available CPP.

If a case has not been presented to a CPP during the detention period, state N/A in this section.

Action and contingency plan

This section requires you to evidence the factors in favour of release and maintaining detention whilst acknowledging the presumption of liberty by detailing how an individual could be managed in society upon release even in cases where detention is being maintained. A failure to detail what provisions may be needed when an individual is released indicates that we have not fully considered the presumption of liberty when determining whether to maintain detention. This information also assists casework teams if safeguards are required at short notice.

Certain areas in this section may not be applicable in every case, however if a recommendation is made to maintain detention the action plan for the next review period must be completed.

You must provide a release address where there is one or alternatively consider whether the person may be eligible for accommodation.

Maintain detention

It is important to record all arrangements that have been made in relation to known safeguarding concerns when considering detention, removal and transfer. For example, whether escorts may be required, the need for medical support or provision of medication. You should detail any measures in place to mitigate the risk of harm to the public and consider whether any further measures should be implemented. This could include the setting up of complex case reviews or additional plans for serving removal directions.

When recommending continued detention, the 'action plan for next review period' section **must** be completed. Specify which barriers to removal are outstanding and include all actions that are required to progress the case between the current and next review in bullet point format. Provide clear anticipated timescales throughout.

Release

Specify any arrangements that are required to facilitate a safe release from immigration detention. Consider all vulnerability concerns and determine whether additional safeguards should be put in place. For example, if contact should be made with appropriate external parties including local social services and NHS trusts to ensure that they have sufficient medication upon release or are aware of how to access medication. Additionally, consider whether a person would be suitable for supported accommodation if granted bail. Information on supported bail accommodation can be found within the Immigration bail guidance. For further information regarding release arrangements within Immigration Removal Centres (IRCs), refer to the DSO - 01-2018 Release of detainees from immigration detention.

Within the contingency plan, detail the next steps to progress the case to removal following release. This should include all actions relating to setting removal directions or resolving outstanding barriers to removal along with clear timescales.

If applicable, provide recommended conditions of immigration bail in accordance with Immigration bail guidance. The number and type of bail conditions to impose will vary and must be considered on the circumstances of each individual case.

Recommendation

This section documents the recommendation to maintain detention or release accompanied by detailed evidence. The recommendation should reflect that the

starting point for consideration is the presumption in favour of liberty and should go on to evidence the balance between all factors both for and against detention.

A recommendation to maintain detention must refer to the likelihood of removal within a reasonable time period and detail the estimated timescales for resolving outstanding barriers. Highlight risks of harm along with immigration factors including the history of compliance with immigration controls. Reference the presence or absence of family ties and any consideration made to Article 8 ECHR. Where they exist, it must note all safeguarding concerns and the Adults at Risk level alongside consideration of the Adults at risk in immigration detention and Adults at risk Detention of victims of modern slavery.

The recommendation should be clear, well-reasoned and take account of all the information provided. Detail any actions that require completion before the next review and if applicable explain why action points from the previous review were not met.

Authorising officer's comments

The authorising officer is required to provide a response to the recommendation to either maintain detention or release. Authorisation must be made at the relevant grade as outlined in the Detention General instructions The authoriser should clearly state whether they agree with the recommendation and provide a concise overview of their rationale. If the authorising officer disagrees with the recommendation, clear action points to progress the case must be provided. For cases where detention is maintained, the authorising officer must reference the timescales of removal.

The authorising officer should refer to the previous review recommendation comments and ensure that the current recommendation has taken account of any changes in circumstances and removal timescales have been adjusted accordingly. Officers must clearly state whether they agree with the recommendations made by a CPP and provide detailed reasoning if a CPP recommendation is rejected.

Authorising officers are expected to check the content of the review to ensure that all relevant factors have been considered and appropriately balanced when determining whether to maintain detention.

All action points required to progress the case prior to the next review should be agreed by the authorising officer.

Previous review comments

The officer conducting the review must copy the previous authorising comments along with the authorising officer name, grade and date of authorisation. Any action points within the previous review comments should be acknowledged by the current authorising officer. This provides an auditable trail of our decision making and presents a documented history of the steps taken to expedite removal.

Detention review period and authorisation

Specify the review type and include relevant dates and details. This information is used to identify how frequently reviews have been conducted and whether they have been authorised at the appropriate grade.

Related content

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