

## Chapter 13 - Prisoners and Detainees

### Internal Guidance

#### Our public statement

##### [Support for British Nationals Abroad: A Guide](#)

- If you are arrested or held in custody or prison in a country overseas, the authorities in that country should ask you whether you want them to contact the British Embassy, High Commission or Consulate. However, you can also ask for this to be done, and should do so particularly if you are charged with a serious offence.
- We will aim to contact you, depending on local procedures, within 24 hours of being told about your arrest or detention. If you want us to, we will then aim to visit you as soon as possible.
- Our staff are there to support you and to take an interest in your welfare. We aim to be sensitive and non-judgemental. We also aim to treat everyone in prison or detention the same, no matter what they are being held for, or whether they are on remand or have been sentenced. You should stay in touch with our staff and ask for their help, as they have experience in dealing with many of the problems you may face.
- But, we cannot get you out of prison or detention, nor can we get special treatment for you because you are British.
- If you want us to, we can tell your family or friends that you have been arrested. If you are thinking about not telling your family, please consider the distress it may cause them if they are not told where you are. It can also be a disadvantage to you if you need money for anything in prison or fall ill. Once we have told your family and friends, we can pass messages between you in places where phone or postal services are not available.
- Although we cannot give legal advice, start legal proceedings or investigate a crime, we can offer basic information about the local legal system, including whether a legal-aid scheme is available. We can give you a list of local interpreters and local lawyers if you want, although we cannot pay for either. It is important to consider carefully whether you want to have legal representation and to discuss all the costs beforehand with the legal representative.
- We can offer you information about the local prison or remand system, including visiting arrangements, mail and censorship, privileges, work possibilities, and social and welfare services. We can also explain where there are different regulations for remand prisoners and sentenced prisoners. For example, in some countries, prisoners are allowed to send more mail when they are on remand
- If appropriate, we will consider approaching the local authorities if you are not treated in line with internationally-accepted standards. This may include if

your trial does not follow internationally-recognised standards for a fair trial or is unreasonably delayed compared to local cases.

- We can also help to put you in touch with the charity [Fair Trials International](#)
- With your permission, we can take up any justified complaint about ill treatment, personal safety, or discrimination with the police or prison authorities. Again, with your permission, we can make sure that any medical or dental problems you might have are brought to the attention of any police or prison doctor.
- If you are in prison in a European Union country, or in Iceland, Liechtenstein, Norway, Switzerland, Canada, the USA, Australia or New Zealand, we aim to visit you once after sentencing and then after that only if there is a real need. In other countries, while you are in prison we aim to visit you at least once a year, although we may visit you more often if necessary.
- Within certain limits, we can send you money from your family. In some cases, there may be a charge for this service. In some countries, depending on the rules of the prison where you are being held, we can help to buy prison 'comforts' with money sent by your family, friends or other people. We can also offer to put you in touch with the prisoners' welfare charity Prisoners Abroad. We may be able to give you information about any local procedures for a prisoner's early release in exceptional circumstances. These procedures are generally known as pardon or clemency. We will only consider supporting pardon or clemency pleas:
  - in compelling compassionate circumstances, such as where a prisoner or close family member is chronically ill or dying and this would leave no-one to care for dependants
  - in cases of minors imprisoned overseas; or
  - as a last resort, in cases where we have evidence that seems to point to a miscarriage of justice.
- We oppose the death penalty in all circumstances. If you are facing a charge that carries the death penalty, or if you have been sentenced to death, we will normally raise your case at whatever stage and level we judge to be appropriate.
- We can explain to you how you may be able to apply to transfer to a prison in the UK if you are in a country from which prison transfers are possible.
- The local authorities may have a policy of deporting foreign nationals after they have completed a prison sentence and we cannot prevent them from applying it to you, even if you had previously lived in the country before your prison sentence.
- You should be aware that if you are arrested for certain serious offences, such as child sex abuse or drugs crimes, our staff must tell other relevant UK authorities.

#### **Friends or relatives of British nationals in detention overseas – our public statement**

If a relative or friend has been detained or held in prison overseas, we can give the following support.

- If your relative or friend has asked us to, we will tell you as soon as we can that they have been detained or held in prison. However, to protect their privacy, we will not normally provide any details of the detention or arrest, or tell you how to contact them, unless they have given us permission.
- We can provide general information about the country involved, prison conditions and the local legal system.
- We can put you in touch with the prisoners' welfare charity **REDACTED INFORMATION IN PUBLIC DOMAIN**
- If the prison where your friend or relative is being detained agrees, we can, within certain limits, pass on any money you want to send to the prisoner to buy prison 'comforts', use the phone and so on. In some cases, there may be a charge for this service.
- You should be aware that, in many countries, mail the prisoner sends or receives will be opened and read by the authorities, and phone conversations may be monitored.

## **REDACTED INFORMATION THIRD PARTY DATA**

### **Prisoners and Detainees – key points**

Contact the prisoner (by telephone or in person) within 24 hours. Visit as soon as possible afterwards, preferably within 48 hours, if the prisoner wishes you to do so.

Offer to inform friends or family in the UK if the prisoner wishes and explain to the prisoner how friends and family can send prison comforts

Ensure the prisoner knows about Prisoners Abroad and encourage them to sign their registration form.

Get to know the legal system and whether or not there is a Prisoner Transfer Agreement.

Keep in regular contact with prisoners to ensure that they are treated in accordance with international standards and that their welfare needs are met. If they are not being met, with the detainee's permission you can proactively follow these up after discussing with Consular Directorate.

After sentencing, in EEA countries, North America and Australasia, visit once after sentencing and thereafter if a real need arises. In the rest of the world visit at least once a year, or more frequently depending on local circumstances and the prisoner's circumstances. Do not visit more than is necessary

Remember to complete the Half Yearly Detainee Return.

Remember that all prisoners should be treated equally regardless of their offence.

Refer all cases where there could be human rights issues to the Human Rights Adviser in Consulate Directorate. In cases where there are human rights concerns (e.g. allegations of mistreatment) we will consider assisting dual nationals as well –

see below.

You should report all cases where there are allegations of mistreatment or torture to the Human Rights Advisor, copying the Head of Human Rights and Assistance Policy Team, the Head of Assistance Group and relevant desk officer in Consular Directorate and your Head of Mission

### Notification of arrest and initial visit – action for Post

1. When you become aware of the arrest of a British national (or a Commonwealth or an EU national with no local representation, in accordance with local burden-sharing arrangements) regardless of where the notification came from (official channels, the media or friends/family) you must:

- **Contact the prisoner** (by telephone or in person) within 24 hours. Visit as soon as possible afterwards, preferably within 48 hours, if the prisoner wishes you to do so. In some countries local procedures or the distances involved make visiting difficult. In these cases, explain to the prisoner that distance / procedure means that it difficult to visit as soon as the prisoner would like and confirm a time period within which to visit.
- Although all prisoners should be treated equally regardless of the alleged offence or possible time in custody, you must visit vulnerable prisoners as a priority (REDACTED INFORM). Therefore, out of hours the consular duty officer should try and visit vulnerable prisoners as soon as possible. If the Global Response Centre takes the call they should try and contact someone at Post who should try and visit.
- Out of hours, i.e. over a weekend, the Global Response Centre/consular duty officer should try and make contact with the detainee over the phone and follow this up by faxing a prisoner pack. If there are difficulties getting through to a prisoner by phone then a prisoner pack should be faxed anyway and a follow up phone call to the prison should be made asking them to pass on the pack. Officers should continue to try and contact the prisoner.
- Where local procedures block first contact by phone or face to face, and prisoner packs are therefore sent by post or fax, you need to ensure the material reaches the detainee, they have an opportunity to respond and, if they wish, request a visit. If you do not hear back from the detainee you *must* follow up by telephone or if this fails, with a visit. Consular officers should take the complete prisoner pack with them on a visit in case the detainee did not receive the first pack. In the long term Posts should work with local authorities to improve the policy on first contact.

### Initial visit – Prisoner pack

On your first visit you must take with you a **prisoner pack**. All posts should have a prisoners pack, whether or not you have prisoners at the present time, and these should be updated on a regular basis and loaded onto your external website. The [REDACTED INFORMATION](#) has a good example of a pack.

The prisoner pack must include the following:

General consular information	A note on what you can and cannot do for the prisoner, Post contact details and details of consular visits
Local legal system information	A note on the local legal system, including bail and parole systems if appropriate (written by or based on information provided by your Honorary Legal Adviser – HLA),
A <a href="#">REDACTED INFORMATION IN PUBLIC DOMAIN</a>	With appropriate disclaimer,
Legal Aid information	Details of any <b>legal aid scheme</b> available to foreigners,

Prison system information	A note on the <b>prison system</b> , adapted to meet the rules of the prison concerned (prison comforts, visiting hours, censorship, visitors' passes, work opportunities etc),
FCO leaflets	<u><a href="#">IN PUBLIC DOMAIN</a></u>
Prisoner Broad Information	General leaflet for prisoners, registration form and CFF form (if necessary) should be handed over . Up to date material is available on the forms for Consular staff page of <b>REDACTED INFORMATION</b> Also general information on Prisoners Abroad should be written into the pack (Please note that the Prisoners Abroad forms should be removed from the prisoner pack when visiting a non-British Citizen, for example an unrepresented EU or Commonwealth National or a British National (Overseas). Please note that practically all British Overseas Territories Citizens are now also British Citizens.)
Fair Trials International information	The <b>Fair Trials International</b> (FTI) leaflet explains how FTI can help defendants and their families and summarises what FTI can and cannot do.
Toiletry and stationery kit	Where local prison conditions and local welfare funds make it appropriate to do so, consider taking a small toiletry kit (toothbrush, toothpaste, soap etc.) and stationery (a prisoner will often want to contact their family urgently).
	To record the prisoner's details and the visit.

In order to remember all the information that should be included in the pack, it is recommended that Post create the pack as one single Word document to be printed off ahead of the visit.

#### During the visit

- Offer to inform friends or family in the UK if the prisoner wishes. If a prisoner does not want their family informed, but you believe that the charges the prisoner is facing make it unlikely that they will be released in the near future or you are aware that there is media interest in the case, you should explain that we will maintain his/her consular confidentiality. However, if the family become aware of the detention (e.g. via the media) it will add to their distress if we cannot discuss the case with them and the prisoner may wish to re-consider the decision not to allow us to inform their family. If the prisoner is a minor (under 18), we must inform the next of kin.
- You should also ask whether the detainee is content for us to share details of his/her case with an MP/MEP if they contact us. You should also explain that unless we have their permission, if an MP or MEP does raise their case with us we will not be able to discuss any specific issues with them. If a detainee is unwilling to agree to this, ensure they know that they can change their mind at any time. Make it clear that they can specify certain third parties who they are happy for us to speak to. Details should be noted on the prison visiting form.

- Explain to the prisoner how family or friends can send prison comforts via Consular Directorate. Give the prisoner as clear an idea as possible, based on other cases, on how long it will take for them to have access to those comforts.
- Check on the prisoner's health and welfare. If a prisoner complains of ill-treatment, always ask them if they want you to raise it with the authorities. If there are lots of complaints, or you are aware of a pattern of ill-treatment, consider making high-level representations. Always report any allegations of ill-treatment to the Human Rights Adviser, the Head of Human Rights and Assistance Policy Team, the Head of Assistance Group and relevant desk officer in Consular Directorate and your Head of Mission, whether or not the prisoner wants you to take the matter up with the authorities.
- Be honest with the prisoner. Be supportive, but do not hold out false hopes. Explain clearly what you will and will not be able to do from the start.
- Don't make promises which you cannot fulfil. If you agree to do something then do it. If you cannot fulfil a request then explain why. If you promise to visit again on a certain date then do so, or send another member of staff on your behalf.
- Ensure the prisoner has access to legal representation. Ensure the prisoner has an up to date copy of your local lawyers list. If it is difficult for a prisoner to contact their lawyer then help to resolve this, but remember that we cannot recommend a lawyer to the prisoner.
- Ensure the prisoner is aware of the services Prisoners Abroad can provide (details of which should be in your prison pack) and encourage them to sign their registration form.
- Continue to visit as often as you consider necessary during the remand period.
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- Inform Consular Directorate of all detentions lasting 24 hours or more. Keep Consular Directorate informed of the progress of the case and the trial (usually through the prisoner's lawyer) and of ALL prison visits (families often contact Consular Directorate to discuss recent visits).

### Visiting dual nationals

You should not normally visit a dual national who has been detained in the country of their other nationality. However, if concerns over mistreatment are raised in any way you should try to contact the detainee to check their welfare. If you are in a country where there are general concerns about mistreatments of certain detainees, such as those held in relation to terrorist or political offences, then you should try to contact any dual national held in relation to such offences, regardless of whether specific concerns have been raised. If contact is not possible by telephone then you should visit. If local authorities block access you should seek advice from Consular Directorate. If the detainee does not raise concerns then you should not provide further consular assistance, but you should explain our publically stated dual national policy and ensure that the detainee has your contact details. If they do raise concerns then you should inform the Human Rights Advisor, the Head of Human Rights and Assistance Policy Team, The Head of Assistance Group and your Head of Mission (see below "prisoners and detainees – human rights").

### Arrest – checklist for Consular Directorate

- Obtain from Post **as many details as possible** of the detainee ie name, date of birth, passport number, next of kin details (specifying whom they would like us to contact on their behalf), charges, sentence details (if applicable), state of health.
- **Inform next of kin** if the prisoner has requested this – unless the prisoner is less than 18-years old when it is mandatory to inform the next of kin.
- **Reassure** next of kin that you are taking a close interest in the case and will continue to keep them updated. Specify when you will next call.
- Where possible, inform next of kin if the country concerned has a Public Defender System or whether the family must pay for a **lawyer**.

DO:	DO NOT:
Be factual but sensitive.	Speculate on the length of any custodial sentence.

Update next of kin on receipt of new information.	Make assumptions or statements about the guilt or innocence of the detainee (“Well, it’s clear he did it…” after someone has been found guilty probably won’t go down too well).
Alert Special Cases Section immediately of any arrests that are clearly of a terrorist nature or maybe connected with terrorism. Special Cases will probably take on the case permanently after discussion with you and your Deputy Head of Section.	Deal with people differently depending upon the nature of the offence with which they are charged.
Record conversations in full detail.	Say “He will only get six months” or “He will be out in a couple of weeks”.
	Get involved in investigations conducted by the local police or authorities. This includes acting as an interpreter, or sitting in on suspect interviews.

**Notification of arrest**

2. British nationals arrested overseas should be allowed to inform the consular officer if they so wish. If the local authorities have denied such a request, raise the subject with them without delay and ask for an explanation of their failure. Base your representations on

- the provisions of the VCCR or the customary international practice that it codified and
- (in Commonwealth countries) the informal reciprocal agreement and
- the practice in the UK for persons under arrest to be given every opportunity of immediate contact with their consular representatives and
- provisions of the bilateral convention.

3. You may be asked to be present when a British national is to be arrested. The circumstances of each case should be weighed up before a judgement is made (below). In general, requests to be present when searches are made should be politely refused.

4. Staff may receive requests from local police or judicial authorities for the criminal records of British nationals under detention. Staff should refuse such requests and advise the authorities to make their enquiries through international police channels.

**Preparation for your first prison visit**

5. A prisoner will look to you for information. Before you conduct your first visit make sure you are prepared for the questions that a prisoner will expect you to answer. Get to know the legal system (but do not give advice). Get to know the prison system and the prison you are visiting. If security is an issue at the prison – or the prisoner is alleged to be violent – share a visit with a colleague. Know whether or not there is a Prisoner Transfer Agreement.

<b>DO BE:</b>	<b>DO NOT:</b>
Helpful	Fail to turn up
Attentive	Give legal advice
As positive and encouraging as possible	Raise false hopes

As informal as possible without being over familiar	Break promises (e.g. to buy something or pass on messages)
Frank but sympathetic	Get over-involved or, worse, under-involved and nonchalant
	Take any risks regarding your personal safety
	Speculate on outcome, sentence or possible release dates

### Mail

6. Arrangements for delivering mail and prison comforts vary depending on your host country. In some countries, it is necessary for consular staff to be involved. Check with your colleagues what the arrangements in your country are.

- If possible, give the family the address of the prison.
- If mail cannot be sent to the prison, advise family and friends that they can send mail directly to the Embassy or Consulate to take to a prisoner. Explain to the prisoner and his or her correspondent that if mail is sent to consular staff, we may open the mail to check for prohibited items, but will not read the contents.
- Do not offer to forward mail through the diplomatic bag between prisoners and their family and friends overseas. The use of the diplomatic bag is governed by international law and should only be used to transport official correspondence or documents/articles for official use.

### Vulnerable groups

7. Vulnerable prisoners could include the following sort of people:

- Ability to survive in prison – e.g. minors, elderly people, those mental health needs and learning difficulties or physical difficulties or lesbian/gay/bisexual/transgender.
- Nature of offence may put the prisoner at risk – e.g. sexual offences.
- Past lives put them at risk – e.g. ex police officer, informant.
- Prisoners with debts within the prison.
- Prisoners who are being bullied (can include minors and any others listed in the above groups).

8. If you are aware of any circumstances that may make a prisoner particularly vulnerable, contact Consular Directorate immediately and visit the prisoner as a priority. You should in any case visit all minors as a priority.

### Bail – action for Post

DO:	DO NOT:
Explain to prisoners that in assessing whether to permit bail, the judicial authorities are entitled to consider a person's links to the country and how likely it is that they will flee. This means that foreign nationals may be less likely to receive bail. But they should take advice from their own lawyer on bail issues.	Interfere with the decision whether to issue bail, unless there are strong grounds to suggest that due process has not been followed. In this case, consult Consular Directorate.
Explain that similar factors are considered in the UK and we do not regard it as a form of discrimination per se.	Offer to pay someone's expenses while they are awaiting trial.
Remind British nationals, who have been permitted to leave the country on condition they return for the proceedings,	Offer to hold the passport of a British national who has been released on bail until the conclusion of legal



that failure to comply could lead to them being placed on an immigration blacklist or extradited from the UK, or a third country to which they later travel, for the offence.	proceedings. We cannot withhold passports belonging to British nationals without the permission of the Home Secretary.
Explain that Prisoners Abroad will not provide hardship payments or other allowances to British nationals who are released on bail.	Offer any official guarantees that a British national released on bail will remain in the country or offer to take the British national into the custody of consular staff prior to the trial. If the person flees the country, HMG, or you personally, could be held responsible. It may even lead to you becoming a <i>persona non grata</i> and returned to the UK.
<u>Explain that they will have to find sufficient funds to support themselves while on bail.</u> They may be unable to work due to local regulations or language difficulties. The local authorities in most countries will not be able to provide support. We cannot provide funding or find them a job.	
Consider making representations to the local authorities if there is unreasonable delay in a case coming to trial.	

#### **Retention of passports by foreign authorities**

9. This can be a sensitive issue and we have to try to balance our inability to refuse passport facilities to eligible British nationals against our wish not to be seen to assist anyone to evade the due process of law.

10. If an individual who has surrendered their passport as a condition of bail enquires about a replacement passport, warn the individual that HMG cannot issue a passport for an individual who already has a valid passport in circulation, without attempting to retrieve the original passport. Before a new passport can be issued, Post must first contact the local authorities and request the return of the holder's original passport. The individual should be warned that such a request might result in bail being revoked. It is for the individual to then decide whether to continue with the passport application.

11. If the individual continues with the application, Post should write to the authority holding the passport and request its return as it is the property of HMG. Explain that it may not refuse passport facilities to eligible British nationals and that a replacement will be issued if the local authorities continue to retain the passport. Ensure that this correspondence is addressed to the correct individuals. You may need to follow up any written correspondence with telephone contact. Ensure that a paper trail is kept of all dealings with the local authorities.

12. If, after 10 working days, the passport has not been returned, Post can issue a replacement and should notify the Country Casework Team in Consular Directorate when a replacement passport has been issued.

13. If a British national on bail approaches a Post in a third country (i.e. they have managed to leave the first country by some means), the same procedure should be followed. The Post in the third country should notify the Post in the country holding the passport who should then write to the local authorities to request the return of the original passport.

#### **Subsequent prison visiting – action for Post**

14. We are publicly committed to ensuring that British nationals are treated in accordance with international standards and that their welfare needs are met. Consular staff may also be asked to assist EU or Commonwealth nationals. Consular staff should keep in regular contact with prisoners, either by visiting personally or by telephone/letter. The frequency of visits should depend on local conditions and the prisoner's circumstances. If you need further help on how frequently to visit prisoners, you might find the prisoner visiting tool helpful.

15. In EEA countries, North America and Australasia:

- Unless consular staff deem it necessary to visit more frequently, the policy for visiting prisoners on remand should be once every 12 months.
- Visit a prisoner once in prison after sentencing and establish what prison conditions are like, and thereafter only if a real need arises.

- Make sure the prisoner has contact details of the Embassy and who to contact if a problem arises.
- If need be, explain again how the prisoner's family or friends can send prison comforts. If the family cannot help financially, ask Consular Directorate to approach Prisoners Abroad who may be able to help with a small monthly allowance.
- Explain about Prisoner Transfer Agreements, if there is one, and how to apply to serve the sentence in the UK.
- Remind the prisoner about Prisoners Abroad and, if necessary, encourage them to sign Prisoners Abroad's registration form. When a prisoner comes towards the end of their detention, advise them to contact Prisoners Abroad who may be able to help the prisoner resettle on their return to the UK. But bear in mind that most prisoners returning to OTs will not qualify for such support.
- Make contact with the Prison Governor and ensure (s)he knows how to contact the Embassy/High Commission if required. It is important to cultivate a good working relationship with a key contact in the prison. This will help you resolve issues quickly and help families have successful prison visits.
- Assist the family when they visit. Provide guidance on visiting the prison, what they can and cannot take in. If the family have travelled a great distance try to arrange extra visits for them.
- Inform local volunteer prison visiting groups about new prisoners (with the prisoner's permission).
- We can ask prisoners if they would like to be visited by a third party (non-family or close friends) and give that third party information on how to go about a visit, e.g. direct with the prison authorities, applying to the Court etc and contact details but we should not arrange the visit nor agree to accompany the third party.
- Refer any complex cases to Consular Directorate and keep the Directorate updated on all cases.

16. In all other countries, consular staff should follow the above guidelines and in addition:

- Visit prisoners at least once a year, and more frequently if necessary.
- Keep a close eye on the prisoner's physical and mental health. If you see a significant change in either then take the necessary steps to get them proper medical care. If you have any concerns about the ability of the prison authorities to provide appropriate and prompt treatment, contact Assistance Policy and Prisoners Section in Consular Directorate who can seek expert guidance in the UK.

#### **Prison visiting – checklist for Consular Directorate**

17. The frequency of visits to British prisoners by consular staff at Posts varies from country to country. Check with Post before you give any information about visiting to relatives. Under our public service agreement, we are committed to aiming to contact prisoners within 24 hours and visit them as soon as possible after, preferably within 48 hours (plus travelling time) of becoming aware of their case.

18. We will then visit all prisoners in the EU states, EEA countries, North America and Australasia once after sentencing, unless real need arises. We must visit prisoners in other countries at least once a year and posts may visit as frequently as twice per month where conditions are extremely poor. Do not visit more than is necessary.

19. We would like consular visits to British prisoners (EU/Commonwealth nationals where appropriate) detained overseas to be consistent worldwide.

We would advise Posts to carry out the assessment annually or if local circumstances change prior to an annual review.

20. Country Casework DOs and ADOs should be aware of how often posts you cover are visiting prisoners and let Assistance Policy and Prisoners Section know if you think they are not complying with this policy.

21. Country Casework DOs and ADOs should be particularly aware of cases involving vulnerable individuals.

#### **Commonwealth and EU nationals – action for Post**

22. If an unrepresented Commonwealth or EU national requires your assistance:

- Inform the nearest Embassy of their national's sentence.
- Visit the prisoner in accordance with local burden-sharing arrangements.
- If no local burden-sharing agreements exist, carry out the first prison visit. Consult Consular Directorate and the nearest Embassy about any additional visits.

#### **Half Yearly Detainee Return – action for Post**

23. Complete at the end of September and March. Assistance Policy and Prisoners Section need up-to-date accurate prisoner statistics to respond to requests from Parliament and the media. Returns must be completed and sent no later than five working days after the last day of the quarter. An e-gram will be sent as a reminder to

all consular posts prior to each deadline. Please note that Overseas Territories are not required to complete the HYDR form.

### **Prison Transfer Agreements**

24. Prisoner Transfer Agreements (PTAs) allow prisoners to transfer to serve the remainder of their sentence in their own country. This enables them to be closer to family and friends in an English-speaking environment, and permits them to benefit from pre-release courses available in British prisons.

25. The UK can conduct prisoner transfers with over 100 countries through various international arrangements:

- the Council of Europe Convention on the Transfer of Sentenced Persons (CECTSP);
- the Commonwealth Scheme for the Transfer of Convicted Offenders; and
- Bilateral Prisoner Transfer Agreements.

26. Consular staff should inform prisoners if the country in which they are detained has signed up to any such arrangement and, if so, should explain how to apply for transfer. Consular staff should provide a copy of the FCO leaflet [\\_](#)

27. An up-to-date list of contracting states to the CECTSP is available (ETS (European Treaty Series) no. 112). Details of countries participating in the Scheme for the Transfer of Convicted Offenders within the Commonwealth is available and the UK has operative bilateral PTAs. Copies of the agreements and a list of countries are available

28. The Additional Protocol to the Council of Europe Convention on the Transfer of Sentenced Persons is due to come into force in the UK in November 2009. It provides for the transfer of a sentenced person **without** their consent only when:

- The sentenced person would be subject to deportation at the end of their sentence or;
- The sentenced person has fled to another signatory state of which they are a national. (This means that the sentencing state can request the enforcement of the sentence to be transferred.)

We expect that those prisoners who other states request to transfer back to the UK will have already gone through the deportation process and will have exhausted any appeals. Prisoners who are informed that they are due to be transferred back to the UK and feel that they have not been through the appeals process should contact the British Consulate who will look at raising the issue with the authorities.

29. A prisoner does not have an automatic right to transfer. Each request is considered on its individual merits. The UK and the country in which the British prisoner is held have the absolute right to refuse a request.

30. The prisoner must also give their consent to the transfer. If consular staff or officials of the sentencing State consider that the prisoner is not capable of giving consent because of age or mental/physical incapacity, the case should be referred to Assistance Policy and Prisoners Section in Consular Directorate.

31. The basic criteria for eligibility to apply for transfer are:

- the prisoner must be a British citizen or have close family ties with the UK (normally through permanent residence in the UK);
- criminal proceedings in the foreign country must be complete. The prisoner cannot be transferred if they are awaiting trial or the outcome of an appeal;
- the prisoner must normally have at least 6 months of the sentence left to serve at time of application, but Agreements with some countries require the prisoner to have 1 year of the sentence left to serve. If in doubt, consular staff should check with Assistance Policy and Prisoners Section, Consular Directorate or familiarise themselves with the requirements of the PTA that applies in their country;
- the offence for which the prisoner was convicted must constitute a criminal offence in the UK;
- the prisoner must have no outstanding fines or other non-custodial penalties;
- other conditions may apply, depending on the specific transfer arrangements with each country.

32. Prisoners should normally make their transfer applications to the prison authorities in the place of detention. However where the prisoner asks us to, we can forward their request to the local authorities on their behalf. The local authorities, together with the UK authorities (National Offender Management Service at the Ministry of Justice, Scottish Prison Service or Northern Ireland Prison Service), must consider the request and then decide whether to agree or refuse the transfer.

33. There may be times when it is right for Consular staff to bring to the attention of local authorities certain factors surrounding an application. But Posts should not do this, or lobby the host government for early or special consideration of a transfer request, without the explicit agreement of APPS Consular Directorate, who will in turn consult the UK authorities before agreeing a course of action. This is particularly important if the transfer request has not been considered /agreed by the UK authorities.

34. Consular staff at Post and in London should, if asked by the UK authorities, assist in forwarding documents, chasing local authorities if the application is being held up, witnessing a prisoner's consent to transfer, verifying the personal details of a prisoner for the UK authorities, and making the final arrangements for transfer. The UK authorities involved will inform you about progress in each case, and will provide instructions when they need your assistance. **Please note that it is essential that any transfer arrangement details (ie return dates and flight details) are not passed to any family and/or friends of the prisoner.** Doing so may result in the transfer being terminated and the detainee may have to reapply for the transfer. Any breach of this should be reported immediately to NOMS in the Ministry of Justice or the relevant authority in Scotland or Northern Ireland.

35. Posts should consult Consular Directorate at once if, for urgent medical or compelling compassionate reasons, it seems advisable to explore the possibility of an application for transfer from a country with which the UK has no repatriation agreement.

#### **Prisoner Transfer Agreements – fare to the UK**

36. Posts have to make sure that the prisoner pays the cost of their fare to the UK. A Prison Service undertaking to repay the cost form is sent to the Consul for the prisoner to sign at the appropriate time. This gives the authority to charge the costs to the Prison Service in the post account (not FCO subheads 'Repatriation against Deposit' or 'non-Deposit cases').

#### **Prisoner Transfer Agreements – length of time for application to be assessed**

37. The length of time can vary considerably. On average it may take 12 months, but in some countries it can take more than two years. It is important that prisoners understand this and are not over optimistic.

#### **Prisoner Transfer Agreements – Overseas Territories**

38. Transfers are possible between participant states and certain Overseas Territories under the provisions of the Council of Europe Convention on the Transfer of Sentenced Persons (CECTSP). The Overseas Territories concerned are:

- Bermuda
- Cayman Islands
- Falkland Islands
- Gibraltar
- Montserrat
- Pitcairn Islands
- St Helena and its Dependencies
- Sovereign Base Areas on Cyprus.

39. Transfers between the UK and

Anguila  
British Indian Ocean Territory  
British Virgin Islands

are possible under informal exchanges of Notes which took place in 1987. The Notes apply the effect of the terms of the Commonwealth Scheme for the Transfer of Convicted Offenders for transfers between the UK and the Overseas Territory concerned.

40. Prisoners wishing to return to one of these Overseas Territories should make their transfer application to the prison authorities in the place of detention or, if they prefer, through their nearest British Consulate who will pass the application request to the relevant UK authorities. The UK authorities will then make an application to the foreign authorities on the prisoner's behalf.

#### **Prisoner Transfer Agreements – note for Consular Directorate**

41. Make relatives aware that it is never possible for a detainee to apply to transfer until all legal procedures/appeals etc have been completed. Even then transfer can take a considerable time to arrange.

#### **Internal Prison Transfers**

42. Only in exceptional circumstances would we consider supporting or resisting an internal prison transfer. If Post consider that there were humanitarian or welfare reasons to do so they should consult Consular Directorate beforehand. If it is decided that lobbying for/against a transfer is not possible then Post should discuss making representations on specific conditions etc once the prisoner has transferred.

**Clemency , pardon and amnesty pleas** (depending on local terminology i.e. discretionary decisions made by the Executive i.e. King, President, Governor etc)

43. Clemency is an act of mercy by the sovereign power in a State, usually resulting in early release for a prisoner. In many countries it is possible for a prisoner to submit a plea for clemency once they have been convicted. The FCO will **consider** supporting pleas for clemency by British prisoners in the following circumstances:

- In compelling compassionate circumstances, such as where a prisoner is chronically ill or dying (particularly when prison conditions overseas are poor) or when a close family member is chronically ill or dying and this would leave no-one to care for dependant children or parents; where continued incarceration is likely to endanger life or is likely to reduce life expectancy significantly;
- If the prisoner overseas is a minor (under 18);
- As a last resort, in cases where we have prima facie evidence of a denial or miscarriage of justice, where we have made representations, but where those representations have failed to secure a remedy. In these cases, our reasons for supporting a plea would not normally be mentioned explicitly in the plea itself.

44. HMG supports appeals for clemency on compassionate grounds only as a last resort, when all other avenues have been exhausted. This might include requests from Post to the relevant local authorities about appropriate medical treatment, or when a transfer to the UK could be completed within a reasonable timeframe.

45. Posts should not submit pardon applications on behalf of prisoners except where the host government will not consider an application unless it is submitted by an Embassy. In such cases posts can forward documents, without comment, but this should only be done by posts which have the clear agreement of Consular Directorate to do so.

46. Posts should not take independent decisions over supporting applications. Consular Directorate will consider support on a case by case basis, taking all the circumstances into account. For countries where the prisoner could apply to transfer to the UK, they will also seek views from the UK Ministry of Justice on whether HMG support may have any impact on a future potential transfer. However all cases that Consular Directorate considers meet the criteria will be submitted to Ministers for a final decision.

## **DO**

- Consult Assistance Policy and Prisoners Section about any appeal for clemency that might merit HMG's support. Ministers make the final decision on whether to support a clemency plea or not.
- Ask Assistance Policy and Prisoners Section for advice on assessing the medical condition of a prisoner. The Pro Bono Medical Panel may be able to help.
- Remember - a prisoner may still submit a private appeal for clemency to the detaining state without HMG's support.

## **Human rights**

### **Summary**

47. Prisoners overseas can be particularly vulnerable to human rights violations. Look out for the key concerns below and refer all cases where you think there could be human rights issues to the Human Rights Adviser (HRA) in Consular Directorate. In cases of alleged torture or mistreatment, you should copy in Head of Consular Assistance Group, Head of Human Rights and Policy Team, and your Head of Mission

48. The HRA in Assistance Policy and Prisoners Section (FTN: 8008 0242) is an expert in human rights law and is responsible for: advising Posts and Desk Officers in London on cases of British nationals overseas where there is concern about human rights; leading on cases where a British national could be, or has been, sentenced to death; and helping the Directorate develop policy on the protection of human rights of British nationals overseas.

49. See key concerns below. If there is a human rights violation, the HRA will work with you to decide whether action is appropriate and what form such action should take. This guidance is in accordance with international human rights law documents and treaties.

### **Human Rights - Advice on allegations of torture/mistreatment - Torture**

50. Broadly speaking, an act of torture is one which causes severe pain or suffering, physical or mental, and has been intentionally inflicted upon a person by/ at the instigation of/ with the consent/ acquiescence of a public official or someone acting in an official capacity. The British Government is opposed to torture in all circumstances. You need to take action on any allegation of abuse involving a British national, including dual nationals, although what you do will depend on the circumstances. Further guidance is set out below.

51. If you are concerned that a detainee has been mistreated, but they do not raise concerns with you, try to talk to them privately. Signs that someone is being tortured may include rashes, weight gain, weight loss, alertness, rapid or particularly slow eye movements in addition to more obvious evidence. If you have reason to suspect abuse, you should ask them whether they want us to make representations, during this first visit if feasible. You should continue on subsequent visits to ask them if they are being mistreated and whether they would like us to make representations accordingly. If they make no complaint but you are still concerned ask the HRA for advice.

#### **Cruel, inhuman, or degrading treatment or punishment**

52. Treatment which does not amount to torture may still constitute cruel, inhuman or degrading treatment or punishment under international law. For example, this could include beatings, food or drink deprivation, subjection to noise or long-term solitary or sensory confinement. Degrading treatment is that which grossly humiliates a person before others or forces someone to act against their will or conscience. Whether ill treatment is of the severity and nature to constitute other cruel, inhuman or degrading treatment depends on all the circumstances of the case.

#### **Reporting cases of alleged or suspected torture or mistreatment**

53. You should report to the Human Rights Adviser in Assistance Policy and Prisoner Section in London all cases where allegations of torture or mistreatment are brought to your attention, either by the detainee themselves or by someone else, copying to your Head of Mission, the Head of Consular Assistance Group and the Head of Human Rights and Assistance Policy Team. This includes cases which you have been informed about via any sources other than the prisoner, including family members or representatives or reports from other agencies. In the case of highly classified information, you should consult the originator of the report, and should ensure that it is copied to the Head of Consular Assistance Group by the originating organisation. For the avoidance of doubt the same reporting procedures apply in the case of EU Commonwealth nationals for whom we have accepted to provide consular assistance.

54. Your report should include as much relevant information and as specific details as possible, including :

- Detainee's full name, date of birth and passport number (if available)
- Full name(s) of alleged perpetrator(s) and name of authority/organisation
- Prison/ detention facility
- Reason for detention
- Name of detaining authority if different from that of the alleged perpetrator
- Allegations made and date when they took place
- How the alleged incident was reported to you (i.e. the name of the person or source if this was not the detainee)
- Whether we have permission from the detainee to raise these with the authorities of the state concerned

55. The Head of Consular Assistance Group will ensure that all allegations of mistreatment are reported to the Director of Consular Services and the relevant Minister.

56. Consular Directorate maintains a central database of all cases where allegations of mistreatment have been made. Posts should also keep a record of cases where allegations of mistreatment have been made, and forward this to Consular Directorate as part of the Half Yearly Detainee Return. This record should include the individual's name, the Compass reference number, a brief description of the allegation including relevant dates, and confirmation whether action has been taken or not.. As the full details of the case will be on Compass, there is no need to provide more information. When forwarding this information to Consular Directorate as part of the Half Yearly Detainee Return, Posts should only send the part of the spreadsheet containing new cases since the previous Half Yearly Detainee Return. This should include individuals who have been previously reported if they make new allegations of mistreatment.

#### **Advice on allegations of torture/mistreatment – Action for consular officers**

57. The most effective action we can take in response to claims of torture or mistreatment is to bring the case to the attention of the relevant authority, with the individual's consent, with a view to ending the mistreatment and/or having the incident investigated and the perpetrators brought to justice. Only the local or national authorities are in a position to take this action: it is not the role of consular officials to investigate allegations of mistreatment.

58. If a British national (or someone on their behalf) makes an allegation that they have been tortured or mistreated, a consular officer should visit them as soon as possible. If, on request, a visit by a consular officer is denied by the local authorities, the consular officer should inform London as soon as possible. Post and London can discuss options for raising with the authorities so that Post can push for consular access and secure a visit as soon as possible. They should get as much detail as possible about the allegations, including dates, times, places, the details of the mistreatment and the names of any officials involved. The British national should be asked if they would like us to take the allegations up with the relevant authorities. Without direct consent of the detained British national, you should take no case specific action with the authorities. Prisoners may choose not

to have allegations of torture or mistreatment raised with the authorities, as they may believe that it could exacerbate the situation.

59. If a British national asks you to take up their complaints, you should consult the Human Rights Adviser urgently on next steps, which will generally be to make representations to the relevant authorities. There will be a strong presumption that allegations of mistreatment should be raised vigorously with the appropriate authorities, with the consent of the individual concerned, including where necessary at ministerial level. Ministerial authority is needed to adopt a different approach.

60. We can raise allegations with the authorities in a number of ways. One option is to do so formally, initially through a Note Verbale. The Note should not imply that we are offering any view as to the substance of the allegations but should express concern at the allegations and request that a prompt, impartial investigation be undertaken. The Note will also normally request that HMG is informed of the result of any investigation undertaken. The HRA will be able to let you have an example of a Note Verbale to bring a case to the attention of the local authorities.

61. You should always follow up the request for an investigation to ascertain the outcome. You should raise our concerns if it appears that the process was not comprehensive or impartial. You should ask the Human Rights Adviser for guidance on what further action to take, who will provide advice in consultation with Post, Consular Directorate and the relevant geographical department. This can include making representations after the detainee has been released, if he is unwilling for concerns to be raised whilst he is detained. If you are asked by a former detainee to raise concerns over mistreatment or torture, either in your country, or in another country, you should seek advice from the Human Rights Adviser. This applies equally if the person has returned to the UK.

62. If the British national does not want us to raise the allegation of torture or mistreatment with the authorities, you should nevertheless take action as follows. You should record the allegation in as much detail as possible as set out above, advise the British national that we can take the allegations up in the future with the authorities concerned, and pass details to the Human Rights Adviser. Where the consular officer has concerns that a British national may be being mistreated while in detention, the consular officer should prioritise regular follow up, if necessary more frequently than according to our standard prison visiting schedules. The officer should continue to ask them on subsequent visits whether they wish us to raise any concerns.

63. Where a British national does not want allegations of torture or mistreatment raised with the country concerned, but there are general concerns over the treatment of prisoners in that country, or you are aware of similar complaints e.g. from EU partners, you should seek the Human Rights Adviser's advice on whether it would be appropriate (and safe for the British national concerned) for us to make general representations, either alone, or via others such as the EU Presidency. If it is agreed such general representations would be useful and safe, the British national should be asked whether they agree to such action before any lobbying is undertaken. These representations may in some cases form part of the wider political dialogue with your host Government.

64. Notwithstanding the above, the FCO may decide to make case specific representations without express consent where there are exceptional circumstances that justify doing so. An example of this may be where the individual is mentally incapable of giving informed consent. Such cases should be determined on a case by case basis, taking the best interests of the individual into account. Again, the Human Rights Adviser should be consulted in all such cases. If necessary, the Directorate will seek ministerial authority.

### **Dual nationals**

65. In cases where you have reason to believe the British national is also a dual national of the country in which he or she has been detained, you should nevertheless record the allegation and inform the appropriate people in exactly the same way as for a mono British national. The Human Rights Adviser, in consultation with others, will provide you with specific guidance on what further action you should take in the case. However, you should note that if you are in a country where there are general concerns about mistreatments of certain detainees, such as those held in relation to terrorist or political offences, then you should try to contact any British national held in relation to such offences, regardless of whether you or the authorities believe them to be a dual national, and regardless of whether specific concerns have been raised **Advice on allegations of torture/mistreatment –**

### **Flowchart**

66– a summary of this flowchart is:

- Ask detainee whether they have been mistreated
- Ask detainee's permission to raise any allegations with the authorities
- Ensure detainee is aware of local complaints procedure and has access to local lawyer
- Inform the Human Rights Advisor, the Head of Mission, and Heads of Assistance Group and Human Rights and Assistance Policy Team of any allegations of torture/mistreatment
- With detainee's permission, and after consulting Human Rights Advisor, send a Note Verbale seeking investigation of allegations or support any other action as directed by London

- If no response received within 1 week (urgent cases) or 3-4 weeks (less urgent cases), or if unsatisfactory response received, agree follow up action with London (this could include a further Note Verbale, senior level call on the MFA, or even ministerial engagement in serious cases).
- It may also be possible to coordinate international action, e.g. enlisting the help of EU colleagues to undertake joint lobbying or an EU demarche – or the detainee can approach the European Court of Human Rights, Human Rights Council, Committee Against Torture or UN Special Rapporteur on Torture

### **Human rights – other key human rights concerns**

Death penalty. Has a British national been given the death sentence? Is there a possibility of the death sentence being passed down?

Arbitrary detention. Is a British detainee being held arbitrarily? It is important to find out if a detainee has been informed promptly at the time of arrest, in a language they understand, the reasons for the arrest and any charges against them. Has the detainee been brought promptly before a judge and been able to challenge the lawfulness of the detention? But please note domestic legislation in some countries allows for detention for long periods without charge.

Incommunicado detention. To be detained incommunicado is to be unable to communicate with the outside world. Such detainees are denied access to lawyers, family and doctors. Those detained incommunicado may also be at risk of suffering further breaches of their human rights whilst isolated. There may also be the question of whether the detaining state has breached its obligation under the Vienna Convention on Consular Relations in relation to consular access.

Unfair trial. Has a detainee been given a fair and public trial within a reasonable time? Are you concerned that the tribunal was not independent or impartial? Also of concern is if, during trial, a detainee has not been presumed innocent, has not been allowed to defend himself or have legal assistance, or has not had free assistance of an interpreter where necessary.

Discrimination. Do you have concerns that a British national is facing discrimination? Discrimination is any difference in treatment based on grounds such as race, colour, age, sex, sexual orientation, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status which aims at restricting or denying ones human rights and fundamental freedoms.

Expressing opinions. Freedom of expression allows a person to hold opinions and to receive and communicate information and ideas without public authority interference.

Religious beliefs. Has a British national been denied freedom of thought, conscience or religion? Has he been forbidden from practising his religion in public or in private?

### **Human rights – checklist for Consular Directorate**

- You and Post may be able to spot when someone's human rights have been abused; the detainee may not realise.
- If you have any concerns about the way a prisoner is being treated – notwithstanding that Post haven't flagged it as an issue of particular concern – you should consult your manager and/or talk the case through with the HRA or another officer in the Assistance Policy and Prisoners Section.

### **Extradition**

67. When a British national is imprisoned overseas awaiting extradition, or arrives overseas following extradition from the UK, it is part of our consular role to have regard to safeguarding their welfare. They should receive the same consular assistance as any other prisoner. Consular staff should not become involved in handling requests for extradition to or from UK. This is not a consular function and any involvement may be seen as a direct conflict of interest with consular welfare and assistance roles.

#### *Third Country Extradition Cases*

68. Where a British national is being extradited from one foreign country to another, there may be concerns about the fairness of the extradition process itself, the fairness of the trial he/she may face in the requesting country, the punishment that may be applied and other welfare issues. Although we cannot interfere in legal proceedings overseas we can sometimes intervene. The most common kind of intervention in extradition cases is lobbying the government of the sending state to seek diplomatic assurances from the requesting state regarding welfare, trial or sentencing. A decision to intervene would be taken in London, on the basis of advice from both Posts concerned. In some cases we may submit to Ministers for approval to intervene. Posts should make sure that all relevant information about the case is available i.e. likely sentence, penalty, risk of mistreatment.



69. When a prisoner is being extradited from the UK, HMG may seek assurances that:

- If detained, they will receive no ill treatment whilst in detention.
- They will receive a fair trial and public hearing by an independent and impartial judiciary.
- Any trial will take place in a civilian court.
- They will be informed promptly and in detail of the nature of the accusations against them.
- They will have adequate time to prepare their defence.
- They should be able to examine, or have examined, witnesses against them and to obtain the attendance and examination of witnesses on their behalf.
- The death penalty will not be imposed, or will not be carried out, if imposed.

70. We aim to apply the same criteria when considering whether to intervene in third country extradition cases. We take into account the extradition procedures in the sending country, including whether they are independent, thorough and take human rights considerations into account. We also take into account the situation in the requesting country, including the likelihood of the prisoner receiving a fair trial, the potential punishment to be applied, and any other welfare issues.

- We will always intervene in the extradition of a British national for an offence which may attract the death penalty, even if the sending state is another abolitionist state.
- We will consider intervening where there is a concern that a British national will not face a fair trial.
- We will consider intervening where there are concerns that a British national may be tortured.
- We will not intervene simply because the conditions of detention in the requesting state are poor.
- We will not intervene in an extradition to the UK.

71. All EU member States participate in the European Arrest Warrant (EAW) Scheme.

72. The EAW scheme is a streamlined revision of the old extradition process. The main differences from the old extradition process are that there is no consideration in the requested state of the merits of the case and there is no need for approval by the executive arm of government. The judge only checks the identity of the person in front of him and the form of the request. Grounds for appeal are very limited. Once a person has been arrested, the extradition process, including any appeal should be completed within 90 days.

73. Our role in providing consular assistance to a BN "extraditee", whether he/she is awaiting an extradition hearing (either in detention or on bail) prior to extradition, or recently extradited and awaiting trial, is the same as for any other form of extradition.

### **Ill health**

74. Many prisoners will suffer some form of illness. If a prisoner claims to be ill, or their family claims that the health of the prisoner is deteriorating:

#### **DO**

- Take all issues of ill health seriously. Get as many details of the condition as you can and keep them on file. This is crucial for any action we take later on.
- With the prisoner's consent, keep records of any medical treatment a prisoner receives, including, if possible, the drugs they have been prescribed. This is extremely helpful for UK doctors when a prisoner is repatriated.
- Refer all requests from British Citizens for money to cover emergency medical treatment to PA
- Refer similar requests from BN(O)s to the BN(O) Assistance Unit in Hong Kong, which may be able to help.
- Discuss mental health cases with the Social Work Advisers.

#### **DO NOT**

- Provide any medication, prescription or otherwise, directly to prisoners. You are putting yourself and the prisoner at risk. A prisoner may misuse genuine medicine or have a bad reaction. We are not medically trained.
- Provide medication that is illegal or banned by the authorities.

#### **CONSIDER**

- Raising complaints about poor conditions with the prison authorities. Consult Assistance Policy & Prisoners Section.

### **III health – Pro Bono Medical Panel**

75. The FCO Pro Bono Medical Panel has about thirty medical specialists in the UK who are able to offer the FCO advice on medical issues concerning British Nationals imprisoned overseas. Their role is:

- To advise the prisoner via Consular Directorate and Post about the medical condition from which he/she may be suffering.
- To warn the prisoner in cases where local treatment is likely to be insufficient and where serious consequences may follow.
- To give an independent assessment of pleas for clemency on compassionate medical grounds.

76. All contact with the Panel should be channelled through Assistance Policy and Prisoners Section. Neither prisoners, their lawyers, nor their family will have direct access to the medical specialist who is considering their case. We are obliged, if asked, to tell the prisoner of the gist of the Panel's recommendations, and if asked to disclose the whole report, but not the specialist's name.

77. The Panel operates on a paper basis, using medical information supplied by the relevant Post, or the prisoner's GP or specialist in the UK, together with any other relevant background information.

78. In some countries it may be possible to find a local *pro bono* doctor to examine a prisoner. This will be on an *ad hoc* basis. Panel doctors do not normally visit prisoners overseas. Assistance Policy and Prisoners Section will advise on a case by case basis.

### **Prisoners on hunger strike**

79. As with other prisoner cases, we should do our best to ensure the health and welfare of prisoners on hunger strike. Although we respect the right of a prisoner to take such action, HMG does not endorse hunger striking as a means to an end. The prisoner is responsible for his/her own actions. We cannot talk a prisoner out of hunger striking, but can encourage the prisoner's family, lawyer or doctor to do so (if the prisoner has indicated that he/she does not want anyone informed, please consult London about confidentiality issues). The local prison authorities still have responsibility for the welfare of the prisoner while he or she is on hunger strike. Within the restrictions above, we should continue to do our best to ensure the prisoner's welfare and health.

80. What is a hunger striker? A hunger striker is someone who refuses liquids/solids for a particular cause, as a form of protest, to seek attention, to generate publicity, or as a threat. Refusal of foods and/or liquids is considered to be a hunger strike when they have been refused for at least 6 days and continuing.

81. Before/at the start of the hunger strike, clarify with the prisoner:

- The purpose of the hunger strike. Are they claiming any abuses of human rights or complaining about poor prison conditions? Have they made other political or personal demands?
- Can we inform the next of kin, lawyer and doctor (please consult London if in doubt)?
- How far does the prisoner intend to go? Have the consequences of hunger striking been explained by a prison doctor? Is he/she aware of all the implications, including the risk of irreversible health problems or the prospect of being force-fed?

82. Clarify with prison authorities:

- How do they propose to deal with this?
- Has the prisoner been examined by a doctor or psychiatrist? Have the consequences of continued fasting been explained to him/her? Have medical officers taken into account any pre-existing medical conditions? Will they transfer him/her to hospital/solitary?
- What is their position regarding force-feeding? If they do this, how do they do it? Are their procedures humane?

### **Contact with third parties:**

83. We cannot normally inform a third party if the prisoner does not wish us to do so.

84. If we are able to inform his/her family, lawyer or doctor we can urge them to discuss all the options with the prisoner, to ensure he/she makes an informed decision

85. But avoid making statements giving any personal views of the prisoner's intention to follow through, or offering medical opinions of his/her condition.

86. Agree a plan of action with Consular Directorate. If the complaint is valid, can we make appropriate representations to the authorities? . Inform Press Office and agree press lines. Make plans to monitor the prisoner's medical condition.

#### **Once the hunger strike has started:**

87. Monitor the medical condition of the prisoner via the prison doctor or an independent doctor. Ask Assistance Policy and Prisoners Section for advice on pro bono medical assessment. Arrange more frequent visits to ensure welfare of individual. Encourage the prison authorities to inform you promptly of any deterioration in health, or if the prisoner dies. Ensure press lines are up to date.

#### **Artificial feeding:**

88. As a general rule, mentally competent adults are entitled to take the decision to hunger strike and should not be fed against their will. Force-feeding can be an invasive procedure and involves degrading elements which, in certain circumstances, may be contrary to prohibitions on torture, inhuman, cruel or degrading treatment in international human rights instruments.

89. The World Medical Association (WMA) Declaration of Tokyo, 1975, prohibits any form of participation in torture by a medical doctor. The Tokyo Declaration also states that prisoners on hunger strike who are capable of forming an unimpaired and rational judgement shall *not* be fed artificially. Once the prisoner is no longer capable of forming a rational judgement, the doctor *may* be entitled to intervene. The WMA Declaration of Malta on Hunger Strikers 1991 says that, in these circumstances, the doctor shall be free to make the decision for his/her patient as to treatment which he/she considers to be in their best interest during the hunger strike. However, the Declaration directs the doctor to take into account the original decision arrived at during the preceding period of care.

90. Different countries have different policies on artificial feeding – try to establish at an early stage what the prison will do, and if the prisoner will accept any form of artificial feeding. Will the medical staff involved follow the Declarations mentioned above or overrule the prisoner's wishes regardless? We cannot prevent the prison authorities from artificial or force feeding even if the individual does not want this to happen. But we should impress upon the prison authorities that artificial feeding should be carried out humanely. Please consult the Human Rights Adviser in Assistance Policy and Prisoners Section for guidance. Also encourage the lawyer to inform the prison authorities of the views of the prisoner.

#### **After the hunger strike:**

91. Ensure that proper medical follow-up care is available in the prison.

92. Ensure that the prisoner's diet is properly monitored – wrong foods could kill.

#### **Death of a hunger striking prisoner**

93. As with other deaths in prison, discuss arrangements for burial with prison authorities as a priority. Consider whether it is appropriate to make further representations to the authorities, e.g. if there have been human rights concerns. Agree press lines or statement if appropriate with Consular Directorate and Press Office.

#### **Death of a prisoner in custody – Action for Consular staff**

94. If Consular staff become aware of a death of a British national prisoner whilst in custody they must inform London immediately. Country Casework Team (CCT) should make sure APPS are aware of the death. If the prisoner was a former Prisoners Abroad client CCT must inform Prisoners Abroad as soon as possible after the next of kin has been informed.

#### **Review of death in custody**

95. In consultation with post, Consular Directorate (APPS and Head of HRAPT) will conduct a lesson learned review of any death in custody. Additionally if the person was a Prisoners Abroad client Consular Directorate will conduct a joint review of the case with PA within three months of the death occurring. The aim of the review is to develop policy, recognise good practice and highlight any areas for improvement on both sides. CCT/Post may be asked to provide a chronology of the case for use in the review.

#### **Suicide**

96. If Post is told (regardless of the source), that a prisoner is contemplating suicide they should try to make contact by telephone straight away and then they should visit them as soon as possible. Consular officers should also make immediate contact with the prison to inform them of the situation, to request that the prisoner be put on suicide watch and for a suitable doctor to visit. **All suicide threats must be taken seriously.**

97. Post should inform CCT as soon as they hear of a suicide threat. CCT can offer advice as cases will most likely differ from each other.

98. During the visit consular officers should check on the prisoner's welfare and try and find out about their current situation. Officers should ask the prisoner if there is anything that can be raised with prison officials to try and improve the situation. You should also ask the prisoner's permission to share details of the current situation with family/friends etc.

99. Consular officers should meet with the prison authorities to see what they are doing about the situation. Consular officers should check that the prisoner is on suicide watch, raise any issues that the prisoner has (with the prisoner's permission) and make sure the prison doctor and social worker visits the prisoner.

100. Consular officers should visit the prisoner more often during this period and monitor the situation carefully and report back to CCT. Chapter 10 has more details on dealing with the threat of suicide at point 22 and also information on prison detention for a detained British national with mental health needs.

#### **Release and repatriation – checklist for Consular Directorate**

101. Many prisoners are not able to transfer, or do not wish to transfer, before the end of their sentence. These prisoners will normally be deported to the UK, even if they have been resident overseas for some time. If a prisoner is about to return to the UK, check:

- That you have informed Prisoners Abroad, if the detainee gives us permission to do so, who can send an information pack to help the detainee prepare for release
- Who is paying for the flight back to the UK? Do we need to issue a UTR?
- Where will the prisoner go once in the UK? Should Prisoners Abroad be involved?
- Does the prisoner have identification documents apart from his/her emergency passport? If not, ask consular staff to issue a validated photocopy of the emergency passport before the prisoner leaves.
- How will the prisoner get from the airport to the place he/she is staying? Is the prisoner taking any medication? Is he/she able to bring a supply back with them? If not, can they bring a copy of their medical records with them?
- Is the prisoner a serious offender? **REDACTED** Please take into account the time difference between Post and Consular Directorate when it is essential that **REDACTED** are to be notified of serious offenders that are due to be released, repatriated or deported.
- **REDACTED**

A prisoner due for release may ask consular officers overseas or the Country Casework Team when back in the UK for written proof that they have been detained overseas. If requested, officers are able to provide a simple letter, addressed to the former prisoner, with basic details of when and where they were imprisoned:

"Dear [former prisoner]

It is our understanding that you were detained in (country) from (date) and were released on (date).

Regards,

Consular Officer"

#### **Payment of fines**

102. HMG does not provide advances to British nationals for fines or bail (this policy is consistent with HMG's policy not to pay for medical treatment or accommodation). If British nationals seek help because they are unable to pay a fine imposed by a court overseas, and are likely to suffer imprisonment in consequence, approach any relatives and friends who may be able to help. If they live in the UK, ask Consular Directorate to approach them. Their names, addresses and telephone numbers should be given. If funds for fines or bail are to be transferred from family via the FCO then fee 51 must be charged.

103. Where large sums of money are being transferred through the Office (especially where the persons are detained overseas on suspicion of serious drug offences), there is a danger that the office may be open to criminal liability under the Proceeds of Crime Act. For this reason all sums over £500 should be signed off by Heads of Section, and all sums over £1000 should also be cleared with Head of CCT. In all such cases you should also consult the Police Adviser and Consular Legal Adviser (or if not available one of the FCO legal advisers).

104. Some foreign governments will allow early release from detention and waive fines if they believe an individual is financially insolvent or otherwise unable to pay the fine. It is for the BN to decide whether to apply for such relief and to submit an application. However in some countries host governments will only accept evidence of inability to pay if backed up by a note from the British Embassy. In cases where this is an *absolute* requirement the individual should request information from the relevant UK authorities (for example, the Department of Work

and Pensions, local housing associations etc) and pass this to Consular staff. If this backs up their claim to have no means to pay fines, and post are not aware of any other funding they have access to or are in receipt of, post can issue a short covering letter with these documents:

"To whom it may concern

The British Consulate in LOCATION confirms that in view of the attached documents/based on the information we currently have about this person produced by the relevant British authorities [NAME] does not appear to have the means to pay the fines required.

Regards,

Consular Officer"

105. We cannot provide an absolute assurance that any British national does not have the funds required, as we cannot carry out a full investigation into their financial status.

### **Prison comforts**

#### **Checklist for Consular Directorate**

106. 'Prison comforts' refers to money sent by family, friends or well wishers to prisoners overseas. The money can be used by the prisoner to buy clothes, food, toiletries, reading materials etc.

- Written instructions should be sent to the family members We should avoid agreeing to accept cash unless exceptional circumstances dictate;
- We accept banker's drafts, postal orders, credit card or cheques (although cheques take a long time to clear and are not encouraged).
- Cheques, bankers drafts and postal orders should be made payable to the Foreign and Commonwealth Office (or "FCO");
- We should discourage personal callers to the KCS, but if this is unavoidable we should NEVER meet a client without a member of the Resources Group being present to confirm amounts and to issue receipts. Where personal callers are arranged we should try to conduct the meetings in agreed "opening hours".
- **As from 1 January 2010**, we can accept only **one** transfer of funds for prisoner comforts per month of up to £100 without charging fees. This means that fees must be applied
  1. if a prisoner has more than one transaction per month (fees applied to each subsequent transfer);
  2. if a transfer is more than £100 (then the fee is charged on the total amount minus £100).
- Charges are applied to amount of money paid in. If relatives pay in £200, we have to charge a fee - we cannot "act as bankers" and let them avoid charges by releasing £100 one month and £100 the next.
- Some prisoners receive funds from more than one family member/friend. It is for the family/friends to arrange who will pay the fee where relevant. For confidentiality reasons, CCT A/DOs are advised not to reveal who else has transferred money.

The FCO's Bank details are:

**REDACTED**

- Check with the posts you cover as to what items are permitted in prisons in your host country and how much things cost. Make sure families are aware of any restrictions on what they can send.
- Process prison comforts quickly – prisoners are anxious to receive the money.
- Follow the procedure and account for all funds carefully, recording all transactions.
- Sign for all mail using a clear signature adding a date and a printed name.
- Inform Prisoners Abroad if one of their clients is receiving prison comfort payments.
- Do not accept more than £200 per month per prisoner unless you have cleared this with Resources Group.

#### **Procedure for Prison Comforts**

- a) Money and accompanying letter **with name and post clearly marked** received by Section Clerk.
- b) Section Clerk opens mail with relevant ADO in Country Casework.
- c) Section Clerk counts money, logs amount in Prison Comforts Book and fills in a deposit sheet. ADO logs letters etc for case file.
- d) Cashier sends out a receipt and Section Clerk returns stamped deposit sheets to the ADO for filing.
- e) Cashier checks funds and provides the Section Clerk with formal acknowledgement.

#### **Deportation of British nationals**

### **Deportation of British nationals - international practice**

107. Independent governments have the general right to decide which non-citizens are to be permitted to live within their territory and, therefore, the right to deport or exclude any of them in accordance with their own laws.

108. International practice is not to deport any person except to the country of which they are a national or to a country where they are acceptable. But international practice is also to consider carefully each case on its merits. Cases involving deportation to a country where there is a possibility that the deportee's safety or liberty would be jeopardised on political grounds are also considered on their merits.

### **Deportation of British nationals - British practice on deportation**

109. Unless there is a relevant agreement, the Home Office do not automatically inform the appropriate foreign Consul of the deportation from the UK of an alien, but may do if the detainee requests it.

110. Reasons for deportation are not given to the detainee or the Consul as a matter of course and may well be withheld where there are specific grounds for doing so.

111. When a citizen of another Commonwealth country is recommended for deportation by a court under section 3(5) of the Immigration Act 1971, the appropriate High Commissioner or other representative is notified. The High Commissioner is also notified when a citizen from a Commonwealth country is being recommended for deportation under section 3(6) of this Act and is being held in custody. The FCO also notify High Commissioners of the Home Secretary's decision on the recommendation if they ask to be notified of it.

### **Deportation of British nationals - notification of Consuls about intention to deport**

112. Local authorities are not obliged to advise consular staff of impending deportations, except in certain countries where there are formal arrangements to inform consular staff.

113. There are formal arrangements for notification between the UK and most Commonwealth and some foreign countries. The information may come to staff by way of a request that the deportee be provided with a travel document, or through some other means.

### **Deportation of British nationals - requests for the reason for deportation**

114. When posts become aware of the impending deportation of a British national, they should, at once, ask the local authorities to explain the reasons for the deportation, although it must be recognised that these need not be given.

### **Deportation of British nationals - adequate notice**

115. Staff should ensure that persons whom the local authorities propose to deport are given reasonable time to complete their domestic arrangements. For a permanent resident the notice should be longer than for a visitor.

116. If the person involved wishes to dispute a deportation order, they should first be advised to consult a lawyer on any legal remedies which may exist for an appeal or a deferment.

### **Deportation of British Nationals – informing a BN of an impending deportation**

117. Consular staff overseas may be informed of a deportation of a British national via colleagues in other government departments. Consular staff should double check with those colleagues whether the information can be shared with the British National. If so, consular officers should inform the British national of their deportation, in order to ensure that they are aware of this, and are given the opportunity to appeal if local laws provide for this. You should also share information with them on support available on their return to UK. For example, they should be encouraged to contact PA who offer resettlement services to those who are registered with them.

118. In order to avoid a conflict of interests, if local authorities or colleagues in other parts of the mission (e.g. political section or SLOs) seek to tell consular staff of a planned deportation, but do not want the BN informed, consular staff should respect this request and not share any details of the impending deportation with the British National. Consular staff should however keep in contact with colleagues from other government departments and if permission is granted, they should inform the British National as soon as possible. Consular staff should however raise concerns with senior staff at post (and through them local authorities) and CCT if it appears a BN is to be deported without being allowed to appeal against deportation if local laws provide for this.

### **Deportation of British nationals - representations against deportation of a British national**

119. The British government reserve the right to make representations in individual cases if the manner in which the power to deport or to exclude is exercised would cause hardship. If the deportation would be or is carried out in an arbitrary or inhumane manner, and if the person concerned requests that representations be made, it should be considered whether to make them.

### **Deportation of British nationals - need to report deportations**

120. Deportation cases often arouse keen interest in Parliament and the press. All such cases should be reported immediately to London or to the appropriate Commonwealth or Overseas Territory government. If a British national who has been convicted of a serious offence is due to be deported **REDACTED** must be informed immediately. Please make a note of this in the Prisoner Speciality screen on Compass. The report should state:

- the grounds on which the person concerned claims British (or Commonwealth) nationality;
- reasons for deportation if known;
- a recommendation on whether official representations should be made;
- the deportee's offence/criminal record, if any;
- medical history and any treatment which may be necessary;
- whether the deportee should be met on arrival.

#### **Deportation of British nationals - deportation to the UK of 'non-belongers'**

121. If consulted by the local authorities about the deportation to the UK of a British national who is not a UK 'belonger' staff should satisfy themselves that the individual is admissible to the UK under the Immigration Act 1971, and the Rules published under the authority of that Act. If it is clear that the deportee would be unacceptable in the UK, the local authorities should be told so. Staff should refer any doubtful cases to UKBA for guidance.

#### **Deportation of British nationals - passports for deportees**

122. A prospective deportee should not be issued with a passport or an emergency passport unless they complete and sign an application form.

123. If they decline to do so the authorities of the deporting country should be told that they will need to provide a temporary travel document for the prospective deportee if they wish to remove them. If this proves impracticable, consular staff may issue, at the written request of the deporting authorities, a Certificate of British Nationality, provided that:

- All legal challenges to deportation have been exhausted, **and**
- There is no other way for the deporting authorities to confirm British nationality (such as checking birth details with the GRO in London) – both this and the previous points are important in relation to the Human Rights Act, **and**
- Staff are satisfied regarding the deportee's nationality and identity
- 124. If the deportee has no other form of identification apart from an emergency passport, consular staff should provide a validated photocopy of the EP before departure. In the short term, this document is likely to be essential for their resettlement in the UK, particularly applying for housing and benefits.

#### **Proof of deportation on return to the UK**

Some prisoners on return to the UK are in need of services (such as emergency housing etc). In order to access these services the prisoner usually has to pass the Habitual Residency Test (HRT). Deportees should bypass this test but in order to do this the prisoner needs to provide clear evidence that they were deported from the country they were detained in. (Those returning from the Immigration Detention Centre in Thailand for example have "allowed to depart" stamped in their passport, rather than "deported".)

In order to try and help this specific group of people. Post are able to provide a simple letter, addressed to the prisoner, with details of where they were detained, that we offered/provided them with consular assistance and the deportation date. The template to use is below:

"Dear (former prisoner),

It is our understanding that you were detained in (country), were offered/provided with consular assistance and it is our understanding that you were/will be deported on (date).

Regards,

British Embassy"

#### **Deportation of British nationals - deportation of dual nationals**

125. Staff should resist efforts by local authorities to deport dual British nationals whose other nationality is that of the deporting country. The matter should be referred to Consular Directorate or the appropriate Commonwealth or Overseas Territory government for instructions.

#### **Deportation of British nationals - other exclusions**

126. These instructions apply similarly to cases in which British nationals are obliged by the local authorities to leave a country in which they are resident or are visiting.

#### **Deportation of British nationals - deported Gambians**

127. When acting on behalf of the Gambian government in the case of a Gambian citizen who is being deported from a third country and has been issued a ticket to travel to the Gambia, staff should withdraw the passport. They should send the passport to the Principal Immigration Officer, Banjul, and issue in its place an emergency passport, valid for a single journey to Banjul only.

## **Immigration Detention**

128. Prisoners who are not deported at the end of their sentence by the country in which they were detained, and who do not have the right to remain in the country, (or who have been detained on visa overstay charges) may be held in Immigration Detention at the end of their sentence and only allowed to leave when they can fund their departure from the country. We are aware of significant numbers who are held in Thailand and Jamaica, although there are others held in Immigration Detention Centres (IDCs) around the world. Where possible we should encourage family and friends to pay for repatriation flights. Only if all other avenues fail consider a UTR [link to Chapter 5, Part 1] to cover flight costs. Remember that this cannot be used to pay fines, and any UTR over £100 must be submitted to the Country Casework team for approval. All UK nationals who are held in Immigration Detention should have their case reviewed at least once every year by consular officials at post, with a note being made on the progress of the case.

### **Prisoners Abroad.**

129. The FCO and Prisoners Abroad work together to provide support for British citizens imprisoned overseas and their families. We have an important, mutually beneficial relationship - working collaboratively to deliver assistance to British citizens detained overseas. Our relationship with Prisoners Abroad is an important one, and we work together closely on many prisoner cases. Prisoners Abroad are able to provide many services that Consular Directorate are unable to and in turn the FCO are able to do things PA can't. Together we can offer better support for prisoners and their families than we could working independently.

### **Prisoners Abroad - Introduction**

130. Prisoners Abroad is an independent, UK-based, humanitarian charity that provides non-judgmental, practical support to British citizens imprisoned abroad. They work with convicted and unconvicted prisoners, regardless of guilt or innocence, on the basis of need.

131. Prisoners Abroad provides prisoners with a support service during the period of their imprisonment which includes information and advice, but also practical support such as: books, magazine subscriptions, information sheets on a variety of topics, pen-pals, language materials, birthday cards, international reply-paid envelopes, regular newsletters and in some cases financial assistance and vitamins. Prisoners become eligible for Prisoners Abroad support as soon as they are detained.

132. Prisoners Abroad provides ongoing information, advice and support to prisoners' families or friends. It has a freephone number (0808 172 0098) for them to call and runs a family linking scheme.

133. Prisoners Abroad also provides assistance to British citizens returning to the UK following imprisonment overseas. They assist returning prisoners by providing funding for emergency accommodation and in gaining access to benefits and long-term housing. They also refer them to other agencies for help with specific problems such as healthcare and assistance in finding employment.

134. Prisoners Abroad does not provide assistance to prisoners released on bail or parole. If a prisoner is transferred back to the UK to serve the remainder of their sentence, they will no longer be eligible for Prisoners Abroad support.

135. Prisoners Abroad are only able to support British Citizens. Unlike the FCO they do not support unrepresented EU Nationals nor Commonwealth Nationals, or other categories of British national who are not also British citizens, such as BN(O)s but they will support those dual national British citizens who we support.

### **Prisoners Abroad - contact between consular staff and Prisoners Abroad**

136. In the first instance, contact should normally be between Prisoners Abroad caseworkers and the relevant Country Casework Team Desk Officers.

137. In some cases it may be easier or more effective for posts to be in direct contact with Prisoners Abroad. Remember to keep the Desk Officer copied in (although most contact should be recorded on COMPASS).

### **Prisoners Abroad - registration**

138. When making the initial visit to a prisoner you should:

- Ensure that Prisoners Abroad's general leaflet for prisoners, authorisation form and CFF form if necessary are included in the prisoner pack. Please note that the Prisoners Abroad forms should be removed from the prisoner pack when visiting a non-British Citizen, for example an unrepresented EU or Commonwealth National or BN(O). The prisoner will need to complete the authorisation form and send it to Prisoners Abroad in order to access Prisoners Abroad's services. If they complete the form while you are there, you could offer to fax it to Prisoners Abroad for them. However, if the prisoner prefers to write to Prisoners Abroad for further information, or to send the 'tear-off' slip at the end of the general information leaflet, they can do so on the understanding that they will not be registered with Prisoners Abroad until the authorisation form has been completed.



- Ensure that you also inform all new prisoners orally about signing up to Prisoners Abroad during your first contact with them by phone or in person.
- If there are exceptional circumstances, such as the need for an instant grant payment, contact Prisoners Abroad immediately.
- If you subsequently become aware that a prisoner is not registered with Prisoners Abroad you should offer details of Prisoners Abroad to the British national prisoner or his/her family.

139. The FCO is bound by the Data Protection Act to protect the personal information of British nationals. In order to allow consular staff to disclose personal information to Prisoners Abroad and vice versa, it is vital that the British citizen signs the authorisation form giving his/her permission.

140. Ensure that the form is returned to Prisoners Abroad, who will send a copy to the FCO so that everyone is aware that consent has been given to swap information. If the Desk Officer receives a copy of the authorisation form this should be recorded on COMPASS so that Posts know they can pass on information to Prisoners Abroad.

141. In exceptional or urgent circumstances, such as where deportation is imminent, the authorisation form should be passed directly to the British citizen for signature and faxed immediately back to Prisoners Abroad with as much information as possible. Such information should include: name, date of birth, offence, length of imprisonment, health problems, current medication and any other useful information.

142. As a last resort, in exceptional or urgent circumstances, when a prisoner is not able to give written consent, verbal consent from the prisoner is acceptable. Consular staff are not able to sign the authorisation form on behalf of the prisoner, instead a memo should be signed by the consular officer to record the verbal consent. This is an interim measure only and should be followed up by written authorisation as soon as possible.

#### **Prisoners Abroad - nationality confirmation**

143. On receiving a request for registration, Prisoners Abroad will contact the relevant Desk Officer to ask if they are aware of the prisoner and to confirm that they are a British citizen. Personal information, including confirmation of nationality, should not be given to Prisoners Abroad until the Authorisation form has been signed by the detainee.

144. If consular staff at post forward forms to Prisoners Abroad by mail or fax, they should attach a comps slip confirming that the prisoner is a British citizen. This saves the CCT Desk Officer having to confirm nationality to Prisoners Abroad later.

145. If consular staff are unaware of the prisoner, Prisoners Abroad will write back to the prisoner suggesting that s/he contacts the British Consulate with details of his/her nationality. Consular staff can check the prisoner's nationality (e.g. through an Omnibase search). As Prisoners Abroad staff are not in a position to verify British nationality, the onus is on the prisoner to contact the Consulate and prove their British nationality (e.g. by providing documentation such as their passport or birth certificate).

146. In some cases British citizens may not want the Consulate informed of their detention. Prisoners Abroad takes care not to go against their wishes. If s/he does not want Prisoners Abroad to share information with the FCO, Prisoners Abroad will not be able to register the prisoner as a client, which will be made clear should this situation arise. If a British citizen would like the Consulate informed but cannot do so, Prisoners Abroad will contact the relevant Desk Officer on his/her behalf.

147. Although we do not, in general, assist dual nationals who travel on their other nationality passport in a third country. Prisoners Abroad does assist these dual nationals. If we become aware of such detainees (we don't always) consular officers should pass the Prisoners Abroad authorisation form to the assisting consulate. It will then be for them to pass this to the prisoner / liaise with Prisoners Abroad. While we will be taking no action on the case, if we have a signed Prisoners Abroad authorisation form we will then be able to confirm nationality to Prisoners Abroad. But please note Prisoners Abroad do not assist dual nationals detained in the country of their other nationality.

#### **Prisoners Abroad - financial assistance**

148. To apply for Prisoners Abroad funding, the prisoner must complete the relevant form available **REDACTED**

149. All Prisoners Abroad funding is means tested. Consular staff should not ask Prisoners Abroad to provide funds unless they have confirmed that the detainee cannot be supported in any other way.

#### **Prisoners Abroad - financial assistance - Craig Feehan Fund (CFF)**

150. The Craig Feehan Fund is available to prisoners in developing countries who are destitute and have no other source of income. Regular payments from this fund help prisoners to buy essentials such as clothing and toiletries. The maximum amount a prisoner can receive is £90 per quarter. Payments are normally made to Consular Directorate every quarter (April - June; July - Sept; Oct - Dec; Jan - Mar) two weeks before the start of the first month, and are accompanied by a list of recipients.

151. If financial assistance is needed for a prisoner and there is no family support, consular staff should inform Prisoners Abroad and ask the prisoner to fill in an application form. Prisoners Abroad will then send an interim payment to cover the months prior to the next quarterly payment. From this point on, the prisoner will receive quarterly payments from Prisoners Abroad until they are notified of their release.

152. If consular staff are aware of a prisoner who is receiving regular or substantial support from family or friends, they should notify Prisoners Abroad so that payments can be suspended.

153. If a prisoner is released (including if released on bail or parole), the Desk Officer should inform Prisoners Abroad and refund any monies due to them.

154. If consular staff become aware of a newly-arrested British prisoner in need of financial assistance and they want to reallocate any funds from recently released prisoners, they must only do this with the agreement of Prisoners Abroad. Prisoners Abroad needs to have a record of a prisoner before they are able to make payments. Unless the grant is urgently needed, Prisoners Abroad will also need the authorisation form before payment is authorised.

**Prisoners Abroad - financial assistance - Practical Relief Fund** (Please note that no further payments will be made from this fund with effect from 1st April 2008 due to financial constraints. Prisoners Abroad will inform us in the future if this changes)

155. For prisoners in countries which do not qualify for the Craig Feehan Fund, Prisoners Abroad may be able to provide single payments to pay for basic essentials. These payments are only available to prisoners who have no other means to purchase these items. The maximum payment available is £50 per year. To apply, the prisoner should complete an application form.

**Prisoners Abroad - Financial Assistance - Medical Fund**

156. Prisoners Abroad can help to pay for essential (not cosmetic!) medical and dental treatment not provided by the prison authorities, where the prisoner has no other means available to pay. When applying for a Prisoners Abroad medical grant the prisoner must complete form and supply a written estimate of the cost of treatment from the dentist or doctor. If applying after treatment, they must include a receipt. Consular staff should only pass medical payments direct to the prisoner, prison authorities, or a medical professional. However, sometimes this will not be possible and in these cases CTT should refer the case to Prisoners Abroad so that the issue can be discussed and a joint decision can be made on who the money can be handed over to.

**Prisoners Abroad - Financial Assistance - Vitamin Fund**

157. Currently prisoners in 15 countries receive quarterly payments from the Vitamin Fund.

158. The Fund is used to purchase a 3-month supply of vitamins for each prisoner. Consular officers can issue the supplies during visits. Prisoners Abroad will send a list of recipients to the relevant Desk Officer via Assistance Policy and Prisoners Section.

159. Refunds or transfer of funds to other prisoners should be done in the same way as for the CFF above. If there are changes in the amount of money needed for these quarterly supplies of vitamins, consular staff should inform Prisoners Abroad so that the amount can be adjusted.

**Prisoners Abroad - Financial Assistance - Sending funds to Posts**

160. When funds are received from Prisoners Abroad, Desk Officers will transfer them to the relevant Posts. Desk Officers will email a form (still normally referred to as a 'deposit fax') to the Post giving details of:

- the name of each prisoner to receive funding;
- the amount of funding each prisoner is to receive (and the total amount);
- the types of grants (e.g. CFF and vitamin fund);
- charging instructions;
- the quarter which the funds cover (e.g. Jan to Mar, Apr to Jun, Jul to Sep or Oct to Dec).

161. Consular staff should contact the Consular Cashier with any queries about sending funds to Posts (FTN: 8008 0093).

**Prisoners Abroad - Health, ill-treatment, fair trials and human rights**

162. Prisoners Abroad caseworkers may contact consular staff if alerted by a British national or their family about problems with health or ill-treatment, or complaints about the fairness of the trial or other human rights matters.

163. If this happens, ensure that Assistance Policy and Prisoners Section are informed as soon as possible. Contact the Prisoner Policy Desk Officer **REDACTED** on health and welfare issues, and the Human Rights Adviser **(REDACTED)** on human rights and fair trial issues.

### **Prisoners Abroad - Resettlement**

164. There are no statutory resources available to help prisoners returning to the UK. Prisoners Abroad is the only organisation which helps this vulnerable group of people. Without the support provided by Prisoners Abroad they are at risk of re-offending in order to survive in a country they may not have been in for many years and where they may have no family, friends or contacts to help them.

165. Often prisoners, especially those in the USA, do not accept that they will be deported to the UK at the end of their sentence and refuse to register with Prisoners Abroad. If this is the case you should take every opportunity to encourage them to register, for example by sending them the general information leaflet and authorisation form when they are more than half way through their sentence and/or entering their final year of imprisonment. It is important not to leave registration until just before deportation takes place.

166. Prisoners Abroad can only provide resettlement services to returning prisoners who are existing clients, or when they have had advance warning from post that a prisoner is returning. Prisoners Abroad cannot assist a returning prisoner who only contacts them once back in the UK. One reason for this is public protection. Prisoners Abroad needs to be prepared to deal with potentially dangerous returning offenders and to be able to provide them with better preparation prior to release.

167. If you are aware of an imminent deportation of a British citizen to the UK, ensure that you inform Prisoners Abroad. Prisoners Abroad will provide posts with a quarterly list of all their clients. If you learn that a British citizen is to be deported, check the list to see if he/she is a Prisoners Abroad client. If they are, contact the Prisoners Abroad caseworker and let them know of the proposed deportation, giving details of the prisoner's conviction and, where possible, the date and time of expected arrival in the UK. The more information that can be given, the better.

168. If the returning prisoner is not an existing Prisoners Abroad client, you should:

Inform him/her of Prisoners Abroad's resettlement services. Emphasize that they will not be able to access Prisoners Abroad's services if they have not signed the authorisation form and made contact with them before they leave.

169. If the British citizen would like Prisoners Abroad's resettlement assistance give them Prisoners Abroad's contact details and ask them to contact them directly. If prison regulations prevent the prisoner from contacting Prisoners Abroad him/herself, offer to contact Prisoners Abroad on their behalf, especially when deportation is imminent.

### **Prisoners Abroad - confirming conviction**

170. Prisoners Abroad needs information about a prisoner's convictions before he/she arrives back in the UK as the type of offence can affect the resettlement services provided (e.g. some hostels will not accept a person convicted of arson). Knowledge of the offence will also enable Prisoners Abroad to ensure that its staff are adequately warned of the arrival of potentially dangerous offenders. Where possible, include details of a person's conviction when informing Prisoners Abroad about the deportation of a British national.

### **Prisoners Abroad - visiting Prisoners Abroad**

171. Prisoners Abroad welcome visits from Desk Officers and overseas consular staff to their office in Finsbury Park. This can be an excellent way to learn more about what Prisoners Abroad do and to meet your contacts face to face. All consular staff are encouraged to take advantage of this opportunity. Should you wish to visit Prisoners Abroad please contact Assistance Policy and Prisoners Section (APPS) or call Prisoners Abroad on +44 (0) 20 7561 6820. In the event of having to cancel a visit/reduce visitor numbers, please give PA as much notice as possible.

172. In most instances, Prisoners Abroad caseworkers deal directly with Desk Officers in London via email and telephone. Prisoners Abroad caseworkers cover all countries between the four caseworkers, who can be emailed on **REDACTED**. Using this email address will ensure that your email reaches all the Prisoners Abroad case workers and your query can be dealt by anyone in the team. It also means that if a caseworker is on leave there won't be a delay in the response.

### **Prisoners Abroad contact numbers**

**REDACTED**

If you don't know who to contact, please telephone the main reception.

External enquiries (from family members, other organisations etc) can be sent **REDACTED**

Further information on Prisoners Abroad and leaflets and forms to download can be found on their [website](#) .

### **Prisoners Abroad – note for Consular Directorate**

173. Developing a good working relationship with Prisoners Abroad caseworkers will help you, but don't discuss

a case with Prisoners Abroad before the prisoner has registered with them and signed the authorisation forms allowing you to release information about their case without breaching the Data Protection Act. This includes confirming the nationality of the prisoner.

#### **Prisoners and Detainees – Contact Details**

**REDACTED NOT RELEVANT TO REQUEST**

#### **Prisoner and Detainees – MP/MEP interest**

For DPA reasons we cannot discuss an individual's case with an MP/MEP without the express permission of the individual concerned. Ministers are keen that we respond to MP/MEP letters on behalf on their constituents. Consular staff need to be active in seeking British nationals' permission to discuss their cases with MP/MEPs.

You should therefore ask whether the detainee is content for us to share details of his/her case with an MP/MEP if they contact us. You should also explain that unless we have their permission, if an MP or MEP does raise their case with us we will not be able to discuss any specific issues with them. If a detainee is unwilling to agree to this, ensure they know that they can change their mind at any time. Details should be noted on the form. If Post/Desk are contacted by an MP/MEP, and there is no record of the detainee's views on whether information should be discussed with them, Post should contact the detainee *as soon as possible*, explaining MP/MEP interest and asking the detainee to consider agreeing that we can share information on their case.

If records clearly show the detainee has expressly said they do not want information shared with MP/MEPs there is no need to ask them again, but if the situation is unclear the detainee should be asked again. Posts/desks should *not* assume a lack of response means that the detainee does not want us to discuss his case.

In the cases mentioned above it may be necessary for the Desk to issue a holding reply so that the deadline for responses to MP/MEP letters is met. The reply should state that Post are trying to contact the detainee to obtain his/her permission and that a full reply will follow if/when permission received.

For which attribute to use on Compass please **REDACTED**

#### **Prisoners and Detainees – guidance is for internal purposes only**

174. This guidance is for internal purposes only. It is subject to change and is not intended for dissemination outside the FCO. **REDACTED INFORMATION IN PUBLIC DOMAIN**

**Annex 13F - Sample Letter To Family Members** (desk specific parts in red text):

Dear Family / Friend etc

#### **PRISON COMFORT MONEY TRANSFERS**

The Foreign and Commonwealth Office operates a "Prison Comfort" system for money transfers to prisoners in country. We can process up to £200 a month **free of charge** under this system which should help name buy items from the prison shop / from a shopping list.

**We cannot accept cash** (any cash received will be returned to sender). You may send a postal order, banker's draft or personal cheque made payable to "**The Foreign and Commonwealth Office**". All Prison comfort funds should be addressed to:

**Please note that personal cheques will take 7-10 working days to clear.**

For larger sums of money (to purchase return air tickets etc) we are able to offer a bank transfer facility. We are obliged to make a charge for this service. Details of the cost and process are available on request.

Please enclose a stamped addressed envelope if you would like a receipt. It is also useful if you can forward a short note to confirm how much is enclosed, whom the money is for and where they are being held.

On receipt of the funds we will inform our Embassy / High Commission in post of the deposit. Our colleagues there will transfer the money into local currency and take it to name when they next visit the facility where he / she is being held (details of visiting regime). In post colleagues can make purchases from a pre defined "shopping list" I should be happy to provide further details about this on request.

**REDACTED INFORMATION NOT RELEVANT TO REQUEST**