



Home Office

Appeals against conviction and sentence

Version 4.0

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About this guidance

This guidance explains what should happen when a foreign criminal appeals against conviction and/or sentence whilst the Home Office is taking deportation action.

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 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 you can email the Guidance, Rules and Forms team.

Clearance

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

- version 4.0
- published for Home Office staff on 18 December 2015

Official – sensitive: do not disclose: start of section

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

Official – sensitive: do not disclose: end of section

- approved on 31 July 2015

Changes from last version of this guidance

Text placed into new GRaFt guidance template.

Related content

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Related external links

Section 1: Introduction

This guidance sets out the policy for dealing with deportation cases where there is an appeal against a criminal conviction and/or sentence.

This guidance must be used in conjunction with the guidance on:

- EEA foreign national offender cases
- Deporting non-EEA foreign nationals

Related content

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Related external links

[Immigration Act 1971](#)

[UK Borders Act 2007](#)

Section 2: Deportation action alongside the live criminal appeal

This page tells caseworkers about the action they must take when they receive notification that an appeal against conviction and/or sentence is live.

Criminal appeal

Whilst a criminal appeal remains outstanding a foreign criminal cannot be removed from the jurisdiction of the relevant criminal appeal court. Their deportation must therefore be put on hold until the outcome of the criminal appeal is known.

Preparations for removal, such as re-documentation, can however continue during this time. For more information on the criminal appeal process, see [Section 3: Appealing a criminal conviction or sentence to the Court](#).

An application to either the Criminal Cases Review Commission (CCRC) or Scottish Criminal Cases Review Commission (SCCRC) has no effect on deportation as the foreign criminal is effectively seeking permission from the court to accept their appeal. For more information on the CCRC and SCCRC see [Section 4: Other avenues of criminal appeal](#).

For more information on the legislation referred to in this guidance, please refer to the following links: [Immigration Act 1971](#) and [UK Borders Act 2007](#). For more information on the process and on the deportation criteria see EEA foreign national offender cases and Deporting non-EEA foreign nationals.

Immigration Act 1971

There is nothing in the [Immigration Act 1971](#) to stop the deportation process from progressing or to prevent a deportation order being obtained under section 3(5) during the period in which an appeal against conviction or sentence could be brought (28 or 21 days after conviction and/or sentencing depending on the court). However, to prevent unnecessary work, it is good practice to defer signing the deportation order until the time limit has passed in case a criminal appeal is lodged with the court.

In cases where there is a live criminal appeal, you should continue to process the deportation case and, where appropriate, make a decision to deport. The decision letter should note that the Home Office is aware that a criminal appeal is in train and that, subject to the outcome of any appeal against the immigration decision to remove from the UK, a deportation order will not be signed until the outcome of the criminal appeal is known.

Where the deportation order has already been signed because immigration appeal rights have been exhausted (because, for example, the criminal appeal was lodged out of time) the foreign criminal should be informed that the Home Office is aware of the criminal appeal and that enforcement action to remove will be deferred pending

the outcome of that appeal. If the criminal appeal is unsuccessful, removal action should then be instigated. There is no need to re-make the deportation order.

UK Borders Act 2007

Although [section 35\(5\)](#) of the UK Borders Act 2007 places a duty on the Secretary of State to deport a foreign criminal, [section 34\(2\)](#) of the Act states that a deportation order may not be made whilst an appeal against a criminal conviction or sentence has been instituted or could be brought in time.

An exception to this is where section 34(3)(b) applies, where the foreign criminal has informed the Secretary of State in writing that they do not intend to lodge a criminal appeal. In such cases the foreign criminal is treated as if they were no longer able to appeal their sentence and/or conviction and a deportation order can be made. If the foreign criminal does subsequently appeal (in or out of time) that does not invalidate the deportation order but removal action should be deferred pending the outcome of the criminal appeal.

Review of sentence by the Attorney General

A referral to the Court of Appeal brought by the Attorney General under [section 36](#) of the Criminal Justice Act 1988 against an unduly lenient sentence should not be treated as an appeal against sentence under [section 34](#) of the UK Borders Act 2007, because section 34 relates to appeals made by the foreign criminal. However, in cases where the Attorney General is considering whether to refer a case or has referred a case to the Court of Appeal, removal action should not be taken until the appeal is concluded as the foreign criminal has the right to be present at the hearings. Where the sentence is increased by the Court of Appeal, the foreign criminal will have between 14 and 28 days to appeal to the Supreme Court on a point of law and removal should not be enforced until that further appeal is concluded.

Human rights and/or protection appeals with the Immigration and Asylum Chamber (IAC)

If an appeal under [section 82 of the Nationality, Immigration and Asylum Act 2002](#) is lodged by a foreign criminal for one or more of the following reasons:

- breach of Refugee Convention
- humanitarian protection issues
- contrary to section 6 of the Human Rights Act 1998 (public authority not to act contrary to the Human Rights Convention)

the appeal should where possible be adjourned, subject to tribunal direction, until the outcome of the criminal appeal is known. Most adjournments are only allowed for 28 days. If the adjournment request is rejected, the section 82 appeal should continue on the merits of the case as it stands. The deportation decision **should not** be

withdrawn on the grounds that there is a live criminal appeal against conviction and/or sentence that is yet to be determined.

Staff are responsible for keeping the IAC updated on the progress of the criminal appeal at all times.

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Section 3: Appealing a criminal conviction or sentence to the Court

This page tells caseworkers about the legal mechanism, grounds and time limits for appealing criminal convictions and sentences in the UK.

A criminal appeal can be lodged against any conviction and/or sentence handed down by the following:

- a Magistrates' Court ([England, Wales](#) and [Northern Ireland](#))
- a Crown court ([England, Wales](#) and [Northern Ireland](#))
- a [Justice of the Peace Court](#) (Scotland)
- a [Sheriff Court](#) (Scotland)
- the [High Court](#) (Scotland)

In all cases, once a criminal appeal is lodged with the relevant court a foreign criminal cannot be deported from the UK until the criminal appeal is concluded.

Criminal appeals criteria

A criminal appeal may be brought against one of the following:

- a conviction and sentence
- a specific conviction and/or sentence where convicted of more than one offence (multiple indictments)
- a sentence only
- a recommendation for deportation from a court (under section 3(6) of the Immigration Act 1971)

If the Court of Appeal considers that an appeal has been brought without good reason it has the power to impose a range of penalties, these include ordering time already spent in custody (after putting in notice of application for leave to appeal) not to be counted as time served under the sentence – in such a case, the National Offender Management Service (NOMS) would be responsible for re-calculating the sentence.

Time limits

Appeals against a conviction and/or sentence should be made within 28 days (or 21 days for Magistrates' Courts cases) from the date of conviction and/or sentencing.

Appeals can still be brought after the relevant time limit, but leave to appeal out of time must be obtained. Substantial grounds must be given for the delay before the court will exercise its power to extend the time allowed, for example where the subject was not physically able to bring an appeal (for example, they were sectioned

under the Mental Health Act) or where new evidence has come to light. Cases can also be referred out of time after an investigation by the Criminal Cases Review Commission (CCRC) or Scottish Criminal Cases Review Commission (SCCRC). For more information on the CCRC and SCCRC out of time criminal appeals see [Section 4: Other avenues of criminal appeal](#).

Courts of appeal

England, Wales and Northern Ireland

The criminal appeal is heard at either the:

- Crown Court (for those convicted and sentenced at a Magistrates' Court)
- Court of Appeal (conviction on indictment and sentenced at a Crown court)

The Court of Appeal (sitting at the Royal Courts of Justice London in relation to English and Welsh convictions and at the [Royal Courts of Justice Belfast](#) in relation to Northern Irish convictions) also hears appeals in cases referred to it by the CCRC.

The [Supreme Court](#) is the final court of appeal for the UK in most areas of law, but in criminal cases it only considers appeals from England, Wales and Northern Ireland. Appeals to the court in criminal proceedings are subject to special restrictions limiting such appeals to exceptional cases involving a point of law of general public importance.

For more details on the courts of appeal see [Section 7: Contact details](#).

Scotland

Criminal appeals are heard at [The High Court of Justiciary](#).

The High Court also hears appeals referred to it by the Scottish Criminal Cases Review Commission.

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Section 4: Other avenues of criminal appeal

This page tells caseworkers about other ways in which criminal appeals can be lodged.

This includes the Criminal Cases Review Commission (CCRC), the Scottish Criminal Cases Review Commission (SCCRC) and referrals to the Court of Appeal by the Attorney General.

Criminal Cases Review Commission (CCRC) and Scottish Criminal Cases Review Commission (SCCRC)

The commissions were set up to investigate suspected miscarriages of justice – usually in cases where appeals through the court system have failed to overturn a conviction. If the Commission decides that there are grounds on which a case can be referred, the case will be sent back to either the Court of Appeal (England, Wales and Northern Ireland) or High Court (Scotland).

England, Wales and Northern Ireland

Once the CCRC makes a referral to the Court of Appeal the appeal will go direct to a full hearing.

The criminal appeal is considered to be live from the date that the CCRC makes the referral and deportation will not be possible whilst the appeal to the Court of Appeal or Supreme Court remains pending.

Scotland

Once the SCCRC makes a referral to the High Court, it is for the court to decide whether to proceed. The point at which the criminal appeal becomes live will depend on whether the foreign criminal's conviction was summary or solemn procedure trial.

In **summary convictions (non jury trial)**, the appeal is considered to be live from the date that the SCCRC makes the referral, as once it is received by the High Court a procedural hearing will take place to establish the terms of appeal and then the appeal will proceed to a full hearing.

If the conviction was **solemn (trial by a jury)**, the foreign criminal must lodge a note of appeal with the High Court, within 8 weeks of the date of the referral, setting out the grounds for their challenge to the conviction. Once lodged, the appeal is treated by the High Court as if leave to appeal has already been granted so the appeal should be considered live from that date.

Regardless which trial procedure (summary or solemn) resulted in the conviction, once the criminal appeal is live removal from the UK will not be possible while the appeal remains outstanding.

For further information see [SCCRC](#).

Attorney General referrals to the Court of Appeal

Where a sentence handed down by a court for a criminal offence appears to be very low or unduly lenient, anyone may ask the Attorney General to examine the case within 28 days of sentencing and the Attorney General may refer it to the Court of Appeal.

For further information see 'Consider unduly lenient (low) sentences' within [The Attorney General's Office](#).

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Section 5: Action after the criminal appeal

This page tells caseworkers how to deal with a foreign national offender (FNO) case after an appeal against a criminal conviction and/or sentence has been made.

Criminal appeal outcomes

Following the criminal appeal, the conviction (which may be only one of several) may be overturned and/or a sentence may be decreased, or in some cases, increased.

In every case, you must look again at the conviction and sentence to see whether the foreign criminal still meets the criteria for deportation. In some cases, the original decision may have to be either withdrawn or amended in the light of the criminal appeal.

Overtaken convictions

Where a conviction is overturned, you must not continue to consider the foreign criminal for deportation on the basis of the sentence imposed for the now overturned conviction. Any information held relating to the conviction must be corrected accordingly or removed.

For further information see [Annex A: Cases that met UK Borders Act 2007 criteria](#), and [Annex B: Cases that met the Immigration Act 1971 criteria](#).

Increases and decreases in sentence

Where the criminal appeal results in changes to the length of sentence, you must:

- consider whether deportation action is still appropriate either under the 2007 or the 1971 Acts, and amend the existing deportation decision where necessary
- obtain a new court certificate or confirmation from the court as to the new sentence: all data on HO files should be corrected to show the revised sentence
- check with the National Offender Management Service (NOMS) how the changes affect the calculation of the sentence

For further information see [Annex A: Cases that met UK Borders Act 2007 criteria](#), and [Annex B: Cases that met the Immigration Act 1971 criteria](#).

Re-trials

Following an upheld appeal a court may order a re-trial, a foreign criminal awaiting re-trial may not be removed from the jurisdiction of the court.

In a case where a re-trial is ordered, the foreign criminal will no longer be liable to deportation on the basis of the now-overturned conviction although they may still be liable to deportation if they have other convictions which meet the deportation criteria. However, deportation action cannot be enforced until the new trial has been concluded.

If the foreign criminal is re-convicted and deportation is pursued, the overturned conviction must not be referred to in the new deportation decision.

Where a re-trial is ordered, all information relating to the previous trial must be corrected accordingly or removed. If it is determined in the applicant's favour, the deportation decision will have to be reconsidered in the light of the court's findings.

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Section 6: Detention

This page tells caseworkers when they can detain a foreign national offender (FNO) where a criminal appeal is or could be brought.

Detention decision

Before making a decision to detain a foreign criminal who is awaiting the outcome of an application or appeal with the appeal court, decision makers must look at Chapter 55 of the Enforcement Instructions and Guidance (EIG). This is especially important where the criminal appeal is taking or has taken a particularly long time to resolve.

Overtured convictions

When a foreign criminal who has been the subject of deportation action based on a conviction, subsequently overturned by the appeal court, any previous detention would not automatically be unlawful. The decision to detain would have to have been made in line with statutory powers and the appropriate policy applied at the time. For further details see Chapter 55 of the EIG.

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Section 7: Contact details

This page provides caseworkers with details of relevant contacts when a criminal appeal is to be heard.

Courts of Appeal

Criminal appeals resulting from convictions and sentences at magistrates' courts are heard at the Crown court. Enquiries about these appeals must be addressed to the relevant Crown court. Court details are available via the web links:

England and Wales

For information see [Crown court contact details](#).

Northern Ireland

For information see [Crown court contact details](#).

Royal Courts of Justice, High Court and Supreme Court

England and Wales

For further information see [Royal Courts of Justice –Court of Appeal Criminal Division](#).

Northern Ireland

For further information see [Royal Courts of Justice \(Northern Ireland\) – Court of Appeal Criminal Division](#).

Scotland

For further information see [The High Court of Justiciary](#).

United Kingdom

For further information see The [Supreme Court](#).

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Annex A

Cases that met UK Borders Act 2007 criteria

Appeal Outcome	Question	Answer yes or no	Decision
Overtured conviction	Any other convictions?	Yes	Are the Auto Deport criteria still met? <ul style="list-style-type: none"> • yes – issue ‘Notification of variation of wording’
Overtured conviction	Any other convictions?	Yes	Are the Auto Deport criteria still met? <ul style="list-style-type: none"> • no - withdraw ‘Auto Deport’ decision and either: <ul style="list-style-type: none"> ○ consider deporting under the 1971 Act if criteria are met ○ send to Removals Command where applicable (for more information on the criteria see Referring non-criteria FNO cases to removals casework)
Overtured conviction	Any other convictions?	No	Withdraw ‘Auto Deport’ decision <ul style="list-style-type: none"> • send to Removals Command where applicable (for further information see above)
Overtured conviction If either: <ul style="list-style-type: none"> • specific charge overturned in multiple indictments • conviction replaced with a lesser charge 	Are the Auto Deport Criteria still met?	Yes	Issue ‘Notification of variation of wording’
Overtured	Are the Auto	No	Withdraw ‘Auto Deport’ decision

Appeal Outcome	Question	Answer yes or no	Decision
conviction If either:: <ul style="list-style-type: none"> • specific charge overturned in multiple indictments • conviction replaced with a lesser charge 	Deport Criteria still met?		and either: <ul style="list-style-type: none"> • consider deporting under the 1971 Act if the criteria are met. • send to Removals Command where applicable (for further on the criteria see Referring non-criteria FNO cases to removals casework)
Sentence reduced at appeal	Are the Auto Deport Criteria still met?	Yes	Issue 'Notification of variation of wording'
Sentence reduced at appeal	Are the Auto Deport Criteria still met?	No	Withdraw 'Auto Deport' decision and either: <ul style="list-style-type: none"> • consider deporting under the 1971 Act if the criteria is met • send to Removals Command where applicable (for further information on the criteria see Referring non-criteria FNO cases to removals casework)
Attorney General referral (sentence considered to be very low or unduly lenient)	Sentence increased?	Yes	Issue 'Notification of variation of wording'
Attorney General referral (sentence considered to be very low or unduly lenient)	Sentence increased?	No	Continue with Auto Deport process

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Annex B

Cases that met the Immigration Act 1971 criteria

Appeal outcome	Question	Answer - Yes or no	Decision
Overtured conviction	Any other convictions?	Yes	Is the 1971 Act deportation criteria still met? Yes – issue ‘Notification of variation of wording’
Overtured conviction	Any other convictions?	Yes	Is the 1971 Act deportation criteria still met? <ul style="list-style-type: none"> • no – withdraw the deportation decision <ul style="list-style-type: none"> ○ send to Removals Command where applicable (for more information on the criteria see Referring non-criteria FNO cases to removals casework)
Overtured conviction	Any other convictions?	No	Is the 1971 Act deportation criteria still met? <ul style="list-style-type: none"> ○ Send to Removals Command where applicable (for further information see link above)
Overtured conviction If either: <ul style="list-style-type: none"> • specific charge overturned in multiple indictments • conviction replaced with a lesser charge 	Are the deportation criteria still met?	Yes	Issue ‘Notification of variation of wording’
Appeal outcome	Question	Answer - Yes or no	Decision

<p>Overtured conviction</p> <p>If either:</p> <ul style="list-style-type: none"> • specific charge overturned in multiple indictments • conviction replaced with a lesser charge 	Are the deportation criteria still met?	No	<p>Withdraw the deportation decision:</p> <ul style="list-style-type: none"> • send to Removals Command where applicable (on the criteria see Referring non-criteria FNO cases to removals casework)
Sentence reduced at appeal	Are the deportation criteria still met?	Yes	Issue 'Notification of variation of wording'
Sentence reduced at appeal	Are the deportation criteria still met?	No	<p>Withdraw the deportation decision:</p> <ul style="list-style-type: none"> • send to Removals Command where applicable (on the criteria see Referring non-criteria FNO cases to removals casework)
Attorney General referral (sentence considered to be very low or unduly lenient)	Sentence increased?	Yes	Issue the 'Notification of variation of wording' – the deportation order should not be revoked just because a sentence increase brings it above the threshold as set out in section 32(2) of the UK Borders Act 2007
Attorney General referral (sentence considered to be very low or unduly lenient)	Sentence increased?	No	Continue with deportation process

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