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### 15. Service of notice of intention to deport

If, after consideration of all the relevant facts, deportation is considered the correct course of action, the relevant form should be served.

**Since 2 October 2000 form APP104 was replaced with one of the following:**

- ◆ ICD.1070 for conducive deportation generally
- ◆ ICD. 1071 for conducive deportation with refusal of asylum at the same time
- ◆ ICD.1072 for dependants of a deportee
- ◆ ICD.1075 for those who applied under the Regularisation scheme for overstayers and who will continue to be deported as overstayers (non-asylum)

- ◆ ICD.1076 for those who applied under the Regularisation scheme for overstayers and who will continue to be deported as overstayers and who have also been refused asylum.
- ◆ ICD. 1914 reasons for deportation notice

Separate notices exist for EEA cases and are available in CID Document Generator. For further information see Chapter 8 Section 3 of the European Casework Instructions.

## 15.1 Service of ICD.1070, 1071 & 1072 forms

The Criminal Casework Directorate may ask the enforcement office to serve the relevant form, “one-stop notice” and any detention or restriction order:

- ◆ **the proposed destination on removal must be specified and the notice signed and dated;**
- ◆ make a photocopy of the relevant form for the port file, ensuring that the reverse side of the form is copied;
- ◆ Serve a detention/restriction order as appropriate (IS91/164) and send a copy to the Criminal Casework Directorate.
- ◆ inform the DC and MODCU in detained cases and send the ICD form, IS93e, IS168 and any appeal/disclaimer to MODCU;
- ◆ Inform the relevant police station of any reporting restrictions.
- ◆ Endorse the person’s passport with the words “Served with form..... at (name of enforcement office [avoiding use of the word “enforcement” see IG 43/01]) on (date)”
- ◆ The Inspector must complete form DO8A contemporaneously (plus a DO2 or DO4 for detention or restriction) and send them immediately to the Criminal Casework Directorate with a copy to the enforcement office for the port file.

Section 17 of the 2004 Act enables the Secretary of State or an immigration officer to retain a passport (or other document) which comes into their possession in the course of their normal immigration duties, while it is suspected that the person to whom the passport/document relates may be liable to removal and retention of the passport may facilitate removal.

## **15.2. Untraced subjects of ICD.1070, 1071, 1072, 1075, 1076.**

When the subject of an ICD.1070/1071/1072/1075/1076 referred by the Criminal Casework Directorate (CCD) cannot be traced, refer the case back to CCD for guidance.

## **15.3. Missing overstayers (pre 2 October 2000)**

Where the subject of APP104 action is encountered and has been notified as a missing overstayer, he may, if appropriate, be detained, with the authority of an Inspector/Senior Caseworker under section 2(2) of Schedule 3 to the 1971 Act. **Do not re-serve the APP104.** Report the circumstances to CCD who will make a decision whether to submit for a deportation order and/or to maintain detention.

## **15.4. Deportation orders (DOs)**

Once appeal rights have been exhausted, and provided that the decision to deport has not been overturned, case-workers in the relevant section will prepare a submission to seek a DO. An order will usually be signed by the Chief Executive or Deputy Chief Executive; although Ministers may sign deportation orders in particular cases.

## **15.5. Deportation Orders not yet enforced**

A DO is **enforced** when the person to whom it relates is removed from the UK. Where a DO has not been enforced, consideration of whether it should be revoked will be for the relevant casework section.

## **15.6. Invalid Deportation orders**

An order is invalid if:

- ♦ the person was not in the UK on the date the order was signed;

- ♦ the order was improperly made;
- ♦ The person has become entitled to the right of abode.

Where there is reason to believe that an order is invalid, refer the case to Removals Casework Team (RCT) (for orders prior to 2 October 2000), or the Criminal Casework Directorate (orders from 2 October 2000).

An order **may** be invalid if:

- ♦ The person has become a family member of an EEA national exercising Treaty rights in the UK.

Where there is reason to believe this is the case, refer to the relevant section.

### **15.7. Revocation of deportation orders**

Applications for revocation of DOs, which have been enforced, are considered by the relevant case-working section. A decision to revoke an un-enforced or invalid DO should also be taken in the relevant case-working section.

### **15.8. Service of Deportation Orders**

- ♦ commence interview by establishing identity;
- ♦ refer to Chapter 26 if there is no travel document;
- ♦ confirm current address;
- ♦ confirm/establish names, dates of birth of partner and any children;
- ♦ establish current domestic circumstances;
- ♦ serve copy of DO (**not the original**) and explain its implications;
- ♦ Decide whether to detain or restrict. (Consider the criteria for detention outlined in 55.5);

- ◆ refer to designated Inspector/Senior Case-worker and obtain a detention/restriction order; (see Chapter 54)
- ◆ note any representations made but advise that these should be submitted in writing to the Criminal Casework Directorate, not the enforcement office; advise that removal will proceed unless instructed otherwise;
- ◆ if destination appeal rights exist, (i.e. not exercised at ICD.1075 stage), serve the appeal forms;
- ◆ photograph subject (under Section 2(4) of Schedule 3 to the 1971 Act for the purposes of identification if the person is detained, or with his consent);
- ◆ endorse the back of the **original** DO: "Served by (name), (enforcement office), (place), (date)";
- ◆ if served in HM Prison, ask a prison officer to witness and sign the back of the DO and give a copy of the DO to the prison officer to serve on the Governor;
- ◆ if served in a police station, give a copy of the DO to the custody sergeant;
- ◆ place copies of all forms served on port file and HO file;
- ◆ if offender is released on restriction, inform relevant police station;
- ◆ If offender is detained, inform the DC and MODCU.

## 15.9. Irish deportees

Following a ministerial statement on 19 February 2007, concerning the deportation of Irish nationals, the only criteria under which an Irish national will be considered for deportation are:-

- ◆ A court has recommended deportation in sentencing, or
- ◆ The Secretary of State concludes that due to the exceptional circumstances of the case, the public interest requires deportation.

Such cases will be considered by CCD.

#### Exceptional circumstances

It is considered that deportation of Irish Nationals may be appropriate in exceptional circumstances. These cases, by definition, will be rare. However, as a guide, deportation may be considered where an offence involves national security matters or crimes that pose a serious risk to the safety of the public or a section of the public. This might be where a person has been convicted of a terrorism offence, murder or a serious sexual or violent offence and is serving a sentence of 10 years or more (a custodial period of 5 years or more).

Any deportation action must be agreed at Director level.

Subject to the above criteria, an Irish national who falls for deportation (ensure that he is not otherwise exempt under section 7 of the Immigration Act 1971) will be dealt with under the Immigration (European Economic Area) Regulations 2006. See also: Conducive deportation of EEA nationals and Chapter 8 Section 3 of the European Casework Instructions

### 15.10. Missing deportees

Although it is the policy of the Border and Immigration Agency not to make a DO in respect of a person with whom it is not in contact, the subject of a DO may abscond or go to ground following the making of the DO. Where the subject of a DO comes to light, review the case as follows:

- ◆ If the subject of a DO is encountered within 3 months of the DO being signed (or any subsequent authority to remove); **and**
- ◆ his circumstances remain unchanged; **and**
- ◆ There was no undertaking to review given to Ministers or anybody representing the deportee: then no further reference to the Criminal Casework Directorate is required and removal can proceed. However, designated Inspector/ Senior Case-worker authority to detain/restrict is required if necessary. No detention order is required but provide a copy of the DO.
- ◆ If the subject of a DO is encountered and a period of more than 3 months has passed since the DO was signed:

- ◆ Send a report to the Criminal Casework Directorate setting out the current circumstances.

However, where there are no new and compelling circumstances or if the person wishes to leave voluntarily and he has disclaimed his appeal rights, a designated Inspector/Senior Case-worker may authorise removal.

### **15.11. Removal of APP 104/ICD 1071 series of cases - Power to remove the subject of a DO**

Paragraph 1(1) of Schedule 3 to the 1971 Act states that, where a deportation order is in force against any person, the Secretary of State may give directions for his removal to a country or territory specified in the directions being either:

- (a) A country of which he is a national or citizen; or
- (b) A country or territory to which there is reason to believe that he will be admitted.

Costs for the removal of the subject of a DO are always met by the Secretary of State (unless a person is a port refusal and then recommended for deportation e.g. a drugs carrier - in which case the carrier can be asked to pay the costs. However, in these cases, once the DO has been served, removal is the responsibility of the refusing port).

### **15.12 Supervised departures in deportation cases**

Any person subject to deportation action may be removed, at public expense if necessary, (under section 5(6) of the 1971 Act as amended by paragraph 2 of the schedule to the 1988 Act) by means of a supervised departure (SVD). However, it is unlikely that SVD will be suitable for most deportation cases. In such cases refer to EPU.

### **15.13. Procedures for the removal of the subject of a Deportation Order**

Removal is usually effected at public expense. Paragraph 1(4) of Schedule 3 of the 1971 Act allows for the Secretary of State to apply in or towards payment of expenses of the voyage from the UK of a deportee, (or the maintenance until departure of such a person and his dependants) any money belonging to that person, but this should not be done. If the person **asks** to pay for his ticket, he should, if unable to purchase this himself, be put in touch with the removal

contractor. If any money is given to immigration staff in payment for a ticket, give a receipt and forward the money to ISFPG. In SVD cases, the offender may also pay for his ticket.

(It is possible to give directions for the removal of a deportee under paragraph 9 of Schedule 2 to the 1971 Act, if he is liable to removal under these powers as well as under the DO (e.g. when a person was apprehended attempting to smuggle a controlled substance into the UK). The same procedure should be followed as in illegal entry cases. However, if a deportee was a port refusal, removal should be arranged by the refusing port).

- ◆ obtain designated Inspector/Senior Case-worker's authority for removal;
- ◆ Arrange a flight through the removal contractor.
- ◆ inform the DC or prison and MODCU of removal details (if detained);
- ◆ ensure the escorts have a copy of the DO and a release order for the place of detention;
- ◆ inform the offender of flight details;
- ◆ follow the procedures for removals via second port if appropriate (see 9.11);
- ◆ Inform MODCU (if detained) and the Removals Casework Team (orders pre 2 October 2000) or the Criminal Casework Directorate (orders post 2 October 2000) of all arrangements and inform them of departure when affected.

#### **15.14. After removal**

- ◆ confirm departure (with the Escort Contractor in detained cases, or the port of departure in non-detained cases);
- ◆ update CID;
- ◆ inform the Removals Casework Team (orders pre 2 October 2000) or the Criminal Casework Directorate (orders from 2 October 2000) and MODCU (if appropriate) within 24 hours;



- ◆ complete a clearance report (IS169) as soon as possible; copy to WICU, RCT or CCD and ECO; copy to MODCU if the offender had been detained prior to removal;
- ◆ Clear port file.