Home Office

Deportation on conducive grounds Immigration Act 1971 and UK Borders Act 2007

Version 5.0

Contents

About this guidance

This guidance tells you about deportation on the ground it is conducive to the public good.

This guidance applies to deportation decisions made in respect of:

- any non-British citizen who does not have rights protected under the Agreements regardless of when the conduct occurred
- any person who has rights protected by the Agreements (or the UK's domestic implementation of the Agreements) in relation to conduct that occurred after 11pm GMT on 31 December 2020

A person has residence rights protected by the agreements (or the UK's domestic implementation of the agreements) if they:

- have been granted pre-settled or settled status under Appendix EU or entry clearance under Appendix EU (Family Permit)
- have a pending valid application to the EU Settlement Scheme (EUSS) evidenced by a Certificate of Application (CoA)
- are a joining family member until the relevant deadline for an application to the EUSS, that is 3 months after their first arrival to the UK
- are a frontier worker as defined in regulation 3 of the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020 (Frontier Workers Regulations 2020)
- are in the UK having arrived with entry clearance granted by virtue of their right to enter the UK as a service provider from Switzerland under Appendix Service Providers from Switzerland to the Immigration Rules
- have or are seeking permission to enter or remain in the UK as a patient for the purpose of completing a course of planned healthcare treatment in the UK which was authorised under the 'S2 arrangements', as provided for at Appendix S2 Healthcare Visitor to the Immigration Rules - this also includes persons or family members accompanying or joining the patient

For the purposes of this guidance, any person who has rights protected by the Agreements (or the UK's domestic implementation of the agreements) is referred to as a 'relevant person'.

European Economic Area (EEA) citizens include EU citizens, EEA citizens and Swiss citizens.

The 'Agreements' refer to the EU Withdrawal Agreement, the EEA EFTA Separation Agreement and the Swiss Citizens' Rights Agreement.

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 the Migrant Criminality Policy Team.

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 email the Guidance Review, Atlas and Forms team.

Publication

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

- version **5.0**
- published for Home Office staff on **22 May 2025**

Changes from last version of this guidance

Official-sensitive: start of section

The information in this section has been removed as it is restricted for internal Home Office use only.
Official-sensitive: end of section

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Purpose

This section tells you about use of this guidance in considering deportation on the ground it is conducive to the public good.

Use of this guidance

This guidance must be followed when you are considering taking a deportation decision on the ground it is conducive to the public good (conducive grounds) under:

- Immigration Act 1971
- UK Borders Act 2007
- regulation 27A of the European Economic Area (EEA) Regulations 2016, as amended and saved by:
  - the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 (Grace Period Regulations 2020)
  - the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (Consequential Regulations 2020)

Deportation on conducive grounds applies in respect of any person (EEA citizen or non-EEA citizen) who does not have rights protected by the Agreements regardless of when that conduct was committed or, in respect of a relevant person in relation to conduct committed after 11pm GMT on 31 December 2020.

Where a relevant person has conduct (including any criminal convictions relating to it) committed on or before 11pm GMT on 31 December 2020, consideration must be given to making a deportation decision on public policy, public security or public health grounds.

Guidance on deportation on grounds of public policy, public security or public health can be found at: public policy, public security and public health decisions.

Where a relevant person has conduct that occurred both before and after 11pm on 31 December 2020 consideration must be given to whether it is appropriate to make a deportation decision on conducive grounds or on public policy, public security or public health grounds. For further guidance see: conduct spanning the end of the transition period.

For more information about 'relevant persons' and those whose rights are protected by the Withdrawal Agreement or the UK's domestic implementation of the Agreements see:

- Relevant persons

and the following guidance:

- EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members

- EEA, Swiss nationals and EC association agreements
- frontier workers
- S2 healthcare visitor
- service providers from Switzerland

EEA citizens sentenced to a period of imprisonment

Where an EEA citizen or their family member has been sentenced to a period of imprisonment, and they have not acquired leave under the EU Settlement Scheme (EUSS) and do not have leave by virtue of arriving in the UK with an EUSS Family Permit, if you are considering making a deportation order in relation to their conduct committed before 11pm GMT on 31 December 2020, you must ensure you apply the correct threshold when considering whether to make a deportation decision.

As with all deportation decisions concerning EEA citizens and their family members who have not acquired leave under the EUSS or leave by virtue of arriving in the UK with an EUSS Family Permit, you must ascertain whether there is a pending valid EUSS application awaiting a determination. If it is confirmed there is a pending valid EUSS application, then you must also ascertain whether they were residing in the UK in accordance with the EEA Regulations 2016 or had acquired a right of permanent residence immediately before 11pm GMT on 31 December 2020. For more information, see EEA nationals: qualified persons.

If they were serving a sentence of imprisonment immediately before 11pm GMT on 31 December 2020 then, unless they had acquired a right of permanent residence prior to their imprisonment, they will not have been residing in the UK in accordance with the EEA Regulations 2016 and the conducive deportation threshold will apply to them.

If they had acquired a right of permanent residence and have conduct committed before 11pm GMT on 31 December 2020, you must apply the public policy or public security test, as set out in regulation 27 of the EEA Regulations 2016. For more information, see public policy, public security and public health decisions.

If they had not acquired a right of permanent residence and were released from prison before 11pm GMT on 31 December 2020, you must consider whether any further period of residence in the UK before that date was in accordance with the EEA Regulations 2016. If it was not, you must apply the conducive threshold to the deportation decision.

The best interests of a child

The duty in section 55 of the Borders, Citizenship and Immigration Act 2009 to have regard to the need to safeguard and promote the welfare of children who are in the UK means that consideration of a child's best interests is a primary, but not the only, consideration when making a deportation decision on conducive grounds.

Where a child or children in the UK will be affected by a deportation decision on conducive grounds, you must have regard to the best interests of the child in the UK

when considering whether to take such a decision. You must carefully consider all the information and evidence provided concerning the best interests of a child in the UK and the impact the decision may have on the child. You must carefully assess the quality of any evidence provided.

Although the duty in section 55 only applies to children in the UK, the statutory guidance, Every Child Matters – Change for Children, provides guidance on the extent to which the spirit of the duty should be applied to children overseas. You must adhere to the spirit of the duty and make enquiries when you have reason to suspect that a child may be in need of protection or safeguarding, or presents welfare needs that require attention. In some instances, international or local agreements are in place that permit or require children to be referred to the authorities of other countries and you are to abide by these and work with local agencies in order to develop arrangements that protect children, promote their welfare and reduce the risk of trafficking and exploitation.

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Working together to safeguard children

Introduction

This section introduces you to considering deportation on the ground it is conducive to the public good and the circumstances when a deportation decision is considered appropriate.

Background

The Immigration Act 1971 (the 1971 Act) and paragraphs 13.1.1. to 13.4.5. of the Immigration Rules provide for a person who is not a British citizen to be deported where:

- the Secretary of State deems it to be conducive to the public good (section 3(5)(a) of the 1971 Act)
- the person is a spouse, civil partner or child under 18 of a person who has been ordered to be deported or has been deported (section 3(5)(b) of the 1971 Act)
- the person is aged 17 or over and has been recommended for deportation by a court following a conviction for an offence punishable with imprisonment (section 3(6) of the 1971 Act)

Section 7 of the 1971 Act provides an exemption from deportation for certain Commonwealth and Irish citizens resident in the UK on 1 January 1973.

The UK Borders Act 2007 (the 2007 Act) places a duty on the Secretary of State to make a deportation order in respect of a foreign criminal. A foreign criminal, as defined by the 2007 Act, is a person who is not a British citizen or Irish citizen, who has been convicted of an offence in the UK and sentenced to a period of imprisonment of at least 12 months.

The duty to deport does not apply if there is an exception under section 33 of the 2007 Act. From 11pm GMT on 31 December 2020, the exceptions to the statutory duty to deport include a relevant person convicted of an offence which consisted of or included conduct committed before 11pm GMT on 31 December 2020.

Since 9 July 2012, the Immigration Rules have contained a framework for considering claims that the deportation of a foreign criminal would breach Article 8 of the European Convention on Human Rights (the right to respect for private and family life).

Parliament set out its view in the Immigration Act 2014 which amended the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) that it is in the public interest to seek the deportation of a foreign criminal. The 2002 Act also sets out in section 117C the public interest considerations under Article 8 to be taken account of in considering the deportation of foreign criminals. A foreign criminal as defined by section 117D of the 2002 Act is a person who is not a British citizen, has been convicted in the UK of an offence and to whom one of the following applies:

- has been sentenced to a period of imprisonment of at least 12 months
- has been convicted of an offence that has caused serious harm

- is a persistent offender

In respect of conduct committed after 11pm GMT on 31 December 2020, European Economic Area (EEA) citizens and their family members will be considered for deportation under the UK's deportation thresholds in the same way as non-EEA citizens.

Threshold for deportation

Deportation on the ground it is conducive to the public good (conducive grounds) gives the Secretary of State discretion to act in a way that reflects the public interest.

Government policy is to pursue deportation on grounds of criminality where the person:

- has received a custodial sentence of 12 months or more for a single conviction for a single offence in the UK or overseas (this can be made up of aggregate or consecutive sentences)
- has received combined sentences totalling 12 months or more in the UK or overseas
- has been convicted in the UK or overseas of an offence which has caused serious harm
- is a persistent offender

unless the person is exempt from deportation under the 1971 Act. If any of the exceptions set out in section 33 of the 2007 Act apply, the Secretary of State will consider whether deportation remains appropriate.

Deportation may also be pursued for reasons including but not limited to:

- national security
- where a court has recommended deportation
- involvement in gun crime or serious drug offending regardless of the length of sentence received
- where there is compelling circumstantial evidence that the person's conduct or presence in the UK has caused or is likely to cause serious or high harm
- participation in, or facilitation of, a sham marriage
- where a person has facilitated (assisted or attempted to assist) another person in the fraudulent acquisition of leave

This is not an exhaustive list and deportation may be pursued in any case where the Secretary of State considers that deportation is conducive to the public good.

Relevant persons

Section 3(5A) of the 1971 Act provides that the Secretary of State cannot deem a relevant person's deportation to be conducive to the public good where it would breach the Agreements to do so.

Regulation 23(6)(b) of the EEA Regulations 2016, as saved by the Grace Period Regulations 2020 provides the power to make a deportation decision on the ground it is conducive to the public good in accordance with regulation 27A of the EEA Regulations 2016, as saved, in respect of a person protected by the Grace Period Regulations 2020 for conduct committed after 11pm GMT on 31 December 2020.

The Grace Period Regulations 2020 protect the rights of a person who was lawfully resident in the UK under the EEA Regulations immediately before the end of the transition period (at 11pm GMT on 31 December 2020) and who has made a valid application to the EU Settlement Scheme (EUSS) on or before 30 June 2021 where:

- a decision on the EUSS application is still pending
- a decision on an administrative review or appeal against refusal of the EUSS application is not yet finally determined

A person will remain subject to the Grace Period Regulations 2020 until:

- they are granted leave under the EUSS
- the deadline to appeal expires where they are refused leave
- their administrative review of, or appeal against a refusal is finally determined

If a person was in prison on 31 December 2020, it is unlikely that they will satisfy the requirement to have been lawfully resident in the UK immediately before the end of the transition period unless they had acquired permanent residence rights before being imprisoned.

Where this guidance refers to a “relevant person”, this is intended to mean both those who are relevant persons for the purposes of the Grace Period Regulations 2020 Regs or section 3(5A) of the Immigration Act 1971, unless otherwise stated.

The following table shows which deportation power and grounds should be used in each scenario:

Scenario	Relevant deportation decision
Conduct is before 11pm GMT on 31 December 2020 and no EUSS leave is held. They did not make a valid EUSS application before 30 June 2021 and therefore not covered by the Grace Period Regulations 2020, and they are not a Frontier Worker, S2 Healthcare Visitor or Swiss service providers	Conducive decision under the Immigration Act 1971, or automatic deportation under the UK Borders Act 2007
Conduct is after 11pm GMT on 31 December 2020 and EUSS leave held	Conducive decision under the Immigration Act 1971, or automatic deportation under the UK Borders Act 2007

Scenario	Relevant deportation decision
Conduct is after 11pm GMT on 31 December 2020 and is a Frontier Worker/ has a Frontier Worker Permit	Conducive decision under the Immigration Act 1971, or automatic deportation under the UK Borders Act 2007
Conduct is after 11pm GMT on 31 December 2020, but they were an EEA national or family member who was lawfully resident in the UK before that time and no EUSS leave held After 30 June 2021, only those with outstanding EUSS applications made before that date will be considered in this cohort as persons covered by saved EEA regulations.	Conducive decision in accordance with regulation 27A of the EEA Regulations 2016, or automatic deportation under the UK Borders Act 2007
Conduct is before 11pm GMT on 31 December 2020 and EUSS leave or entry clearance is held Conduct is before 11pm GMT on 31 December 2020 and no EUSS leave is held, but they are covered by the Grace Period Regulations 2020 due to a pending valid EUSS application made before 30 June 2021 Conduct is before 11pm GMT on 31 December 2020 and S2 Healthcare Visitor or Swiss Service Provider entry clearance / leave is held	Deportation under regulation 23(6)(b) of the EEA Regulations 2016, in accordance with a public policy, public security or public health decision under regulation 27 of those regulations
Conduct is before 11pm GMT on 31 December 2020 and is a Frontier Worker / has a Frontier Worker Permit	Deportation under regulation 15(1)(b) of the Frontier Workers Regulations 2020, in accordance with a public policy, public security or public health decision under regulation 18 of those regulations

Irish citizens

The UK does not routinely deport Irish citizens. On 19 February 2007, the Secretary of State announced in Parliament, through a Written Ministerial Statement, that Irish citizens will be considered for deportation only where a court has recommended deportation in sentencing or where the Secretary of State concludes that, due to the exceptional circumstances of the case, the public interest requires deportation.

Deportation may be appropriate in cases where for example, the person is convicted of an offence involving national security matters, a crime that poses a particularly serious risk to the safety of the public or to a section of the public (such as a

terrorism offence, murder, or a serious sexual or violent offence), and is serving a custodial sentence of 10 years or more, or if a criminal court has recommended deportation. This includes anyone of dual Irish and another (non-British) citizenship.

Where consideration is given to deporting an Irish citizen, you must consider whether the person is:

- exempt from deportation under section 7 of the 1971 Act
- a relevant person with conduct committed before 11pm on 31 December 2020
- a person of Northern Ireland under the Belfast Agreement

If the person is not a relevant person or is a relevant person with conduct committed after 11pm on 31 December 2020, consideration of deportation must be on conducive grounds. If the person is a relevant person with conduct committed before 11pm on 31 December 2020, you must refer to guidance on the public policy, public security or public health test.

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Court recommended deportation of Irish citizens

Irish citizens will also be considered for deportation if a court has recommended this in sentencing. These cases are referred in the usual way. Where a court has recommended deportation, the Home Secretary can use discretion and consider the referral. However, the referral is a recommendation only. If the individual would not otherwise fall to be considered for deportation under the exceptional circumstances policy, it would not generally be appropriate to pursue deportation.

Definitions

Serious harm

It is at the discretion of the Secretary of State whether an offence is considered to have caused serious harm.

An offence that has caused 'serious harm' means an offence that has caused serious physical, psychological, emotional or economic harm to a victim, victims or to society in general.

A person does not have to have been convicted in relation to any serious harm which followed from their offence. For example, they may fit within this provision if they are convicted of a lesser offence because it cannot be proved beyond reasonable doubt that they were guilty of a separate offence in relation to the serious harm which resulted from their actions.

Recent court cases have shown that minor offending that more broadly contributes to societal harm does not necessarily meet the definition of serious harm. In the case of Mahmood, R (on the application of) v Upper Tribunal (Immigration and Asylum Chamber) & Ors [2020] EWCA Civ 717 (05 June 2020), which dealt with the joint appeals of three persons subject to a deportation decision (Mahmood, Kadir and Estnerie) the Court of Appeal stated that the prevalence of (even minor) offending may cause serious harm to society, but that does not mean that an individual offence considered in isolation has done so ('Shoplifting, for example, may be a significant social problem, causing serious economic harm and distress to the owner of a modest corner shop; and a thief who steals a single item of low value may contribute to that harm, but it cannot realistically be said that such a thief caused serious harm himself, either to the owner or to society in general'). This was reaffirmed in the case of Wilson (NIAA Part 5A; deportation decisions) [2020] UKUT 350 (IAC) (25 November 2020), in which it was concluded that 'the contribution of an offence to a serious or widespread problem is not sufficient; there needs to be some evidence that the offence has caused serious harm'.

The fact that the offending is not characterised as having caused "serious harm" for sentencing purposes will not always be determinative of whether serious harm has been caused.

An evaluative judgement should be made in light of the facts and circumstances of the offending.

Where a person has been convicted of one or more violent, drugs or sex offences, they will usually be considered to have been convicted of an offence that has caused serious harm.

Persistent offender

Persistent offender means a repeat offender who shows a pattern of offending over a period of time and are therefore deemed to show a particular disregard for the law. This can mean a series of offences committed in a fairly short timeframe, or which escalate in seriousness over time, or a long history of minor offences. In the case of Mahmood, R (on the application of) v Upper Tribunal (Immigration and Asylum Chamber) & Ors [2020] EWCA Civ 717 (05 June 2020), in relation to the case of Estnerie, a persistent offender was defined as ‘someone who keeps breaking the law’ (in that specific case 6 criminal offences committed over 14 years).

It can include offending which was dealt with in the course of one set of criminal proceedings.

A person does not need to have received a custodial sentence to be considered for deportation as a persistent offender.

A persistent offender is not a permanent status that can never be lost once acquired but a person can be regarded as a persistent offender even though they may not have offended for some time.

In the case of Estnerie, it was also determined that to lose persistent offender status requires ‘keeping out of trouble for a significant period of time’, as well as showing remorse and rehabilitation.

When considering whether a person is a persistent offender you must consider the following factors:

- the number of offences committed
- when the offences were committed
- the pattern and nature of offending including the seriousness and frequency of offending and whether there has been any escalation in the seriousness of the offending
- how recent the last offence took place
- whether the person has engaged in any programmes aimed at addressing the cause of their offending (and no further offending has occurred since then)

Non-custodial sentences and out of court disposals including police cautions, community sentences and civil orders can be taken into account when considering whether a person is a persistent offender. Further information can be found at: non-custodial sentences: cautions, warnings and reprimands.

Related content
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Cases referred for deportation consideration

This section tells you about the types of cases which are referred for deportation consideration.

Foreign national offenders

Foreign National Offender Returns Command (FNO RC) is responsible for considering whether it is appropriate to deport a foreign national offender on grounds of criminality. Where deportation is not possible because for example the relevant deportation threshold is not met, consideration may be given to whether it is appropriate to remove the person.

Cases can be referred to FNO RC by HM Prison and Probation Service (HMPPS), the Scottish Prison Service (SPS), Northern Ireland Prison Service (NIPS), police forces, the Courts, Immigration and Compliance (ICE) teams in Immigration Enforcement, Border Force Officers and decision-makers in UK Visas and Immigration (UKVI).

All foreign nationals who receive a custodial sentence in the UK are referred by the relevant prison service to FNO RC for deportation consideration. HMPPS in England and Wales operate under a requirement to refer an FNO within 10 days of sentencing (or immediately if release is imminent). The SPS and NIPS operate within similar time frames.

In addition to the referral of all foreign nationals in prison, a referral must be made to FNO RC for deportation consideration where a person is already in the UK or is applying to come to the UK and:

- the person has, at any time, received a custodial sentence of 12 months or more for a single conviction for a single offence in the UK or overseas
- the person has been convicted in the UK or overseas of an offence which has caused serious harm
- the person is a persistent offender
- the person is the subject of an existing deportation order, exclusion direction or exclusion order made on criminality grounds
- the person has entered the UK in breach of a deportation or exclusion order and has lodged further representations
- a court has recommended deportation
- the person has been extradited from the UK or is the subject of an extradition request
- the person has been convicted of a criminal offence and received a sentence overseas
- there is compelling circumstantial evidence that the person’s conduct or presence in the UK has caused or is likely to cause serious or high harm

Where FNO RC has previously decided not to pursue deportation and the person has not committed any further offences since that decision, a referral is not required.

Sham marriage

Sham marriage is a form of immigration abuse which results in significant economic harm including, but not limited to, job displacement, education costs, and health care costs, caused by those who do not have permission to stay or remain in the UK. Sham marriage is also often linked to wider organised crime.

The government is committed to maintaining the integrity of the immigration system, protecting the vulnerable and the rights of legitimate couples, disrupting abuse, and ending exploitation. This includes taking action against those facilitating, entering, or attempting to enter into a sham marriage.

The National Returns Progression Command (NRPC) is responsible for considering whether deportation is appropriate on conducive grounds where:

- a person has entered or attempted to enter into a sham marriage (whether it was successful or not), or assisted another person to enter or attempt to enter into a sham marriage (whether it was successful or not)
- there is no criminal conviction, or criminality does not meet the relevant threshold (for FNO RC to consider deportation)

For a relevant person, deportation will be on conducive grounds under regulation 23(6)(b) and in accordance with regulation 27A of the EEA Regulations 2016 where the person has rights protected by the Grace Period Regulations 2020, and the 'relevant conduct' commenced after the end of the transition period on 31 December 2020.

For a person who has EUSS settled status where the sham marriage conduct was not relevant to the grant of their own ILR, and where the relevant conduct commenced after the end of the transition period on 31 December 2020, deportation will be on conducive grounds under section 3(5) of the 1971 Act.

For a person who has non-EUSS ILR where the sham marriage conduct was not relevant to the grant of their own leave, regardless of when the conduct commenced, deportation will be on conducive grounds under section 3(5) of the 1971 Act.

For all other cases involving sham marriage conduct, please refer to marriage investigations guidance for more details on other sham marriage removal pathways.

Any cases involving sham marriage conduct where there are criminal convictions, must be referred to FNO RC for consideration initially. If it is determined that the criminality threshold is not met, the case will be referred to NRPC for deportation consideration.

Facilitation of fraudulently acquired rights or permission

Similar to sham marriage abuse, assisting another person in the fraudulent acquisition of rights or permission in the UK is a form of immigration abuse which results in significant economic harm. It is also often linked to wider organised crime.

Assisting another fraudulently to acquire status may, for example, include the provision of false evidence, such as employment records or tenancy documentation, to appear to demonstrate earlier and/or longer residence in the UK than was actually the case.

NRPC is responsible for considering whether conducive deportation is appropriate where:

- a person has assisted or attempted to assist another person in fraudulently acquiring a right or permission to enter or stay in the UK (whether it was successful or not)
- there is no criminal conviction, or criminality does not meet the relevant threshold (for FNO RC to consider deportation)

For a relevant person, deportation will be on conducive grounds under regulation 23(6)(b) and in accordance with regulation 27A of the EEA Regulations 2016 where the person has rights protected by the Grace Period Regulations 2020, and the 'relevant conduct' commenced after the end of the transition period on 31 December 2020.

For a person who has EUSS settled status where deception was not relevant to the grant of their own ILR, and where the relevant conduct commenced after the end of the transition period on 31 December 2020, deportation will be on conducive grounds under section 3(5) of the 1971 Act.

For a person who has non-EUSS ILR where the relevant conduct was not relevant to the grant of their own leave, regardless of when the conduct commenced, deportation will be on conducive grounds under section 3(5) of the 1971 Act.

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Related content
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Consideration of deportation

This section tells you about the steps you must take when considering whether a person should be deported from the UK.

Approach

In all cases referred for deportation consideration, you must first establish whether the person is:

- a British citizen
- a relevant person
- exempt from deportation under section 7 or 8 of the 1971 Act

Where the person is a 'relevant person', you must establish when the relevant conduct was committed. For example, when the offence was committed which led to their conviction and subsequent referral for deportation consideration.

Where the person is a 'relevant person', and conduct was committed before 11pm GMT on 31 December 2020, consideration must be given to deportation on grounds of public policy, public security or public health under regulation 27 of the European Economic Area (EEA) Regulations 2016, as saved, or regulation 18 of the Frontier Workers Regulations 2020 (if the person is a Frontier Worker). Further guidance can be found at: public policy, public security or public health decisions.

Where a person is a 'relevant person', and conduct was committed after 11pm GMT on 31 December 2020, consideration must be given to deportation on conducive grounds.

Where you have established the person:

- is not a British citizen
- is not exempt from deportation under the 1971 Act
- is not a relevant person
- is a relevant person and the conduct occurred after 11pm GMT on 31 December 2020

you must consider whether there is a duty to deport under section 32 of the 2007 Act and whether any of the exceptions apply.

Where the duty to deport does not apply because, for example, the person has not received the relevant sentence length, you must then consider whether it is appropriate to deport the person under the 1971 Act or, if the person is a relevant person who is protected by the Grace Period Regulations 2020, whether deportation is appropriate under regulation 27A of the EEA Regulations 2016.

In all cases, where you are considering deportation, you must consider whether, in light of all the information and evidence provided by the person or their

representative, the person meets the family and private life exceptions to deportation set out at paragraphs 13.2.3. and 13.2.4. of the Immigration Rules. Guidance on considering Article 8 ECHR claims in deportation cases can be found at: Criminality Article 8 guidance.

Relevant persons with conduct spanning the end of the transition period

Where a person is a relevant person and conduct occurred both before and after 11pm GMT on 31 December 2020, you must consider which grounds the decision will be made on. This will be either:

- public policy, public security or public health grounds
- conducive grounds

In order to assess whether the deportation decision should be made under the public policy, public security or public health test or on conducive grounds you must take a 3-staged approach.

First, you must consider conduct committed after 11pm GMT on 31 December 2020 to ascertain whether this conduct in itself meets the threshold for deportation under the 2007 Act or under the 1971 Act. If so, you can then proceed to make a decision on conducive grounds.

Second, if the threshold for deportation under the 2007 Act or 1971 Act is not met taking account of conduct committed after 11pm GMT on 31 December 2020 alone, you must consider conduct committed before 11pm GMT on 31 December 2020 and assess it in accordance with regulation 27 of the EEA Regulations 2016 (or, if the person is a frontier worker, regulation 18 of the Frontier Workers Regulations 2020) to ascertain whether the public policy, public security or public health test is met.

Alternatively, you can apply the test in regulation 27 of the EEA Regulations 2016 or regulation 18 of the Frontier Workers Regulations 2020 to the whole course of conduct in cases where:

- the person has engaged in conduct that spans both before and after 11pm GMT on 31 December 2020, but that conduct is a continuous course of conduct rather than multiple individual offences (for example a fraud that has taken place over several months and which has resulted in a single conviction)
- the conduct has occurred before 11pm GMT on 31 December 2020 and the threat is still present (for example, national security threat: deporting someone on public policy or public security grounds due to extremist conduct / inciting violence)

Third, conduct that occurred before 11pm GMT on 31 December 2020 may be relevant in some cases, in assessing the seriousness of conduct that occurred thereafter. For example, a conviction for wounding with intent post-transition period could be seen as more serious if there is a pre-transition period conviction for possession of a bladed article. If reaching a decision that the threshold for

deportation under the 2007 Act or 1971 Act is met, you must ensure the decision is based on conduct after 11pm GMT on 31 December 2020 and that conduct after 11pm GMT on 31 December 2020 is sufficiently serious on its own to justify the decision.

In some cases, conduct that occurred before 11pm GMT on 31 December 2020 may inform a decision based on conduct thereafter. This may be the case where conduct that occurred before 11pm GMT on 31 December 2020 is more serious than conduct that occurred after that time, but the conduct after that time indicates a continuing pattern of conduct that is serious. For example, a conviction for shoplifting after 11pm on 31 December 2020 may not, on its own, lead to a conducive deportation decision. However, multiple convictions for shoplifting before 11pm GMT on 31 December 2020 followed by a further conviction after that date may demonstrate a continuing pattern of conduct which is serious.

Conduct that occurred before 11pm GMT on 31 December 2020 may also inform a decision based on conduct thereafter where conduct that occurred before 11pm GMT on 31 December 2020 is more serious than conduct that occurred after that time, but the conduct after that time indicates a current serious threat. For example, an arrest for being in possession of a knife after 11pm GMT on 31 December 2020 may not, on its own, lead to a conducive deportation decision, but possession of a knife could be seen as more serious if there is conduct before 11pm GMT on 31 December 2020 that indicates an intention to carry out a terrorist attack.
In cases where the above circumstances are thought to apply you must seek the opinion of a senior caseworker before proceeding.

Late EUSS applications with conduct before 31 December 2020

An EU Settlement Scheme (EUSS) application can still be made after 30 June 2021 where there are reasonable grounds for the delay in making that application, or where a different deadline applies, for example for joining family members. Where a valid EUSS application is submitted and a deportation decision has already been made, that EUSS application is a barrier to removal and no enforcement action must be taken until the application has been concluded.

Where an individual has been referred to FNO RC with conduct before 11pm GMT on 31 December 2020 and a valid late EUSS application is pending, how to proceed will depend on whether automatic deportation applies or whether deportation would be pursued on conducive grounds.

Where automatic deportation applies, a stage 1 deportation decision must be made and served. However, before any representations received are considered you must assess whether the public policy test is met. If the public policy test is met, you can consider any representations and proceed with the stage 2 decision. However, if the public policy test is not met, you must not proceed with the stage 2 decision and must instead refer the case back to UKVI for the consideration of the EUSS application. This is because for applicants with conduct before the end of the transition period, the public policy test must be met for an EUSS application to be refused on suitability grounds. This applies to applicants who apply late to the EUSS.

For conducive deportation decisions made under section 3(5) of the 1971 Act, you must consider whether the public policy test is met prior to making a stage 1 deportation decision. In these cases, there is no statutory obligation to pursue deportation so discretion can be applied where the public policy threshold is met. Where the threshold is met a stage 1 decision can be made. Where the public policy test is not met, no further action should be taken, and the case returned to UKVI for the processing of the EUSS application.

It may be possible to deport an applicant with a pending EUSS appeal where their application has been refused and certified under regulation 16 of The Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020. An EUSS refusal can only be certified where a deportation decision has been made when:

- the applicant has not appealed a deportation decision under the EEA Regulations within 14 days
- the applicant has not made a human rights or protection claim following a conducive grounds or automatic deportation decision
- the applicant is appeal rights exhausted

If a human rights or protection claim has been made, the decision to refuse that claim must be certified under section 94 or section 94B of the 2002 Act or under regulation 33 of the EEA Regulations before a decision can be made to certify the decision to refuse the EUSS application.

For more information on regulation 16, please see the Appeals section of this guidance.

Offenders aged under 18

For guidance on offenders under the age of 18 see Managing foreign national offenders under 18 years old.

Mentally disordered offenders

The Mentally Disordered Offenders team in FNO RC deal with all foreign nationals who are subject to restriction orders, restriction directions or hospital directions made under the Mental Health Act 1983, the Criminal Procedure (Insanity) Act 1964 or the Criminal Procedure (Insanity and Unfitness to Plead) Acts 1991. You must forward a case involving a mentally disordered offender to the Mentally Disordered Offenders team.

Related content
Contents

British citizens and other nationals exempt from deportation

This section tells you about establishing whether a person is a British citizen or exempt from deportation.

Overview

British citizens are not subject to immigration control and cannot be considered for deportation. Before proceeding with deportation action, you must be satisfied that the person is not a British citizen or is not exempt from deportation.

A person who was previously a British citizen but has been deprived of that citizenship can be subject to deportation proceedings. A person who held British citizenship on the date of the offence, conviction or sentencing and, who is now the subject of a deprivation order is to be treated as a foreign criminal, both in relation to section 32 the 2007 Act and section 117D of Part 5A of the 2002 Act. Accordingly, they can be subject to deportation action under the 2007 Act and subject to the exceptions to deportation and 'very compelling circumstances' test in the 2002 Act. The fact that the person was a British citizen is a relevant consideration in the proportionality assessment but not determinative.

Section 7 of the 1971 Act provides an exemption from deportation for certain Commonwealth citizens and citizens of the Republic of Ireland. Section 8 of the 1971 Act provides an exemption from deportation for diplomats.

Where a claim to British citizenship is made, you must first establish whether this can be verified from records held by the Home Office. If these checks fail to identify the person is a British citizen, the onus is on the person seeking to establish a claim to obtain the necessary information or documents themselves.

Where a referral is made for deportation consideration and you establish the person is a British citizen or exempt from deportation under section 7 or section 8 of the 1971 Act, you must seek the appropriate approval to concede the case. Before deciding to stop deportation action on the grounds that the person is a British citizen you must check that Status Review Unit are not considering deprivation action.

British citizens

Every person who is a British citizen is either a British citizen by descent or a British citizen otherwise than by descent. The differences between these are that a British citizen by descent cannot normally pass their citizenship to children born outside of the UK, unless they were born to a parent in crown designated or EU service.

British Overseas Territories citizens

Following the commencement of the British Overseas Territories Act 2002 on the 21 May 2002, all British Overseas Territories citizens (BOTCs) who were not already British citizens automatically became British citizens, with the exception of those connected with the Sovereign Base Areas of Cyprus (Akrotiri and Dhekilia). Most BOTCs are also British citizens, but those who became BOTCs after 21 May 2002 through naturalisation or registration in a territory will only be British citizens if they have applied for and been registered as a British citizen.

Other forms of British nationality

Other forms of British nationality have existed in the past that are not recognised now, for example:

- British citizenship of the United Kingdom and Colonies (CUKC)
- British dependent territories citizenship – it became British Overseas Territories citizenship

The following are British nationals but do not have the right of abode in the UK:

- British Overseas citizens
- British Protected persons
- British Nationals (Overseas)

Some British subjects have the right of abode in the UK.

Right of abode

Section 2 of the 1971 Act sets out who has a right of abode in the UK. In simple terms a right of abode is conferred on British citizens and certain Commonwealth citizens.

A Commonwealth citizen with a right of abode in the UK may be considered for deportation on conducive grounds, provided they are not exempt from deportation under the 1971 Act. In such cases, you must consider whether it is appropriate to deprive a right of abode under section 2A of the Immigration Act 1971, as inserted by section 57 of the Immigration, Asylum and Nationality Act 2006 before considering whether to proceed with deportation action.

Guidance on who qualifies for a right of abode in the UK and the circumstances when it may be appropriate to deprive a person of a right of abode is at:

- Right of abode

Identifying British citizens

Guidance on how to consider whether a person has an automatic claim to British citizenship and the evidence required to establish a claim can be found at:

- British citizenship: automatic acquisition

To establish identity and British nationality, a birth certificate is not conclusive proof of identity, and in most cases, you will require additional evidence.

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Before any case can be conceded you must confirm a photographic match between the records held and those of the person subject to deportation consideration.

Confirmation of identity using checks of the Home Office paper or electronic record could indicate that nationality/identity has previously been established. For example, the subject may have previously been considered for deportation and enquiries at that time established they were a British citizen or a foreign national exempt from deportation and this information was confirmed, including the required photographic matching process.

It may be clear the subject is the same person, indicated by (for example):

- evidence of a licence recall
- further offending under the same Police National Computer (PNC) reference number
- serving further sentence under the same HM Prison and Probation Service (HMPPS) number - as these numbers are person specific unlike prison numbers

You are not required to undertake a further check if a person's British citizenship or exemption from deportation has previously been confirmed. However, if the person has since received a conviction or convictions relating to identity fraud, you must undertake checks to establish the person is entitled to British citizenship or an exemption from deportation.

In all cases you must confirm the link between the paper records, the person subject to referral and the documentation provided.

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Exemption from deportation for certain Commonwealth citizens

Commonwealth citizens

Section 7(1) of the 1971 Act provides an exemption from deportation where all of the following apply:

- the person was a Commonwealth or Irish citizen when the 1971 Act came into force on 1 January 1973
- the person was ordinarily resident in the UK on 1 January 1973
- the person was ordinarily resident in the UK for at least 5 years before the decision to make a deportation order is made

Sections 7(3) and (4) of the 1971 Act set out how the period of 5 years should be counted and excludes any time spent serving custodial sentences of 6 months or more.

A person who can establish that they meet the exemption in section 7 of the 1971 Act will not be liable to deportation and will not be deported. As set out in section 3(8) of the 1971 Act, the onus is on the person to assert they are entitled to rely on the exemption in section 7 and to prove that to be the case.

Consideration

When considering whether a person is exempt from deportation under section 7 you must first establish whether the person was a Commonwealth citizen on 1 January 1973. Commonwealth citizens on 1 January 1973 includes citizens of the following countries:

- Anguilla
- Antigua and Barbuda
- Australia
- Bangladesh
- Barbados
- Belize
- Bermuda
- Botswana
- British Antarctic Territory
- British Indian Ocean Territory
- Brunei
- Canada
- Cayman Islands
- Cyprus (excluding the Sovereign base areas)
- Dominica
- Falkland Islands
- Fiji
- Ghana
- Gibraltar
- Grenada
- Guyana
- Hong Kong
- India
- Jamaica
- Kenya
- Kiribati
- Lesotho Malawi
- Malaysia
- Maldives
- Malta
- Mauritius
- Monserrat

- Namibia
- Nauru
- New Zealand
- Nigeria
- Pakistan
- Papua New Guinea
- Pitcairn, Henderson, Ducie and Oeno Islands
- Saint Helena, Ascension and Tristan da Cunha
- Saint Lucia
- Samoa
- Seychelles
- Sierra Leone
- Singapore
- Solomon Islands
- South Africa
- South Georgia and the South Sandwich Islands
- Sri Lanka
- St Kitts and Nevis
- St Vincent and The Grenadines
- Swaziland
- Tanzania
- The Bahamas
- The Gambia
- Tonga
- Trinidad and Tobago
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Vanuatu
- Virgin Islands
- Zambia
- Zimbabwe

It is important to check whether the country has withdrawn and / or re-joined the Commonwealth at any point. For example, Pakistan withdrew from the Commonwealth in 1972 but later re-joined in 1989.

You must then consider whether the person was ordinarily resident in the UK on 1 January 1973.

You must also consider whether the person was ordinarily resident in the UK in the 5-year period before the stage 1 decision to make a deportation order. The 5-year period excludes time spent in prison of 6 months or more and includes the total time before and after any time spent in prison.

The responsibility is on the person claiming an exemption under section 7 to prove that the criteria are satisfied. A wide range of evidence may be provided to

demonstrate that the person was ordinarily resident at the relevant periods. This includes, but is not limited to:

- passports
- travel documents
- birth certificates
- school and study records
- employment history
- family history
- medical or dental records
- evidence of addresses, property ownership or rental agreements
- factual records including court proceedings

Guidance on how to assess ordinary residence is at: Assessing ordinary residence

Exemption from deportation for other cases

Section 8 of the 1971 Act provides an exemption from deportation for:

- those exempt under section 3(1) of the Immigration (Exemption from Control) Order 1972 as amended
- members of diplomatic missions. Members of the family forming part of the household of a member of a diplomatic mission, or any other person entitled to like immunity under the Diplomatic Privileges Act 1964

For more information, see persons exempt from immigration control.

Related content
British Overseas Territories citizen
Contents

Related external links
British Nationality Act 1948

Duty to deport under the UK Borders Act 2007

This section tells you about the duty to deport a foreign criminal under the UK Borders Act 2007.

Overview

Section 32 of the 2007 Act provides that the Secretary of State must make a deportation order in respect of a foreign criminal where all of the following apply:

- the person is not a British citizen or an Irish citizen
- the person was convicted in the UK of an offence
- the person was sentenced to a period of imprisonment of at least 12 months (single sentence)
- the person was serving that sentence on or after 1 August 2008, whether in custody or in the community
- the person had not been served with a notice of a decision to deport for the relevant offence before 1 August 2008

unless one of the exceptions set out in section 33 of the 2007 Act apply.

The automatic deportation provisions in the 2007 Act do not apply to a person who is exempt from deportation under section 7 or section 8 of the 1971 Act.

Where the duty to deport does not apply, consideration must be given to whether deportation should be pursued under the 1971 Act.

Section 38 of the 2007 Act requires the sentence to be a single sentence for a single offence (it must not be an aggregate sentence or consecutive sentences). When a person has been sentenced to more than one prison sentence to be served concurrently or consecutively, the relevant sentence is the single longest period of imprisonment, regardless of the overall time to be served. For example, where a person is sentenced to a nine-month sentence and a 6-month sentence to be served consecutively the overall sentence is 15 months; but as neither single sentence is for 12 months or more, section 32 does not apply.

See also section on suspended sentences.

Definition of imprisonment

Section 32(2) of the 2007 Act sets out that the automatic deportation provisions apply to those sentenced to a period of imprisonment of at least 12 months and section 38 defines “imprisonment” to include a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders) for at least 12 months and includes a reference to a person who is sentenced to imprisonment or detention,

or ordered or directed to be detained, for an indeterminate period (provided that it may last for 12 months).

Sentences given in days or weeks

Sometimes sentences are given in days or weeks instead of months or years. The following will help you determine whether the sentence is at least 12 months.

The interpretation for 12 months in section 32 is a period of 12 calendar months. A month for the purposes of this legislation is a calendar month as defined by the Interpretation Act 1978.

A period of imprisonment of 12 months consists of 365 days (unless it is a leap year, in which case it is 366) and ends on the corresponding date in the twelfth month. A period of imprisonment of 52 weeks does not amount to 12 months, because a week consists of seven consecutive days, as per its ordinary meaning, and so amounts only to 364 days.

A period of imprisonment of 12 months does not include a reference to a person who is sentenced to a period of imprisonment of at least 12 months only by virtue of being sentenced to consecutive sentences amounting in aggregate to more than 12 months, as defined in section 38(1)(b) of the 2007 Act.

Indeterminate sentences

Imprisonment for at least 12 months includes where a person is sentenced to imprisonment or detention, or ordered or directed to be detained, for an indeterminate period (provided that it may last for at least 12 months) as defined in section 38(1)(d) of the 2007 Act.

Suspended sentences

Imprisonment for at least 12 months does not include suspended sentences unless a court subsequently orders that the sentence or any part of the sentence, regardless of length, is to take effect, as defined in section 38(2)(a) of the 2007 Act. In circumstances where the court orders a suspended sentence or any part of it (of whatever length) is to take effect, then providing the original suspended sentence was for at least 12 months, the case should be considered under the 2007 Act.

Other types of imprisonment

Imprisonment due to the default of payment of compensation or a fine does not amount to a sentence of imprisonment for the purposes of the 2007 Act.

Imprisonment other than in a prison

Imprisonment for at least 12 months includes where a person is sentenced to detention or ordered or directed to be detained in an institution other than a prison, including a hospital or an institution for young offenders as defined in section

38(1)(c) of the 2007 Act. It does not include periods detained in the Military Correctional Training Centre (MCTC) although these cases can be considered for deportation under the 1971 Act.

Related content
Contents

Exceptions to automatic deportation under the UK Borders Act 2007

This section tells you about the exceptions to the duty to deport in the UK Borders Act 2007.

Section 33 of the 2007 Act provides the following exceptions to automatic deportation:

- where removal would breach either a person's rights under the European Convention on Human Rights (ECHR) or the United Kingdom's obligations under the Refugee Convention
- where the Secretary of State considers the person was under the age of 18 on the date of conviction
- where the person is the subject of extradition proceedings
- where the person:
  - has leave granted under Appendix EU or entry clearance granted under Appendix EU (Family Permit) to the Immigration Rules
  - has a right of admission as a frontier worker under the Frontier Workers Regulations 2020
  - may be granted leave under Appendix Service Providers from Switzerland to the Immigration Rules
  - may be granted leave under Appendix S2 Healthcare Visitor to the Immigration Rules
  - is a relevant person within the meaning of the Grace Period Regulations 2020

and where the offence that would have justified deportation consisted of or included conduct that took place before 11pm GMT on 31 December 2020

- where the person is the subject of an order, direction or transfer for treatment direction under mental health legislation
- where the Secretary of State considers that the person's deportation would contravene the United Kingdom's obligations under the Council of Europe Convention on Action against Trafficking in Human Beings

Where an exception applies there is no statutory duty to make a deportation order.

However, an exception does not prevent the making of a deportation order or a decision to deport a person on the basis that it is conducive to the public good.

Furthermore, where a person is a 'relevant person' , a deportation on conducive grounds must not be made on the basis of conduct before 11pm GMT on 31 December 2020. Where conduct has occurred both before and after 11pm GMT on 31 December 2020 refer to Relevant persons with conduct spanning the end of the transition period.

Under section 33(7) of the 2007 Act, where deportation would be contrary to the ECHR or the Refugee Convention or the person is subject of extradition, the person's deportation is still deemed conducive to the public good, but the Secretary of State is not obligated to make a deportation order.

Asylum and human rights

Where deportation would breach the person's rights under the European Convention on Human Rights (ECHR) or the UK's obligations under the Refugee Convention, then the exception at section 33(2) applies.

Where consideration is being given to deportation under the 2007 Act, any claim made that the person's removal would breach the Refugee Convention and / or that it would breach the ECHR must be considered in full before a deportation order can be signed.

Where it is found that deportation would breach the UK's obligations under the Refugee Convention or the ECHR then deportation will not be possible.

Protection Claim

Where a protection (asylum, Articles 2 and 3 ECHR) claim is raised during the deportation consideration process, it must be considered by a case owner who has had the appropriate training.

Guidance for considering a protection claim can be found in the asylum end to end process guidance.

Article 8 – family and private life

Paragraphs 13.2.3. and 13.2.4. of the Immigration Rules sets out how an Article 8 claim from a person who is liable to deportation must be considered. Guidance on how to consider an Article 8 claim can be found at:

- criminality guidance for Article 8 ECHR cases

Age

Section 33(3) of the 2007 Act provides an exception from automatic deportation for a person who the Secretary of State considers was under the age of 18 on the date of conviction. If this exception applies, and the person is now aged 18 or over, consideration must be given to whether the person should be deported under the 1971 Act.

Original, credible documentary evidence from an independent source will normally be sufficient to determine a person's age. In addition, a Merton compliant age assessment by a local authority will normally be accepted as decisive evidence.

Where there is no other evidence or information to determine the age of the person being considered for deportation, case owners must use the age of the person accepted by the court.

Assessments completed by social services emergency duty teams are not acceptable evidence of age.

For more information see managing foreign national offenders under 18 years old.

There is no provision under the 2007 Act to exempt a person from automatic deportation on the basis of an upper age limit. For adults, age alone will not provide an exemption from deportation.

Where a person aged 70 or over is liable to automatic deportation under section 32 of the 2007 Act, you must refer the case to a senior caseworker for approval before taking a deportation decision.

Extradition

This section gives guidance on what to do in cases where a person who is, or may be, liable to deportation is also the subject of an extradition request. Extradition from the UK is governed by the Extradition Act 2003 (2003 Act). It is the process by which a foreign state may request that the UK surrender a person to them to stand trial or, for those who have already been convicted in the country concerned, to serve a sentence of imprisonment.

An exception from automatic deportation under the 2007 Act applies where a person is subject to current extradition proceedings (see exception 4 in section 33(5)). This exception applies where the person is:

- the subject of a certificate under section 2 or section 70 of the 2003 Act
- in custody pursuant to arrest under section 5 of the 2003 Act
- the subject of a provisional warrant under section 73 of the 2003 Act
- the subject of a certificate under section 74B of the 2003 Act

The application of exception 4 in section 33(5) of the 2007 Act means that the Secretary of State is not under the duty to make a deportation order in section 32(5). However, exception 4 does not prevent the Secretary of State from making a deportation order (see section 33(7)(a)) if the person's deportation is considered to be conducive to the public good as set out in section 32(4) (see closing words of section 33(7)).

The fact that a person is the subject of an extradition request does not prevent the Secretary of State from deeming a person's deportation to be conducive to the public good pursuant to section 3(5)(a) of the 1971 Act, whether directly under the Act or by way of the EEA Regulations, where those regulations are saved in respect to the person. Neither does it prevent the Secretary of State from making a deportation order under section 5(1) of the 1971 Act.

It is government policy that surrender of a wanted person through extradition will normally take priority over the removal of that person pursuant to a deportation order.

Where an extradition request is received the UK Central Authority (UKCA) will notify the case owner. The case owner must also establish whether the individual is detained / remanded under extradition provisions.

Any action to physically remove a wanted person who is subject to the deportation process (for example, setting removal directions, flight booking) and where you have been notified a formal extradition request has been made should be progressed on a case-by-case basis following advice from HOLA and Policy. Case owners must seek HOLA advice in such cases to assess the risk of a successful challenge on the basis that deportation would be seen as disguised extradition and therefore an abuse of process. Where the risk is low, deportation action should continue to be pursued and where the risk is high, only the physical removal of the person should be paused for as long as the extradition proceedings are ongoing.

However, other actions pursuant to a deportation order should continue to take place. Checks to ascertain the foreign national's identity, nationality, immigration status and criminal record, and thus liability to deportation, may be completed. This may include serving a stage 1 deportation decision or, depending on the deportation provisions concerned, a liability to deportation notice along with standard questionnaires.

Any outstanding claims or applications, including human rights claims, asylum or protection clams, or EUSS applications, can be progressed and decided while extradition proceedings are ongoing. These applications or claims should be processed in the normal way, which may include service in conjunction with a stage 2 deportation decision and deportation order. Further submissions made after the stage 2 decision is served can also be considered and determined in the usual way while extradition proceedings are ongoing.

Where you have been notified of an extradition request after a human rights and / or asylum claim have already been decided and the decision to deport is maintained with the person having been notified, normal deportation procedures should follow, including obtaining a final outcome of any related appeal and implementing any post-decision or post appeal grant of leave to remain.

You must keep UKCA appraised of developments in the deportation process, including where decisions have already been made and the outcome of any appeal is known.

If extradition fails, you will be informed by UKCA and can take action to enforce deportation where the person is free of removal barriers. As the extradition exception in section 33(5) of the 2007 Act will no longer be relevant, automatic deportation can continue. Similarly, deportation under the 1971 Act or under the EEA Regulations (where those regulations have been saved in respect to the person) may continue.

Mental health grounds

A person who is the subject of an order, direction or transfer for treatment direction under one of the statutory provisions listed below will be subject to an exception from automatic deportation under section 33(6) of the 2007 Act. The provisions listed in s.33(6) are:

- a hospital order or guardianship order under section 37 of the Mental Health Act 1983 (MHA 1983)
- a hospital direction under section 45A of the MHA 1983
- a transfer direction under section 47 of the MHA 1983
- a compulsion order under section 57A of the Criminal Procedure (Scotland) Act 1995 (CP(S)A 1995)
- a guardianship order under section 58 of the CP(S)A 1995
- a hospital direction under section 59A of the CP(S)A 1995
- a transfer for treatment direction under section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003
- an order or direction under a provision which corresponds to a provision specified above and which has effect in relation to Northern Ireland

The Offender Management and Public Protection Group (OMPPG) in HMPPS advises the Mentally Disordered Offenders (MDO) team when a foreign criminal is subject to restriction orders, restriction directions or hospital directions under the Mental Health Act 1983.

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Victims of human trafficking

Where removal of the person would breach the UK's obligations under the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT), deportation must not proceed under section 3(5)(a) of the 1971 Act or by way of the 2007 Act (which provides that a person is excepted from automatic deportation under section 33(6A) of the 2007 Act).

Under ECAT, potential victims of modern slavery must be provided with a recovery and reflection period during which the victim must not be removed from the UK. Section 61 of the Nationality and Borders Act 2022 (NABA 2022) provides for a recovery period of at least 30 days where a positive reasonable grounds decision is

made. The recovery period does not apply where the competent authority has determined that the victim's offending meets the criteria set out in section 63(3) of the NABA 2022 (public order disqualification). Decisions on whether to apply the public order disqualification are made on a case-by-case basis, balancing the individual's threat to public order against their recovery needs.

Where the competent authority has made a decision to apply the public order disqualification there is no requirement to provide modern slavery support or entitlements and the deportation process can continue. In such cases a positive reasonable grounds decision is not a barrier to removal and no conclusive grounds decision is required. There is no right of appeal against a decision to apply the public order disqualification.

Where the competent authority has made a decision not to apply the public order disqualification and a positive reasonable grounds decision is made, the person is entitled to the minimum 30-day recovery period and the competent authority is required to make a conclusive grounds decision.

The public order disqualification does not apply to a person who received a conclusive grounds decision before 30 January 2023 unless new information comes to light or concerns are raised at a later date, for example where an offence is committed after 30 January 2023 which meets the disqualification threshold.

Further information about the protections that apply to victims of modern slavery and the public order disqualification can be found at: Modern slavery: how to identify and support victims.

Making a referral for a potential victim of modern slavery (PVoMS)

If a person claims they are a victim of trafficking you must refer them to a competent authority by completing a National Referral Mechanism (NRM) referral form. Adult victims must give their consent for referral to the NRM, consent is not required for those aged under 18.

The competent authority will make a reasonable grounds decision where possible within 5 working days, which acts as an initial filter to identify potential victims.

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Negative conclusive grounds decision

Where the Public Order Disqualification is not applied and a conclusive grounds decision is made, the exception to automatic deportation under the 2007 Act no longer applies on human trafficking grounds.

You must serve the person with a deportation decision if all of the following apply:

- they have been considered as a potential victim of trafficking
- they have completed, where applicable, a recovery and reflection period
- they are not otherwise exempt from deportation, or subject to other exceptions to deportation under section 33 of the 2007 Act

Positive conclusive grounds decision

Where the competent authority has made a positive conclusive grounds decision which confirms the person is a victim of trafficking or modern slavery, consideration will be given to granting permission to stay (if the person does not already hold immigration status in the UK). Where a decision is made to grant permission, approval must be sought from the Head of FNO RC not to pursue deportation.

For guidance on temporary permission to stay for victims of human trafficking and slavery see: Temporary permission to stay for victims of human trafficking and slavery.

Where the competent authority decides not to grant temporary permission, you must proceed to consider whether deportation is appropriate subject to consideration of any other objection to deportation the person may have made.

Related content
Contents
Modern Slavery: Statutory Guidance

Deportation under the Immigration Act 1971

This section tells you how to consider deportation under the Immigration Act 1971.

Deportation conducive to the public good

Section 3(5) of the 1971 Act provides for the Secretary of State to make a deportation order on the basis their deportation is conducive to the public good. This gives the Secretary of State discretion to act in a way that reflects the public interest.

Where a person referred for deportation consideration does not meet the criteria for deportation under the 2007 Act, consideration must be given to whether deportation should be pursued under the 1971 Act on the ground it is conducive to the public good.

It will normally be appropriate to consider deportation on the ground it is conducive to the public good under the 1971 Act (or regulation 27A of the European Economic Area (EEA) Regulations, as saved, where it concerns a person protected by the Grace Period Regulations 2020 with conduct committed after 11pm on 31 December 2020) in the following types of cases (this is not an exhaustive list):

- where the person's offending has caused serious harm in the UK or in another country
- where the person is a persistent offender
- where the person has been assessed by the police as a high harm offender and is a threat to the public
- where the person has a conviction for a serious drug offence or for a gun crime
- where the person has engaged in sham marriage conduct
- where the person has assisted, or attempted to assist, another person in the fraudulent acquisition of leave, or a Withdrawal Agreement right to reside to support that person's application for EU Settlement Scheme (EUSS) status

A conviction for a drug-related offence which concerns possession for personal use does not usually constitute an offence which has caused serious harm. Such an offence will however be taken into account when considering whether deportation is appropriate because the person is a persistent offender.

Consideration must also be given to whether deportation should be pursued under the 1971 Act (or regulation 27A of the EEA Regulations, as saved) where the person is subject to an exception from automatic deportation under section 33(7) of the 2007 Act.

This is not an exhaustive list and deportation may be pursued in any case where the Secretary of State considers that the individual's presence in the UK is not conducive to the public good. However, if a person is a 'relevant person', a deportation decision

on conducive grounds must not be made on the basis of conduct committed before 11pm on 31 December 2020.

Consideration

When deciding whether it is proportionate to pursue deportation on the ground it is conducive to the public good you must consider each case on its individual merits taking account of:

- the nature of the offending, the length of any sentence or sentences given and Judge's sentencing remarks
- when the offending occurred
- the impact of the offending on the victim
- any assessment made by the police about the threat posed to the public
- any risk assessment made by HM Prison and Probation Services
- any factors which are capable of outweighing deportation such as length of the person's residence in the UK, their ties to the UK and the UK's obligations under the ECHR, Refugee Convention or other international treaties or conventions, such as the European Convention on Action against Trafficking in Human Beings

Deportation of family members

Section 3(5)(b) of the Immigration Act 1971 provides for the deportation of a family member of a person being deported. A family member includes the spouse, civil partner or children under the age of 18.

Where a deportation order is made against a person under the 1971 Act, a deportation order cannot be made against the family member of that person if more than eight weeks have elapsed since the person was removed from the UK. It also cannot be made if a person has EUSS leave / EUSS Family Permit or is a relevant person on the basis of conduct committed before 11pm GMT on 31 December 2020 by the person to be deported.

Where a deportation order is made against a person under the 2007 Act, a deportation order cannot be made against the family member of that person if the person subject to deportation under the 2007 Act either:

- has not appealed in respect of the automatic deportation order and more than 8 weeks have elapsed after the period when an appeal can no longer be brought
- has appealed in respect of the automatic deportation order and more than 8 weeks have elapsed after the person has exhausted their appeal rights

A decision to deport a spouse or civil partner will not normally be made where the spouse or civil partner has qualified for settlement in their own right or is living apart from the person against whom a deportation order has been made. Simply being separated because the person subject to a deportation order is in prison or in an immigration removal centre does not constitute living apart. The family member must

show that they were living apart from the foreign national offender before their imprisonment or, where applicable, after their release from prison.

A decision to deport a child of a person who is subject to deportation will not normally be made where one or more of the following applies:

- the child and their mother or father are living apart from the person subject to deportation
- the child has left home and established themselves on an independent basis
- the child married or formed a civil partnership before deportation came into prospect

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A deportation order made against a family member under section 3(5)(b) will cease to have effect if the spouse, civil partner or child cease to belong to the family of the person who is the subject of a deportation order or if the deportation order made against the person ceases to have effect. Where the spouse or civil partner is liable to deportation in their own right, for example because they are also foreign criminals, you must take action on that basis.

Where a child of a person liable to deportation is aged 18 or over and liable to deportation in their own right, you must take action on that basis. Deportation consideration can begin before a person turns 18 years old, but a stage 2 deportation decision should not be issued until a person is aged at least 18.

Court recommendations – section 3(6)

Section 3(6) of the Immigration Act 1971 allows for the deportation of foreign nationals who are aged 17 and over and have been convicted of criminal offences in the UK, where the sentencing court recommends deportation. The basis for court recommended deportations is that both:

- the foreign national has been convicted of a crime where a term of imprisonment can be imposed
- the relevant form (an IM3) has been served on the foreign national by the police or prosecuting authority, at least seven days before sentence, giving the person the opportunity to state why they should not be recommended for deportation - this is a prerequisite for a Court recommended deportation – a Court cannot recommend deportation without having first considered the response through the IM3 form

This is a recommendation only. If the person would not otherwise be considered for deportation, it would not generally be appropriate to pursue deportation on this basis.

Related content
Contents

Deportation under regulation 27A of the EEA Regulations

This section tells you how to consider deportation under regulation 27A of the European Economic Area (EEA) Regulations.

Where a person protected by the Grace Period Regulations 2020 with conduct committed after 11pm GMT on 31 December 2020 is referred for deportation consideration and they do not meet the criteria for deportation under the 2007 Act, consideration must be given to whether deportation should be pursued under regulation 23(6)(b) in accordance with regulation 27A of the EEA Regulations, as saved, on the ground it is conducive to the public good.

Regulation 32(3) of the EEA Regulations (as saved) provides that individuals who are considered for deportation in accordance with regulation 23(6)(b) can be treated if they were a person liable to deportation by virtue of section 3(5)(a) of the 1971 Act such that section 5 to, and Schedule 3 of, that Act apply accordingly.

Where the person is a foreign criminal as defined in the 2007 Act (that is having been sentenced to at least 12 months in prison) then the Secretary of State must conclude that their deportation is conducive to the public good, unless an exception in section 33 of that same Act applies. There are no exceptions for relevant persons where the conduct is after the end of the transition period (11pm GMT on 31 December 2020). The exception to deportation under the 2007 Act for a relevant person (see section 33(6) – exception 7) only applies to conduct before the end of the transition period.

When considering whether deportation is appropriate under regulation 27A because for example the person is a foreign national offender or for reasons of national security, you must refer to deportation conducive to the public good.

Sham marriages

Paragraph 7(a) of Schedule 1 to the EEA Regulations 2016, as saved sets out that involvement in a marriage, civil partnership or durable partnership of convenience for the purpose of circumventing the UK's immigration controls is considered to be contrary to the fundamental interest of society to prevent unlawful immigration and abuse of the immigration laws and maintain the integrity and effectiveness of the immigration control system.

Where there are reasonable grounds to consider that a relevant person with rights protected by the Grace Period Regulations 2020 has:

- participated in or facilitated a marriage, civil partnership or durable partnership of convenience (whether or not it was successful), and
- the relevant behaviour started after 11pm GMT on 31 December 2020

you must consider whether deportation is appropriate on conducive grounds under regulation 23(6)(b) and in accordance with regulation 27A of the EEA Regulations 2016, as saved.

For further details on establishing when the relevant conduct commenced specifically for those suspected of being either a participant or facilitator of a sham marriage, see marriage investigations guidance – determining when relevant conduct commenced.

Deportation on conducive grounds following a sham marriage determination, is not reliant on the individual having a criminal conviction, but any decision must be proportionate in accordance with regulation 27A.

It may not always be appropriate or proportionate to take action following a sham marriage determination, or to take the same action against both parties of a sham relationship. For example, it is unlikely to be proportionate to take action on sham marriage grounds against a party of a sham relationship where, on a balance of probabilities, evidence suggests that they were duped or deceived as to the true nature and purpose of the relationship, or where the union was forced. See Marriage investigations – post investigation actions.

Sham marriage involvement could also be a part of a broader consideration for deportation where there is a pattern of offending or anti-social behaviour. However, this must be weighed against factors in favour of the individual, such as any rights they might have under Article 8 of the European Convention on Human Rights (ECHR), in order for a proportionate decision to be made.

You must use the stage 1 liability for deportation notice (ICD 4932A) and stage 2 deportation decision (ICD 4933A) notice for deportation following a sham marriage determination.

Where a sham marriage is the only consideration and there is no criminal conduct involved, the decision to deport is based simply on the sham marriage determination and a proportionality assessment in accordance with regulation 27A. As such, the stage 2 notice must:

- state that the decision is being taken on the ground the decision is conducive to the public good and provide detailed reasons for the sham marriage determination
- show that the decision to deport is proportionate in accordance with regulation 27A

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Criminal and Financial Investigations (CFI) must be notified before a deportation decision is made, to allow a joint response to be agreed, where either of the following apply:

- Home Office databases indicate there is already CFI involvement in a case
- information you have received in relation to the case suggests that a marriage has been contracted for a criminal purpose, such as facilitation or obtaining leave by deception

For more information, see marriage investigation – criminal investigations.

For further guidance about relevant persons with rights protected by the Grace Period Regulations 2020 see: public policy, public security or public health decisions, and for information on the removal of other cohorts following a sham marriage determination see: Marriage investigations – removal pathways.

Facilitation of fraudulently acquired rights or permission

Paragraph 6(b) of Schedule 1 to the EEA Regulations 2016, as saved, sets out that fraudulently obtaining or attempting to obtain, or assisting another to obtain or to attempt to obtain, a right to reside under these Regulations is considered to be contrary to the fundamental interests of society to prevent unlawful immigration and abuse of the immigration laws and maintain the integrity and effectiveness of the immigration control system.

Where there are reasonable grounds to consider that a relevant person with rights protected by the Grace Period Regulations 2020 has:

- fraudulently obtained or attempted to obtain, or assisted another to obtain or to attempt to obtain, a right to reside under these Regulations and
- the relevant behaviour started after 11pm GMT on 31 December 2020

you must consider whether deportation is appropriate on conducive grounds under regulation 23(6)(b) and in accordance with regulation 27A of the EEA Regulations 2016, as saved.

Deportation on conducive grounds following a determination that a person has facilitated the fraudulent acquisition of rights or permission, is not reliant on the individual having a criminal conviction, but any decision must be proportionate in accordance with regulation 27A.

This type of immigration abuse may also form a part of a broader consideration for deportation where there is a pattern of offending or anti-social behaviour. However, this must be weighed against factors in favour of the individual, such as any rights they might have under Article 8 of the ECHR, in order for a proportionate decision to be made.

You must use the stage 1 liability for deportation notice (ICD 4932A) and stage 2 deportation decision (ICD 4933A) notice for deportation following a determination of facilitation of fraudulently acquired rights or permission.

Where a facilitation of the fraudulent acquisition of rights or permission is the only consideration, and there is no criminal conduct involved, a proportionality assessment must take place in accordance with regulation 27A as part of the deportation decision. As such, the stage 2 notice must:

- state that the decision is being taken on the ground the decision is conducive to the public good and provide details about their facilitation of fraudulent acquisition of rights or permission
- show that the decision to deport is proportionate in accordance with regulation 27A

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CFI must be notified before a deportation decision is made, to allow a joint response to be agreed, where either of the following apply:

- Home Office databases indicate there is already CFI involvement in a case
- information you have received in relation to the case suggests that the fraud has been contracted for a criminal purpose

For further guidance about relevant persons with rights protected by the Grace Period Regulations 2020 see: public policy, public security or public health decisions.

Related content
Contents

Stage 1 decision to make a deportation order

This section tells you how to make a stage 1 deportation decision.

Consideration

If a foreign national meets the threshold for deportation, you must consider making a stage 1 deportation decision and issuing a stage 1 decision letter setting out why deportation is conducive to the public good.

You must use the relevant stage 1 decision letter when notifying the person of their liability to deportation on conducive grounds:

- ICD.4932A for deportation of a relevant person under the saved European Economic Area (EEA) Regulations 2016 on conducive grounds following engagement in sham marriage conduct or facilitation of fraudulently acquired leave
- ICD.4936A for deportation under the 1971 Act on conducive grounds following engagement in sham marriage conduct or facilitation of fraudulently acquired leave
- for criminal conduct, the relevant template will be ICD.4936a, ICD.4936b or ICD.4936d, depending on the date of conduct and the person's immigration status

If you are deporting a foreign national for conduct committed after the end of the transition period (11pm GMT on 31 December 2020), and that person either has EU Settlement Scheme (EUSS) leave or a pending valid EUSS application, you must not rely on criminal or undesirable conduct before 11pm GMT on 31 December 2020.

You must set out in the decision letter all disclosable information held by the Home Office about the person's circumstances at the time of the decision including length of residence in the UK, immigration status and any dependants. You must set out why the person meets the threshold for deportation on the ground that it is conducive to the public good. If there is an outstanding human rights claim, you must not consider the claim until after the person has had the opportunity to make further representations so that all matters can be considered together.

If you are unsure whether a person may be a British citizen, then checks must be made to establish the person's nationality before a stage 1 decision letter is issued.

The decision letter must inform the person that they may, if they wish, make representations within 28 days as to why they should not be deported. They must be asked to provide documentary evidence of relationships with any children and family members upon whom they are making a family life claim.

The decision must include a warning under section 120 of the 2002 Act, which places a continuing obligation to raise with the Home Office any reasons why the person should be permitted to remain in the UK, including any time there is a change of circumstances, as soon as they occur.

Some caseworkers are authorised to issue letters without further approval. If you do not have such authorisation, the draft decision must be authorised by a person at least one grade senior to you.

Outstanding applications for limited/indefinite leave to enter/remain under the Immigration Rules

A person may have an application outstanding under the Immigration Rules. If a decision is pending, the application and any further evidence provided must be considered at stage 2 of the deportation process.

If it is decided that deportation is appropriate, then the application under the Immigration Rules will fall to be refused and the decision must be made at stage 2.

EUSS cases

Where a person has made a valid EUSS application on or before 30 June 2021 and on which a final decision (or appeal against refusal) is still pending, you must first decide whether the person is a 'relevant person' before serving a stage 1 letter.

An EUSS application made on or after 9 August 2023 will not be considered valid unless, and until, the Secretary of State is satisfied that they had reasonable grounds for their delay in applying after the relevant deadline.

You must assess the available evidence to determine whether the person is likely to have been resident in the UK by 11pm on 31 December 2020. Any additional information about the person that is already known to the Home Office or established as part of the EUSS application, must be taken into account to inform your decision.
Where you are satisfied from the available evidence that the person had been residing in the UK for more than five years prior to their imprisonment, they will have acquired a right of permanent residence and are therefore a relevant person.
If you are satisfied that the person is a 'relevant person' and conduct was committed after 11pm GMT on 31 December 2020, you must consider whether they are liable to deportation on conducive grounds under Regulation 27A of the EEA Regulations.
You may issue an EEA stage 1 liability notice warning the person of their liability to deportation under the EEA Regulations 2016, as saved.

If conduct was committed before 11pm GMT on 31 December 2020 consideration must be given to deportation grounds of public policy, public security or public health under Regulation 27 of the EEA Regulations 2016, as saved. Further guidance can be found at: public policy, public security or public health decisions.

Where the person has made a valid application to the EUSS after 30 June 2021, and you have determined that the person is not a relevant person, they are deemed to directly benefit from the rights set out in the Withdrawal Agreement under Article

18(3). This means that they cannot be deported for conduct before 11pm GMT on 31 December 2020 without consideration of the public policy, public security or public health test in Regulation 27 of the EEA Regulations 2016.

In such cases you may therefore, if appropriate, issue a stage 1 decision letter notifying them that a decision has been taken that their deportation is conducive to the public good. Consideration of the public policy test will be applied in accordance with suitability rules in Appendix EU, which apply the text of Regulation 27 of the EEA Regulations (even where the Regulations themselves are not saved). If the person's EUSS application is refused on suitability grounds you may then continue to issue a stage 2 notice, including any consideration of any human rights claim. Note that if the individual appeals against the EUSS refusal that appeal will be suspensive of removal unless you certify removal under Regulation 16 of the Citizens' Rights Appeal Regulations. If the person's EUSS application is successful (because the public policy test is not met) then EUSS leave will be granted, and the stage 1 decision should be revoked.

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Where EUSS leave has been fraudulently obtained, a stage 1 should be served and then the case referred to Status Review Unit (SRU) for curtailment due to material fraud in the EUSS application. This process is to be followed regardless of when the EUSS application was made or when the conduct that initiated deportation proceedings was committed. Once SRU has curtailed the fraudulent EUSS leave, you can proceed with a stage 2 deportation decision as usual.

Cases where a travel document is required

In cases where a travel document is required in order to effect deportation and where a protection claim has not been made, you must refer the case to the travel documentation team in Returns Logistics (RL) in order that the process of obtaining a travel document can be started promptly. Obtaining a travel document should not hold up consideration of deportation, and once the referral to the travel documentation team has been made the case should be progressed as normal.

Cases where the person holds refugee status or humanitarian protection

If the person holds refugee or humanitarian protection status you must consider whether to revoke or cease such status in accordance with section 72 of the 2002

Act and paragraphs 339G – 339H of the Immigration Rules. Revocation consideration should normally take place following service of the stage 1 decision.

Refugee status may be revoked under the Immigration Rules on the grounds that the:

- Refugee Convention ceases to apply (paragraph 339A)
- person is excluded from the Refugee Convention (paragraph 339AA)
- person has misrepresented or omitted facts decisive to the grant of refugee status (paragraph 339AB)
- the person is a danger to the UK (paragraph 339AC)

For guidance on revoking protection status or excluding a person from protection status or revoking refugee status or excluding a person from the Refugee Convention see:

- revocation of protection status
- exclusion (Article 1F) and Article 33(2) of the Refugee Convention

In FNO RC you must forward the case to the Cancellation, Cessation and Revocation team (CCRT) who will consider whether it is appropriate to revoke refugee status.

Detention

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 2007Act. 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 under section 32 of the 2007 Act or pending the making of a deportation order under section 32 of the 2007 Act, and those who are the subject of a deportation order pending removal.

Further information on considering whether detention is appropriate can be found in the Detention guidance.

Related content
Contents

Stage 2 consideration of representations and obtaining the deportation order

This section tells you how to consider further representations and how to obtain a deportation order.

Consideration of representations

Where a person has been served a stage 1 deportation decision you must consider whether deportation remains appropriate in light of any new information or evidence provided.

Paragraphs 13.2.3. and 13.2.4. of the Immigration Rules set out when a foreign criminal's private and/or family life will outweigh the public interest in deporting them. When considering whether deportation is in the public interest, you must take into account all the facts of the case (for non-criminal deportation orders, it is a simple proportionality assessment).

Where a person claims that their deportation would be a breach of their family and/or private life any representations must be carefully assessed and balanced against Parliament's view of the public interest to determine whether deportation would breach Article 8.

For guidance on how to consider an Article 8 claim see: Criminality - Article 8 ECHR cases.

If the person raises protection grounds for the first time, having made no previous asylum claim, then you must consider with a senior caseworker whether a referral should be made to the appropriate team for consideration of the protection claim. When referring the case, you must record the reason why the claim was not raised earlier. You must continue to consider the non-protection aspects of the claim.

If the person raises an Article 3 claim on the basis of a claimed medical condition you must request evidence to substantiate claim. Following the Supreme Court decision in AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17 (29 April 2020), it is accepted that a claimant's Article 3 (medical) rights would be breached where there are substantial grounds for believing that they would face a real risk of being exposed to a serious, rapid and irreversible decline in their state of health resulting in intense suffering or a significant (substantial) reduction in life expectancy as a result of the absence of appropriate medical treatment or lack of access to such treatment in the country of return. The claimant must provide evidence capable of demonstrating that there are "substantial" grounds for believing that they would be exposed to a real risk of being subject to "inhuman" treatment contrary to Article 3. In countering such evidence, the returning state must dispel any serious doubts raised by the evidence provided.

Only in very exceptional cases, where the humanitarian grounds against removal are particularly compelling, will an Article 3 medical claim succeed. The test to be applied requires consideration of a range of factors based on the individual facts of each case, of which availability and accessibility of treatment is a key factor, and only where the high threshold has been met will a grant of leave on medical grounds be appropriate.

It is the person's responsibility to supply acceptable, accurate and up-to-date medical evidence in support of their application. The focus of the evidence they provide must be on their current state of health. You must assess this evidence when you consider their Article 3 and / or Article 8 (medical) claim but you are not expected to have any medical expertise.

If you need to request further medical evidence, you must give the person 28 calendar days to reply.

Further details about considering an Article 3 medical claim is provided in the article 3 medical claims guidance. If you need more guidance, you must refer the case to a senior caseworker.

If the person is a Mentally Disordered Offender (such as a person who is subject to a restriction order, restriction direction or hospital direction (for example restricted under sections 37/41, 45(a)/45(b) or 47/49) of the Mental Health Act 1983 or the Criminal Procedure (Insanity) Act 1964 or Criminal Procedure (Insanity and Unfitness to Plead) Acts 1991), refer to the section Mentally disordered offenders (MDOs). For all other medical conditions see human right claims on medical grounds.

If the foreign national claims to be a victim of modern slavery refer to the section Victims of human trafficking.

Stage 2 decision to make a deportation order

If no representations are received within the 20-working day deadline given in the stage 1 decision, you must consider whether to make a deportation order on the facts before you.

If you decide to make a deportation order and the person is not a relevant person, you must use either the ICD.4937a or the ICD. 3934A – stage 2 deport decision letter (for non-criminal conduct), to notify them of the decision.

If the person is a relevant person, you must use the relevant stage 2 deportation decision letter:

- the relevant template from the ICD.4937 suite of templates where representations have been made after the stage 1
- ICD 4939 for criminal cases with no representations received after the stage 1
- ICD 4933A for cases where there is sham marriage conduct, or where the person has assisted, or attempted to assist, another person in the fraudulent acquisition of leave

If a stage 1 decision has been served on file, and the person remains out of contact with the Home Office, you must proceed with serving a stage 2 decision, which must also be served on file. If the foreign national takes the opportunity to raise issues which they consider means that they should not be deported these must be considered fully, and the stage 2 letter must set out any reasons for refusal. The burden of proof is on the individual to show why the impact of deportation would breach the Refugee Convention or their human rights. The person must therefore provide evidence of the impact of deportation.

For guidance on appeal rights see appeals and the appeals guidance.

Cases involving children

The Home Office has a duty to safeguard children and promote their welfare. 'Safeguarding children and promoting their welfare' can be defined as:

- protecting children from maltreatment
- preventing impairment of children's health or development
- making sure children are growing up in circumstances consistent with the provision of safe and effective care, and
- undertaking that role to allow those children to have optimum life chances to enter adulthood successfully

This does not override existing immigration enforcement functions. Consequently, the duty does not replace Foreign National Offender Returns Command (FNO RC's) duty to protect the public by deporting foreign nationals who commit serious criminal offences (nor Return Preparation's when considering sham marriage deportations under the European Economic Area (EEA) Regulations 2016). When you make the decision to deport a family unit containing a child or children under 18 and carrying out the management of that family's removal (including possible detention), you must take into account the need to safeguard and promote the welfare of children.

Although every family situation is different, there are some principles which can be applied to most deportation cases. Where you have a complex case, or when you feel a more in-depth consideration is required, you can seek further advice from senior caseworkers, who will firstly decide if contacting the Office of the Children's Champion (OCC) is appropriate.

There are 2 types of impact resulting from a decision:

- direct - includes the practical and emotional effects the decision may have on the child
- indirect - includes the effects of the decision on other family members, caregivers or the family's circumstances, which have onward effects on the child

The impact of a parent, relative or other carer's detention or deportation can affect a number of aspects of a child's life, this includes their:

- emotional development which results from feelings of sadness, anxiety or fear
- family's circumstances and care arrangements
- educational arrangements
- identity development, particularly when the departing parent is of a different ethnicity as the remaining parent

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Certification of protection and / or human rights claims

If the representations raise protection or human rights grounds and it is decided to refuse the claim or claims, you must consider whether the claim or claims should be certified under existing powers (section 96 and section 94 of the 2002 Act, in that order, or regulation 33 (pursuant to regulation 27A) of the EEA Regulations 2016, (as saved).

If the post-decision representations do not raise protection or human rights grounds, then there will be no right of appeal against the decision, unless the decision was on an EU Settlement Scheme (EUSS) application where protection or human rights grounds were not considered.

You must draft the decision on the human rights claim setting out the reasons for refusing the representations and explaining any appeal rights or decision to certify the claim or claims and obtain a deportation order.

For guidance on when to certify a claim see:

- Further submissions – section 96
- Certification under section 94 of the 2002 Act

If it is not possible to certify a protection or human rights claim under sections 96 or 94 or regulation 33 (pursuant to regulation 27A) then the person will have an in-country right of appeal.

If serving a decision on file, it may be appropriate to certify under either section 94 or section 96 of the 2002 Act, or regulation 33 (as pursuant to regulation 27A) of the EEA Regulations 2016, as saved.

Obtaining a deportation order

Depending on what legislation applies, a deportation order can be obtained at different stages in the deportation process.

Under the 2007 Act, a deportation order can be obtained following a stage 2 decision regardless of whether the person lodges an appeal following the service of the stage 2 decision. However, section 34(2) of the 2007 Act provides that ‘a deportation order

cannot be made under section 32(5) while an appeal or further appeal against the conviction or sentence by reference to which the order is to be made has been instituted and neither withdrawn nor determined or could be brought'.

Under the 1971 Act (in cases where automatic deportation does not apply), a deportation order can be obtained following the stage 2 decision where no representations have been made and there is no appeal right, or where the decision has been certified under section 96 or section 94 of the 2002 Act, regulation 33 (as pursuant to regulation 27A) of the EEA Regulations 2016 (as saved); or where a fresh claim has been rejected under paragraph 353 of the Immigration Rules. If an in-country appeal right has been given, you must only obtain a deportation order once the person has exhausted their in-country appeal rights.

If, despite being offered an in-country right of appeal, the person does not lodge an appeal within the 14-calendar day-time limit, a deportation order must be obtained if it has not already been obtained.

Service of the decision

You must send the stage 2 deportation decision, with the deportation order (if this was obtained), to the person by email or post. If the person is detained in prison or in an immigration removal centre, you must also send a confirmation of conveyance.

The documents must also be sent to the person's legal representatives and a copy placed on file.

If a person's whereabouts are unknown and they do not have legal representatives, you must serve the decision to file.

When a deportation order comes into force

In the case of deportation orders made in accordance with the 2007 Act these come into force when any in-country appeal rights are exhausted.

In the case of deportation orders made under the 1971 Act, these come into force when they are made. A deportation order made solely under the 1971 Act may at any time be revoked by a further order of the Secretary of State.

It is possible under both sets of legislation to remake a deportation order if there has been an error, or if the Home Office later becomes aware that an exception to deportation is met after the deportation order has been made.

The effect of a deportation order

A deportation order requires a person to leave the UK and prevents them from lawfully entering the UK whilst it remains in force. Section 5(1) of the 1971 Act provides that any leave to enter or remain in the UK (including indefinite leave) granted before the order is made is invalidated and that any subsequent grant of

leave will be invalid. Any leave granted in error to a person who is subject to a deportation order is also invalid.

Deportation orders made in accordance with the 2007 Act do not invalidate any leave to enter or remain that the subject of the deportation order has for as long as the person cannot be removed on account of the pending appeal (see sections 78 and 79 of the 2002 Act and see section 104 of the 2002 Act for the definition of "pending").

A deportation order remains in force until it is revoked by the Secretary of State. In the case of persons deported as the family member of a person deported under section 3(5)(b) of the Immigration Act 1971, the order ends when the family member turns 18 years of age if they were deported as a child, or when the marriage or civil partnership is terminated if they were deported as the spouse or partner.

Disclaimer received

If, after making representations, the person decides they wish to leave the United Kingdom voluntarily, you must obtain a signed disclaimer withdrawing any outstanding submissions or appeal. On receipt of the disclaimer, you must:

- enter a note on Atlas stating that a disclaimer has been received
- minute the file – disclaimer received
- obtain a deportation order (if this has not previously been obtained)

Related content
Contents

Serving deportation decisions on file

This section explains the different circumstances under which immigration decisions can be served on file in accordance with the Immigration (Notices) Regulations 2003.

Regulation 7(2) of the Immigration (Notices) Regulations 2003 gives decision makers the power to serve a notice of a decision on file if a person's whereabouts are unknown and no representatives appear to be acting for the person because:

- no address has been provided for correspondence and you do not know either the:
  - last known or usual place of abode
  - place of business of the person
- the address provided is defective, false or the person no longer uses it and the person's whereabouts cannot be traced through a current or previous representative

You must continue to mirror the requirements of regulation 7(2) of the Immigration (Notices) Regulations 2003 when notifying individuals of certain non-appealable decisions notwithstanding that section 82 appealable decisions were changed by the provisions of the Immigration Act 2014.

If a stage 1 notice has been served on file, and the person remains out of contact with the Home Office, you must proceed with considering whether to make a stage 2 decision. If a decision is made to serve a stage 2 decision, this must be served on file.

For the purposes of serving decisions on file, the term 'deportation decision' includes the following immigration decisions:

- decision to deport a person under:
  - section 32(5) of the 2007 Act
  - section 3(5) or 3(6) of the 1971 Act
  - regulation 23(6)(b) (pursuant to regulation 27A of the EEA Regulations 2016, as saved
- decision to refuse a protection and/or human rights claim
- revocation of protection status
- the making of a deportation order under the 1971 Act, the 2007 Act or regulation 23(6)(b) (pursuant to regulation 27A)
- notice of decision to refuse to revoke a deportation order
- notice of decision to refuse further submissions after application of paragraph 353 of the Immigration Rules (either rejection under this provision, or acceptance as a fresh claim that is being refused)

Checks

You must not serve a deportation decision on file unless all reasonable attempts to trace the person and service to the last known address has failed.

These attempts might include:

- writing to the person's last known address at least twice
- telephoning their last contact number at least twice
- contacting their previous representative for a current address

The above is a recommendation, and what is considered 'all reasonable attempts' will depend on the circumstances of the case. You must ensure these attempts are properly documented on Atlas and the Home Office file.

If a foreign national offender does not inform the Home Office of a change of address, or if they abscond from immigration bail, a notice confirming any of the decisions listed above under 'Types of deportation decision' may be served on file.

Validity

The relevant decision notices will be deemed to have been given when:

- a note is entered onto Atlas
- a note is entered onto the Home Office file
- the notices are signed

Certification for non-suspensive appeal rights

Where a decision is being served to file, you must not certify the case under section 94B of the 2002 Act, so as not to generate a non-suspensive right of appeal. However, you may certify a decision you are serving on file under either section 94 or section 96 of the 2002 Act, or regulation 33 (as pursuant to regulation 27A) of the EEA Regulations 2016 (as saved), if appropriate. For more information on these types of certification, see section 94 certification and section 96 certification.

Serving on file process

There is no change to how you consider or make a decision to deport in the case of a decision served on file.

When you have conducted sufficient checks to try and establish the person's whereabouts and these have failed to locate them, you must obtain the agreement of the local team leader or senior caseworker for your initial and subsequent stage deportation proposals (deportation orders must be signed at grade 7 level) to be served on file.

Following team leader or senior caseworker agreement (and in the case of deportation orders, grade 7 level sign-off), you must:

- generate all relevant decision notices and ensure those requiring signature are signed

- complete an ICD.4188 ‘Served on File’ minute sheet, which is available on Atlas, and place the minute sheet on the Home Office file
- update the ‘Key Document Tracking’ screen on Altas to note the notice of a relevant deportation-related decision or that the deportation order is ‘Served’ and that the ‘Despatch Method’ states ‘Served on file’
- add an explanation note on Atlas to explain why the decision has been served on file and authorised (this should be mirrored by a minute for the Home Office file)
- treat the individual as an absconder (for more information on this in foreign national offender cases, see Non-detained, contact management and absconders: Absconder actions)

Official – sensitive: start of section

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

Official – sensitive: end of section

Subject is located process

Once a person subject to a deportation decision or deportation order that has been served on file is located, you must:

- revisit the original decision to serve on file carefully to see if it was correctly served at the time under Regulation 7 of the Immigration (Notices) Regulations 2003
- complete a signed and dated minute on both the Home Office file and Atlas, highlighting the details of all attempts made to contact the subject
- give the person a copy of the notice or decision explaining when and why it was served on file, and the time it came into effect
- take all other routine action following the tracing of an absconder

Official – sensitive: start of section

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

Official – sensitive: end of section

Out-of-time appeals

Where the Immigration and Asylum Chamber (IAC) accepts an out-of-time appeal from a person against a decision that was originally served on file, you must consider whether it is appropriate to certify under either section 94 or section 96 of the 2002 Act, or regulation 33 (pursuant to regulation 27A) of the EEA Regulations 2016 (as saved).

Pre-1 April 2003 decisions served on file

Any decision that was served on file before 1 April 2003, when the Immigration (Notices) Regulations 2003 took effect, is invalid. Decisions before that time were subject to the Immigration and Asylum Appeals (Procedure) Rules 2000, and these Rules dictated that decisions took effect when the subject received the notice. If that notice was not received, any onward appeal rights cannot be considered to have been exhausted. The IAC will require a very persuasive case to justify preventing any appeal lodged against such a decision from proceeding.

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Post-deportation order representations

Any representations received after the deportation order has been made and before the person has been removed from the UK must be considered and treated as an application to revoke the deportation order.

Any delay in submitting representations will weigh against the person revoking the order unless they are able to provide a reasonable explanation for the delay. A reasonable explanation might be a very recent change in the circumstances in the person's home country which has rendered the person a "refugee sur place".

If it is decided to refuse the post-deportation order representations, then you must make clear in the refusal decision letter any appeal rights and certification that applies. See the section on Certification of Protection and Human Rights Claims and the Rights of appeal guidance for further information.

If it is decided on the basis of the post-deportation order representations that deportation should not be pursued, you must seek SCS PB1 level authority to revoke the deportation order. Revocation of the deportation order can only be completed by an SEO (or above).

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Appeals

Information on appeals can be found in the Rights of appeal guidance.

If, despite being offered an in-country right of appeal, the person does not lodge an appeal within the 14-calendar day-time limit, a deportation order must be obtained if it has not already been obtained.

Section 82 decisions

Following changes brought in by the Immigration Act 2014, appealable decisions under section 82(1) of the 2002 Act are where a decision has been made to:

- refuse a protection claim
- refuse a human rights claim
- revoke protection status

A protection claim is a claim that removing the claimant from the UK would breach our obligations:

- under the Refugee Convention
- in relation to persons eligible for humanitarian protection (Articles 2 and 3 European Convention on Human Rights (ECHR))

A protection claim includes asylum claims and claims from those who may fall outside the Refugee Convention but believe they qualify for humanitarian protection because, if removed from the UK, they would be at risk of serious harm as defined in paragraph 339C of the Immigration Rules.

For the purposes of Part 5 of the 2002 Act (appeals in respect of protection and human rights claims), a human rights claim is defined as a claim made by a person that to remove them from or require them to leave the UK or to refuse him entry into the UK would be unlawful under section 6 of the Human Rights Act 1998.

Under section 84(2) of the 2002 Act, an appeal against the refusal of a human rights claim must be brought on the ground that the decision is unlawful under section 6 of the Human Rights Act 1998. Where it is found that the claimant's rights under Article 8(1) of the ECHR are engaged, the Tribunal will go on to consider whether any interference occasioned by the decision under challenge would be "in accordance with the law" for the purposes of Article 8(2). That is the point at which the lawfulness of the decision in a wider sense may now be relevant.

A person who has acquired refugee status cannot be returned to his country unless this status has been revoked and where Article 33(2) of the Refugee Convention has been applied. A person who has humanitarian protection cannot be removed to their country, unless they have their status revoked, as doing so would breach their rights under Articles 2 and 3 of the ECHR.

Where an appealable decision is certified as having been taken in the interests of national security under Schedule 1 of the Immigration (Citizens' Rights Appeal) (EU Exit) Regulations 2020, regulation 15 provides that the appeal to the Special Immigration Appeals Commission (SIAC) cannot be brought from within the UK unless the individual in question brings a human rights claim from within the UK and that claim is not certified under regulation 15(4). Where an appeal can only be brought from out of country in accordance with regulation 15, the appeal is non-suspensive of removal.

More information on appeals to the SIAC can be found in the Rights of appeal guidance.

EUSS / EUSS Family Permit cases

If the person has EU Settlement Scheme (EUSS) leave or leave to enter having arrived in the UK with a valid EUSS Family Permit, they will also have a right of appeal against a deportation decision made under section 5(1) of the 1971 Act on or after 11pm GMT on the 31 January 2020, as per The Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020.

Certification of EUSS/EUSS Family Permit cases

If the person has EUSS leave or leave to enter having arrived in the UK with a valid EUSS Family Permit, the case can be certified under regulation 16(3) of The Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 where:

- a decision has been made to make a deportation order under section 5(1) of the 1971 Act (which includes deportation decisions under sections 3(5) and 3(6), including automatic deportation, of the 1971 Act, and deportation by virtue of the European Economic Area (EEA) Regulations 2016)
- the test at regulation 16(3) and (4) is met

The test at regulation 16(3) is that the removal of a person would not be unlawful under section 6 of the Human Rights Act 1998 despite the appeals process in relation to the appealable decision not having been begun or exhausted.

Regulation 16(4) provides further that the grounds upon which a decision may be certified. This includes (in particular) that the person would not, before the appeal is finally determined, face a real risk of serious irreversible harm if removed to the country or territory to which it is proposed they are to be removed.

It does not matter whether or not the deportation decision is the relevant appealable decision (such as a decision to refuse a human rights or protection claim) – any appealable decision under the regulations can be certified if, separately, a deportation decision has been made or the individual in question is subject to an extant deportation order.

Where an appeal is certified under regulation 16(3) the appeal does not suspend removal. However, a person whose appeal is certified must be given one month from when they are notified of the decision before they are removed except:

- in a duly substantiated case of urgency
- where they are detained pursuant to the sentence or order off any court or
- where they have entered the United Kingdom and are removable as an illegal entrant under Schedule 2 to the 1971 Act

Where an applicant applies to the appropriate Court or Tribunal for an interim order to suspend removal the exceptions above cease to apply, and the person may not be removed until a decision has been taken on their application unless:

- the decision to remove them is based on a previous judicial decision
- they have had previous access to judicial review
- the decision to remove them is based on imperative grounds of public security

Checking if an appeal has been lodged or whether appeal rights are exhausted

In every case with an in-country or out-of-country right of appeal, all documents including the PF1 (form for an appeal lodged against an in-country decision) must be prepared once a decision to deport is served, in preparation for an appeal being lodged. It is your responsibility to monitor whether an appeal has been lodged and to ensure that the file is prepared and ready to send to the Appeals Processing Centre by the target date.

Appeal review

Where an in-country right of appeal exists, you must create a calendar reminder Event so that the case can be monitored for potential appeals and their progression through the appeals system monitored.

When an appeal is lodged, a copy file must be created by the team administrative support and kept and maintained by the casework team. The main file must be forwarded to the Appeals Processing Centre. Any vital documents must be copied onto the copy file before the file leaves the casework team.

Appeal allowed (all appeals)

If an appeal is allowed, you must check whether the Home Office Specialist Appeals Team (SAT) intend to challenge the decision. If there is no further challenge by the Home Office or if any Home Office challenge is unsuccessful, the case will be referred back to Foreign National Offender Returns Command (FNO RC).

If necessary, the person should then be granted leave to remain and may need to be brought back to the UK.

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Where deportation is not possible

This section tells you what to do if you believe deportation is not possible.

If there are grounds to believe that deportation cannot or should not be pursued, then the case must be escalated through the management chain in accordance with the current levels of authority instruction before the final decision is made. For example, deportation may not be pursued in cases where it would breach the foreign national's Article 3 or Article 8 European Convention on Human Rights (ECHR) rights; if the person is considered stateless, or if the person is exempt from deportation under sections 7 or 8 of the 1971 Act. For more information, see the relevant sections earlier in this guidance.

If, after reviewing the evidence and obtaining the appropriate authority, it is decided that deportation cannot or should not be pursued, you must update Atlas to indicate the reasons for the decision. If necessary, the person must be granted leave to remain.

If deportation is not possible, a foreign national is still liable to be deported should their circumstances change significantly. An allowed appeal and subsequent grant of leave does not render a person no longer liable to deportation, and the case should be reviewed (through subsequent leave applications) so that any potential changes in circumstances can be considered. For example, a foreign national who was not deported due to Article 8 considerations may subsequently separate from their partner and lose contact with their children. In these circumstances, a new stage 1 could be served for the same conduct for which deportation was previously considered, as the reason that they could not previously be deported is now no longer engaged. This was established in caselaw in the judgment of MA (Pakistan) v Secretary of State for the Home Department [2019] EWCA Civ 1252 (18 July 2019). In order for a second deportation decision for the same conduct to fit the context of MA (Pakistan), the stage 1 decision should be authorised by an SEO senior caseworker.

Revocation of ILR

If you cannot pursue deportation action against a person because there is a legal barrier preventing removal for example where removal would breach human rights, consideration must be given to revoking any indefinite leave. For further guidance see Revocation of Indefinite Leave.

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