



Home Office

Impending Prosecutions

Version 7.0

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About this guidance

This guidance explains impending prosecutions in the UK and how to determine whether they are a barrier to deporting foreign national offenders. An impending prosecution is when a person is awaiting the outcome of a prosecution for an offence brought against them by the police or [the Crown Prosecution Service \(CPS\)](#).

You must tell your operational assistant director about any case involving an impending prosecution and make sure all actions are recorded on CID.

Contacts

If you have any questions about the guidance or think that it 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 you can email Guidance – making changes.

Clearance and publication

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

- version 7.0
- published for Home Office staff on 20 June 2016

Changes from last version of this guidance

Content reviewed and updated to account for legislative changes relating to the deportation process which was fully introduced in October 2014, and transferred to the current guidance template.

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Finding out about an impending prosecution

This page tells criminal casework (CC) staff what to do if they get a positive result that indicates an impending prosecution when they check the Police National Computer (PNC).

You must check the PNC before any deportation or removal action is taken to see if the foreign national offender (FNO) has an impending prosecution. You cannot deport a FNO who has an impending prosecution without the consent of:

- your assistant director
- the police
- the Crown Prosecution Service (CPS)

If you receive a positive PNC check, you must contact the relevant police force for any further information. The Criminal Record Offence (CRO) number will help you find the name of the police station, but not the name of the appropriate police officer. If you are unsure of which police force to contact, you may contact the court as cited on the PNC check for this information.

Depending on the PNC's content you may have to contact the court to find out which police station and police officer is dealing with the impending prosecution.

You may only find out about an impending prosecution when a police officer contacts the Home Office.

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Action to take when an impending prosecution is confirmed

This page tells criminal casework (CC) staff when they may decide to suspend deportation action once they know about an impending prosecution.

You must consider each case on an individual basis, taking into account the:

- current stage deportation has reached
- previous conviction
- alleged offence

Once you have enough details on the impending prosecution from the Police National Computer (PNC) check or from the police directly, you must consider temporarily suspending deportation action pending the outcome of any court case. It will depend on the specifics of each case as to when any temporary suspension should begin, but in the majority of cases it will likely be most appropriate following the issue of the initial deportation ('stage 1') notice. This will engage the offender with the deportation process upfront and make them aware it is being actively considered.

You may then delay issuing a supplementary deportation ('stage 2') decision, and obtaining any deportation order, until you know the outcome of the impending prosecution. Once that is known, you may take the additional information into account and ensure it is considered appropriately in your supplementary decision letter.

In some cases, depending on the circumstances, you may consider that it is appropriate to progress the case beyond the stage 2 decision and obtain a deportation order, but not have it enforced until the prosecution outcome is known. This requires the agreement of your local assistant director and the CPS.

In certain cases, you may feel that the public interest overall would be better-served by enforcing the offender's deportation imminently, rather than awaiting the outcome of the impending prosecution. In such a case, you must set out your justification to your assistant director, and if they agree, contact the CPS to explain your argument, with a view to reaching an agreement on how to proceed. Circumstances where it might be considered preferable to deport ahead of the impending prosecution's resolution might include, but won't be limited to:

- where existing grounds for deportation are based on one or more convictions for serious offences or serious harm, and the offence pending consideration is of a minor nature
- where existing grounds for deportation are based on persistent and repetitive low-level offending, and the offence pending consideration is of a similarly-low-level nature

There will be cases where the public interest will lie in favour of deferring any deportation in order to allow the processes of justice to run their course. Circumstances where it might be considered preferable to defer deportation to await the resolution of the impending prosecution might include, but won't be limited to:

- where the grounds for deportation are finely-balanced on the basis of one or more convictions for minor offences, and the offence pending consideration is of a serious nature
- where, regardless of the strength of the existing grounds for deportation, the offence pending consideration is of a serious nature

When presenting a case to the CPS for proceeding with deportation notwithstanding the impending prosecution, you must secure their agreement before continuing. If you cannot reach agreement with the CPS to deport ahead of the resolution of a prosecution, you must abide by their decision and not seek to enforce a deportation order until the outcome is known.

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Related external links

[The Crown Prosecution Service](#)

Communication with the police

This page tells criminal casework (CC) staff how to keep in touch with the police if there is an impending prosecution and deportation action needs to be temporarily suspended.

You must take the following action in a case with an impending prosecution:

- keep in touch with the police station dealing with the case so you are up to date with the current situation, including any date set for a hearing in court - set yourself a reminder on CID about keeping contact with the relevant police station
- if the person is likely to receive a further sentence, consider asking the Crown Prosecution Service (CPS) if it could be a custodial sentence
- if the only barrier to deporting the foreign national offender (FNO) from the UK is the impending prosecution and it is not appropriate to detain the person under immigration powers, you must ask the police if the person has been remanded in custody on any further charges - for more information on immigration powers, see: 55 Detention and temporary release
- monitor any remand closely
- make sure the police are aware they must inform you if they or the court intend to grant bail - you must consider urgently whether detention, a restriction order or electronic monitoring is appropriate
- immediately notify the offender manager of the National Offender Management Service (NOMS) if bail is granted - you must:
 - telephone them with the result of the bail hearing on the same day - if this is not possible it must be no later than the day after the hearing
 - send notification of the outcome in writing by email or fax - this makes sure the offender manager can set up appropriate arrangements to supervise the release from detention (they must then set up appropriate arrangements for supervision after detention)
 - record the outcome of the bail hearing on CID
- notify the NOMS probation area's single point of contact (SPOC) in writing either by email or fax - for a list of current SPOCs, see: National Probation Service OMU SPOC list

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Detention and further offences committed after release

This page tells criminal casework (CC) staff what to do when a foreign national offender (FNO) is detained under immigration powers and has an impending prosecution.

If the FNO is detained you must make sure you carry out regular detention reviews until either:

- the outcome of the hearing
- all barriers to deportation except the impending prosecution have been resolved

For more information on detention reviews, see: 55 Detention and temporary release.

You must make sure detention is still lawful. Detention is appropriate if there is still a realistic prospect of removal within a reasonable timescale. For more information, see the link above.

If you consider detention is no longer lawful you must refer the case to the strategic director of Immigration Enforcement Crime and Intelligence, via your assistant director. For more details on this process, see: Criminal Casework Process Communication 5/2013. If release is authorised, it must be under a restriction order with appropriate reporting restrictions and/or electronic monitoring.

If a further offence is committed following release agreed by the Home Office or Immigration and Asylum Chamber (IAC), you must bring the case to the attention of an assistant director.

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The foreign national offender (FNO) receives a further custodial sentence

This page tells criminal casework (CC) staff what to do when the foreign national offender (FNO) receives a further custodial sentence.

You must consider the following in the light of the latest verdict:

- where the case is in the deportation process
- the length of the new sentence, severity of offence, etc
- any further valid representations made by the FNO

A deportation decision may not yet have been made. Although the provisions of the Immigration Act 2014 allow for the process to be initiated far sooner after initial sentencing, it could be that deportation was not previously pursued, but the additional conviction and sentence has made it appropriate to pursue. In these cases, you must take the additional conviction or convictions into account as usual in your consideration, alongside the earlier event or events.

If a stage 1 deportation decision has already been made, but a deportation order has yet to be signed or to take effect, you will need to review the case and issue a new stage 1 decision that takes full account of the new conviction or convictions accordingly.

For details on core deportation legislation, see: [Section 3 Immigration Act 1971](#) and [Section 32 UK Borders Act 2007](#). For information on general deportation consideration and procedure, compliant with the provisions of the Immigration Act 2014, see: [Deporting foreign nationals](#).

If the Immigration and Asylum Chamber (IAC) or any other judicial body has any outstanding action on the FNO's case, you must notify them of the additional conviction immediately so they are aware of the situation at any future appeal hearing.

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