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56. Home leave (Release on Temporary Licence) for prisoners subject to removal action

The grant of home leave (release on temporary license) for a person serving a custodial sentence is normally at the discretion of the Prison Governor.

When a Governor wishes to allow a prisoner home leave, but the detainee is also detained under Schedule 2 of the 1971 Act, he should contact a CIO at the port or enforcement office that authorised detention, giving 10 days notice of the decision to allow for any representations to be made as to why the prisoner should not be released. However, the final decision rests with the Governor, even if an IS91 has been served.

Where a prisoner has been court recommended for deportation or has already been notified of a decision to make a deportation order, the Governor requires the permission of CCT for the person to be released. Prisons should make such requests directly to CCT but any received by ports/enforcement offices should be forwarded for the attention of a senior case-worker.

56.1. Temporary admission, release on restrictions and temporary release (bail)

Whilst a person who is served with a notice of illegal entry, notice of administrative removal, or is the subject of deportation action is liable to detention, such a person may, as an alternative to detention, be granted temporary admission or release on restrictions. The policy is that detention is used sparingly, and there is a presumption in favour of granting temporary admission or release on restrictions. Another alternative to detention is the granting of bail, which is covered

separately in Chapter 57. The fundamental difference between temporary admission/release on restrictions and bail is that the former can be granted without the person concerned having to be detained, while the latter can only be granted once an individual has been detained and has applied for bail.

The power to grant temporary admission to illegal entrants and persons served with notice of administrative removal who are liable to detention under paragraph 16 is set out in paragraph 21(1) and (2) to Schedule 2 of the Immigration Act 1971 (and as amended by the 1988 Act). This provides that the grant of temporary admission in illegal entry or administrative removal cases may be subject to such restrictions (on residence, employment and reporting to the police or an IO) as may be notified to him in writing by an IO. It follows that IOs, with the authority of a CIO, are able to grant temporary admission in all illegal entry and administrative removal cases liable to detention under paragraph 16.

A person who is the subject of deportation action who is detained or liable to detention may be placed on a restriction order, under paragraph 2(5) of Schedule 3 to the 1971 Act. This provides for similar conditions to be attached to the grant of release on restrictions in deportation cases to those in illegal entry and administrative removal cases, with the exception that it is for the Secretary of State to notify in writing any conditions attached to their release.

IOs may, under the authority of a designated Inspector, serve papers granting release on restrictions to a person who has been served with a notice of intention to deport by an enforcement office at the request of the relevant case-working section, normally CCT. However only a person with delegated authority (i.e. designated Inspectors - see chapter 54) may sign any restriction order or amendment to a restriction order.

Case-workers in the relevant section (who act on behalf of the Secretary of State) may grant temporary release to persons served with a notice of intention to deport under section 3(5) or who have been recommended for deportation by a court or who is the subject of a deportation order.

The LEO that served the notice of illegal entry or administrative removal should deal with variations to the conditions attached to the grant of release on restrictions in illegal entry and administrative removal cases. In deportation cases variations should be notified by case-workers in the relevant section. This is irrespective of whether or not the notice of intention to deport was served by an IO under the delegated authority arrangements.

56.2. Employment restrictions

See chapter 23.10.

56.3. Reporting restrictions

Persons subject to reporting restriction should not be required to report to police stations if they could report to an immigration reporting centre instead. Immigration Service reporting centres which contain holding rooms are currently established at Becket House (London), Communications House (London), Dallas Court (Manchester), Eaton House (Heathrow), Electric House (Croydon), Festival Court (Glasgow), Lunar House (Croydon), Frontier House (Folkestone), Reliance House (Liverpool), Stanford House (Birmingham) and Waterside Court (Leeds).

Where reporting to a police station is considered essential, this should not be more frequently than monthly (unless authorised by an Inspector in exceptional circumstances) **and the police station must be informed**; if the case remains unresolved after 3 years and the offender has abided by the terms of his temporary admission or release on restrictions, lift reporting restrictions (unless removal is imminent). A failure to attend by an offender will be reported by the police to the enforcement office for appropriate action. **When a case has been resolved, the appropriate police station must be informed.**

It is possible to impose reporting restrictions on unaccompanied minors, however reference should be made to Chapter 27.2 before doing so.

56.4. Failing to comply with the terms attached to a grant of Temporary admission, release on restrictions or bail

A person who fails to comply without reasonable excuse with the terms attached to the grant of temporary admission, release on restrictions or bail commits an offence under section 24(1)(e) of the Immigration Act 1971. A decision on whether to charge a person or prosecute currently rests with the Police or Crown Prosecution Service.

56.5. Procedures when granting temporary admission to an illegal entrant or person served notice of administrative removal

- ◆ serve form IS96, informing the subject of his release and the restrictions imposed upon him;
- ◆ serve form IS106, the release order, on the detaining agent;

- ◆ advise the Detention Co-ordinator of release where they have been notified of the initial detention and MODCU if the person has been detained for 28 days or more.

56.6. Procedures when releasing on restrictions a person served with a notice of intention to deport

- ◆ serve form IS164 on the subject, notifying him of his release on restrictions;
- ◆ DO4 is completed by the Duty Inspector and sent to the relevant case-working section and MODCU within 24 hours;
- ◆ advise Detention Co-ordinator of release where they have been notified of initial detention;
- ◆ serve form IS106, the release order, on the detaining agent;

Serve a copy of the restriction order as soon as possible so that the person is informed of his responsibility to obtain approval for any proposed change of address and of his liability to prosecution for failing to comply with the order.