Managing the risk presented by Offenders who may be removed from the country or deported
Public Protection Manual
Foreign Nationals

1. PURPOSE

This chapter of the Public Protection Manual provides guidance for Governors, Directors of contracted out prisons and Prison Service areas on their obligations to manage the risk presented by offenders who may be removed from the country or deported by the Immigration Service.

NB - It is important to note that not all offenders who are scheduled to be removed or deported will leave the country, it must also be noted that prisoners scheduled to be removed from the country have the right to appeal and consequently it is possible that some may be released into the country where public protection procedures are in place; it is possible that some offenders will be released from UKBA (United Kingdom Border Agency) custody into the community which public protection measures have been taken into account and put in place before an offender is released from their custody.

This guidance describes the safeguards that must be put in place to protect the public. For other guidance on managing this group of offenders, please refer to (PSO 4630 Immigration and Foreign Nationals in Prisons)

Furthermore, (PSO 6000 Parole Release and Recall) and PSI 28/2006 contain specific guidance on the release arrangements for determinate sentence prisoners who are liable to deportation. The amendments to the Public Protection Manual, as set out in this document, do not alter in anyway the arrangements set out in PSO 6000 and PSI 28/2006.

1.2 OUTCOME

Governors, Directors of contracted prisons and Area Managers/Director of Management Services (DOMs) must ensure that processes are in place that provides effective sharing of all information relevant to an offender’s risk, with the Immigration Service and NOMS Offender Managers.

2. MANAGING THE RISK FROM BEGINNING TO END

The National Offender Management Model supports the beginning to end management of an offender’s risk throughout both the custodial and community elements of the sentence. The key-worker who will be responsible for managing the offender’s risk throughout the sentence will be the Offender Manager who will most often be based in the community. The Offender Supervisor will act as the first point of contact with the offender in custody and will provide support to the Offender Manager role.

Where the Immigration Service has identified an offender as someone who should be removed from the country or deported at the end of the custodial element of the sentence, the offender will be transferred from prison into UKBA accommodation. The Offender Manager will continue to supervise the offender’s risk up to the point of departure from the country or up to the points at which supervision would normally end.

Due to the fact that some offenders who have completed their custodial sentence may be released under UKBA regulations into the community, either pending their appeal or on winning their appeal to stay in the country, it is necessary to prepare release arrangements as a safeguard. The Offender Manager will be responsible for managing the risk and will be supported by prison based Interdepartmental Risk Management Teams (IRMT) and Offender Management Units (OMU).
3. ALLOCATION AND CATEGORISATION OF THOSE DETAINED UNDER THE IMMIGRATION ACTS

Population Management Section liaises with the Immigration Service population managers (DEPMU) to determine the most appropriate location for the detainee to be held after expiry of a custodial sentence, should immediate removal not be possible. A protocol is in place between NOMS and UKBA which sets out the criteria for allocation.

In general terms, Immigration Detainees will only normally be held in prison accommodation in the following circumstances:

- National Security – where there is specific (verified) information that a person is a member of a terrorist group or has been engaged in terrorist activities.
- Criminality – those detainees who have been involved in the importation of Class A drugs, committed serious offences involving violence, or committed a serious sexual offence requiring registration on the sex offenders’ register.
- Security – where the detainee has escaped prison or immigration custody, or planned or assisted others to do so.
- Control – engagement in serious disorder, arson, violence or damage, or planning or assisting others to so engage.

The above criteria are an initial guide to indicate the suitability of detainees for the IRC estate. It must be recognised that the behaviour of ex-FNP detainees will be the key factor as some who would be excluded by the above criteria may be sufficiently well behaved to merit transfer.

It must be assumed that regardless of the guidelines any ex-prisoner who had been deemed suitable as a Cat. D will be acceptable for the IRC estate.

When a detainee meets the above criteria they should be referred to PMS who will consider their allocation to a prison.

3.1 SOME OFFENDERS WILL REMAIN IN PRISON CUSTODY

Under the protocol agreed by UKBA and NOMS, certain groups of offenders are considered unsuitable for transfer from prison to Immigration detention. When the offender comes to the end of their custodial element of the sentence they will remain in prison accommodation until their removal from the country.

In cases where the offender is going to remain in prison custody, UKBA will provide a warrant for detention in the form of an ‘I.S. 91’ four weeks before the end of the custodial period. As far as life sentence prisoners and those offenders sentenced to Imprisonment for Public Protection are concerned, they will continue to serve their indeterminate sentence in custody, following a release direction by the Parole Board, until such time as removal takes place – in effect, the removal date and the release date are one and the same. This means that it should not be necessary for UKBA to provide a warrant for detention in the form of an I.S. 91 for those offenders serving an indeterminate sentence. Staff in Lifer Review and Recall Section NOMS should be contacted in any cases of doubt.

Exceptionally, where a former prisoner, held in Immigration detention, is assessed as unsuitable for continued detention (e.g. due to reasons of severe disruption, violence or threats to security), UKBA will refer the individual to Population Management Unit for consideration of a location within a prison establishment. Individuals accepted into prison accommodation under this protocol will be subject to monthly review and will be returned to Immigration detention upon agreement that the risk has reduced.
Where offenders continue to be accommodated in prison custody and are held on an Immigration Service detention warrant (I.S.91) the prisoner should be kept informed of how their case is progressing and be provided with contact details of the person dealing with the case in UKBA.

3.2 MAPPA SUPERVISION

Most offenders who fall under MAPPA will be managed at Level 1 Ordinary Agency Management and will only require supervision by generally one agency Police or Probation and will normally be suitable for UKBA accommodation after the completion of the custodial element of their sentence. Where this is the case, the Offender Manager will continue to manage the offender’s risk until removal from the country or until the period of supervision has ended. The prison where the offender is held will ensure all risk management information and contact details for the Offender Manager are available to UKBA.

Where agents of the Immigration Service (Enforcement Teams) arrest an individual in the community under Immigration legislation and that person is still being managed at MAPPA Level 2 or 3, it will be for the Immigration Service to negotiate with the Population Management Unit to accommodate them in prison custody. Where this is agreed the authorisation to hold the individual will be form I.S.91. (Each police/probation area has an identified MAPPA Lead/Co-ordinator who will be able to confirm if the detainee is subject to MAPPA Level 2 or 3.)

4. UKBA APPEALS AND BAIL APPLICATIONS

Where an individual is appealing against a decision to remove them from the country or an asylum/immigration refusal decision the Asylum Immigration Tribunal (AIT) will deal with the application. The Tribunal has the authority to release the individual into the community.

In addition, immigration detainees may apply to an Immigration Judge to be released on bail pending the outcome of their application or appeal. Where information exists to indicate the offender presents a risk to the community this information should be made available to the Tribunal hearing, the appeal, or to the Immigration Judge considering the bail application. It is the Presenting Officer who will put any information regarding risk to the judge.

It is therefore essential that UKBA inform the prison where the offender is being held, and when the case is to be heard including the details of the Presenting Officer. The Offender Manager must be given the opportunity to provide the Tribunal or Immigration Judge with risk management information and recommendations regarding the offender’s risk to the community. All necessary precautions should be put in place to prevent the offender from being released into the community without appropriate safeguards.

4.1 CONSIDERATIONS FOR TEMPORARY RELEASE AND OPEN CONDITIONS

Where offenders have been identified as likely to be deported or removed from the country and subsequently apply for release on temporary licence or are considered for open conditions, assessments must take into account the offender’s risk to the public and his/her desire not to be removed from the country. In all cases the UKBA Casework Team in Croydon must be contacted for their contribution. (Contact details are available from PSO 4630.)

4.2 REDUCTION OF RISK

Offenders who remain in prison after the custodial element of their sentence because of their high level of risk will continue to be assessed. Where there is evidence to indicate that their risk has reduced or where a decision has been taken to reduce the level of management required from MAPPA Level 2 or 3 to Level 1, the offender will be deemed suitable for UKBA accommodation.
4.3 NOTIFICATION TO UKBA OF PENDING RELEASE DATE

Prison establishments must notify UKBA Criminal Casework Directorate (CCD) and Population Management Section of all prisoners who are due to be removed or deported twenty weeks before the end of the custodial element of their sentence. In return UKBA will provide authority to continue to detain those who remain in prison through the I.S. 91 form four weeks before release.

5. FOREIGN NATIONAL PRISONERS: CHANGES IN LAW AND UKBA POLICY FROM 1 AUGUST 2008

- **Automatic Deportation** for some non-EEA nationals under the UK Borders Act 2007
- **A change to prison warrants** relating to any foreign national prisoner who qualifies for deportation
- **Drug offenders** (non-EEA nationals) – change unrelated to UK Border Act.

5.1 AUTOMATIC DEPORTATION

Under present arrangements non-EEA nationals sentenced to 12 months or more are considered for deportation by the UK Borders Agency if the Court has not already recommended deportation. Prisoners are deported if their presence in the UK is judged not to be ‘conducive to the public good’.

5.2 UK BORDERS ACT

Under the UK Borders Act 2007 which comes into effect on the 1 August 2008, the Home Secretary is **required** to make a deportation order against all non-EEA prisoners sentenced to 12 months or more (with certain exceptions). This change will affect prisoners sentenced on/after 1 August and those convicted and sentenced to 12 months or more before 1 August who have yet to receive an ICD 350 ‘liability for deportation’ notice from the UK Border Agency. Prisoners should be made aware of this situation (see Annex A ) Q and A document drawn up for prisoners by the Criminality Policy Team of the UKBA, which will assist members of staff in answering any prisoners’ questions.

5.3 COURT WARRANTS

There will be a change to prison warrants for foreign nationals. Where a person qualifies for deportation it will be noted on the warrant that they must be referred to the UK Border Agency. However where it is not noted that a person needs to referred, Foreign National Co-ordinators should nevertheless check to see if the person does qualify for deportation according to existing guidance. This is particularly important when it becomes apparent during the prison sentence that a person is not a UK national.

5.4 DRUG OFFENDERS

From 1 August UKBA will now seek to deport all non EEA nationals who receive a custodial sentence of any length for an offence connected with the supply of a controlled drug. Prison staff will therefore need to ensure that any Foreign National Prisoner who is in custody for any drug offence is referred to CCD as per the normal process. UKBA will then assess the individual’s nationality and details of the drug offence. This change is unrelated to the UK Borders Act change mentioned above.
Annex A

Foreign National Prisoners and Automatic Deportation and Drug Offences

1 What is automatic deportation?

From 1 August 2008, the UK Borders Act will mean that the Home Secretary must make a deportation order against you if you have been sentenced to prison for at least 12 months.

2 Who will this apply to?

This will apply to everyone who is not a British Citizen unless:

- Removal would breach your rights under the European Convention on Human Rights or the Refugee Convention;
- You were under the age of 18 at the time of conviction;
- You are an EEA national or close family member of an EEA national;
- You are subject to certain mental health legislation;
- You are subject to extradition proceedings or
- Removal would contravene the United Kingdom’s obligations under the Council of Europe Convention on Action against Trafficking in Human Beings (recognised victims of Trafficking) – yet to be commenced

If automatic deportation does not apply to you, you may still be deported under the existing law.

3 How can automatic deportation be appealed against?

Unless you have an arguable asylum or human rights claim, you will only be allowed to appeal from outside the UK.

4 Will my appeal be decided before I am deported?

Unless you have an arguable asylum or human rights claim you will not have your appeal heard before you are deported.

5 Can someone who has been deported return to the UK?

A person who has been deported can only apply for permission to return to the UK if the deportation order has been revoked. Applications to have the deportation order revoked will not usually be considered until 10 years have passed since removal. If your sentence is over 30 months, and will never become spent (under the Rehabilitation of Offenders Act 1974), you will not normally be allowed to return to the UK.
6. I am currently being considered for deportation, will this become automatic?

If you have already received your ‘notice of liability for deportation’ (form ICD350), your case will continue to be considered under the existing law.

7. I was sentenced before 1 August 2008, will my deportation be automatic?

If you have already received your notice of liability for deportation (ICD350), your case will continue to be considered under the existing law. If you have not received an ICD350 on 1 August 2008 and you have received a custodial sentence of at least 12 months you will be considered for automatic deportation.

8. Will I be deported for committing a drug offence?

From 1 August, if you are from outside the EEA and receive a custodial sentence for a drug offence (not including possession only), you may be liable for deportation. If your sentence is less than 12 months, you will still retain an in country right of appeal against this.

UK Border Agency, Criminality Policy Team
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