

Policing and Crime Bill

Foreign National Offenders

Background

1. Foreign nationals comprise 12% of the prison population in England and Wales¹. The Government aims to remove as many Foreign National Offenders (“FNOs”) as quickly as possible to their home countries, to protect the public, to reduce costs and to free up spaces in prison. The number of deportations of FNOs removed from the UK has increased from 4,539 in 2011/12² to 5,277 in 2014/15. More than 25,000 FNOs have been removed from the UK in the period 2010 to 2015³.
2. The Immigration Act 2014 provided for a revised deportation process so that, in cases where there is no real risk of serious irreversible harm to the individual, an FNO can only exercise his or her right of appeal from outside the UK, thereby allowing for the more rapid deportation of many FNOs. Most FNOs do not appeal once returned to their home country. By the end of 2015 more than 2,600 FNOs have been removed under the new ‘deport first, appeal later’ powers, since they came into force in July 2014.
3. Establishing nationality at the earliest opportunity post-arrest is ideally achieved through seizing identity documents. The successful and early establishment of an FNO’s identity helps to facilitate overseas criminal records checks; if these checks reveal serious offending, this can allow the Home Office to consider deportation action even in cases where an individual is released without charge. Missing opportunities to establish the nationality of individuals early in the process can cause significant delays later, when seeking to deport FNOs and illegal immigrants from the United Kingdom.
4. Successful identification of an FNO is particularly difficult in cases where an individual is not carrying an identity document at the time of their arrest. Although it is already possible for police officers to search premises for identity documents, this is resource-intensive and to require officers to do so in every case would be disproportionate. The provisions in the Bill will supplement these powers to give the police and immigration officers more opportunities to establish a suspected foreign national’s identity, and to obtain documents from suspected foreign nationals in cases where they cannot undertake a premises search. A statutory requirement (backed by criminal sanction) on all defendants, regardless of their nationality, to state their name, date of birth and nationality in court will provide an added incentive for suspected foreign nationals to comply with the police in establishing their identity on arrest. The Bill will also provide a second opportunity to capture this information for those who failed to give these details to the police.

¹ [Offender Management Statistics Quarterly Bulletin: July to September 2015, MoJ](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/399234/offender-management-statistics-bulletin-july-sept-2014.pdf)
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² Managing and removing foreign national offenders, October 2014, NAO

³ Ibid.

Amendments to the UK Borders Act 2007 (“the 2007 Act”)

5. The Bill requires any individual who is arrested for an offence to state his/her nationality if required to do so by an immigration officer or constable. The officer or constable must suspect that the individual may not be a British citizen. An offence is committed if, without reasonable excuse, the person fails to comply with the requirement, either by providing false information or not providing any information. The offence will be summary only subject to a maximum penalty (in England, Wales and Northern Ireland) of six months' imprisonment, an unlimited fine, or both.
6. The Bill also provides a power to immigration officers and constables to obtain documents from persons not remanded in custody, and retain them where a search cannot be undertaken (or where the individual is not in possession at the time of arrest). The new power will require an individual to produce a nationality document within 72 hours when asked to do so. The officer or constable must suspect that the individual may not be a British citizen before issuing a notice to the person. The notice will be given in writing and will set out the time by which the document must be produced; the person to whom it must be produced; and the means by which it is to be produced. The document may be retained by the police where the officer suspects that the person may be liable to removal from the United Kingdom and retention of the document may facilitate the individual's removal. An offence is committed if, without reasonable excuse, the person fails to comply with the requirement. The offence will be summary only subject to a maximum penalty (in England, Wales and Northern Ireland) of six months' imprisonment, an unlimited fine, or both.
7. This power will help to verify any statement made on arrest by the individual - should they comply with the notice. The document provides) means by which immigration action may be enforced, should the person be deportable or removable under immigration powers.

**Home Office
July 2016**

Failure to lock in identity: Case study: **Mohammed Mansare**

- Identified as an overstayer in 1994 and placed in Home Office removal case load but was at large in the community
- When first arrested claimed he was British which was not challenged
- Subject of over 400 Police intelligence reports and 46 named suspect crime reports:
- Between 1994 and 2011 no police information or intelligence on *MANSARE* had been passed to the Home Office as he was believed to be British
- Intelligence file submitted to Home Office in August 2011 and detained
- Removed back to Sierra Leone in July 2012