

Criminal Casework Directorate

Children and Family Cases Process Instruction

DOCUMENT INFORMATION

Version History

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1 Introduction

Section 3(5)(b) of the Immigration Act 1971 provides for the deportation of family members ‘if another person to whose family he belongs is or has been ordered to be deported’. The immigration rules also state that “Where the Secretary of State decides that it would be appropriate to deport a member of a family as such, the decision, and the right of appeal, will be notified and it will at the same time be explained that it is open to the member of the family to leave the country voluntarily if he/she does not wish to appeal or if he/she appeals and his/her appeal is dismissed”.

In carrying out this immigration function, Case Owners need to be aware of their statutory duty in relation to any children involved. Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Secretary to make arrangements for ensuring that specific functions are discharged having regard to the need to safeguard and promote the welfare of children – regardless of nationality – who are in the UK. “Children” means persons under the age of 18. Consequently, **any** action taken by CCD Case Owners in relation to children must have regard to this duty. “Safeguarding children and promoting their welfare” can be defined as:

- ◆ protecting children from maltreatment;
- ◆ preventing impairment of children’s health or development;
- ◆ ensuring that children are growing up in circumstances consistent with the provision of safe and effective care; and
- ◆ undertaking that role so as to enable those children to have optimum life chances and to enter adulthood successfully.

This does not override existing UKBA functions. Consequently, the duty does **not** supersede the CCD vision to protect the public by deporting foreign nationals who commit serious criminal offences. However, in making the decision to deport a family containing a minor child and in the plans for carrying out the detention or removal of a child or a close member of the child’s family, Case Owners will take into account the need to safeguard and promote the welfare of children. As with Article 8 ECHR considerations, there is no automatic bar on removal simply because arrangements in the country of destination do not mirror the arrangements that would have been provided in the UK.

In carrying out their duties in the United Kingdom, staff of the UK Border Agency may become aware of issues or situations which could suggest that the Agency or a particular member of staff was not considering the safeguarding and promotion of a child’s welfare. These may relate to the way in which a particular child was dealt with by the Agency or they may relate to general measures in place that staff believe are unlawful.

Where staff members have any concern of this sort, they should first consider raising the matter with their line manager or with a line manager above that level (e.g. their countersigning officer). However, there may be occasions when because of the nature of their concerns, staff feel unable to report their concerns in this way. In such cases, staff can seek **informal** advice from the UK Border Agency's Children's Champion or **Safeguarding Children Co-ordinators**. The Children's Champion should treat the matter as a confidential referral. This can be done by e-mailing the 'Children's Champion' inbox which is already available to staff or by emailing the Children's Champion directly. The referral should be marked as for the attention of the Children's Champion staff only, so that the identity of the referrer can remain undisclosed until such times as their concerns have been properly dealt with. However, **if staff wish to pursue this formally then they must follow the official [whistleblowing procedures](#) as set out on Horizon.**

This Process Instruction covers the procedures that should be followed by Criminal Casework Directorate (CCD) staff when dealing with Foreign National Prisoners' close family members and dependant children. More information on what constitutes a family member can be found in section 2.1. It also covers the detention and deportation of child FNPs who were under 18 years of age on the date of their conviction.

This document should be read in conjunction with Chapter 55 of the Enforcement Instructions and Guidance (EIG).

[http://horizon/IND/Manuals/EnforcementGuidance/Resources/Detention and Removals/Guidance/Chapter55.doc](http://horizon/IND/Manuals/EnforcementGuidance/Resources/Detention%20and%20Removals/Guidance/Chapter55.doc) (POISE).

[http://www.homeoffice.gsi.gov.uk/IND/Manuals/EnforcementGuidance/Resources/Detention and Removals/Guidance/Chapter55.doc](http://www.homeoffice.gsi.gov.uk/IND/Manuals/EnforcementGuidance/Resources/Detention%20and%20Removals/Guidance/Chapter55.doc) (INDIGO).

Case Owners should note that the complexity of children and family cases means that they can often be time-consuming and difficult to resolve. In dealing with appeals, judicial reviews and additional applications, it is all too easy to lose sight of children's need to have contact with their parents or guardians who are facing detention, removal or deportation from the UK. A process has been set up to enable and ensure that Case Owners do consider the needs of children if detention or deportation action will mean splitting a family (See section 3). If CID or the UK Border Agency file shows that there are child dependants who are eligible for deportation or who may be adversely affected by the deportation of a member of their family, then their individual needs must be part of the consideration to proceed with deportation, to detain or to remove the child and or the associated adult. Contact should be made as quickly as possible with Children's Services (formerly Social Services) covering the area where the child lives and (if it is possible that the child is subject to the family courts) the Children and Family Court Advisory and Support Service (CAFCASS) to gather information

about the child's situation. After receiving any response from Children's Services the Case Owner can have full regard to the need to safeguard and promote a child's welfare. Where the child is likely to be split from their parent or usual carer or the welfare report indicate complex need, the Case Owner should refer a case to the Office of the Children's Champion (OCC) for further advice on how to proceed following the escalation procedure set out in section 1.1. In cases where the Case Owner plans to split a family for the purposes of deportation see section 3.

1.1 Children and Families Cases: Sources of Advice

Case Owners should note that due to the complexity of family cases these instructions are not exhaustive and do not cover every circumstance. In order to provide Case Owners with the advice and information they need to make well-judged decisions there is a consultation process that should be adhered to when ever a case involving children is encountered. Staff should note that though it has different levels of escalation, it is strictly for consultative purposes. Responsibility for progressing the case remains with the Case Owner and they **do not** replace the varying levels of authority required to clear specific actions.

Case Owners should normally consult with colleagues in the following manner:

- ◆ In any case where there are family members, especially children, on file, Case Owners should liaise with a **Tier 2 trained Senior Caseworker**.
- ◆ If the case is not straight forward then the Senior Caseworker will seek advice from one of the CCD **Safeguarding Children Co-ordinators**. These are:

<redacted>

- ◆ If the case involves any of the following:
 - Evidence of maltreatment to a child
 - Splitting families that involve a child or children
 - Unaccompanied minors
 - Child offenders
 - Detention of a child beyond 21 days
 - A child in care
 - A case involving Family Court Proceedings

- Any other circumstances that the Safeguarding Children Co-ordinator deem it necessary

then the Safeguarding Children Co-ordinator will provide advice but **also** advise the Case Owner to consult the **Office for the Children’s Champion**.

Staff should note that this is an escalation process and – in general – the OCC should not be consulted before taking these steps. However, if Co-ordinators are unavailable then Senior Caseworkers may deem it necessary to leapfrog this step and consult directly with the OCC.

1.1.1 How to Contact the Children’s Champion

Case Owners should summarise any relevant information that they have and send it to the OCC “Children’s Champion” inbox (details below). The OCC will focus exclusively on the children and their advice will depend on the quality of information you have collected about the daily care, the welfare and development and the wishes and feelings of the child.

The OCC “Children’s Champion” in-box is on the Global address list and is <redacted> . They will aim to respond to queries within five days (excluding weekends).

Each stage of the Case-Owning process may be considered in **one** single request for advice i.e. the deportation order, the arrangements to detain and the arrangements to remove. This should minimise the number of referrals to the OCC for each case. However, the OCC may ask for the case to be kept under review while specified steps are carried out such as gathering additional information.

1.1.2 Contacting the Children’s Champion - Timing

The OCC cannot be expected to work without detail of the family life of the deportees. Sending a request for advice without such detail will cause needless delay and frustration for all concerned. Therefore such requests should be planned in advance and emergency or urgent requests at the last minute should be avoided. The OCC does not guarantee to respond to such requests on time.

Consulting the OCC is **usually** appropriate at the earliest reasonable juncture **after** the Case Owner has requested and received a report on the child or children from Children’s Services (enabling the best advice to be provided). However, there is no prescriptive time for contacting the OCC, as suitable timing varies on a case by case basis. For example, a non-exhaustive list of varying times when contact may be beneficial includes:

- ◆ after Removal Directions have been set, if evidence of family ties have only just come to light;
- ◆ after the subject’s appeal against deportation, as this should have covered Article 8 issues; or

- ◆ before a report has been requested from Children’s Services, if information on file needs urgent attention advice.

Any decision of when to contact the OCC should be made in conjunction with Senior Caseworkers and Safeguarding Children Co-ordinators.

1.2 Training

All staff whose work involves children either directly or indirectly, must complete an e-learning package on child safeguarding awareness developed in partnership with organisations that have a formal and professional role in children’s well being.

All staff who conduct interviews with children or who have regular contact with children or cases involving children in their work must be required to complete further e-learning courses and if possible specific training, also developed in partnership with organisations that have a formal role in protecting children. Staff who give advice to caseworkers on complex children’s issues must also complete more advanced levels of training about children and their needs in the immigration context. In CCD these people will be the Safeguarding Children Co-ordinators (details above) and Senior Caseworkers.

1.3 Alternatives to Deportation

In cases where the spouse, partner and/or any children of the deportee are not British citizens consideration should always be given to ensuring that, if appropriate, the family can be removed with the person subject to deportation action. In all cases and particularly where children are involved UKBA will prefer voluntary departure. Although FRS is limited to the FNP themselves, it benefits his/her family through promoting reintegration and providing support to them; facilitated returns should be sought wherever possible.

Removal can either be;

- ◆ by admin/port removal; or
- ◆ deportation as a family member under section 3(5)(b) of the Immigration Act 1971.

More information can be found in section 3.1.2 of this Process Instruction

2 Deportation of Family Members

2.1 Considering Evidence of Family Ties and Deportation Eligibility

Section 3(5)(b) of the Immigration Act 1971 provides for the deportation of family members ‘if another person to whose family he belongs is or has been ordered to be deported’. The immigration rules paragraph 363 (ii) state that the circumstances in which a person is liable to deportation includes “where the person is the spouse or civil partner or child under 18 of a person ordered to be deported.”

Section 5(3) of the 1971 Act provides that a deportation order shall not be made against a family member if more than eight weeks have elapsed since the main deportee left the UK after the making of the deportation order against him. Note that in automatic deportation cases, the timing is slightly different. A deportation order cannot be made if eight weeks have elapsed since the main deportee was appeal rights exhausted (section 37 of the UK Borders Act). This is covered in more detail in section 8.

A deportation order made against a family member will cease to have effect if the child ceases to belong to the family of the other person or if the DO against the main deportee ceases to have effect.

In order for the Case Owner to establish whether the subject's family members will be eligible for deportation, it is important for the Case Owner to first consider any available evidence that suggests whether the family function as a unit (i.e. that there is a strong subsisting relationship between the parties). It is worth noting that evidence supporting this assessment is best gathered and checked over a period of time. It would be possible for example to ask prison staff for reports on visiting, letters, telephone calls etc. received by the prisoner during the course of their sentence. The FNP may also have discussed concerns about the family with prison welfare services. This information will provide a more balanced consideration of the safeguarding and welfare needs of any children involved.

Paragraphs 365 – 368 of the Immigration Rules deal with the deportation of family members and give the Secretary of State power, in certain circumstances, to make a Deportation Order against the spouse, civil partner or child of a person against whom a Deportation Order has been made. However the Secretary of State will not normally decide to deport the spouse or civil partner of a deportee where:

- (i) he has qualified for settlement in his own right; or
- (ii) he has been living apart from the deportee.

The Secretary of State will not normally decide to deport the child of a deportee where:

- (i) he and his mother or father are living apart from the deportee;
- (ii) he has left home and established himself on an independent basis; or
- (iii) he married or formed a civil partnership before deportation became a prospect.

It is important to consider:

- ◆ whether there is any contact between the parent/s and their children;
- ◆ whether the heads of the family are legally married or co-habiting;
- ◆ in the case of male deportees whether they are recognised as a legal parent of the child despite not being married to the mother; or

- ◆ whether the child is in the care of a local authority particularly if this is by order of a family court.

The Secretary of State will not normally decide to deport the spouse of a deportee where the spouse has:

- ◆ qualified for settlement in their own right; or
- ◆ been living apart from the deportee. In which case, there should be clear evidence that the relationship no longer subsists, either prior to or since the offence, but not as a result of deportation action. Proof of legal separation/divorce proceedings would need to be provided.

The Case Owner will also need to establish whether contact with the children was limited prior to the subject's custodial sentence. If contact was limited then the Case Owner will need to establish the reasons in liaison with Children's Services and the relevant Local Authority if applicable. This could be because the spouse/children were at risk from the prisoner.

There may be some relevant information relating to this included in the response to the <redacted> from the subject.

2.1.1 Deporting the Child of a Deportee

We have a legal duty to have regard to the need to safeguard and promote the welfare of children in the discharge of UKBA functions. In many cases, maintaining the integrity of the family unit will be in the interests of the child. However, the Secretary of State will not normally decide to deport the child together with the deportee where:

- ◆ the child and their mother or father are living apart from the deportee, but not as a result of deportation action, or they are in the care of the Children's Services/Local Authority. In these cases, there should be clear evidence that the relationship no longer subsists, either prior to, or since the offence. Documentary evidence should be obtained, such as proof of legal separation/divorce proceedings and/or evidence of care proceedings from Children's Services. Note that if the child is in temporary care of Children's Services then the child may be able to be removed with the parent or parents. If a child is in the permanent care of the Children's Services then this should be accepted as proof that the relationship between the child and the parents does not involve a direct dependency. Deportation or otherwise removing the child is likely to involve negotiations with the family court. It is possible that the care plan for such a child involved contact with the prospective deportee. This will need to be carefully considered but it may be proportionate to suggest that such contact will need to be by other means than the deportee remaining in the UK;

- ◆ the child has spent most of his life in the UK and is nearing the age of 18. The longer a child has been here, the more settled he/she is likely to be and the less likely that he/she has a meaningful basis for a private life in another country, particularly if he/she has spent most of his/her formative years (0-10) here. Where the child has been born here they may have established a right to registration as a British Citizen. If in doubt staff should consider escalating in line with the consultation procedure described in section 1.1;
- ◆ the child has left home and established himself on an independent basis; or
- ◆ the child married before his deportation as the child of a deportee came into prospect.

The following must also be taken into account:

- ◆ the ability of the spouse to maintain themselves and any children in the UK, or to be maintained by relatives or friends (possibly without charge to public funds), not merely for a short period but for the foreseeable future;
- ◆ the practicability of any plans for the child's care and maintenance in this country if one/ both of his/her parents were deported;
- ◆ any representations made by or on behalf of the spouse or child; and
- ◆ any other considerations (for example a child's imminent public exams) that might reasonably delay removal.

2.2 Contacting Children's Services

If there is evidence of family members, especially children, on file then the Case Owner must contact the relevant Children's Services for more information about their circumstances and issues that might affect deportation action. This is especially important if there is evidence of maltreatment on file and such concerns should be raised with Children's Services. Information on identifying this can be found in [The Guidance on Referring Children to Welfare Agencies](#).

Case Owners should use the Children's Services Referral Form when approaching Children's Services (see section 2.2.1 below).

Contact Details for Children's Services Departments can be found by contacting the relevant council and asking for Children's Services contact details.

The following link gives contact details for Local Councils.

http://www.direct.gov.uk/en/DI1/Directories/Localcouncils/AToZOfLocalCouncils/DG_A-Z_LG

2.2.1 Children’s Services Referral Form

Case Owners should use the Children’s Services template on the [OCC website](#) and send to Children’s Services, in order that they can provide as much useful information as possible. The main purpose of the document is to identify any issues around the family’s health welfare and education, for instance to identify at an early stage whether a child has special needs which might affect any deportation or removal action.

The referral form **must also** include details of the following if there is evidence to indicate their presence:

- ◆ **for frontline staff:** if any potential indicators of harm have been identified as listed in the statutory guidance on Section 55 of the Borders, Citizenship and Immigration Act 2009;
- ◆ When a child appears to have no adult to care for them and the Local Authority has not been notified;
- ◆ When a private fostering arrangement has been identified and there is doubt over whether the Local Authority is aware;
- ◆ When a child is a potential victim of trafficking; or
- ◆ When a child is identified as having gone missing.

2.2.2 Children and Family Court Advisory and Support Services (CAFCASS)

CAFCASS looks after the interests of children involved in family proceedings. They work with children and their families, and then advise the courts on what they consider to be the best interests of individual children.

The Case Owner may need to liaise with the Family Courts via CAFCASS to find out whether the family (or family members) are subject to any court proceedings or legal obligations that might affect deportation issues.

http://www.cafcass.gov.uk/about_cafcass.aspx

Although this step may need to be taken in order to discharge our duty to safeguard and promote the welfare of children, it does not necessarily mean that deportation should not go ahead. This will depend on factors such as the degree of harm the child is thought to face and whether criminal proceedings are proposed against an abusive parent etc. The UK Border Agency is committed to making its decisions in such cases quickly in order to avoid a waste of family court time. The Family Courts in turn do not want to become unnecessarily involved in cases particularly if the case has been brought primarily to frustrate immigration controls.

2.2.3 Insufficient Evidence of Family Ties

Evidence of any family ties should be already on file in the form of a questionnaire sent out as part of the <redacted>. Further evidence may also be obtained by requesting prisons to provide reports on visiting, letters, telephone calls etc. received by the prisoner during the course of their sentence. The FNP may also have discussed concerns about the family with prison welfare services. It is worth noting that evidence supporting this assessment is best gathered and checked over a period of time. If there is insufficient evidence of family ties, or more information is still needed to establish whether the family still function as a unit then the Case Owner should consider whether a prison interview with the subject is necessary to obtain more information. The Case Owner should complete the referral sheet and send it to the CCD Operations (Ops) Team.



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The Case Owner should prepare any instructions (questions) for the interviewing officer that they deem necessary in order to get more information about family members that would be liable for deportation. Liaison with prison staff for more information may be appropriate.

For information on typical areas of coverage for an interview, Case Owners are advised to consult Annex M of Chapter 8 of the Immigration Directorate Instructions.

<http://horizon/ind/manuals/idi/Resources/DOCS/Ch08FamilyMembers/05ChildrenM.doc>

2.2.4 Sufficient Evidence of Family Ties

If, after analysis of all the available evidence the Case Owner considers that there is sufficient evidence of family ties to proceed with deportation action against a subject's family members, and removal or deportation is appropriate, then the Case Owner should proceed with issuing deportation paperwork as follows:

- ◆ <redacted> – Decision to make a Deportation Order (under section 3(5)(b)); and
- ◆ <redacted> – Reasons for Deportation letter (referring to paragraphs 364 – 368).

A line should be included in the <redacted> letter advising that it is open for the family member to leave the country voluntarily if he/she does not wish to appeal, or if he/she appeals and his/her appeal is dismissed.

- ◆ <redacted> – AIT-1 Notice of Appeal; and
- ◆ <redacted> – Appeal Disclaimer.

If the family members are reporting then the documents should be served to them in person at the reporting centre.

If the family members are not reporting then the documents must be posted to the address of the family members, and in the case of those under 18 c/o the parent or responsible adult where appropriate. Where children are in care the documents should be posted to the social worker responsible for the children's welfare. In cases where documents are sent by post they must be sent by recorded delivery and wherever possible a signature must be obtained as proof of delivery. The Case Owner should also make clear to the family member that it is open to them to leave the country voluntarily if they do not wish to appeal, or if their appeal is dismissed.

2.2.5 Detention of Families

When family members have exhausted all appeal rights, or they do not appeal, then they will also be liable for deportation alongside the main subject. If the family members do not wish to depart voluntarily the Case Owner will need to liaise with the relevant LEO and the family detention unit (see sections 4.2 to 4.4) before completing a family welfare form (see section 2.2.6) in order to detain the family prior to deportation. Case Owners should note that there must be a presumption against detaining families and the detention of children must always be a last resort and for the shortest possible time. Detention is covered in more detail in later sections.

Further information on the enforcement process of family cases can be found in Chapter 45 of the Operational Enforcement Manual.

<http://horizon/ind/manuals/EnforcementGuidance/Resources/OEA/Guidance/Chapter45.doc>

(POISE)

<http://www.homeoffice.gsi.gov.uk/ind/manuals/EnforcementGuidance/Resources/OEA/Guidance/Chapter45.doc> (INDIGO)

2.2.6 Family Welfare Form

In the event that a Case Owner decides that there is evidence that a deportee is still part of a family unit, and therefore those family members that are eligible are to be deported as well, the Case Owner should ensure that before liaising with the relevant LEO regarding arrest and detention of those family members that they complete a family welfare form on CID (<redacted>).

The reason for the form is to show an audit trail for each stage in the decision making process, from commencing deportation action to eventual removal. The Case Owner should complete the first part of the form (the other two parts relate to the LEO and Immigration Removal Centre (IRC) and will be filled in to the best of their ability, based on the knowledge that they have of the deportee and their family members).

The details on the form will help the family detention unit and Immigration Removal Centres (IRC) by alerting them to any issues (such as medical ones) that need to be addressed whilst

the family is being detained. It is important that the form records all known special needs and welfare issues of any dependent children in order to ensure that families needs are identified, and arrangements can be made at an early stage to ensure that suitable detention accommodation can be provided.

Process of completing the Form

1. The Case Owner decides that there is evidence that the family are still functioning as a unit and decides to deport family members alongside the main deportee.
2. The Case Owner should liaise with the relevant LEO or IRC as appropriate regarding further action on the case and inform them that they will complete the first part of the form and save it on CID.
3. The Case Owner should complete the first part of <redacted> form on Doc Gen, including as much information as they can. The Case Owner must include any advice received from the OCC, especially if our actions involve splitting a family (in which case we should confirm the CCD Director's approval of the split). See section 3 for more details on splitting families. It should be noted that as the <redacted> is a form used across the whole of UKBA there are parts of the form that may have to be left blank. However Case Owners should use information already on file, any correspondence on questionnaires or contact with the Children's Services to ensure as many details as possible are completed.
4. The Case Owner should then save the form on CID. This will enable the LEO and the IRC to access the form and be forewarned of any issues that they need to take into account when planning an arrest and subsequent detention and removal.

3 Splitting Families for the Purposes of Detention and Deportation

3.1.1 Background

Detaining under immigration legislation is a serious step. Where it is decided to detain a family the normal process should be that they remain together and therefore splitting families for detention and removal purposes is also a very serious decision that needs to be taken at a senior level within the UK Border Agency. UKBA staff should have regard to the need to safeguard and promote the welfare of the child before deciding to split a family. For the purposes of this instruction, splitting a family can be defined as separating family members who have an existing family life and where the split would have an impact on a child's life. There is a complex balance to be struck between allowing the child to continue their life in the community and reuniting them with the parent who is to be deported. Any decision to split a family, whether it be through deportation, detention or release, requires consultation **at the**

earliest possible juncture with the OCC (via the procedure outlined at section 1.1) and clearance at CCD Director-level.

3.1.2 Deportation

When considering the deportation of a foreign national on conducive grounds, or as the result of a court recommendation, full consideration should be given to the status and potential impact on any family members remaining in the United Kingdom, especially those who are children. regard must always be had to the need to safeguard and promote the welfare of the child in question as required by the new duty and associated statutory guidance accompanying section 55 of the Borders, Citizenship and Immigration Act.

Our obligations to the child and other family members under Article 8 should always be considered irrespective of whether a specific claim has been made or not. A competent Article 8 consideration will include consideration of the best interests of any children as set out in the UN Convention on the Rights of the Child (UNCRC) Article 3. Article 3 of the UNCRC says that in any administrative decision affecting a child, the best interests of the child must be a primary consideration. The aim is always to carry out the UK Border Agency's administration of the Immigration Rules with the minimum possible interference with the family's private life. In particular the Agency aims to enable the family to maintain continuity of the care and development of the children in ways that are compatible with the immigration laws.

In cases where the spouse, partner and/or any children are not British Citizens consideration should always be given to ensuring that, if appropriate, the family can be removed with the person subject to deportation action. **Cases where a spouse/partner or other member of the family is an EEA national may need to be dealt with as if they are an EEA national, therefore the minimum length of sentence for action should fit the EEA National Deportation criteria. All such cases should be referred to a SCW who will advise whether the file needs to be dealt with by Team 7 (EEA Nationals).**

Removal can either be:

- ◆ by admin/port removal in which case the local port must be liaised with to ensure that removal, if appropriate, can be co-ordinated. Full reference to the status and intention to remove family members should be included in the <redacted> reasons for deportation letter; or
- ◆ deportation as a family member under Section 3(5)(b) of the Immigration Act 1971. A separate notice and reasons for deportation letter will be required and in the case of children the notice and decision will need to be served on a responsible adult and/or representative. The provisions of paragraphs 365-368 of the Immigration Rules HC 395 (as amended) must be considered in each case where the deportation of a family member is being considered. These paragraphs can be found at Annex A. These

decisions attract a right of appeal and, if an appeal is lodged, the AIT should be contacted to ensure that the appeals are heard jointly (unless this is not possible due to automatic deportation; see section 8 below). It should be noted that where we are considering such action the family member must be given the opportunity to depart voluntarily. Clearly the timing of any such departure may be dependent on the FNP's date of deportation.

In cases where removal or deportation action of family members is not appropriate or otherwise precluded, for example if the spouse and/or children are British or settled in the United Kingdom, consideration should be given to whether Article 8 is engaged. For example, if interference with family life is in pursuit of a legitimate aim (immigration control), rationally connected to that aim and reasonable and proportionate to its needs. In some cases, it may be possible for the Agency to assist family members who cannot be deported or removed to accompany a deportee if that is their decision. They should be referred to the appropriate AVR team to see how their case may be progressed. Again, this consideration should be referred to in the FNP <redacted> reasons for deportation letter, or the appropriate automatic deportation letter.

In those cases where we do not propose to deport or otherwise remove some family members in the UK (and their nationality is immaterial) the appropriate parties (see section 1.1) must be consulted for advice on the effect of the split on the child. It is essential that enquiries are made, prior to referral if possible, to ensure that as much background information can be provided with respect to the potential effect of our actions on any children. It is important that staff also consider (and consult) whether there is any effective legal or welfare barrier to the family member(s) accompanying or joining the deportee on a voluntary basis. This will also have the effect of allowing these issues to be considered at any appeal against the deportation decision.

The submission for a DO must include consideration of the effect of the split on the family and where the case involves children, consideration to the need to safeguard and promote the welfare of the child. It should also include confirmation that advice from the OCC has been sought, received and given due regard. The authority to deport a subject rests with the Chief Executive Officer but should be submitted to **the CCD Director first**, allowing him/her opportunity to approve the family's split.

For Automatic Deportation cases please refer to section 8.

3.1.3 Administrative Removal

In cases where it is decided appropriate to administratively remove a person and where this will involve splitting a family, this must be approved by the CCD Director, or the relevant regional director where applicable. The Office of the Children's Champion must be consulted when the removal involves children, and their advice fully taken into account and included in

submissions to the CCD Director. However the authority to remove will rest with the CCD Director.

It may be possible to administratively remove family members of a FNP as overstayers or illegal entrants in their own right. This should be considered before taking deportation action against them.

3.1.4 Appeals Determinations and Article 8

Consultation (using the prescribed procedure) will still be necessary even if an Appeal Determination with an Article 8 approach goes in favour of the UK Border Agency. Staff – in consultation with the Safeguarding Children Co-ordinators – should give particular consideration to escalating this as far as the OCC if there is any significant delay between the outcome of the appeal and the proposed date of the deportation. In such a case evidence relating to any change in circumstances should be gathered. The Appeal Judgement should be pointed out in the case summary presented to them.

3.1.5 Detention

Where detention of an individual under immigration powers is being considered and this will involve splitting a family, then the decision must be approved by the CCD Director.

Staff should note that at the end of the custodial sentence, **the decision to detain an FNP may involve splitting the family for immigration purposes** (if it is decided not to detain the family). **This will be the case even if the ex-prisoner is held in the same institution where they served their sentence.** This is because the criminal courts will already have considered the welfare of the family in awarding the sentence. Consequently, the transfer of the prisoner to immigration detention requires the family issue to be reconsidered, now that the prescribed sentence has been served. If, after consultation with the OCC, it has been determined that in this situation CCD are splitting a family (and this split is proportionate) then staff should seek Directorial clearance as described below.

In order to safeguard and promote their wellbeing it will be appropriate to ensure enquiries (with the OCC) about the welfare of the child are made as early as possible. As in all cases, detention should be considered in line with CCD's current policy, i.e. there must always be a presumption against detention and each case must be considered on its individual merits. Detention of children should only occur as a last resort and for the shortest possible time.

3.1.6 Contacting the CCD Director

Contacting the CCD Director regarding a DO submission should continue to be made in the normal way. Where Case Owners wish to refer a case for the Director's approval to split a family the referral should be made by email, outlining all relevant circumstances of the case, including the advice of the OCC, via the Case Owner's Assistant Director. It should be noted that the CCD Director's approval is only needed when the removal or detention of a family

member will split a family and may consequently affect the child/children. **It is not necessary to get the Director’s approval when removing a subject where there are no children involved. However, in deportation cases Chief Executive DO authority is still required.**

3.1.7 Process to split a family (Court Recommended/Conducive)

Case Owners should take the following action in respect of splitting a family:

1. Decide on the basis of the evidence that they have received whether deportation is applicable. If so the Case Owner should assess whether there is information on file to suggest that deportation action against the subject would split a family. If there appears to be no element of dependency or subsisting relationship between the subject and family members then further enquiries will not be necessary.
2. In order to get more information about the children and family members the Case Owner should contact the relevant Children’s Services to see if they have previously had any contact with the family or can supply more information regarding relevant child protection issues. Case Owners should use the Children’s Services template on the [OCC website](#).

In the first instance, the Case Owner should contact the Children’s Services which cover the area of the children’s home address.

3. After consultation with Senior Caseworkers and Safeguarding Children Co-ordinators (see section 1.1) the Case Owner should send the OCC a summary of case information including any relevant information from Children’s Services that they have obtained. The Case Owner should consider if the child has any need to be safeguarded (protected) by a child welfare agency in the UK and if the proposed action could be said to have an adverse impact on a child’s welfare. If the Children’s Services have not replied then they should inform the OCC of this.
5. When the Case owner has all the relevant information from Children’s Services and the OCC (where applicable) the Case Owner should prepare a <redacted> “Reasons for Deportation Letter” and <redacted> “Notice of Decision to Deport”. The <redacted> should be sent attached to an email that gives a brief outline of the case to the Case Owner’s AD.
6. The Assistant Director (AD) will then submit the email to the CCD Director for approval to split the family.
7. The CCD Director will make a decision on whether or not to split the family and relay that decision to the AD who will then forward the email to the Case Owner.
8. If the CCD Director has approved the split then The Case Owner should serve the <redacted> and <redacted> to the subject.

9. The deportation process should then be followed in the normal way. If the subject appeals against deportation and their appeal is dismissed then the DO submission should be forwarded to the Chief Executive. The Chief Executive is also bound by the duty to consider the need to safeguard and promote the welfare of children. The submission should show that such a consideration has taken place.

3.1.8 Process to split a family (Automatic Deportation)

Case Owners should note that in Automatic Deportation cases the process will be slightly different as a DO submission will have been submitted earlier in the process. In these cases requests to the CCD Director for approval to split a family should be made in the same way but instead of including the <redacted> Reasons for Deportation letter a summary of the case should be included with a copy of the DO submission **before** it is sent to the CEO to approve Deportation.

3.2 Dependants who are Considered not to be part of family Unit

If there is a dependant who is not considered to be part of the functioning family unit then the Case Owner should not proceed with further deportation action in respect of them. However, if investigation into any family members has revealed child welfare concerns then the Case Owner **must** report this immediately to the Local Authority.

3.2.1 Children not being Deported with Family

In some cases the welfare needs of a child may only be met by being separated from their parents, for example if a court finds that they are responsible for significant harm inflicted on the child or if the parents have clearly abandoned the child other than as a pretext to avoid the child being deported. **The task of assessing whether such conditions apply falls to the children's services where the child is resident.** In such cases, parents may be deported once the court has decided that the local authority should be granted a full care order while the child remains in suitable long term care arrangements in the UK. Separate arrangements for the child will need to be made on a case by case basis. In order to regularise the child's leave (if appropriate), the Case Owner should inform children's services that they should make an application via Managed Migration.

4 Detention of Children

The detention of anyone, regardless of age, requires careful consideration and there must be due regard to safeguarding and promoting the welfare of children, even if the potential detainee is not a child. For example, when considering the detention of violent, sex and drugs offenders, Case Owners have a statutory duty to consider the impact this may have on safeguarding and promoting the welfare of children in the community. However, this instruction will largely focus on the detention of Children.

4.1 Detention of Dependant Children

There must be due regard to the need to safeguard and promote the welfare of children when considering Immigration Detention. The detention of a child, or children (who are subject to immigration control) of an FNP under immigration powers can arise in three circumstances:

- ◆ where it is decided to continue to detain a FNP who gave birth to a child whilst serving her term of imprisonment (or immigration detention in a prison) and the FNP and child were held in a prison's Mother and Baby Unit (MBU). MBUs hold mothers with their babies up until the baby is nine months old;
- ◆ where a child has been separated from their parent or carer (for example, a relative, another adult or a local authority temporarily caring for the child) acting as the child's parent during the parent's imprisonment, and it has been decided to reunite the child with the parent in an Immigration Removal Centre (IRC) as close to the proposed removal as possible. The decision to detain the child must consider the timing and likely length of detention, the attachment of the child to the caring relatives or foster parents etc. Reuniting the child with the detained parent may require careful planning and if possible agreement with the parent, the carer, the social workers in the detention centre and UKBA. Children may need time to adjust to such a major change in their care arrangements and more than one preparatory visit to the detention facility; or
- ◆ where a parent and child are detained under immigration powers for the purposes of deportation.

4.1.1 Timing of Decisions and Release of Guardian from Immigration Detention

The detention of children may not be appropriate or justifiable in every case. Consequently, the timing of decisions should be carefully considered. In cases where children's welfare needs are overwhelmingly compromised by their parent's/guardian's detention, it will be necessary to consider his/her release from detention. Such a decision, involving release of an adult, will require Chief Executive authority.

4.2 Factors to Consider Before Authorising Detention

Detaining children should be a last resort and each case must be considered on its individual merits. It is important that, before authorising the detention of any child of a FNP, the Case Owner has regard to the need to safeguard and promote the welfare of the child (in consultation with the relevant sources of advice stated in section 1.1), i.e. he/she:

- ◆ considers the child's need for protection from maltreatment;
- ◆ considers the child's need for health and development;

- ◆ considers the child's need to grow up in circumstances consistent with the provision of safe and effective care preferably with their own family; and
- ◆ undertakes that function so as to enable those children to have optimum life chances and to enter adulthood successfully, e.g. by encouraging and enabling the parents to cooperate with deportation and plan for the child's life in another country.

The factors in sections 4.2.1-4 must also be considered.

4.2.1 Mother and Baby Cases

Firstly, the Case Owner should ensure that the child is not a British citizen, as British citizens cannot be detained using immigration powers. This does not necessarily mean that the child cannot be reunited with and leave the UK with a deportee.

The Case Owner should establish whether the baby is still in detention with the mother. If the baby is no longer in detention then the Case Owner should liaise with the prison over the whereabouts of the child.

The Case Owner should review any case involving a mother and her baby in detention no later than one month prior to the end of the custodial sentence. This is to ensure that, if the child is still with the mother there is sufficient time to notify the Family Detention Unit to arrange a mother and baby detention space in an Immigration Removal Centre (IRC). For more information see section 4.2.3. It is worth noting that the prison staff in MBU often have excellent relationships with the mothers in their care. These staff are often best placed to explain and prepare the mother for detention and deportation if they are given the information in good time.

4.2.2 The Family Detention Unit

The Family Detention unit:

- ◆ allocates family detention space at Yarl's Wood, Dungavel, and Tinsley House immigration removal centres, which are used to accommodate children who are detained with their families prior to removal;
- ◆ actively monitors all detained family cases involving children to ensure that children are detained for the shortest possible time to effect removal;
- ◆ undertakes the enhanced detention reviews of detained children. Reviews are carried out by an HEO at day 7 of detention, by an SEO at day 10, and by an Assistant Director at day 14 and every seven days thereafter;
- ◆ commissions an independent report on children's welfare by local authority social workers at 21 days.
- ◆ co-ordinates the weekly submission to Ministers seeking authority for the continued detention of children beyond 28 days detention;

- ◆ organises and participates in the weekly conference call (each Monday at 11.00) to ensure that the welfare of detained children is fully considered and in line with policy. This is done in conjunction with the SEO manager, the Office of the Children's Champion, and professional staff at Yarl's Wood removal centre, including the Social Worker, Healthcare Team, and the Childcare Manager; and
- ◆ provides a 'gate-keeping' role for the detention of families involving Children. This will mean that while detention of families can occur in line with normal Detention Policy, the FDU will expect detention to occur only when removal is pending. Although other scenarios may justify detention, Detention Services may contact the Case Owner for further clarification if they arise.

All cases where children are to be detained must be referred to the FDU, as they will be taking on enhanced detention reviews. The FDU will need as many details as possible about the parent and child prior to a request for detention space. Case Owners should complete a Family Welfare Form on CID (see Section 2.2.6).

See also the Process Instruction on Detention;

<http://horizon/IND/Manuals/Enforcement/CCDInstructions/index.asp> (POISE)

<http://www.homeoffice.gsi.gov.uk/IND/Manuals/Enforcement/CCDInstructions/index.asp>

(INDIGO)

Those requesting family detention space must complete a Family Pre Booking Form and fax it to the team on 0113 341 3311. If accommodation is required within two days then the Team has five hours to action the request and provide a response. In all other cases a response will be given within 24 hours.

For more information or to request a Family Pre-Booking Form the Family Detention Unit can be contacted on 0113 341 3343.

In most cases the baby will still be in detention with the mother (and in the majority of cases they will be detained together), particularly if the mother is breast-feeding her child. In such cases UKBA policy is that they must not be separated unless it is unavoidable due to the behaviour or health needs of the mother. If the Case Owner considers that their actions will not be concluded by the end of the sentence and that detention for a substantial period of time is likely then the Case Owner should ask their SEO Operational Manager to discuss the case with their AD. They should consider whether the mother and child should be detained together or whether the child's interests would be better served by alternative care arrangements. The AD's consideration must focus on the welfare of the child, turning on the probable length of detention, the views of the mother and the availability of suitable care arrangements. **If it is thought that they should be split, advice should be sought from**

the Children's Champion Office and any final decision to split the mother and child must be endorsed by the CCD director.

4.2.3 Child detained in a Mother and Baby Unit

For a child currently held with their mother in an MBU consideration must be given to:

- ◆ whether, exceptionally, there is any information which indicates that mother and child should not remain together. The lead agency in any subsequent separation related to the welfare of the child will be the relevant local authority children's services; and
- ◆ whether there is any information which indicates that the welfare of the baby would be adversely affected if the mother and baby were to be transferred to an Immigration Removal Centre; such information might relate to the mother's ability to look after her child if she detained away from the close support available in the MBU, e.g. while undergoing a course of treatment that should not be disrupted.

This information is most likely to be provided by the social worker attached to the MBU. If consideration is to be given to separating a child from their mother, the procedures for authorising such separation is outlined in the Operational Enforcement Manual (OEM) chapters 38 and 58 and must be strictly followed. It should be based upon co-ordination with professional social work advice, and consultation with the Office of the Children's Champion.

4.2.4 Child living in the Community

For a child who has lived in the community (usually in the care of relatives, friends or a care placement arranged by a Local Authority's (LA's) Children's services department) while their parent or carer has served a term of imprisonment consideration must be given to:

- ◆ whether a child is the subject of a child protection plan or is the subject of a current section 47 (child protection) investigation that may result in a child protection plan;
- ◆ whether, exceptionally, there is any information which indicates that the child should not be reunited with their parent or carer at all (for example, where the child was a victim of trafficking for which the parent or carer has been convicted); and
- ◆ whether, when it is clear that it is in the child's interests that they should be reunited with the parent or carer, there is information which indicates that the welfare of the child would be seriously harmed if they were to be detained.

This information is most likely to come from the LA's social worker who will have had responsibility for the child during the parent's imprisonment if the child was in the public care (remember, it is important to include details of any suspected private fostering arrangements in the referral to Children's Services). To obtain this information it is important that the CCD caseworker makes very clear in contacting the LA that the UK Border Agency is planning to

detain the child as part of arrangements to remove the child with their parent or carer as they have no right to remain in the UK.

A decision not to reunite a child with their parent or carer must be taken on the basis of professional social work advice. If professional social work indicates that a child should be reunited but should not be detained, the SEO Operational Manager must balance the risk to the public that the release of the FNP parent or carer may present.

4.3 Authorising Detention

The detention of any child under immigration powers must be properly authorised. Detention will only be lawful where a decision to deport the child of an FNP has been taken and served, or following the making of the deportation order against the child. The decision to deport itself must be in accordance with the current law and policy on the deportation of family members. Detention can only be for a reasonable period for the purpose of deportation (see Chapter 55 of the Enforcement Instructions and Guidance).

[http://horizon/ind/manuals/EnforcementGuidance/Resources/Detention and Removals/Guidance/Chapter55.doc](http://horizon/ind/manuals/EnforcementGuidance/Resources/Detention%20and%20Removals/Guidance/Chapter55.doc) (POISE)

[http://www.homeoffice.gsi.gov.uk/IND/Manuals/EnforcementGuidance/Resources/Detention and Removals/Guidance/Chapter55.doc](http://www.homeoffice.gsi.gov.uk/IND/Manuals/EnforcementGuidance/Resources/Detention%20and%20Removals/Guidance/Chapter55.doc) (INDIGO).

In each case, the need to safeguard and promote the welfare of the child must be taken into account when considering whether detention of that child is reasonable and appropriate, along with any other relevant factors. Whilst in many cases it will be in a child's interests to stay with their parent or to be reunited with their parent or carer at the earliest opportunity, there will be exceptions, for example where detention would unnecessarily disrupt the existing care arrangements for a child when removal is likely to be significantly delayed. Examples of this might include:

- ♦ a legal challenge without a known court date;
- ♦ children who are undergoing specialist health treatment that is not readily transferable to the IRC; or
- ♦ children who are just about to take important public examinations such as GCSE.

The detention of any child of a FNP must be authorised, using <redacted> forms, by someone at AD level or above in advance of their detention. The relevant detention forms and notices will need to be prepared and served in order to ensure that detention is lawful.

4.4 Transfer to UK Borders Agency Detention Accommodation

It is important that the detention of any child is arranged through the Family Detention Unit (<redacted>) who control access to the dedicated family accommodation at Yarl's Wood,

Tinsley House and Dungavel. (Families can only be accommodated at Tinsley House and Dungavel for a maximum of 72 hours. Yarl's Wood is the main removal centre used to accommodate families with children). Accommodation will need to be booked well in advance, and once confirmation has been received arrangements for the transfer of the family to Yarl's Wood, Tinsley House or Dungavel will need to be arranged.

4.4.1 Mother and Baby Unit

Where a mother and baby are to remain in a prison Mother and Baby Unit (MBU) under IS detention the Family Detention Unit **must** be advised that that they are detained under immigration powers. The Family Detention Unit can be contacted on <redacted>. The Family Detention Unit must also be advised if a child is born to a FNP detained under immigration powers in a prison MBU.

4.4.2 Child reunited with Parent

In the case of a child who is being reunited with their parent in detention, particular care needs to be taken by the CCD caseworker to ensure that arrangements for the transfer to Yarl's Wood, Tinsley House or Dungavel are clearly coordinated with:

- ◆ the parent(s) who may be assisted in planning the transfer by the social worker at Yarl's Wood;
- ◆ whoever has day to day responsibility for the child (sometimes the LA's social worker); and
- ◆ staff at Yarl's Wood, Tinsley House or Dungavel.

This will ensure that the child will be properly prepared and looked after immediately before and during the transfer to Yarl's Wood, Tinsley House or Dungavel and that their reception there and the reunion with the parent can be properly planned.

4.5 Detention Reviews

the decision to maintain detention of the child at a detention review must have regard to the need to safeguard and promote the welfare of the child, and therefore the detention of every child of an FNP must be reviewed at 7, 10, 14 and 21 days and every seven days thereafter. The Family Detention Unit will carry out detention reviews in conjunction with the Case Owner and SEO Operational Manager in CCD. Preparation and issue of the <redacted> for the 28 day review and any subsequent <redacted> if appropriate will remain the responsibility of CCD. When deciding whether continued detention is appropriate the length of time the Child has already spent detained should be taken into account.

4.5.1 Decision to Detain a Child Beyond 28 days

SEO operational managers reviewing detention are required to provide information about each child's case to the Family Detention Unit if it is anticipated that a child will be detained

beyond 28 days. **NB this information will be required before the 21 day point is reached.**

This information will be used to advise the Immigration Minister who must authorise the continued detention of any child beyond 28 days (see section 4.5.3). The social worker and the staff looking after the children at Yarl's Wood will also provide information about the welfare of the child. In making his decision The Minister must have regard to the need to safeguard and promote the welfare of the child.

It is vital that Case Owners' spare no effort in seeking to resolve any new barriers to removal and deportation that have been raised as quickly as possible. The Minister has the right to see that progress is being made and that the intervening time is used to try to persuade the parents to cooperate.

4.5.2 Decision to Release Parent and Child

If there is information which indicates that a child's welfare needs can only be met by being released, then release of the child is usually the only appropriate action. The CCD SEO operational manager will have to consider if continued detention of the FNP remains reasonable in line with current policy; the possible risk to the public of releasing the parent (and child) must be balanced against the effect of separation on the child (and to a lesser extent, the FNP). A recommendation to release an adult FNP or a person with a deportation order signed against them needs approval by the Chief Executive. Therefore, the recommendation to release an adult parent and child should be made at Grade 7 level who will then refer the case to the Chief Executive for clearance.

Very exceptionally, it may be decided (after careful consideration of advice from the social worker at Yarl's Wood) that the child should be released but not the parent. **This should be treated as a decision to split a family and therefore requires clearance by the CCD Director.** When any decision to release is made the SEO operational manager will need to ensure that suitable arrangements for their care after release are in place. Yarl's Wood may be able to assist in making arrangements alternatively where the child was living in the community prior to their detention.

The assessments and arrangements should be shared between relevant parties through a conference call. The UK Border Agency will be interested in exploring what steps need to be taken to decide if the child will continue to be liable for deportation (and therefore to further detention) at a more appropriate time.

4.5.3 Ministerial Consideration

An SEO operational manager, whose cases include that of a child whose detention beyond 28 days is to be considered by the Minister, will be required to participate in a conference call organised by the Family Detention Unit every Monday morning at 11.00 AM. In addition to

colleagues in the Family Detention Unit (FDU), these weekly conference calls are participated in by:

- ◆ representatives from every LEO with a case which is to be considered by the Minister;
- ◆ UK Border Agency staff at Yarl's Wood;
- ◆ the Yarl's Wood Children's Services manager;
- ◆ the social worker at Yarl's Wood;
- ◆ healthcare professionals at Yarl's Wood;
- ◆ head of Child Services at Yarl's Wood; and
- ◆ representatives of the UK Border Agency Children's Champion.

The available information is scrutinized by the appropriate parties at a weekly conference call hosted by the FDU. The task of the conference is to weigh up the impact of continuing detention on the child's welfare against the need to maintain effective immigration controls. The conference will take into account the details of the particular case, for example, the seriousness of the crime, compliance with the immigration process etc.

When deciding whether to continue detention, the SEO operational manager should seek advice via the consultation procedure set out in section 1.1, up to and including the OCC. Advice should also be sought from the Family Detention Unit.

5 Child FNPs at the end of their Custodial Sentence

5.1 UK Border Agency Policy – Detention

There must always be a presumption against detaining a child and each case must be considered on its individual merits. Detention of children must be a last resort and **all** relevant matters should be taken into account when considering the welfare of the child FNP, including their health, Article 8 rights and the factors included in section 4.2. However, in CCD cases, detention of an FNP under 18 may be authorised in exceptional circumstances where it can be shown that they pose a serious risk to the public and a decision to deport or remove has been taken. **This must always** be balanced against UKBA's duty to have regard to the need to safeguard and promote the welfare of children. Of course, a significant proportion of the general public are children themselves, and the promotion of their welfare may be taken into account when considering the detention of FNPs aged under 18 who pose a serious risk to the public.

Consequently, any decision to detain an FNP aged under 18 (whether unaccompanied or not) requires authority at **ministerial level**. A recommendation to detain should be sent to him/her via the appropriate Assistant Director after consultation with **Safeguarding Children Co-ordinators, the OCC and the FDU**. In the situation where **age is disputed**, unless there

is unequivocal evidence suggesting the individual is 18 or over – for example, the courts accepted that the individual was significantly over 18 – the presumption should be that he/she should be treated as a child.

5.2 UK Border Agency Policy – Release

Conversely, a decision to release an FNP does not require ministerial clearance.

Whenever release of a child FNP is being considered CCD managers will need to be informed **prior** to release so that they can be aware of individual cases. The level of notification/authority of individual releases will depend on the severity of the crime which has been committed.

Where less serious crimes have been committed notification should go to the relevant Assistant Director. In cases where more serious crimes have been committed and there is considered to be a serious risk to the public, and the Deputy Director considers release appropriate, authority must be agreed by the CCD Director following a submission. If a case is considered to be exceptionally high risk the Director may decide to seek authority from the Strategic Director or the Chief Executive. More serious crimes include where the offence is violent, sexual or involves drugs, where the sentence length indicates a serious offence, or where the FNP is subject to MAPPA arrangements.

The Case Owner must also liaise with the relevant Offender Manager (where applicable) to ensure that any relevant licence conditions or MAPPA arrangements are in place. Case Owners may also need to liaise with relevant local social services when releasing a child FNP to ensure that proper arrangements are in place for them once they are released into the community. Instructions on contacting the Offender Manager are set out in Annex A of the CCD Bail Instructions.

It should be noted that there are no alternatives to immigration detention which are available to hold young FNPs after they have completed their custodial sentences. Case Owners should bring such cases to the attention of their AD (see section 5.3 below). It is therefore imperative that planning the possible removal of a FNP who is under 18 should be undertaken and immigration action put in place well before the due release date.

Young FNPs will be the responsibility of a local authority, Youth Offending Team and the plans for the discharge, detention and deportation of such a prisoner will need to be discussed and where possible agreed with the YOT case worker.

Chapter 55 of the EIG fully states UKBA policy on Detention and Temporary release.

5.3 Removal of those under the age of 18

Section 6 (3) (a) of the 1971 Immigration Act enables a court to recommend deportation on those who are 17 years of age and above but there is no lower age limit on those who can be

considered for deportation under section 3 (5) of the 1971 Immigration Act. However in practice the removal process for those under 18 poses considerable problems as they cannot be removed to their country of origin unless adequate reception arrangements are available.

Therefore, removal of those who will be under the age of 18 at the end of their custodial sentence should be brought to the attention of the team Assistant Director (AD) immediately. The AD must make a submission to ministers following consultation with other relevant areas of the UK Border Agency, including the Family Detention Unit on <redacted> and CCD Safeguarding Children Co-ordinators. In every case they should also take advice from the Office of the Children's Champion and liaise with the subject's current place of detention before advising on appropriate action. The individual circumstances of the case **must** be taken into account with due regard given to safeguarding and promoting the child's welfare. No child should be detained under immigration powers without prior ministerial authorisation and such authorisation is only likely to be justified in cases where it could be shown that an FNP under the age of 18 poses a serious risk to the public. Further information regarding the detention those under 18 can be found in Chapter 55 of the EIG using the links below:

[http://horizon/ind/manuals/EnforcementGuidance/Resources/Detention and Removals/Guidance/Chapter55.doc](http://horizon/ind/manuals/EnforcementGuidance/Resources/Detention_and_Removals/Guidance/Chapter55.doc) (POISE)

[http://www.homeoffice.gsi.gov.uk/IND/Manuals/EnforcementGuidance/Resources/Detention and Removals/Guidance/Chapter55.doc](http://www.homeoffice.gsi.gov.uk/IND/Manuals/EnforcementGuidance/Resources/Detention_and_Removals/Guidance/Chapter55.doc) (INDIGO).

All cases that involve FNPs who are under 18 should be brought to the attention of an AD at the earliest possible date.

5.4 Unaccompanied Children

Unaccompanied children cannot be returned to their country of origin unless they have adequate and safe care and reception arrangements in place. If there is information on file to suggest that the child can return to a safe environment in his/her country of origin then deportation action should be continued in the normal way. Where these arrangements are not in place deportation paperwork should be served but removal should be deferred until the subject reaches 18 years of age.

When unaccompanied or separated children are being escorted from their normal place of residence to a port where removal will take place, then they must be served with the formal notice of detention form IS 91. This will ensure they are subject to detention procedures whilst the supervised escort is occurring. The introduction of formal detention arrangements at this point means that the UK Border Agency is fully responsible for the child during that period.

Other than in this situation, **unaccompanied children must only ever be detained in the most exceptional circumstances.** Overnight detention for unaccompanied children is only permitted so that alternative arrangements for a safe place to stay can be made. This is a safeguarding measure not an immigration measure and might occur, for instance, if a child arrives in the UK very late in the day and arrangements with a Children's Services Department for somewhere to stay cannot be made. This exceptional measure is intended to deal with unexpected situations only. **The UK Border Agency must not detain an unaccompanied child for any other reason, including for the purpose of a pending removal.**

If a child is detained because of the need to safeguard him or her, then the specific circumstances or reasons for the detention must be recorded. This must include the details of the efforts made to place him or her in non-immigration care facilities such as may be provided by a Local Authority before deciding to detain (and the responses received.)

Case Owners should note that any FNP under 18 who arrived in the UK before their 10th birthday and has spent a significant part of their childhood in the UK should be referred to a Senior Caseworker for advice before action is taken.

5.5 Care and Reception Arrangements In Country Of Origin

Ministers have agreed that no unaccompanied child will be removed from the United Kingdom unless we are satisfied that adequate reception and care arrangements are in place in the country to which they are to be removed. The Country of Origin Information Service (COIS) can be contacted for information about reception arrangements.

5.5.1 Making Preliminary Enquiries Into Reception Arrangements

If the claim of an accompanied child falls to be refused then consideration does not need to be given to care arrangements in their country of origin because they can be removed with their carer, providing that the carer can also be removed.

In the case of unaccompanied children, if preliminary enquiries show that adequate reception arrangements can be made, the caseworker should show on file that a potential carer has been identified and that there is a realistic prospect of setting up suitable arrangements for the child's return. This in effect means that a parent, guardian or other person who can be trusted to care for the child's welfare will be able to meet the child at the port of arrival and provide care for him/her thereafter. However, acceptable care and reception arrangements can vary from case to case and country to country. Where caseworkers are in any doubt about the acceptability of arrangements they should seek guidance from a Tier 2 trained senior caseworker. For guidance on how to make reception arrangements, see next paragraph.

5.5.2 Making Reception Arrangements

Making acceptable reception arrangements will usually involve locating the child's parents or other close relatives who will be able to look after the child. Alternatively, the social services or equivalent in the child's home country may be able to provide for the child. This will depend very much on the quality of care provision available.

If there are any details regarding the parent's whereabouts, such as a last known address, the caseworker should begin enquiries by contacting the relevant British diplomatic post. The caseworker can contact the Entry Clearance Officer (ECO) by email, fax or by letter which will be sent via diplomatic bag. The post should be given as much information as possible to help them with enquiries. It is especially useful if they can be provided with details of any visas that the child may have been issued in the past, or information about the schools the child attended etc. It is important that the ECO should be reminded not to disclose during the enquiries that the claimant is an asylum seeker. To do so would breach our duty of confidentiality to the claimant.

Other agencies such as the International Red Cross and International Social Services provide some tracing services but these are generally only available to the child or young person and may not be even then if these agencies are aware of our intention to enforce removal against the young person's wishes.

6 Granting Leave

6.1 Granting Children Leave

If the Case Owner decides that the circumstances of the case do not merit deportation action they should consider whether a grant of Discretionary Leave would be appropriate. Case Owners should refer to the CCD Process Instruction "Grants of Leave".

<http://horizon/IND/Manuals/Enforcement/CCDInstructions/index.asp> (POISE)

<http://www.homeoffice.gsi.gov.uk/IND/Manuals/Enforcement/CCDInstructions/index.asp>

(INDIGO)

7 Court Orders

Case Owners should be aware that children may be subject to court proceedings before deciding what further action to take on a case. Whilst immigration law takes precedence over Children Act 1989 proceedings or court orders such as Residency Orders (a Residency or Contact Order cannot prevent the removal of a child from the UK) and equivalents in the devolved administrations, Article 8 should always be taken into account and the family proceedings are likely to be relevant in this assessment. (See section 7.2.1). CCD should always liaise closely with the courts to achieve the best outcome for the child, which in many cases will be delaying removal until the proceedings are concluded. The courts will be

cautious about granting Residence Orders for children who are subject to immigration control to ensure that they are not sought simply to frustrate immigration controls. If proof exists of such an intention it is important to ensure the court is able to consider it at the earliest possible stage.

7.1 Residence Orders

These orders decide where the child is to live and with whom. The granting of a residence order to someone automatically gives him or her parental responsibility for the child if they do not already have it. Parental responsibility obtained as a result of a Residence Order will continue until the order ceases.

A Residence Order lasts until the child is 16, unless the circumstances of the case are exceptional and the court has ordered that it continue for longer.

7.2 Contact Orders

Contact Orders require the person with whom a child lives to allow that child to visit, stay or have contact with a person named in the order. Orders continue until the child is 16.

The court will only make Contact Orders for children over 16 years old in exceptional circumstances.

More information on Court Orders can be found on the CAFCASS website.

http://www.cafcass.gov.uk/the_law_about_children/contact_and_residence.aspx

7.2.1 Court Orders and Article 8

Where a subject is involved in family proceedings in the UK, for example with regards to contact with his child, it may not be appropriate to remove him until the outcome of those proceedings has been determined. Again, each case must be considered on its particular facts; involvement in, or orders made in, Children Act 1989 proceedings cannot deprive the Secretary of State of his powers of removal and deportation. However, it may be something to which he should have regard when deciding whether to exercise those powers. It should also be noted that applications under the Children Act 1989 may be vexatious.

In cases where the subject and their family members are involved in court proceedings, and deportation action would split a family see section 3.

8 Automatic Deportation

From 1st August 2008 all non-EEA foreign national prisoners (FNPs) who have received a custodial sentence of 12 months or more are subject to automatic deportation from the United Kingdom. This means that where such a sentence has been imposed the Secretary

of State is **legally obliged** to make a Deportation Order unless the FNP falls within one of the 6 exceptions. Unless the case meets one of these criteria or has a refused but arguable asylum or human rights claim there will only be an out of country right of appeal against automatic deportation. Automatic deportation where children are involved will require additional care to consider the need to safeguard and promote their welfare.

Case Owners should note that one of the 6 exceptions to automatic deportation is where the FNP was under the age of 18 on the date he or she was convicted. However deportation action can still be continued under conducive or court recommended powers (see section 5).

Case Owners should refer to the Process Instruction on Automatic Deportation for more information.

<http://horizon/IND/Manuals/Enforcement/CCDInstructions/index.asp> (POISE)

<http://www.homeoffice.gsi.gov.uk/IND/Manuals/Enforcement/CCDInstructions/index.asp>
(INDIGO)

8.1 Making a Deportation Order

Family members of FNPs can not be deported under the UK Borders Act 2007. Case Owners should continue to take deportation action under the provisions of the Immigration Act 1971.

Furthermore, where a deportation order is made against a foreign criminal in accordance with the UK Borders Act 2007, a deportation order (under the provisions of the Immigration Act 1971) can not be made against a family member of the subject after a period of eight weeks has expired. When the period of eight weeks begins depends on whether the subject decides to appeal against the deportation order.

8.1.1 FNP Decides to Appeal

When the FNP decides to appeal in respect of an automatic deportation order, the relevant period of eight weeks begins when the appeal is no longer pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002).

8.1.2 FNP Decides not to Appeal

When the FNP decides not to appeal in respect of the automatic deportation order, the eight week period begins when an appeal can no longer be brought, ignoring any possibility of an appeal out of time with permission.

8.2 Appeals Process

Family Cases and the appeals process in automatic deportation may cause problems due to the timescales involved and because the provisions of the Immigration Act 1971 and UK Borders Act 2007 are different. Family members of FNPs Automatically Deported cannot be deported more than eight weeks after the FNP's appeal rights are exhausted. See the IDI on Family and Automatic Deportation UK Borders Act 2007 for further details.

In practical terms if a subject has an in-country appeal against automatic deportation under the UK Borders Act 2007 then the family members' appeals would need to be dealt with under section 3(5)(b) of the 1971 Act. It is therefore imperative that in order to co-ordinate the Appeals so that they can be heard at the same time the two decisions which generate a right of appeal (the deportation order in an automatic deportation case and the 1070 in the case of a family member) must be served simultaneously. The AIT must be notified in writing when appeals are lodged, quoting the AIT appeal reference so that the two appeals should be heard together.

Case Owners should note that in cases where the individual subject to automatic deportation has an in-country right of appeal, chooses not to appeal but family members do, may be particularly problematic because of time constraints. In this scenario the advice of a senior caseworker should be sought as soon as possible.

If the FNP has an out of country right of appeal then his/her removal should be postponed until the family's appeal has been heard and (if appropriate) dismissed. This is to ensure that the FNP does **not** become appeal rights exhausted, thereby meaning that the eight week period beyond this date where we can legally deport family members **cannot** elapse.

9 Post Deportation Action

Once the subject and family members have been deported Case Owners should follow the post deportation actions as set out in Process Communication <redacted> "Post Deportation Process" – link below.

<http://horizon/ind/manuals/criminalcases/resources/ccdprocess/2008/0108%20Post%20Deportation%20Process.doc> (POISE)

<http://www.homeoffice.gsi.gov.uk/ind/manuals/criminalcases/resources/ccdprocess/2008/0108%20Post%20Deportation%20Process.doc> (INDIGO)