



Home Office

# Removal/deportation of witnesses to deaths in detention-interim guidance

Version 1.0

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# About this guidance

This interim guidance sets out the process for caseworkers to follow when deciding whether to pause the removal or deportation of any detained person who has been identified as a witness to a death in immigration detention and has potentially relevant evidence to give at the inquest or Fatal Accident Inquiry (FAI) in Scotland.

It follows the judicial review judgment in the case of *Lawal/2021/UKUT 114/IAC* which was handed down on 14 April 2021.

The guidance applies to witnesses to deaths in immigration removal centres, residential short-term holding facilities (RSTHFs), the Pre-Departure Accommodation (PDA), during escort journeys or to witnesses to deaths who are detained under Immigration Act powers in prisons.

## Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email Detention Policy.

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.

## Publication

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

- version **1.0**
- published for Home Office staff on **13 August 2021**

## Changes from last version of this guidance

This is new guidance

### Related content

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# Article 2 (Right to Life) of the European Convention on Human Rights (ECHR)

Where a person detained under immigration powers witnesses a death in detention in any of the [places of detention listed above](#) they may have important evidence to give at the subsequent inquest or Fatal Accident Inquiry (FAI) in Scotland. In some circumstances this may necessitate pausing their removal from the UK, pending the inquest/FAI or preliminary investigations taking place.

Being a witness to a death in immigration detention is not an automatic barrier to that person's removal from UK. In all cases in which an individual is being considered for removal or has removal directions already set, an assessment must first be made of whether their removal should be deferred in order for evidence to be gathered in line with our procedural obligations under Article 2 (Right to Life) of the [European Convention on Human Rights](#) (ECHR).

Article 2 (Right to Life) contains two substantive obligations: firstly, the general obligation to protect everyone's right to life by law, and to prohibit intentional deprivation of life and, secondly, a procedural obligation to carry out an effective investigation into alleged breaches of this obligation.

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# Process

## Identifying and securing relevant evidence from the potential witness

Where a caseworker is informed that a person in immigration detention could be a potential witness to a death in detention, the caseworker or casework team responsible for the case will need to ensure that relevant conversations occur as soon as possible to ensure that the following information has been obtained and recorded on CID/ATLAS and that any decision on continuing detention and removal is fully informed. The following should be established as a minimum:

1. Whether the person has evidence to give regarding the death in detention;
2. If yes, record, or facilitate the recording of, any initial statement of such evidence. This may be through Home Office staff, Prison and Probation Ombudsman (PPO), the police or the Coroner depending on the circumstances);
3. Determine whether the individual is willing to give evidence at the inquest/ Fatal Accident Inquiry (FAI);
4. Record relevant contact details of the individual, including in the country of proposed removal;
5. Whether it is practicable in the particular circumstances for the individual to return to the UK to give evidence in person or give evidence by video link from overseas if required. This will require consideration of the infrastructure in place for giving video evidence in the proposed country/region of return.

For deaths in the Home Office detention estate the Detainee Engagement Team (DET) in the relevant Immigration Removal Centre will ensure that relevant conversations occur as soon as possible following the death with the potential witness or witnesses. In line with the requirements of DSO 8/2014 (Deaths in Detention) The expectation is that this would be via completion of the Annex C checklist appended to that DSO. There are no on-site DETs in either residential short-term holding facilities (RSTHFs) or at the Pre-Departure Accommodation (PDA). As indicated in DSO 8/2014 in RSTHFs this function would be carried out by the supplier, overseen by the DES Escorting and Contract Monitoring Team (ECMT). At the PDA the function would be carried out by the local Gatwick DET.

For deaths in prisons, where DSO 8/2014 does not apply, such conversations and collation of the information set out above would need to be conducted by the Immigration Prison Team (IPT), FNO liaison officer or Offender Management Unit (OMU) as applicable. This information will then be communicated back to the caseworker and recorded by them on CID/ATLAS. Again, this would need to happen at the very earliest opportunity following the death.

If this information has not been obtained and recorded on CID/ATLAS, the caseworker should instruct the relevant DET/IPT to conduct these conversations and gather any relevant information as soon as possible. As indicated above, in residential STHFs this function would be carried out by the supplier, overseen by the

Escorting Contract Monitoring Team (ECMT). At the PDA it would be carried out by the Gatwick DET.

In the event a potential witness is due to be removed shortly (ie within the relevant notice period of minimum 72 hours or 5 working days) following the death, removal should be deferred to allow evidence to be gathered where this is not possible before the date of removal. This may require existing removal directions to be cancelled in some cases. It should be clear that deferring removal in these circumstances would not automatically translate to pausing the individual's removal entirely pending any subsequent investigation or inquest/FAI. In the case of a death in a residential STHF, where periods of detention are time limited by law, then the witness would need to be transferred to an immigration removal centre to allow the evidence-gathering process to continue.

**Please note that the Home Office retains the ability to take removal decisions, even pending a Coroner's (Procurator Fiscal in Scotland) investigation.**

## Consulting other relevant actors/external bodies

The gathering of evidence and information set out above may require caseworkers to consult other relevant actors, such as the police, Prison and Probation Ombudsman (PPO) and Coroners. (For Scotland, the equivalent of Coroners is the Procurator Fiscal who decides if it is appropriate to hold a fatal accident inquiry.) This must be done for every case, although it may be that, on occasions, some of these bodies will inform us that they have no interest or involvement in the case. A draft letter for caseworkers to use in making these enquiries is attached at [Annex A](#) of this guidance.

Caseworkers will need to establish from DES/IPT/OMU which Coroner Court or Procurator Fiscal they are dealing with, establishing the contact details and then make contact to the relevant location.

In making such enquiries, caseworkers must be clear that the Home Office is not asking Coroners/Procurators Fiscal, the police or PPO to make the decision about an individual's detention or removal from the UK, but simply to provide their views on the significance of the person's evidence or ability to give evidence from abroad, to be taken into account by the Home Office in deciding whether or not to pause the individual's removal from the UK.

The police may, however, veto a witness's removal/deportation from the UK where they indicate the following: (1) they suspect the death witnessed may have been the result of a crime; and (2) there is an ongoing criminal investigation into that death; and (3) they consider that person due to be removed is a key witness to those events. This is because removing the individual in such circumstances may prejudice the investigation of a serious crime. It should be noted that this will be subject to compliance with the requirements of the Foreign Witnesses: Law Enforcement Requests to the Home Office policy guidance.

It is essential that the above enquiries are commenced, and concluded, quickly as delay will have implications for the legality of the witness's continued detention. Consequently, where the police, PPO, Coroner/Procurator Fiscal are unable to give their views on the significance of a witness's evidence speedily the Home Office may have to proceed to make a decision about the person's removal without this information.

## **Making a decision on the removal or deportation of a potential witness to a death in detention**

Once a person has been identified as a potential witness to a death in detention and the above information has been obtained, caseworkers must determine whether the person's removal should continue or should be put on hold taking account of the following non-exhaustive factors:

- the likely importance of the person's evidence, taking account of any views on this matter expressed by the Coroner (or Scottish and NI equivalents), police and PPO if available - this would include whether the person was the sole witness of events
- the ability of the Home Office to maintain contact with the individual if they are removed from the UK
- the likelihood of the individual being able to return to the UK to give evidence in person when the inquest takes place or give their evidence by video link from overseas

For example, specific consideration may need to be given to whether the individual is a sole witness to the death and/or whether the Home Office would be returning the individual to a country which lacks the necessary infrastructure to allow them to give evidence by video link or where it is not likely to be feasible to return them to the UK for the inquest/FAI. Where caseworkers consider that they need advice on the IT infrastructure available in a country of proposed return they should contact the Country Policy and Information Team (CPIT) for this.

Decisions as to whether removal should be paused or proceed as originally planned must be taken on a case-by-case basis at a minimum SEO level, taking account of the factors set out at in this section. This decision should be fully referenced and considered within a Detention and Case Progression review.

## **Proceeding with a witness's removal**

The relevant case-working team must then refer their decision, via their line management chain, to Senior Civil Service (SCS) level for a final decision on whether to pause the individual's removal.

If the SCS's final decision is that the witness's removal should proceed, then arrangements for removal should continue in the normal way.

## Removal of witness deferred pending an inquest/investigation: consideration of the person's continued detention

Where the final decision taken by SCS is to pause removal, then **immediate** consideration must be given to person's continued detention pending the inquest. In line with our published detention guidance, each case will need to be considered on the individual facts of the case. This will include taking account of any indicative timeframe for the conclusion of the inquest/Fatal Accident Inquiry and the consequent impact on removal timeframes.

## Voluntary departure from the UK of a witness to a death in detention

A foreign national who has witnessed a death in detention but wishes to leave the UK voluntarily before any decision has been taken by the Home Office as to whether their removal/deportation should be paused will not be prevented from departing. Where this happens, the Home Office will still need to take steps to gather any appropriate evidence as outlined above before their departure and ensure full contact details are obtained in the event the individual is required to give further evidence. The views of the individual on giving evidence, for example, by video link, in writing or returning to the UK should be factored into decision making. The individual's views on this point should be recorded.

## Informing the Coroner (Procurator Fiscal in Scotland), the police and Police and Prisons and Probation Ombudsman of the Home Office's decision

The Coroner (Procurator Fiscal in Scotland), police and PPO should be informed of the Home Office's final decision, regardless of whether it is to proceed with the witness's removal/deportation from the UK as originally planned or to pause their removal/deportation.

## Return of witness to the UK to give evidence at the inquest/Fatal Accident Inquiry (in Scotland)

Where a witness to a death in detention is removed from the UK in line with this instruction but indicates they would be prepared to return to the UK to give evidence in person at the time of the inquest/FAI their return would be dealt with in line with guidance set out in: Foreign Witnesses: Law Enforcement requests to the Home Office

### Related content

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# Annex A: template letter for Home Office caseworkers to send to Coroners (Procurator Fiscal in Scotland), the police and Prisons and Probation Ombudsman

**INSERT WITNESS'S FULL NAME, NATIONALITY, DATE OF BIRTH AND HO REFERENCE NUMBER**

Dear Sir or Madam

The above-named person is currently detained under Immigration Act powers in **[INSERT NAME OF THE IRC OR PRISON]** and is liable for removal/deportation **(delete as appropriate)** from the United Kingdom. This is expected to take place **[Please note that, where it is possible to provide a timescale for the person's removal/deportation, please add that to the letter here.]**

He/she has been identified as a witness to the death of **[INSERT NAME OF PERSON WHO DIED]** which took place at **[INSERT NAME OF IRC OR PRISON]** on **[INSERT DATE]** and consequently he/she may have important evidence to give at the inquest/ Fatal Accident Inquiry **(delete as appropriate-latter applies to Scotland only)** into this death. The following steps have been taken to record a statement of evidence from **[INSERT NAME OF WITNESS AND ADD DETAILS OF THE STEPS THAT HAVE BEEN TAKEN/WILL BE TAKEN TO RECORD AN INITIAL STATEMENT OF EVIDENCE]**. This statement can be provided on request.

Being a witness to a death in immigration detention is not an automatic barrier to the person's removal or deportation from the UK. In line with its obligations under Article 2 of the European Convention on Human Rights (ECHR) the Home Office needs to decide urgently whether **[INSERT WITNESS'S NAME]** removal/deportation **(delete as appropriate)** from the UK should continue as planned, or should be put on hold pending the inquest/Fatal Accident Inquiry to allow him/her **(delete as appropriate)** to give evidence in person at those proceedings.

You should be aware that a decision by the Home Office to pause the person's removal/deportation will have implications for their continued detention under immigration powers.

Questions to be directed at Coroners/Procurators Fiscal

To inform the Home Office decision about this it would be helpful to know the current procedural position in relation to the inquest/FAI and the timescale for this; whether the Coroner/Procurator Fiscal will need to take a statement from the witness; and

whether **[INSERT WITNESS'S NAME]** personal attendance at the inquest/FAI is likely to be required.

We would also be grateful if you could confirm whether you would be content for **[DETAINED PERSON'S NAME]** to provide their evidence at the inquest/FAI by video link from abroad (via Zoom or similar) to allow the Home Office to proceed with their removal from the UK.

You should be aware that the Home Office has taken, or will be taking, the following steps in this case: determined that the person has evidence to give regarding the death; recorded/facilitated recording of an initial statement of evidence from them; established that they are willing to give evidence at the inquest/FAI; recorded their contact details, including in the country of their proposed removal/deportation; and determined whether it is practicable for them to return to the UK to give evidence in person at the time of the inquest/FAI or is content to do so by video link from overseas, if required.

Please note that, in consulting you about this issue, the Home Office is not asking you to make the decision on whether his/her **(delete as appropriate)** removal/deportation **(delete as appropriate)** from the UK should continue or not but the Home Office will take your views into account in reaching the decision as whether to remove/deport.

#### Questions to be directed at Prisons and Probation Ombudsman (PPO)

To inform the Home Office decision about this it would be helpful to know the current procedural position in relation to the PPO's investigation and the timescale for this; and whether the PPO will need to take a statement from the witness.

Please note that, in consulting you about this issue, the Home Office is not asking you to make the decision on whether his/her **(delete as appropriate)** removal/deportation **(delete as appropriate)** from the UK should continue or not.

#### Questions to be directed at Police

To inform the Home Office decision we would be grateful to know whether the death witnessed by **[INSERT WITNESS'S NAME]** is subject to criminal investigation. If so, is the witness's evidence required as part of that investigation and what is the likely timescale for the conclusion of the investigation?

Please note that, in consulting you about this issue, the Home Office is not asking you to make the decision on whether his/her **(delete as appropriate)** removal/deportation **(delete as appropriate)** from the UK should continue or not.

Where the police consider the death may have been the result of a crime and therefore wish to apply to the Home Office to defer **[INSERT WITNESS'S NAME]** removal from the UK the decision will be subject to compliance with the requirements of the Home Office's "Foreign Witnesses: Law Enforcement Requests to the Home Office" policy guidance.

The following paragraphs to be included in all letters (ie to police, Coroner/Procurator Fiscal and PPO)

The Home Office appreciates that you may not feel able to comment on these matters at the current time. Where that is the case, then the Home Office will need to reach decision about whether **[INSERT WITNESS'S NAME]** removal/deportation **(delete as appropriate)** from the UK should proceed, without taking account of your views. However, any provisional views you are nevertheless able to provide would nevertheless be appreciated and will inform the Home Office's decision.

As indicated above, it is important that the Home Office makes a prompt decision about **[INSERT NAME OF WITNESS]** removal from the UK so I would be grateful for your response by **[INSERT DATE]**

Yours faithfully

CASEWORKER'S NAME,  
PHONE NUMBER AND EMAIL ADDRESS  
CASEWORK TEAM NAME