

Criminal casework

Separating families for deportation and detention purposes

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This guidance tells you about Immigration Enforcement's current policy on decisions to separate family members of foreign national offenders (FNOs) as a consequence of deportation or removal.

It also explains:

- what defines a family unit for these purposes
- what considerations must be taken into account, and
- how the process must be managed.

There are situations where an individual claims to have established a family life in the UK with a child within the meaning of Article 8 of the European Convention on Human Rights (ECHR), but has failed to provide evidence or demonstrate that a family life does actually exist.

Where this guidance does not apply

This guidance does not apply to the following cases:

- Where a decision to remove or deport is made on the basis that no family life has been established (for example because no evidence has been presented and the individual has otherwise been unable to demonstrate that a family life exists).
 - o For more information on defining family life see related link: 45 Family cases.
- Where a FNO is choosing to leave voluntarily under the facilitated returns scheme (FRS), unless the whole family are leaving voluntarily and criminal casework is making a decision to effect the removal of the FNO's family members in advance.

Changes to this guidance – This page tells you what has changed since the previous version of this guidance.

Contacts - This page tells you who to contact for help if your senior caseworker or line

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Information owner

Information owners – This page tells you about this version of the guidance and who owns it.

Safeguard and promote child welfare – This page explains your duty to safeguard and promote the welfare of children and tells you where to find more information.

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This page lists the changes to the 'Separating families for deportation and detention purposes' guidance, with the most recent at the top.

Data of the charges	Details of the change	Consideration and
Date of the change	Details of the change	Consideration and
29 July 2014	Change request:	process
	 Various changes made to ensure 	How to process a family
	accordance with the Immigration Act 2014	separation referral
	provisions which took effect on 28 July	
	2014	When to submit for
	 Amendment to approach for contacting 	authority to separate a
	local authority children's services in	family unit
	children cases.	
24 January 2014	Change request:	Family separation where
		the FNO wishes to leave
	 Policy and principle: 	<u>voluntarily</u>
	 Paragraph below second set of bullet 	On a slan
	points has been changed and new	See also
	paragraph below that.	Contact
	 Consideration and process: 	Contact
	 third paragraph below the first set of bullet points amended. 	Information owner
	 second set of bullet points, new link added. 	Links to staff intranet
		removed
	 How to process a family separation referral: 	
	o this is a new page.	
	 When to submit for authority to separate a family unit: 	
	 sub-heading 'Stages at which AD 	

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authority must be sought' section has been re-written.
 sub-heading 'Operations AD authority needed' this is a new section. sub-heading 'Chief caseworker AD authority is needed' this is a new section. sub-heading 'Imminent release cases' the last paragraph has been amended. Family separation where the FNO wishes to leave voluntarily: second paragraph amended.
For previous changes to this guidance you will find earlier versions in the archive. See related link: Children and family members - Archive.

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This page tells you about immigration enforcement's general policy governing detention in family cases dealt with by criminal casework.

The guidance also explains the principles criminal casework caseworkers consider when thinking about separation of families for deportation purposes.

To detain a foreign national under immigration legislation is a serious step. There is a presumption of not detaining in all cases. While this policy applies to criminal cases dealt with by criminal casework, the presumption in favour of release may be outweighed by the risk to the public of harm from reoffending or the risk of absconding, with evidence of a previous lack of respect for UK law.

Where detention is considered, there must be a clear and reasonable prospect of deportation or removal in the foreseeable future.

See related links for more information on the:

- detention policy applied to criminal casework cases, set out in chapter 55 of the enforcement instructions and guidance, and
- operational process set out in the criminal casework detention process instruction.

Immigration enforcement's approach to managing the return of families with children is now to manage return without detention in an immigration removal centre. It is designed to encourage understanding, acceptance and compliance, which will lead to departures of families (preferably together as a unit), where it has been decided that they have no legitimate basis to continue remaining in the UK. For more information, see related link: Managing the return of families with children.

Immigration enforcement will always try to arrange the coordination of the deportation or removal of family members from the same unit where practical. Chapter 45 of the enforcement instructions and guidance provides further details on maintaining the family

unit, see related link.

Immigration enforcement is also committed to not detaining both parents at the same time, or a single parent, if that decision will result in a child being taken into care. However, there may be circumstances where you decide to detain a parent if:

- a child is already in care, or
- they are being cared for by a parent or other relative in the community.

You must consider the reasons why a child is already in care. If the only reason is the parent's detention, there are no child welfare concerns and the local authority intend to reunite the family after release, continued detention of the parent is only likely to be suitable in cases where the risk to the public and/or risk of absconding are assessed to be very high.

If the child is being cared for by another family member you must establish if they are prepared to continue to care for the child if the parent is detained beyond the end of their custodial sentence.

When you consider a decision to separate a family unit, you must always take into account the duty to safeguard and promote the welfare of any children involved. However, the separation of a family unit may be justified for effecting the deportation of the foreign national offender (FNO) and, where suitable, removal of the family members where:

- there is evidence a FNO belongs to a subsisting unit of family members who fall within
 the scope of 'family life' as defined by article 8 of the European Convention on Human
 Rights (ECHR) but section 117A-D of the Nationality, Immigration and Asylum act 2002
 (as amended by section 19 of the Immigration Act 2014) and paragraphs 396 to 400 of
 the Immigration Rules indicate that deportation remains appropriate (for more details
 on this see link on left: Definition of 'family unit', and related links on right: Immigration
 Rules Part 13 Deportation, section 117A-D NIA Act 2002 and Article 8 and
 criminality)
- it is not possible to remove one or all these family members with the FNO when they are deported
- detention of the FNO under immigration powers is justified in line with detention policy

after a custodial sentence is completed until deportation is effected, and/or
 family members are not liable to removal and wish to remain in the UK.



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This page tells you about immigration enforcement's approach to defining a family unit for the purposes of family separations as part of decisions made by criminal casework caseworkers to deport and detain.

The concept of the 'family unit' cannot be defined by one single indicator alone. It is based on whether you consider there are sufficiently close family ties and dependencies to be 'family life' within the meaning of Article 8 of the European Convention on Human Rights. This can be demonstrated in various arrangements of family circumstances.

For further general guidance on what constitutes subsisting familial relationships such as partners, parents and children etc, see related link: IDI chapter 8: Appendix FM (sections 2 and 3).

When you consider if a FNO (and any family members) should be deported you must refer to the relevant paragraphs of the Immigration Rules on Article 8 consideration, and the provisions of section 117A-D of the Nationality, Immigration and Asylum Act 2002 (as amended by section 19 of the Immigration Act 2014), which took effect on 28 July 2014 and set out where, in the case of FNO families, the likely balance of the public interest in deportation and respecting individuals' private and family life will lie.

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This section tells you about the general considerations made by criminal casework and the processes they follow when family separation is necessary in deportation and removal cases.

When making a proposal to separate a family unit, you must demonstrate that any safeguarding child welfare issues have been taken into account, and weighed against the need to pursue deportation or removal.

There is a complex balance between:

- allowing a child to continue their life in the community where they have formed genuine ties, and
- reuniting the child, where it is right to do so, with a parent who is to be deported.

You must give close attention to Article 8 of the European Convention on Human Rights (ECHR), and Article 3 of the United Nations Convention on the Rights of the Child (UNCRC). Both of these have been further defined by the introduction on 9 July 2012 of paragraphs 396 to 400 of the Immigration Rules, and on 28 July 2014 of section 117A-D of the Nationality, Immigration and Asylum Act 2002 (as amended by section 19 of the Immigration Act 2014).

For more information, on these areas see related links: Immigration Rules Part 13 – Deportation, section 117A-D NIA Act 2002.

You must consider if, from the information known, you need to approach the office of the children's champion (OCC) for advice. You do not have to contact the OCC but you should consider it on a case by case basis. If the separation proposal forms part of an 'ensured' return plan under the managing family returns process, you will need to get advice from the independent family returns panel about the best way to carry out the departure with minimum impact on the child's wellbeing.

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For more information, see related links:

Introduction to children and family cases

Managing the return of families with children

How to process a family separation referral.



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This page tells you the process criminal casework caseworkers must follow to separate a family in foreign national offender (FNO) deportation cases.

You must follow this step-by-step guidance when you need to separate a family:

- If you think deportation of the FNO is appropriate, you must assess if there is information to suggest the FNO belongs (or would belong, if not in custody) to a subsisting family unit in the UK within the context of Article 8 of the European Convention on Human Rights (ECHR):
 - o If there is no element of dependency or subsisting relationship between the FNO and family members, and they are not considered to have 'family life' within the context of Article 8, a family separation will not be relevant.
 - o If there is evidence of 'family life' under Article 8, continue as below.
- Assess if it is necessary to separate the family unit for deportation purposes. For example, will family members be deported or removed with the FNO:
 - If there will be no separation of the family, there will be no need to follow the process at deportation stage, though you must follow it later if you decide to detain under immigration powers.
 - o If the family will be separated, and there are children under 18 in the family unit, continue as below.
- Where there is a suggestion or evidence that local authority children's services (LACS)
 have been or might be involved in the care of children, contact them to establish
 whether they have contact with the family, and ask them for any relevant information
 regarding child protection issues.
- Consider if the case needs input from the office of the children's champion (OCC). If so, you must ask for advice on a referral template (ICD.4361) which you must complete as fully as possible to provide OCC with all the details they may need to give sound advice on the child welfare issues:
 - You must email this form to the OCC using the related link.
 - o For further details, see related link: How to contact the OCC.
- Carefully consider all information, including any advice from the OCC, to establish if

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- any child requires protection from a child welfare agency in the UK, and if proposed action by criminal casework would have any adverse impact on their welfare.
- If you still consider deportation to be appropriate and it is necessary to separate the family from the FNO, seek approval from a senior caseworker (SCW).
- If agreed by a SCW, email the completed ICD.4361 to the relevant assistant director (AD) for authority to separate the family.
- Once authorised by the AD, follow the deportation process in the usual way, as set out in the deportation process instructions. See related links:
 - Managing foreign national offenders under 18 years old
 - o Automatic deportation, and
 - Deportation of family members of foreign national offenders.
- All deportation order (DO) submissions must include detailed consideration of the
 effect of the separation on the family and, where the case involves children, particular
 consideration of the need to safeguard and promote their welfare. You must record all
 this information and details from the Home Office file, CID and any OCC advice
 received.

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This page tells you when the criminal casework caseworker must get authority to separate a family in foreign national offender (FNO) cases, and at what level.

The core guidance on separation of families is set out in chapter 45 of the Enforcement Instructions and Guidance (EIG) (see related link: 45 Family cases), and you must refer to it when dealing with family separations. The guidance below relates more specifically to FNO cases.

Evidence of a subsisting family life

You must get authority from an assistant director (AD) to separate a family unit for deportation (and where applicable detention) purposes, once sufficient evidence of a subsisting family life has been gathered.

You do not need to get authority to separate a family unit when you consider deportation of a FNO in cases where there is no evidence, because there is nothing to show that one exists.

To fully consider whether there is subsisting family life, you must follow all of the instruction in the section 'Detaining foreign national offenders with parental responsibility', see related link, which covers:

- Determining parental responsibility
- Subsisting family relationships
- Local authority children's services
- Considering children's circumstances
- Considering the FNOs circumstances
- Making the decision.

Stages at which AD authority must be sought

Once you have enough evidence to show the FNO has a subsisting family life, and you have decided it is proportionate to pursue the deportation of the FNO, you must get authorisation

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to separate the family unit. You do not normally need to get AD authority for family separation more than once in any case, as long as authority has been sought for detention (when re-detaining a FNO who is in the community) and deportation.

The exception to this is where family circumstances have changed significantly since the original authority to separate the family was obtained. Authority should be obtained from either an operations AD or a chief caseworker AD, as outlined below.

Operations AD authority is needed:

- If the FNO is serving their custodial sentence, a deportation decision has already been made and there is a decision to detain the FNO at the end of their custodial sentence under immigration powers. You must get authority to separate the family for detention purposes before the detention paperwork is serviced.
- If the FNO is in the community, the deportation decision has already been made and there is a later decision to detain the FNO for deportation purposes. You must get AD authority to separate the family before the FNO is detained.

Chief caseworker AD authority is needed:

- If the FNO is in custody at the point the deportation decision is made, you must get authority to separate the family for deportation purposes before the deportation decision is served.
- If the FNO is about to be detained under immigration powers before a decision has been made to deport them but it is likely a deportation decision will follow. This scenario only arises in 2007 UK Borders Act cases where there is a specific power to detain for this purpose. If the FNO is in the community when the deportation decision is made you must get authority to separate the family for deportation purposes before you serve the deportation decision.
- In all other cases, after any deportation appeal has been dismissed, or if one has not been lodged, but before you set any removal directions.

You must remember it will not be necessary to get AD authority for a family separation before deportation action starts. In most cases you will need to get AD authority at the point of decision.

If the AD does not give authority to separate the family, you must submit a release referral to the strategic director.

If family deportation action is being proposed, no family separation will result from the decision to deport, and no authority to separate the family is needed at the decision stage. However, authority will still be required to separate for detention purposes if detention is considered appropriate.

If you are unsure if AD authority is required, for example if a substantial period has elapsed since the last decision, you must consult a senior caseworker.

Imminent release cases

In the case of FNOs who are to be considered for deportation but (usually as a result of short custodial sentence) are due for release from custody within 48 hours, they will only be liable to be detained under immigration powers on completion of their sentence if they have been served with:

- an ICD.0350AD (notice of liability to deportation) in 2007 UK Borders Act cases, or
- both the ICD.1070(notice of decision to deport) and ICD.1914 (reasons for deportation) in 1971 Immigration Act cases.

In 1971 Immigration Act cases, for a smooth transition between custodial and immigration detention you must serve the following before you refer the case for authority from the AD:

- ICD.1070
- ICD.1914, and
- IS.91 (the detention notice).

You must get authority for the family separation within seven days of the person entering detention.

During that period you must gather the necessary information for the AD to make a fully informed decision. If for any reason that authority is not obtained, you must submit a release referral to the strategic director. For more information on how to do this, see related link:

Detention (section 1.3).

Detention review

You must review any detention every 28 days in line with policy. However, if one of the following factors is identified after an initial decision has been made to detain a FNO case, you must review their detention immediately:

- a child is in care and remains in care because of the detention
- the FNO is a single parent and the child is living with family and/or foster carers because of the detention
- concerns have been raised about child welfare
- siblings will be split up by detention of a parent
- both parents are FNOs and in custody and/or detention
- the child has special needs.

In these cases, you must balance the welfare of the child against the other risk factors in the case, to decide if the risk of harm to the public or risk of absconding posed by the FNO outweighs the best interests of the child. You are reminded that Immigration Enforcement has agreed not to detain parents where that will cause a child to be taken into care, except in the most exceptional circumstances.

Where one of the above factors becomes clear, and the FNO is detained, you must prepare a release referral and get authorisation from the strategic director (SD).

Families with no children under 18

The policy in chapter 45 of the EIG (see related link) has been changed so authority is not needed to separate a family unit with no children or where any children are over the age of 18.

You will need to consider any family life issues in the context of Article 8 of the European Convention of Human Rights (ECHR) in the context of both section 117A-D of the Nationality Immigration and Asylum Act 2002 and paragraphs 396 to 400 of the Immigration Rules as part of the deportation decision. See related links: Section 117A-D NIA Act 2002 and Immigration Rules Part 13 - Deportation.

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This page tells you about the requirement for criminal casework caseworkers to contact the office of the children's champion (OCC) in separation cases where the foreign national offender (FNO) wants to leave the UK voluntarily.

Where a FNO has confirmed that they want to leave the UK and are going voluntarily, you must only consult the OCC in the following circumstances:

- FNO is a single parent
- FNO is the primary care giver
- child and/or children are known to the local authority children's services (LACS) for child protection.

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This page tells you about Immigration Enforcement's policy, followed by criminal casework caseworkers, for the detention of one or both parents for deportation purposes when their child or children are in care.

Immigration Enforcement has made a commitment that it will not detain two parents, or a single parent, where that decision will result in a child being taken into care. However, there may be circumstances when you decide to detain a parent where their child:

- is already in care, or
- where they are being cared for by the other parent or another relative in the community.

In these circumstances, and where it is proposed to deport or remove a parent without their child, you must get authority to separate the family.

The same process, as described in the link on left: Consideration and process, must be followed:

- submit a referral template to the office of the children's champion (OCC)
- consider their advice, and
- if proceeding with the separation, refer the template to an assistant director for clearance, copying in the briefing and correspondence team (BCT) to note (see related link: Email BCT).

For more information on the issue of detention of parents, see related link: Detaining foreign national offenders with parental responsibility.

Family members who are not part of the family unit

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This page tells you how criminal casework caseworkers handle family members who are not considered to be part of a foreign national offender (FNO)'s family unit for the purposes of deportation.

If there is a family member who is, for whatever reason, not considered to be part of the FNO's family unit within the definition of 'family life' under Article 8 of the European Convention on Human Rights, you must not take deportation action as a dependent relative. See link on left: Definition of 'family unit'.

However, if there is evidence that a person may be liable to removal for an immigration offence in their own right, you must refer the matter to the relevant immigration compliance and enforcement (ICE) team (formerly known as local immigration team (LIT)) to consider enforcement action.

If a child is not considered part of a FNO's family unit for deportation purposes, and any investigations by you reveal any child welfare concerns, you must report these immediately to the relevant local authority children's services (LACS) to take forward.

If the child is to be referred to an ICE team for further consideration of their immigration status, any child welfare concerns must be reported to LACS before you refer the case to the ICE team.

Children in the family unit who are not being deported

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This page tells you how criminal casework caseworkers handle children who are considered to be part of a foreign national offender (FNO)'s family unit for the purposes of deportation. but will not be deported or removed with the FNO for welfare reasons.

You will come across cases of children who are part of a FNO's family unit, but will not be deported or removed from the UK because they have particular welfare needs which can only be met by being separated from their parent(s). For example, where a court has found that one or both parents were responsible for significant harm inflicted on the child.

The local authority children's services (LACS) department where the child is resident is responsible for assessing whether such conditions apply. In these cases, parents may be considered for deportation once the court has decided the local authority should be granted a full care order while the child remains in suitable long-term care arrangements in the UK

If the child has no lawful basis of stay in this country either under the UK Immigration Rules or European Economic Area (EEA) regulations, you must arrange to have their stay regularised before the FNO is deported, unless the other parent has custody of the child and is in the UK. That parent must be asked to submit an application for leave to remain. Once the application has been received and validated this will be processed by the relevant temporary migration casework team.

Contact

This page explains who to contact for more help with separating families for deportation and Related links Policy and principle detention purposes. See also Definition of 'family unit' If you have read this guidance and still need more help with this category, you must first ask Changes to this quidance your senior caseworker or line manager. Consideration and process If the question cannot be answered at that level, you may email criminality policy guidance Information owner (CPG) team using the related link: Email CPG gueries. Detention of parents Links to staff intranet Changes to this guidance can only be made by the guidance, rules and forms team removed Family members not part (GRaFT) team. If you think the policy content needs amending you must contact CPG, who of the family unit will ask GRaFT to update the guidance, if appropriate. Children part of the GRaFT will accept direct feedback on broken links, missing information or the format, style family unit not being and navigability of this guidance. You can send these using the link: Email: GRaFT team. deported

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This page tells you about this version of the 'Separating families for deportation and detention purposes' guidance and who owns it.

Version	9.0
Valid from date	29 July 2014
Policy owner	Criminality policy guidance (CPG)
Cleared by director	Angela Kyle
Director's role	CC Director
Clearance date	19 October 2011
This version approved for	Andy Smith
publication by	
Approver's role	IBPD
Approval date	25 July 2014

Changes to this guidance can only be made by the guidance, rules and forms team (GRaFT) team. If you think the policy content needs amending you must contact CPG using the related link: Email CPG queries, who will ask GRaFT to update the guidance if appropriate.

GRaFT will accept direct feedback on broken links, missing information or the format, style and navigability of this guidance. You can send these using the link: Email: GRaFT.

Related links See also

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