



Home Office

# Release on temporary licence and transfer to open conditions (category D)

Version 10.0

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# About this guidance

This guidance is about the Ministry of Justice National Offender Management Service policies on releasing foreign national offenders from prison on temporary licence, and transferring them to an open prison.

## Contacts

If you have any questions about the guidance or think that it has factual errors then email the Guidance Rules and Forms team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

## Clearance

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

- Version: 10.0
- Published for Home Office staff on: 10 November 2015

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**Official – sensitive: do not disclose: start of section**

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

**Official – sensitive: do not disclose: end of section**

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- Approved on: 28 April 2015

## Changes from last version of this guidance

Content fully-reviewed and updated to account for policy changes made by the Ministry of Justice's National Offender Management Service (NOMS) in August 2014.

## Related content

[Contents](#)

# Policy overview

This page tells Home Office Immigration Enforcement decision makers about the current Ministry of Justice National Offender Management Service's (NOMS) policy. It covers considering foreign national offenders (FNOs) still serving a custodial sentence for release on temporary licence (ROTL) or transferral to an open ('Category D') prison.

Previously, FNOs serving a custodial sentence could be considered for ROTL or for reclassification to category D status on an individual basis, taking the circumstances of each case into account.

However, since 14 August 2014, the policy has been amended and is now summarised as follows:

- **prisoners in closed conditions who have a deportation order against them and who have either exhausted appeal rights in the UK or whose appeal rights must be exercised from abroad** – cannot be:
  - classified as suitable for open conditions
  - granted ROTL
- **prisoners in closed conditions who do not meet the criteria above, but who are liable for deportation or removal proceedings:**
  - must be subject to a more rigorous risk assessment prior to consideration for open conditions or ROTL
  - open conditions or ROTL will only be appropriate where it is clear that the risk is very low
- **prisoners already in open conditions** – are not subject to the bar on allocation to open conditions or being given ROTL:
  - however, any prisoner whose deportation status changes whilst in open conditions must be re-assessed for suitability to remain in open conditions or receive ROTL
  - they may remain in open conditions subject to being assessed as continuing to be of 'very low risk of absconding'
- **prisoners who are not liable to deportation or removal:**
  - are not subject to any restrictions, either because they do not meet the initial criteria for deportation or for removal
  - have been considered for deportation or removal by the Home Office and it has been decided that they may remain in the UK - these prisoners must be considered for open conditions and ROTL in the same manner as other prisoners who are free of restrictions

Full details of NOMS' policy on FNOs in respect of Category D transfer and ROTL are available in Prison service instruction (PSI) 37/2014.

The ROTL policy generally has been further amended in Prison service instruction (PSI) 13/2015 which at chapter 10 incorporates all the relevant guidance from PSI 37/2014. The detail of the guidance relating to FNOs remains as set out in PSI 37/2014.

## Related content

[Contents](#)

**Related external links**

PSI 37/2014 made key amendments to the following associated NOMS policy documents:  
Links to staff intranet removed.

# ROTL and open conditions and category D requests

This page tells Immigration Enforcement Criminal Casework (CC) staff how to handle release on temporary licence (ROTL) and category D requests.

In order to properly apply the policy set down in Prison service instruction (PSI) 37/2014, there must be a reliable system of communication between NOMS and Immigration Enforcement in order to make sure that a prisoner's current immigration status is properly recorded, and this is taken into account when a prison makes decisions as to whether ROTL or open conditions or category D is appropriate in the case of a foreign national offender (FNO).

The category D and the ROTL do not apply to FNOs who are being held in a prison under immigration powers, only those still serving their custodial sentence.

In both ROTL and category D cases, prison establishments will request relevant information as to whether an FNO is currently liable to deportation (or otherwise an alternative form of removal), conformity with any immigration requirements and any information on their risks from CC, using the following standard forms:

- ROTL: ROTL 9 (now ROTL-FNP) (for a blank copy see Annex D of Prison service instruction (PSI) 37/2014)
- category D: CCD 3 (for a blank copy see Annex C of Prison service instruction (PSI) 37/2014)

The ROTL 9 form has been renamed 'ROTL-FNP'. It remains the same form apart from the title and both are currently in use. The term 'ROTL 9' was phased out on 1 July 2015.

Email the ROTL 9 now ROTL – FNP form or fax it to 0208 760 8650, which are generic contact points, unless a specific officer's contact details have already been given.

In either case, CC staff must make sure they return the completed form within 5 working days of receipt.

Any subsequent change to the prisoner's deportation status must also be notified to the prison within 24 hours of the change being made.

# Receiving a ROTL 9 (now ROTL-FNP) or CCD 3 form

This page tells Immigration Enforcement Criminal Casework (CC) staff how to prepare a case for a release on temporary licence (ROTL) request.

Most ROTL 9 or ROTL-FNP and CCD 3 forms will be received by CC workflow initially. When the appropriate officer receives either form, they must complete the following preparation:

1. Set up a calendar event on CID to show a ROTL 9 (now ROTL-FNP) or CCD 3 has been received and the date of reply.
2. Check the details against CID and Warehouse using the:
  - prisoner's name
  - prison number
  - Home Office (HO) reference, if any.
3. If there is no trace, re-check the details with the prison custody officer, asking them for any alias or alternative information they may have.
4. If there is still no trace, request that the prison faxes the nominal index card (NIC) and order of imprisonment, so that a file can be created.
5. If the case is on CID, and the HO file is allocated to a CC casework team, workflow must send the ROTL 9(now ROTL-FNP) or CCD 3 to that team for the decision maker to respond to. In all other cases where the file has not been allocated, the ROTL 9 (now ROTL-FNP) or CCD 3 must stay in workflow.

# Responding to a ROTL 9 (now ROTL-FNP) or CCD 3 form

This page tells Immigration Enforcement Criminal Casework (CC) staff how to respond to a release on temporary licence (ROTL) request.

The prison will specify the relevant deadline for reply on the ROTL and open conditions or category D request, which should be 5 working days from the request, and you must comply with this wherever possible. The procedure is the same whether the request is allocated to a decision maker in casework or an officer in workflow to respond to.

Section 1 of both the ROTL 9 (now ROTL-FNP) and CCD 3 form will have been completed by the prison making the referral. Section 2 must be fully-completed by the responding Criminal Casework (CC) officer with the following information as to whether the foreign national offender (FNO):

- meets relevant criteria for deportation (in cases where the usual sentence threshold is not met but a decision has been made to pursue deportation on grounds of serious harm and/or persistent offending, this must also be clearly-indicated)
- has been served with a deportation decision (a 'stage 1' notice in post-Immigration Act 2014 considerations or a liability notice in pre-2014 Act considerations)
- has a deportation order signed against them
- has exhausted their appeal rights against deportation:
  - the form asks for this, but for those whose decisions have been made in accordance with section 82 of the Nationality, Immigration & Asylum Act 2002 (as amended), and whose appeal will be non-suspensive following certification under section 94B of that act, their appeal will not be heard until after they are deported from the UK
  - this means that increasingly, appeal rights of FNOs still in custody will not be exhausted, but nevertheless it must be made clear that their deportation will be enforced ahead of the ARE stage
- is not liable to deportation but is to removal proceedings
- is subject of a decision to detain them under immigration legislation post-sentence

Section 3 must also be completed to provide any additional information held by the Home Office (HO) which might be relevant to the National Offender Management Service (NOMS) risk assessment. Such information might include, but is not limited to, the following:

- family ties (in the UK or country of origin)
- strong community links
- compliance or non-compliance with immigration conditions including bail
- behaviour during any previous detention in an immigration removal centre
- any history of verbal or documentary deception to gain leave to enter, leave to remain or evade removal from the UK
- whether they have produced evidence of nationality or identity (if there is a copy of the FNO's passport and/or birth certificate on file, you must provide these)
- any known aliases in addition to any noted in Section 1 by the prison
- how imminent deportation or removal from the UK is likely to be



On completing the requisite information, you must:

1. Have the form quality-assured in accordance with local procedures.
2. Once cleared, send the response back to the relevant prison.
3. Enter a case note on CID confirming the date the response was sent.
4. Link a hard copy to the HO file by the agreed deadline.

It would be helpful if the CCD3 or ROTL9 (now ROTL-FNP) did not express an opinion, or opposition to movement to open conditions, or on ROTL and merely presents the information relevant to the decision to be made.

You must remember it is not you who makes the final decision as to whether a FNO is granted either ROTL or a move to category D status. It is the relevant prison governor who decides, but they will take immigration information fully into account before determining the request in accordance with PSI 37/2014 and any other related NOMS policy.

#### **Related content**

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