



Home Office

Foreign witnesses: law enforcement requests to the Home Office

Version 2.0

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About this guidance

This guidance tells you about foreign nationals required to give evidence in the UK.

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 you can email the Guidance Rules and Forms team.

Publication

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

- version **2.0**
- published for Home Office staff on **20 January 2021**

Changes from last version of this guidance

- updated to reflect devolved prosecutorial agencies, court systems and legislation
- updated details of Central Points of Contact (CPC)
- updated to reflect how extended leave interacts with an extant Deportation Order (DO)
- updated to include effects of a DO signed by the Governor of a Crown Dependency
- updated to reflect who to engage with regarding visa waivers
- updated to include NPCC guidance on how to obtain a written statement

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Requests to the Home Office

This section tells you about requests to allow a foreign national to enter or remain in the UK to give evidence in court.

Due to the international element of serious and organised crime, it may be necessary for a foreign national to come to the UK or for their removal to be deferred to enable them to give evidence in court. In most cases the foreign national will be a witness giving evidence in a criminal case on behalf of the prosecution, including for example where they have been involved in a covert policing operation. There may also be occasions where a foreign national is required to give evidence as a witness for the defence in a criminal case or as a witness in a civil case, Coroner's court or at an independent public inquiry.

It is essential that the integrity of UK immigration control and border security is maintained. The final decision about whether a person is allowed into the UK, or whether removal from the UK is deferred, will be made by the Home Office, with ministers being consulted if necessary.

A request for a foreign national to enter the UK, for their stay to be extended or for their removal to be deferred for the purpose of giving evidence, may be made to the Home Office by any of the following:

- all territorial UK Police forces, including the British Transport Police
- National Crime Agency
- Border Force
- Immigration Enforcement
- Military Police forces
- some government departments such as the Department for Work and Pensions and HM Revenue and Customs (HMRC)
- some government agencies, such as the Health and Safety Executive and the Environment Agency

A request to the Home Office must be made to the relevant Central Point of Contact (CPC) as soon as you have identified a need for the person to give evidence. The CPC is responsible for co-ordinating the Home Office response to the request.

Central point of contact

Official – sensitive: start of section

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

Official – sensitive: end of section

When making a request to the Home Office for a person to enter or remain in the UK, you must provide the following information:

- full names, including all known aliases, date or dates of birth, nationality and, if known, their Home Office reference
- details of known immigration history in the UK
- details of all known convictions or criminality both in the UK and abroad
- an assessment of any risk that the person's presence in the UK might present to the community, to the individual or associates of the individual
- plans for the person's support and accommodation while in the UK
- person's association with defendant
- importance of witness's evidence to the trial, including risks to the trial if the person cannot testify
- reasons why the witness needs to be physically present in the UK to give evidence - where possible, television links and written statements are preferred by HM Courts and Tribunal Service (HMCTS) as it is administratively easier and cheaper than sponsoring a foreign national to give evidence (see [Live television links](#) and [Written statements](#))
- expected date and duration of trial and how long the witness is expected to be required

- if the trial date is over 6 months away and the person does not have leave to be in the UK, or any existing leave will expire well before the trial start date, explain why the person cannot return home in the interim and return to the UK for the trial; this also applies to ongoing investigations
- if the person is a witness in a criminal prosecution, a letter is required from the Crown Prosecution Service (CPS), the Crown Office and Procurator Fiscal Service (COPFS) or the Public Prosecution Service (PPS) case officer confirming the need for that person to be in the UK

If you are sponsoring a foreign national's entry to, or extension of their stay, in the UK, you will be liable for any application charges incurred by the applicant.

A formal written request to the Home Office must be authorised by an office at the following levels or above:

- Police - Assistant Chief Constable/Commander
- HMRC - Band 11
- National Crime Agency - Deputy Director
- Border Force and Immigration Enforcement – Grade 6 or above

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Witnesses outside the UK

This section details requests involving foreign witnesses who are outside the UK.

Live television links

Where there is a requirement for a foreign national who is outside of the UK to give evidence, you must first consider whether it is possible for evidence to be given by video link. Video link will be the preferred method of giving evidence in cases where leave to enter is unlikely to be granted because the person has criminal convictions, links with organised crime or war crimes, or whose presence in the UK is otherwise not considered conducive to the public good.

[Section 32\(1\) of the Criminal Justice Act 1988](#) enables evidence to be given from abroad through a live television link by a person other than the defendant and subject to the leave of the court, in:

- trials on indictment
- appeals to the [Criminal Division of the Court of Appeal](#), or to the [High Court of Justiciary](#) for Scotland.
- hearings of references under [section 9 of the Criminal Appeal Act 1995](#) for England and Wales, and [section 10 of the Criminal Appeal Act 1995](#) for Northern Ireland

This provision applies equally to prosecution and defence witnesses.

When arranging a video link with a witness abroad, you must consider the laws of the other jurisdiction. Most jurisdictions require local law enforcement to be informed of any contact with witnesses by foreign authorities. Some jurisdictions may require, or prefer, that video link hearings are arranged using mutual legal assistance (MLA). Where MLA is required, a request must be issued by a court or designated prosecutor in line with [section 7 of the Crime \(International Cooperation\) Act 2003](#).

Law Enforcement can assist either through an established relationship with a witness or through Police Cooperation channels to establish their willingness to give evidence by video link. This can prepare the court for submission of MLA or an informal request for arrangements to be made, and whether a coercive power is required to compel their attendance.

An application for video link should be made as soon as reasonably practicable and not more than 28 days after the defendant pleads not guilty in the magistrates' court, or 14 days after the defendant pleads not guilty in the Crown Court. In Scotland, an application must be made as soon as reasonably practical after the defendant pleads not guilty in either the [Justice of the Peace Court](#), [Sheriff Court](#) and [High Court](#). You must therefore make the relevant prosecutorial agency aware of the need to apply for a video link at the earliest opportunity. These timescales are important due to the time it takes for MLA requests to be processed, causing potential delays to trials.

For further information on live television links, please contact the National Police Chiefs' Council (NPCC) Judicial Cooperation mailbox.

Written statements

Depending on the type of evidence to be given, the prosecutor might consider whether the evidence can be made by way of written statement (under [section 9 of the Criminal Justice Act 1967](#) (CJA 1967)), or by formal admission (under [section 10 of the CJA 1967](#)). If accepted, the witness would not need to give evidence in person and the statement can be read out in court.

A Written Statement should be obtained in any case to gather the evidence the witness can provide. The NPCC Judicial Cooperation team will be able to assist in gathering written statements from abroad. This can be escalated to a formal MLA request submitted by a prosecutor to the overseas authority if it is either known police channels will fail or have failed to obtain a written account for use at court. This will apply for most states where the evidence is to be used in court. For more information, please see the [MLA guidance](#).

[Section 9 of the CJA 1967](#) does not require the statement to be taken in the UK or exclude the statement from being entered as read if accepted under [section 10 of the CJA 1967](#) by the defence. It should also be set out in the Special Procedures section in the MLA or Police Cooperation request to the overseas Central or Executing authority.

The oral evidence of a witness may, however, be more compelling than reading their statement in court and, if the evidence is central to the issues in the case, it is likely that the witness will be required to attend court to give evidence ('attend court' includes via live television link, as per the section above).

Entry to the UK

A foreign national who needs to travel to the UK to give evidence as a witness will normally be expected to meet the requirements of the [Immigration Rules](#) for entry as a visitor.

Nationals of certain countries need an entry clearance (visa) to come to the UK. These are generally known as visa nationals. Non-visa nationals do not require entry clearance to visit the UK, unless they are coming for more than 6 months.

Those subject to a deportation order (DO) will not be allowed entry to the UK unless the Secretary of State revokes the DO or a visa waiver or entry clearance requirement waiver is considered appropriate. In rare cases the Secretary of State is unable to revoke a DO as it has been signed by the Governor of a Crown Dependency – if this is the case the Ministry of Justice Victim and Witness Team should be contacted, as the MoJ are responsible for the constitutional relationship between the UK and the Crown Dependencies.

When considering whether to grant a visa or entry clearance waiver to an individual with an extant DO, in certain circumstances it may be appropriate to grant the individual a period of conditional immigration bail. When considering whether to revoke an extant DO, consideration must be given to Home Office policy and the requirements of the Immigration Rules.

If there is any doubt about a person qualifying for entry on arrival, it is recommended that entry clearance is obtained before travelling.

Waiver of UK visa or entry clearance requirement

In exceptionally limited circumstances, consideration may be given to a request to waive a UK visa or entry clearance requirement. This may include where there is a compelling public interest for a witness to give evidence in person, but the person would be unlikely to qualify for a visa on the basis of, for example, criminal convictions or associations, a poor immigration history, or if they are the subject of an extant DO.

The visa or entry clearance waiver consideration process remains an exceptional one and must be used only as a last resort. Due to its exceptional nature, there is no specific guidance on this, however where an entry clearance waiver might be necessary you should engage with UK Visas and Immigration, Special Cases Unit, Foreign National Offender Returns Command (FNORC) (previously known as Criminal Casework) and the Risk and Liaison Overseas Network (RALON).

You must contact the relevant [CPC](#) if you wish to make a request to waive a UK visa or entry clearance requirement. All requests are considered on a case-by-case basis taking account of the individual circumstances of the case and the assessed risk to border security. If the person is outside the UK, the decision to grant a waiver will normally be considered and authorised by UK Visas and Immigration. If the person is at the border, the decision to grant a waiver will normally be considered and authorised by Border Force National Command Centre.

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Witnesses already in the UK

This section tells you about foreign nationals already in the UK who are required to give evidence.

If a person required to give evidence or otherwise support investigations is already in the UK, you must contact the Home Office as soon as possible to establish the person's immigration status.

If the person is likely to need to extend their stay in the UK, or if any removal action is to be temporarily deferred, you must resolve this early on.

An application to extend a person's stay in the UK must be made on the appropriate application form and will require payment of an application fee and healthcare surcharge. An application for leave for a person required to give evidence must include a supporting letter from the case officer at the relevant prosecutorial agency. The specific guidance for the extension of leave will depend on whether the witness has an extant DO or not. If not, leave can be extended through the normal route for the leave that the witness has, or through Leave outside the Immigration Rules. However, if there is an extant DO then if leave needs to be granted the DO has to be revoked, otherwise [section 5\(1\) of the Immigration Act 1971](#) continues to apply, making any leave given them to enter or remain before the order is made or while it is in force invalid.

For further advice about which application form to complete or to make a request for removal to be deferred you should contact the [Central point of contact](#). There is no specific guidance for this as it will depend on how far along the removal process the subject is, and whether they are subject to the Early Removal Scheme or Tariff Expired Removal Scheme.

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