



# Automatic deportation

This guidance is based on the UK Borders Act 2007 and on the Immigration Rules.

## Automatic deportation

### About this guidance

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This guidance tells criminal casework directorate (CCD) caseworkers how to handle cases that meet the criteria for automatic deportation.</p> <p>From 1 August 2008 foreign national offenders (FNOs) who have been sentenced to a period of imprisonment of 12 months or more have been subject to automatic deportation from the UK. The 12 months must be for a single sentence for a single conviction. It must not be aggregate or consecutive sentences.</p> <p>This means where such a sentence has been imposed, the Secretary of State is legally obliged to make a deportation order unless the FNO falls within one of six exceptions. For a list of the exceptions and further guidance, see the link on the left: Exceptions to automatic deportation.</p> <p>This guidance is based on the UK Borders Act 2007. For the text of the UK Borders Act 2007, see the related link.</p> <p>Changes to this guidance - This page tells you what has changed since the previous version of this guidance.</p> <p>Contact - This page tells you who to contact for help if your senior caseworker or line manager can't answer your question.</p> <p>Information owner –This page tells you about this version of the guidance and who owns it.</p> <p>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.</p>	<p><b>In this section</b> <a href="#">Changes to this guidance</a> <a href="#">Contact</a> <a href="#">Information owner</a></p> <p><b>Related links</b> Links to staff intranet removed</p> <p><b>External links</b> <a href="#">UK Borders Act 2007</a></p>
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## Automatic deportation

### Changes to this guidance

[Automatic deportation criteria](#)  
[Definition of imprisonment in the UK Borders Act 2007](#)  
[Cases where deportation action started before 1 August 2008](#)  
[Deportation under conducive and court recommended powers – the 1971 Act](#)  
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This page lists the changes to the automatic deportation guidance, with the most recent at the top.

Date of the change	Details of the change
14 March 2013	Change request: <ul style="list-style-type: none"><li>• Cases where exceptions do not obviously apply<ul style="list-style-type: none"><li>○ Third paragraph reworded.</li></ul></li></ul>
22 February 2013	Six month review by the modernised guidance team: <ul style="list-style-type: none"><li>• Minor housekeeping changes</li></ul>
24 August 2012	Six month review by the modernised guidance team: <ul style="list-style-type: none"><li>• No changes made.</li></ul>
11 July 2012	Change request: <ul style="list-style-type: none"><li>• As a result of Immigration Rules changes to Article 8</li><li>• Exception due to Article 8 claims:<ul style="list-style-type: none"><li>○ everything on this page has been deleted apart from the first paragraph</li><li>○ the second paragraph is new</li></ul></li><li>• Proportionality of deportation in article 8 claims:<ul style="list-style-type: none"><li>○ second paragraph is new</li></ul></li></ul>

#### Related links

[Cases when exceptions do not obviously apply](#)

**See also**  
[Contact](#)

[Information owner](#)

Links to staff intranet removed

		<ul style="list-style-type: none"> <li>○ sub-heading 'ZH (Tanzania)' has been deleted</li> <li>• Article 8 – Evidence of family life: <ul style="list-style-type: none"> <li>○ sub-heading 'ZH (Tanzania)' has been deleted</li> <li>○ first bullet point new</li> <li>○ fourth bullet point, second sentence after 'make sure that' 'proportionally' and been changed to 'the claim'.</li> </ul> </li> </ul>		
	22 June 2012	For the 22 June 2012 changes you will need to access version 2.0 which is now archived. See related link: Automatic deportation - Archive.		
	30 March 2012	Completely revised by the CCD process team and the modernised guidance team.		

## Automatic deportation

### Automatic deportation criteria

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This page tells criminal casework directorate (CCD) caseworkers about the automatic deportation criteria for foreign national offenders (FNOs) under the UK Borders Act 2007.</p> <p>Automatic deportation of FNOs started on 1 August 2008. It applies when the:</p> <ul style="list-style-type: none"><li>• custodial sentence is 12 months or more, and that sentence is a single sentence for a single conviction, it must not be an aggregate sentence or consecutive sentences</li><li>• offender was serving that sentence on or after 1 August 2008, and</li><li>• offender had not been served with a notice of decision to deport before 1 August 2008 (for further guidance on these cases see <a href="#">link on left: Cases where deportation action started before 1 August 2008</a>).</li></ul> <p>For further guidance on how the UK Borders Act defines the length and type of imprisonment see <a href="#">link on the left: Definition of imprisonment in the UK Borders Act 2007</a>.</p> <p>FNOs who have been convicted and/or sentenced before 1 August 2008 may still be subject to automatic deportation as long as they meet the criteria above.</p> <p><b>Foreign national offenders who do not meet the criteria for automatic deportation</b></p> <p>You must still consider the following categories, who do not meet the criteria for automatic deportation, for deportation under the Immigration Act 1971:</p> <ul style="list-style-type: none"><li>• Non-European Economic Area (EEA) nationals and their family members who receive two or three custodial sentences in a five year period that in total exceeds 12 months.</li><li>• Foreign offenders who are recommended for deportation by a court and sentenced to less than 12 months imprisonment.</li></ul>	<p><b>External links</b></p> <p><a href="#">UK Borders Act 2007</a></p>
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## Automatic deportation

### Definition of imprisonment in the UK Borders Act 2007

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This page tells criminal casework directorate (CCD) caseworkers how imprisonment is defined for the purposes of the UK Border Act 2007.</p> <p>Section 32 (2) of the UK Borders Act 2007 sets out the length of imprisonment of at least 12 months to qualify for automatic deportation and section 38 defines what is meant by imprisonment. To access the act, see the related link.</p> <p><b>Length of imprisonment</b></p> <p>Automatic deportation will only apply when:</p> <ul style="list-style-type: none"><li>• the custodial sentence is at least 12 months</li><li>• that sentence is a single sentence for a single conviction, it must not be an aggregate or a consecutive sentence</li></ul> <p><b>Sentences given in days or weeks</b></p> <p>Sometimes sentences are given in days or weeks instead of the more familiar months or years. The following will help you determine whether the sentence falls within the criteria.</p> <p>The interpretation for 12 months in section 32 is a period of 12 calendar months. A month in a statute is a calendar month as defined by the Interpretation Act 1976, unless there is provision within it for a different definition (which in the case of the UK Borders Act there is not).</p> <p>A period of imprisonment of at least 12 months would end on the corresponding date in the 12th month. It would consist of 365 days, unless in a leap year it would be 366.</p> <p>‘Week’ is given its ordinary meaning of seven consecutive days, so 52 weeks is only 364 days.</p> <p>For the purposes of automatic deportation and sentencing, there are not 52 weeks in 12</p>	<p><b>External links</b></p> <p><a href="#">UK Borders Act 2007</a></p>
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	<p>months and so a case sentenced in this way would fall outside the definition of 'foreign criminal' for the purposes of automatic deportation.</p> <p><b>Indeterminate sentences</b>  Imprisonment for at least 12 months includes where a person is sentenced to imprisonment or detention, or ordered or directed to be detained, for an indeterminate period (provided that it may last for at least 12 months).</p> <p><b>Suspended sentences</b>  The definition of imprisonment for the purposes of this act does not include suspended sentences unless a court subsequently orders that sentence or any part of that sentence, regardless of length, is to take effect. In these circumstances, if the original suspended sentence was for at least 12 months, then you must consider automatic deportation.</p> <p><b>Types of imprisonment</b>  Imprisonment due to the default of payment of compensation or a fine does not amount to a sentence of imprisonment for the purposes of the UK Borders Act 2007.</p> <p>For the purposes of this act, imprisonment includes where a person is sentenced to detention, or ordered or directed to be detained in an institution other than a prison, including a hospital or an institution for young offenders, for at least 12 months.</p> <p>A person released on license is still technically serving their custodial sentence for the purposes of calculating when they were serving a sentence and therefore a person released on licence on or after 1 August 2008 will qualify for automatic deportation (provided the other criteria are met).</p>	
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## Automatic deportation

### Cases where deportation action started before 1 August 2008

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This page tells criminal casework directorate (CCD) caseworkers how to process the case of a foreign national offender (FNO) who has been sentenced to at least 12 months but action to deport started before 1 August 2008 (when the UK Borders Act 2007 came into force).</p> <p>FNOs who have been convicted or sentenced before 1 August 2008 may still be subject to automatic deportation but whether the UK Border Agency are able to take action under the 2007 Act will depend on whether the FNO has previously been given a firm undertaking that their deportation will be pursued under the Immigration Act 1971 (the 1971 act). See below for more information.</p> <p><b>Liability to deportation letter issued (ICD.0350)</b></p> <p>You must issue a new liability to automatic deportation letter (ICD.0350AD) when:</p> <ul style="list-style-type: none"><li>• an old liability to deportation letter (ICD.0350) has been issued</li><li>• a notice of intention to deport (ICD.1070) under the 1971 act has not yet been served, and</li><li>• the individual meets the criteria for automatic deportation set out in the link on the left: Automatic deportation criteria.</li></ul> <p>You must get agreement from your HEO senior caseworker before you issue the letter. This explains the FNO's liability to deportation and gives them a chance to state why they are exempt from automatic deportation. You can then process the case under the UK Borders Act 2007 in the normal way.</p> <p><b>Notice of intention to deport served previously under 1971 Act (for example ICD.1070)</b></p> <p>Automatic deportation does not apply if the FNO was served with a notice of decision to deport (see below for a list of notices) before 1 August 2008 unless:</p> <ul style="list-style-type: none"><li>• the notice was served for a previous offence, and</li><li>• it was decided not to proceed with deportation.</li></ul>	<p><b>External links</b></p> <p><a href="#">UK Borders Act 2007</a></p>
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	<p>You must continue to consider the case under the 1971 act if a deportation order was made on the basis of a previous conviction but the deportation order was never enforced for practical reasons. For example:</p> <ul style="list-style-type: none"> <li>• the individual absconded</li> <li>• the individual was convicted of a further offence, or</li> <li>• barriers prevented removal.</li> </ul> <p>In these cases you must not issue an ICD.0350AD.</p> <p>You must deal with the person under the UK Borders Act 2007 if a previous deportation decision was withdrawn or revoked. For example:</p> <ul style="list-style-type: none"> <li>• the individual won an appeal against deportation, or raised a late successful claim, but</li> <li>• the individual has re-offended and meets the criteria for automatic deportation.</li> </ul> <p><b>Deportation order signed under the 1971 Act</b></p> <p>If there is a signed deportation order (DO) obtained under the 1971 act and a previous decision was not to proceed with removal (either because of an allowed appeal, or successful submissions), you must make sure that DO has been revoked. If the foreign national re-offends and meets the relevant criteria, they must be dealt with under the UK Borders Act 2007.</p> <p>If the 1971 act DO was not revoked and remains valid but the foreign national was not removed for practical reasons, perhaps because they absconded or there was an operational barrier, then in most cases the UK Border Agency would continue to pursue deportation under the 1971 act.</p> <p>In these circumstances you do not need to issue an ICD.0350AD in such cases as the next stage is removal. Although, depending on the length of time since the original decision to deport, you may want to make enquiries to make sure there has not been any significant change in circumstances.</p>	
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	<p>If the original DO was obtained some time ago and was based on overstaying leave to enter or remain or working in breach of the conditions attached to leave, and the current conviction meets the criteria for automatic deportation, it might be appropriate to obtain a DO on the basis of the new conviction. A senior caseworker must always be consulted before revoking one DO to replace it with another.</p> <p>Notices of decision include:</p> <ul style="list-style-type: none"> <li>• ICD.1070</li> <li>• APP104</li> <li>• APP108</li> <li>• ICD281</li> <li>• ICD279</li> <li>• ICD1002, and</li> <li>• ICD747.</li> </ul> <p>This is not a complete list. If in doubt, seek the advice of a senior caseworker.</p>	
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## Automatic deportation

### Deportation under conducive and court recommended powers – the 1971 act

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This page tells you what to do when a case does not meet the criteria for automatic deportation.</p> <p>Foreign national offenders (FNOs) who do not meet the automatic deportation requirements must be considered for deportation using conducive and court recommended powers under sections 3(5) or 3(6) of the Immigration Act 1971 (the 1971 act) respectively (that is people with court recommendations with sentences of less than 12 months and those with aggregate sentences). Further guidance on considering deportation under the 1971 Act can be found in the related links:</p> <ul style="list-style-type: none"><li>• Drugs offences (Bournemouth commitment), and</li><li>• IDI Chapter 13: Deportation.</li></ul> <p>People who qualify for an exception from automatic deportation must also be considered for deportation either under conducive or court recommended powers or the relevant European Economic Area (EEA) legislation. This is unless they are going to be extradited or removing them would breach the European Convention on Human Rights (ECHR) or the UK's obligations under the Refugee Convention or the Council of Europe convention on action against trafficking in human beings.</p> <p>For guidance on how to consider asylum and human rights claims from people being dealt with under the UK Border Act 2007 see related link: Asylum and human rights considerations.</p> <p>For guidance on how to consider claims from people who have been trafficked see related link: Human trafficking.</p> <p>For guidance on how to deal with cases where extradition applies, see the related link: Exception due to extradition.</p>	<p><b>Related links</b></p> <p><a href="#">Exception due to extradition</a></p> <p><a href="#">Human trafficking</a></p> <p><a href="#">Asylum and human rights considerations</a></p> <p>Links to staff intranet removed</p> <p><b>External links</b></p> <p><a href="#">Immigration Act 1971</a></p>
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## Automatic deportation

### Exceptions to automatic deportation

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This section tells you about the categories of case that are exceptions to automatic deportation under section 33 of the UK Borders Act 2007 and how to consider claims of exception.</p> <p>The exceptions are listed below:</p> <p><b>Asylum and human rights</b> Where deportation would breach the subject's rights under the European Convention on Human Rights (ECHR) or the UK's obligations under the Refugee Convention. For more information, see related link: Asylum and human rights considerations.</p> <p><b>Age</b> Where the foreign national offender (FNO) was under the age of 18 on the date they were convicted. See related links: Exception due to FNO being under 18 at time of conviction and Managing foreign national prisoners who are under 18.</p> <p><b>European Economic Area (EEA) nationals</b> Where the FNO is an EEA national or a close relative or other dependant of an EEA national. This exception includes those here under the provisions of European community association agreements (ECAA). See related link: Exceptions for EEA nationals.</p> <p><b>Extradition</b> Where the FNO is subject to extradition proceedings instigated by another government. See related link: Exception due to extradition.</p> <p><b>Mentally disordered offenders</b> Those being held under one the specified provisions of the Mental Health Act 1983 or associated legislation will not be subject to automatic deportation. See related link: Exception for mentally disordered offenders.</p> <p><b>Victims of human trafficking</b></p>	<p><b>In this section</b> <a href="#">Asylum and human rights considerations</a></p> <p><a href="#">Human trafficking</a></p> <p><b>Related links</b> <b>See also</b> <a href="#">Exception due to FNO being under 18 at time of conviction</a></p> <p>Links to staff intranet removed</p> <p><a href="#">Exceptions for EEA nationals</a></p> <p><a href="#">Exception due to extradition</a></p> <p><a href="#">Exception for mentally disordered offenders</a></p> <p><a href="#">Exceptions for victims of human trafficking</a></p> <p><a href="#">Further representations and applications to revoke the deportation</a></p>
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	<p>Where automatic deportation would contravene the UK's obligations under the Council of Europe Convention on Action against Trafficking in Human Beings ratified by the UK on the 17 December 2008 and implemented from 1 April 2009. See related link: Exceptions for victims of human trafficking.</p> <p><b>Additional exemptions</b> An individual is also exempt where they are subject to sections 7 and 8 of the Immigration Act 1971. This includes certain Commonwealth citizens, Irish citizens, those with the right of abode, crew as well as other exemptions. As they are exempt under the Immigration Act 1971 as well as the UK Borders Act 2007, the UK Border Agency will not pursue these individuals for deportation. For a more exact definition, see related link: Immigration Act 1971.</p> <p><b>British citizens</b> The UK Borders Act 2007 only applies to foreign nationals. For guidance on how to determine whether an individual is a British citizen see related link: Identifying British citizens and others exempt from deportation.</p> <p><b>Consideration of exceptions</b> Wherever possible case owners must use the evidence in the ICD.0350AD and on file to assess whether an exception applies without making further enquiries. The main exception to this is fresh asylum applications when an interview must be conducted. It is the responsibility of the individual to raise any exceptions on which they are relying to prevent their deportation.</p> <p>Where an individual raises Article 8, case owners must follow the relevant guidance. See related links:</p> <ul style="list-style-type: none"> <li>• Exception due to Article 8 claims</li> <li>• Criminality guidance for Article 8 ECHR</li> <li>• Article 8 – Evidence of family life</li> </ul> <p>If the case owner decides that an exception does apply, then they must refer the case to a senior caseworker with a minute, explaining why the FNO must be treated as an exception.</p>	<p><a href="#">order</a></p> <p><a href="#">Exception cases that do not raise asylum or human rights</a></p> <p><a href="#">Exception due to Article 8 claims</a></p> <p><a href="#">Article 8 - Evidence of family life</a></p> <p><a href="#">Exceptions do not apply and asylum and human rights not raised</a></p> <p><b>External links</b> <a href="#">Immigration Act 1971</a></p>
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	<p>If the senior caseworker agrees with the case owner's conclusion they must minute the file accordingly and the file must either be returned to the original case owner or, if applicable, be allocated to the relevant team or specialist dealing with exception categories. For example the mentally disordered offenders unit or EEA team. These cases must be looked at under the normal criminal casework directorate (CCD) criteria and processes relating to deportation under the Immigration Act 1971. . See related link: Exception cases that do not raise asylum or human rights.</p> <p><b>Asylum claims</b></p> <p>All cases with an asylum claim, either explicit or implicit must not be considered by a case owner who has not had the appropriate training. They must be sent directly to an asylum specialist in one of the CCD asylum teams for consideration of whether an asylum exception applies.</p> <p>Before an asylum applicant can be interviewed, form AIR4265 must be completed. This requires a senior caseworker to confirm that a claim for asylum has been made and referral to the asylum teams is warranted. For further guidance, contact one of the CCD asylum teams.</p> <p>Case owners must apply the same criteria when assessing asylum or human rights claims under the 2007 Act as they would any other asylum or human rights claim. Such claims can be certified under section 94 or section 96 of the Nationality, Immigration and Asylum Act 2002 (as amended) if appropriate. Guidance on dealing with further representations within the deportation process can be found in the related link: Further representations and applications to revoke the deportation order.</p> <p>If the FNO does not provide any satisfactory evidence that they are an exception and there are no other indications on any UK Border Agency file which amount to a claim for asylum or human rights, the case owner must assume that the FNO is not an exception from automatic deportation and must arrange for the signing and serving of the deportation order (see related link: Exceptions do not apply and asylum and human rights not raised).</p>	
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## Automatic deportation

### Asylum and human rights considerations

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This page tells you how to consider asylum and human rights claims from foreign national offenders (FNOs) who meet the requirements for automatic deportation under the UK Borders Act 2007.</p> <p>Guidance on how to consider asylum claims can be found in the CCD process instruction on handling foreign national prisoners who have made asylum claims or who have been recognised as refugees (see related link).</p> <p>CCD has specialist asylum teams and cases involving FNOs who make claims for asylum or who are recognised refugees must be referred to them for consideration.</p> <p>Under the UK Borders Act 2007, asylum and human rights claims must be considered in full before a deportation order can be signed. There are three possible outcomes:</p> <ul style="list-style-type: none"><li>• The claim is accepted. The foreign national offender (FNO) cannot be removed.</li><li>• The claim is dismissed. The case owner must consider certification under either:<ul style="list-style-type: none"><li>○ section 94 of the Nationality, Immigration and Asylum (NIA) Act 2002 if the FNO is from a non-suspensive appeal (NSA) country or if their claim is otherwise certified as clearly unfounded, or</li><li>○ section 96 of the NIA Act 2002 if the FNO previously had an appeal under section 82(1) and could have raised at that appeal the material now relied upon. Section 96 also applies if the FNO was served with a section 120 notice in respect of a decision under section 82(1) and should have raised the material now relied on in response to that notice and there is no satisfactory reason for the FNO not having done so. If a claim is certified under section 96, there is no right of appeal.</li></ul></li><li>• The claim is found to be refusible but not certifiable under section 94 of the NIA Act 2002. Section 72 of the NIA Act 2002 may be applicable to an asylum claim. The decision to deport will attract an in country right of appeal.</li></ul> <p>Once you have decided to refuse any asylum and human rights claims and start deportation action, the correct paperwork can be found at the related link: Cases that raise asylum or</p>	<p><b>Related links</b></p> <p><b>See also</b></p> <p>Links to staff intranet removed</p> <p><a href="#">Cases that raise asylum or human rights</a></p> <p><b>External links</b></p> <p><a href="#">UK Borders Act 2007</a></p> <p><a href="#">Nationality, Immigration and Asylum Act 2002</a></p>
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## Automatic deportation

### Human trafficking

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This page tells you how to consider the automatic deportation of foreign national offenders (FNOs) who are victims of human trafficking.</p> <p>On 1 April 2009, a further exception to automatic deportation under Section 33 of the UK Borders Act 2007 came into force. Exception 6 applies when automatic deportation would breach the UK's obligations under the Council of Europe Convention on Action against Trafficking in Human Beings. Section 33 was amended by the Immigration and Criminal Justice Act 2008 to enact the provisions of the trafficking convention.</p> <p><b>Definition of the human trafficking exception from automatic deportation</b></p> <p>In order to commit a breach of the UK's obligations under the trafficking convention, the UK Border Agency would have to remove or deport a potential victim of trafficking during the 45 day reflection and recovery period. Once this period is over and a conclusive decision finding that they have not been trafficked has been served, the exception to automatic deportation will no longer apply on human trafficking grounds (although it should be noted that it is possible that other exceptions may still apply, for example human rights).</p> <p>An individual who has previously been considered as a potential victim of trafficking and given a 45 day reflection and recovery period but is ultimately considered not to be exempt from automatic deportation under any of the exceptions listed under section 33 must be served with an automatic deportation decision in the normal way.</p> <p><b>Definition of victim of trafficking</b></p> <p>Trafficking in human beings is defined in Article 4(a) of the convention as being a combination of the following three constituent elements where:</p> <ul style="list-style-type: none"><li>• The person has been subject to the act of recruitment, transportation, transfer, harbouring or receipt.</li><li>• By means of threat or use of force or other form of coercion, of abduction, of fraud, of deception, of abuse of power, of a position of vulnerability, of giving or receiving payments or benefits to achieve the consent of a person having control over another</li></ul>	<p><b>In this section</b></p> <p>Links to staff intranet removed</p> <p><b>Related links</b></p> <p><b>See also</b></p>
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	<p>person.</p> <ul style="list-style-type: none"> <li>• For the purpose of exploitation. Exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices, similar to slavery, servitude or the removal of organs.</li> </ul> <p>All three elements must be present in order to meet the definition of a trafficked victim, except where the individual is a child, in which case the second bullet does not apply.</p> <p>Further guidance on the definition of a victim of human trafficking can be found in related links:</p> <ul style="list-style-type: none"> <li>• Victims of human trafficking - guidance for frontline staff, and</li> <li>• Victims of trafficking: guidance for the competent authorities.</li> </ul> <p><b>Process and consideration</b></p> <p>If you have a case that you think is a possible victim of trafficking then you must refer it to a trained 'competent authority'. Competent authority training has been given to designated staff in the criminal casework directorate (CCD). If you wish to refer a case to a competent authority, you must send the file to the competent authority lead. A list of leads, including the CCD lead and deputy lead can be found using related links.</p> <p>The CCD competent authority lead will receive the referral and allocate the case to the relevant CCD competent authority.</p> <p>The competent authority will look at the case and decide whether they believe the FNO is a victim of human trafficking. If they are not, and they do not qualify for any other exceptions, they will be processed under the UK Borders Act 2007.</p> <p>If the competent authority has reasonable grounds to believe that an individual is a potential victim of trafficking, they will make a positive reasonable grounds decision under the national referral mechanism and the individual will then be granted an extendable reflection and recovery period of 45 days. During this time removal action is suspended until a conclusive decision can be taken. (See the section on Definition of the human trafficking exception from automatic deportation above.)</p>	
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	<p>There are several conclusions that the competent authority can come to at the conclusive decision stage but the main ones are ‘trafficked’ and ‘not trafficked’. For a full list of the possible decisions, and the CID outcomes, see the related link: <a href="#">Victims of trafficking: guidance for the competent authorities</a>.</p> <p>If the FNO is found not to be a victim of human trafficking they will be processed under the UK Borders Act 2007 unless any of the other exceptions apply.</p> <p>If the FNO is found to be a victim of trafficking then they will be exempt from automatic deportation but only during the 45 day reflection and recovery period. Where a recognised victim’s reflection and recovery period comes to an end, that is the UK Border Agency have served the conclusive grounds decision or withdrawn the reasonable grounds decision, then barriers to removal and detention come to an end for those who do not qualify for leave and they can be removed if it is safe and appropriate to do so in accordance with the UK’s wider domestic and international obligations. Where it is proposed not to pursue deportation this must be authorised in the usual way.</p> <p>Case owners may also see rare cases where individuals have been granted or are applying for a residence permit on the basis of their cooperation with law enforcement authorities or owing to their personal situation. If, after the 45 day reflection and recovery period, the competent authority concludes on the balance of probabilities that the person concerned is a victim of trafficking then the person may be granted leave on a residence permit. Consideration of deportation must be made before a residence permit is granted and authority not to pursue deportation must be obtained in the normal way.</p> <p>If a person claims to be a victim of trafficking but has only ticked the relevant box on the ICD.0350AD liability notice, or simply claimed to be a victim of trafficking, case owners must check the file to see if there are sufficient indicators of trafficking to warrant further consideration by a competent authority under the national referral mechanism. Case owners must discuss with a competent authority whether further enquiries should be made before coming to a final decision.</p> <p>For further guidance on dealing with human trafficking cases, including the detention of</p>	
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	<p>potential victims of trafficking (see the section on RG outcome –person accepted as a potential victim, pages 28 and 29 at the time of publishing) in related link: Victims of trafficking: guidance for the competent authorities.</p> <p>For more information on dealing with victims of trafficking who are helping the police, see related links.</p>	
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## Automatic deportation

### Workflow procedures

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This section tells you about the workflow procedures for foreign national offenders who are considered for automatic deportation.</p> <p>For information, see related links:</p> <ul style="list-style-type: none"><li>• <a href="#">Action on receipt of a new case</a></li><li>• <a href="#">Cases when exceptions obviously apply</a></li><li>• <a href="#">Cases when exceptions do not obviously apply.</a></li></ul>	<p><b>In this section</b></p> <p><a href="#">Action on receipt of a new case</a></p> <p><a href="#">Cases when exceptions obviously apply</a></p> <p><a href="#">Cases when exceptions do not obviously apply</a></p>
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## Automatic deportation

### Action on receipt of a new case

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This page tells you what action criminal casework directorate (CCD) workflow must take when they receive a new case regarding a foreign national offender (FNO) who is being considered for automatic deportation.</p> <p>When a new case is received in workflow, a new case record must be created on CID. This will have the case type ‘criminal case – tbc’.</p> <p>Workflow must assess whether any obvious exceptions apply. If it is deemed that they do not, the case type must be changed to ‘Automatic Deportation’.</p> <p>All new cases that meet the criteria must be sent an ICD.0350AD (unless it is accepted that an exception exists on the basis of the documents or evidence on file – see below) or an ‘ICD.0350 A Auto Deport’ in the case of recognised refugees or asylum seekers that meet the section 72 criteria. For more information on considering section 72 cases, see related links.</p> <p>The ICD.0350AD letter asks FNOs to state whether any of the exceptions to automatic deportation apply to them and makes it clear that the FNO needs to explain at the start of the deportation process why they believe that an exception applies to them. If they do not raise an exception at that point, or subsequently raise one, they may not be able to exercise any right of appeal. This is because if the exception is not accepted, any suspensive appeal right may be subject to certification.</p> <p>If it is accepted that an exception exists on the basis of the evidence on file then one of the specialist teams (such as the European Economic Area (EEA) team, the mentally disordered offenders (MDO) team or a team dealing with minors) may take the case and use one of the specialised ICD.0350s, for example, ICD.0350EEA for EEA cases. If subsequently the UK Border Agency do not accept the exception and the ICD.0350AD was not served, then give the FNO the opportunity to raise any exceptions to automatic deportation. Case owners will not be able to draw conclusions on the grounds that these exceptions were not raised before, if they were not given the opportunity.</p>	<p><b>In this section</b> <a href="#">Cases when exceptions obviously apply</a></p> <p><a href="#">Cases when exceptions do not obviously apply</a></p> <p><b>Related links</b> <b>See also</b> Links to staff intranet removed</p> <p><a href="#">Cases where deportation action started before 1 August 2008</a></p>
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	<p>Automatic deportation will not apply, and so staff must not send an ICD.0350AD, where the FNO has been served with a notice of decision to deport (see below for a list of notices) prior to 1 August 2008, unless the notice was served for a previous offence and deportation did not proceed. For further guidance see related links.</p> <p>Notices of decision include:</p> <ul style="list-style-type: none"> <li>• ICD.1070</li> <li>• APP104</li> <li>• APP108</li> <li>• ICD281</li> <li>• ICD279</li> <li>• ICD1002 and</li> <li>• ICD747.</li> </ul> <p>This is not a complete list. If in doubt, seek the advice of a senior caseworker</p>	
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## Automatic deportation

### Cases when exceptions obviously apply

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This page tells you what action workflow must take when they receive a case for automatic deportation for a foreign national offender (FNO) and it appears that one of the exceptions to automatic deportation applies.</p> <p>You may receive a case where it is obvious that an exception to automatic deportation applies, for example, there may be a European Economic Area (EEA) passport on file, or it may appear obvious from documentation that the FNO was under 18 at the time of conviction. For more information on the exceptions to automatic deportation, see related links.</p> <p>In these cases, you must still send the relevant liability to deportation letter (ICD.0350). This is because the obvious exception may not be the only one which applies and the person must be given the opportunity to raise all current issues prior to the consideration of deportation action.</p> <p>If, after receiving the completed liability to deportation letter, as a workflow caseworker you decide that one or more of the exceptions clearly applies, then you must get approval from your HEO manager. If necessary, the HEO should seek guidance from an appropriate senior caseworker from a case working team. If it is agreed that the FNO benefits from an exception from automatic deportation, the case will form part of the normal conducive deportation or EEA regulations and will have a right of appeal in the UK. You must change the case type on CID, as appropriate. You must allocate the file as normal. See related link: Workflow.</p>	<p><b>In this section</b></p> <p><a href="#">Action on receipt of a new case</a></p> <p><a href="#">Cases when exceptions do not obviously apply</a></p> <p><b>Related links</b></p> <p><b>See also</b></p> <p>Links to staff intranet removed</p> <p><a href="#">Asylum and human rights considerations</a></p> <p><a href="#">Exception due to FNO being under 18 at time of conviction</a></p> <p><a href="#">Exceptions for EEA nationals</a></p> <p><a href="#">Exception due to extradition</a></p> <p><a href="#">Exception for mentally disordered offenders</a></p> <p><a href="#">Exceptions for victims of human trafficking</a></p>
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## Automatic deportation

### Cases when exceptions do not obviously apply

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This page tells criminal casework directorate (CCD) workflow what action to take when exceptions to automatic deportation do not obviously apply to a foreign national offender (FNO) case.</p> <p>Once the ICD.0350AD is sent out, you must allocate the case to case owners through the allocation queue in the normal way. See related links for the general workflow instruction.</p> <p>The precedent set by the case of Chindamo 00TH2345 (TH388300) is not binding on 2007 act cases but is still applied and no decision to deport should be taken earlier than 18 months before the earliest date on which the offender might be released from custody.</p> <p>If the original decision is taken more than 18 months before release, for example, because the FNO was not released at the parole eligibility date, then this decision must be reviewed by a case owner within 18 months of the actual date of release. In most cases, this review can simply be a review of the file to make sure that nothing has been received or has changed since the original decision. If there have been no changes then deportation can continue.</p>	<p><b>In this section</b></p> <p><a href="#">Action on receipt of a new case</a></p> <p><a href="#">Cases when exceptions obviously apply</a></p> <p><b>Related links</b></p> <p><b>See also</b></p> <p>Links to staff intranet removed</p> <p><a href="#">Asylum and human rights considerations</a></p> <p><a href="#">Exception due to FNO being under 18 at time of conviction</a></p> <p><a href="#">Exceptions for EEA nationals</a></p> <p><a href="#">Exception due to extradition</a></p> <p><a href="#">Exception for mentally disordered offenders</a></p> <p><a href="#">Exceptions for victims of human trafficking</a></p>
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		<a href="#">Further representations and applications to revoke the deportation order</a>
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## Automatic deportation

### Case owner actions

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This section tells case owners how to make a decision on cases for automatic deportation for foreign national offenders (FNOs).</p> <p>Although deportation under the UK Borders Act 2007 is said to be automatic, this refers more to the fact that the Secretary of State is legally obliged to take deportation action rather than the fact that there is no casework to do. The 2007 Act does not make any difference to barriers to removal casework such as travel document applications or judicial reviews. What it marks is a change of emphasis. Previously case owners were looking at reasons why the person must be deported. Under the UK Borders Act 2007, that decision is already taken. The case owner's job is to decide whether any of the exceptions from deportation will apply. However any decision must still be proportionate under Article 8. For more information, see related links.</p> <p>Claims for an exception from automatic deportation can be made at any time in the process, and must always be considered. If an exception is raised after the stipulated period for responding to the ICD.0350AD, but not accepted, consideration must always be given to certifying any suspensive appeal right which may arise under the provisions of section 96. For more information, see related links:</p> <ul style="list-style-type: none"><li>• Further representations and applications to revoke the deportation order , and</li><li>• 3.0 - The One Stop Procedure: Warnings And Certificates.</li></ul>	<p><b>In this section</b></p> <p><a href="#">Exception due to extradition</a> <a href="#">Exception due to FNO being under 18 at time of conviction</a> <a href="#">Exception for EEA nationals</a> <a href="#">Exception due to asylum and/or human rights</a> <a href="#">Exception due to Article 8 claims</a> <a href="#">Exception for mentally disordered offenders</a> <a href="#">Exception for victims of human trafficking</a></p> <p><b>Related links</b></p> <p><b>See also</b></p> <p><a href="#">Further representations and applications to revoke the deportation order</a> Links to staff intranet removed <a href="#">Exception to automatic deportation due to Article 8 claims</a> <a href="#">Proportionality of deportation under Article 8</a></p>
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## Automatic deportation

### Exception due to extradition

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This page tells you how to consider whether a foreign national offender (FNO) is exempt from automatic deportation because they are subject to extradition proceedings.</p> <p>Extradition could occur at any point of the deportation process.</p> <p><b>If the subject is due to be extradited</b></p> <ul style="list-style-type: none"><li>• The judicial cooperation unit (JCU) or Metropolitan Police extradition unit will contact the criminal casework directorate (CCD) case owner at the beginning of the case, if an extradition request has been made against the FNO.</li><li>• Any request for extradition from outside the UK takes precedence. The move to deport must be put on hold while extradition is taken forward by the JCU.</li></ul> <div><p>Restricted – do not disclose – start of section</p><p>The information in this page has been removed as it is restricted for internal UK Border Agency use only.</p><p>Restricted – do not disclose – end of section</p></div> <p>For more information on the process for excluding FNOs, see related link: .Exclusion decisions and exclusion orders</p> <p><b>If extradition fails:</b></p> <ul style="list-style-type: none"><li>• JCU tells you.</li><li>• The case is returned to you, and you continue with deportation under the appropriate immigration law, either the 1971 or 2007 act.</li></ul>	<p><b>Related links</b> <b>See also</b></p> <p>Links to staff intranet removed</p>
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## Automatic deportation

### Exception due to FNO being under 18 at time of conviction

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This page tells you how to consider whether a foreign national offender (FNO) is exempt from automatic deportation because they were under the age of 18 at the time of conviction.</p> <p>In most cases, case owners will be able to use the age accepted by the court. However, this is not a guarantee of age and case owners may need to consider other evidence.</p> <p>In age disputed cases the strongest evidence that can be used to determine that an FNO is over 18 is:</p> <ul style="list-style-type: none"><li>• Credible and clear documentary evidence that they are 18 years of age or over. Or</li><li>• A full Merton-compliant age assessment by social services stating that they are 18 years of age or over. Assessments completed by social services emergency duty teams are not acceptable evidence of age.</li></ul> <p>If the case owner does accept that the FNO is an exception because of their age, they must consider deportation under the existing conducive or court recommended route. If the decision is made to deport, then the FNO has an automatic in-country right of appeal under the Immigration Act 1971 (the 1971 act).</p> <p>For further guidance see the related link: Managing foreign national prisoners who are under 18.</p> <p><b>CID</b></p> <p>If you accept that the FNO is an exception, you must insert the appropriate case outcome. If you decide that deportation can continue under the 1971 act, then the CID case outcome you must use is 'Automatic deportation not pursued (conductive/court recommended followed)' and a new case must be opened with the appropriate case type.</p>	<p><b>Related links</b></p> <p><b>See also</b></p> <p>Links to staff intranet removed</p>
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## Automatic deportation

### Exception for EEA nationals

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This page tells you how to consider whether a foreign national offender (FNO) is exempt from automatic deportation because they claim, or there is reason to believe, that they are a European Economic Area (EEA) national exercising treaty rights or a family member of an EEA national exercising treaty rights.</p> <p>In order to qualify for an exception to automatic deportation the FNO would have to demonstrate that deportation would breach their rights under community treaties.</p> <p>Case owners must note that section 33(3) of the UK Borders Act 2007 refers to ‘community treaties’ and this includes European Community Association Agreement (ECAA) Turkish national cases. This means that these cases are excluded from automatic deportation. For more information on ECAA cases, see the related link: 6.0 – Business applications under the Turkish-EC Association Agreement.</p> <p>The case owner must request documentary proof from the FNO. If this is provided and it is accepted that the FNO is either an EEA national or a family member of an EEA national, then the case must be considered under the current criminal casework directorate (CCD) EEA deportation process. The FNO will retain their in-country right of appeal.</p> <p><b>CID</b></p> <p>If the case owner accepts that the FNO benefits from this exemption, the appropriate case outcome must be inserted. If the case owner concludes, after consultation with a HEO senior caseworker, that deportation can continue under the EEA regulations then the CID case must be given the outcome ‘Automatic deportation not pursued (conducive/court recommended followed)’ and a new case must be opened with the appropriate case type.</p> <p>If satisfactory evidence that the subject is an exception is not provided, deportation will be automatic. The case owner can arrange for the signing and issuing of the deportation order and liaise with CCD prisons operations and removals team (PORT) over the removal arrangements, once the appeal right is exhausted. The FNO will have a right to appeal from inside the UK by virtue of section 92(4)(b).</p>	<p><b>Related links</b></p> <p><b>See also</b></p> <p>Links to staff intranet removed</p>
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## Automatic deportation

### Exception due to asylum and/or human rights

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This page tells you how to consider whether a foreign national offender (FNO) is exempt from automatic deportation because they have raised the question of asylum or human rights in the ICD.0350AD or there are clear asylum and/or human rights issues that have already been raised on file.</p> <p>This is the only exception which can, if it is not accepted, attract a suspensive right of appeal in the UK, subject to certification under section 94 or section 96 of the Nationality, Immigration and Asylum Act 2002 (the NIA Act 2002).</p> <p>Asylum claims must be assessed by an asylum specialist case owner.</p> <p><b>Claims that could or should have been raised in respect of the one-stop notice</b></p> <p>This can include cases in which the subject has raised asylum and/or human rights issues in response to the ICD.0350AD but could or should have raised the claim in response to a previous one-stop notice. For example, the subject has been served with a notice as an illegal entrant or as the subject of section 10 administrative removal action. Alternatively, the subject may have failed to respond to the ICD.0350AD within the stipulated period. These cases can be certified, subject to the provisions of section 96.</p> <p>If the FNO has previously had a right of appeal under section 82(1) of the NIA Act 2002, and the material raised in the current claim could have been raised in the previous appeal or should have been raised in response to a section 120 notice but was not and there is no satisfactory reason for the FNO not having done so, the claim can be certified under section 96. This means that there is no right of appeal against the refusal of the human rights or asylum claim.</p> <p>Claims that are certified under section 96 do not need to be authorised by non suspensive appeal (NSA) accredited staff but must be agreed by a senior caseworker.</p> <p>When pursuing deportation against such a case, the CID outcome must be amended to state 'Automatic deportation pursued, HR/Asylum certified s96'.</p>	<p><b>Related links</b></p> <p><b>See also</b></p> <p>Links to staff intranet removed</p> <p><a href="#">Cases that raise asylum or human rights</a></p> <p><b>External links</b></p> <p><a href="#">Nationality, Immigration and Asylum Act 2002</a></p>
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	<p><b>Clearly unfounded claims</b></p> <p>If a claim is considered to be clearly unfounded, automatic deportation still applies. The case must be refused, certified under section 94 of the NIA Act 2002 and the deportation order must be served. Assuming no other exceptions apply, the case owner must prepare the removal directions (RDs) pack and send it to the RDs desk in the criminal casework directorate (CCD) prisons operations and removals team (PORT) to arrange removal. The FNO will have an out of country right of appeal.</p> <p>Claims that are certified under section 94 can only be authorised by NSA accredited staff. For more information, see the related link: Certification under section 94 of the NIA Act 2002.</p> <p>If you pursue deportation against a clearly unfounded claim, the CID outcome must be amended to state, 'Automatic deportation pursued, HR/Asylum certified s94'.</p> <p><b>Non-certifiable asylum and human rights claims</b></p> <p>If the case owner believes the evidence provided demonstrates an arguable but not conclusive case for remaining in the UK on human rights or asylum grounds then this must be fully considered.</p> <p>If the case owner pursues deportation against an arguable claim, the CID outcome must be amended to state, 'Automatic deportation pursued, HR/Asylum not certified'. Automatic deportation is deemed to be pursued in such cases, even though a right of appeal within the UK is granted. For guidance on commencing deportation action in cases that raise asylum or human rights see related links.</p> <p>If the asylum claim is accepted and section 72 criteria are met but deportation cannot occur, for example, because of Article 3 barriers, the FNO's immigration status must be re-considered in the light of this. For guidance on section 72 see the related link: Asylum - Handling foreign national prisoners who have made asylum claims or who have been recognised as refugees</p> <p>If the asylum claim is refused but the FNO is being granted leave (for example, discretionary</p>	
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	leave on human rights grounds) for less than one year (or for periods not exceeding one year in total) there will be no appeal against the decision to refuse asylum. See section 83(1)(b) of the related link: Nationality, Immigration and Asylum Act 2002.	
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## Automatic deportation

### Exception due to Article 8 claims

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This section tells you how to consider whether a foreign national offender (FNO) is exempt from automatic deportation because their removal would breach their rights under Article 8 of the European Convention of Human Rights (ECHR).</p> <p>From 9 July 2012 the Immigration Rules set out clear criminality thresholds beyond which an offender will be deported. For further information about how to apply the rules, see related link: Criminality guidance for Article 8 ECHR.</p>	<p><b>In this section</b></p> <p><a href="#">Proportionality of deportation in Article 8 claims</a></p> <p><a href="#">Article 8 – Evidence of family life</a></p> <p><b>Related links</b></p> <p><b>See also</b></p> <p>Links to staff intranet removed</p>
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## Automatic deportation

### Proportionality of deportation in article 8 claims

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This page tells you how to consider evidence of family life in Article 8 cases when a foreign national offender (FNO) meets the automatic deportation criteria.</p> <p>From 9 July 2012 the Immigration Rules set out clear criminality thresholds beyond which an offender will be deported. For further information about how to apply the rules, see related link: Criminality guidance for Article 8 ECHR.</p> <p>In cases where family life and/or Article 8 is expressly raised on the ICD.0350AD, the claim must be considered and either treated as arguable or certified under either section 94 (unfounded human rights or asylum claim) or section 96 (one stop procedure) of the Nationality, Immigration and Asylum Act 2002, as and when appropriate.</p> <p><b>General</b></p> <p>If there is evidence on the ICD.0350AD that an individual has what amounts to family life in the UK for the purposes of Article 8, the claim must be fully considered. There are three possible outcomes:</p> <ul style="list-style-type: none"><li>• The case owner concludes that Article 8 will be breached if the FNO is deported. The exception applies.</li><li>• The case owner concludes that Article 8 will not be breached if the FNO is deported but the case cannot be certified under either section 94 or section 96. The FNO can appeal against the refusal of the Article 8 claim from within the UK.</li><li>• The case owner concludes that Article 8 will not be breached if the FNO is deported and that the case can be certified under either section 94 or section 96. The FNO can only appeal against the decision on the Article 8 claim from outside the UK (section 94 certification) or has no appeal against the decision on the Article 8 claim (section 96 certification).</li></ul> <p>Certification under section 94 of the 2002 Act will be appropriate in cases when the Article 8 claim has no merit. For example, if an individual claims to have a family life in the UK, but this only amounts to relationships with members of the extended family, or adult family</p>	<p><b>In this section</b></p> <p><a href="#">Article 8 – Evidence of family life</a></p> <p><b>Related links</b></p> <p><b>See also</b></p> <p>Links to staff intranet removed</p>
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	<p>members, and there are no special elements of dependency.</p> <p>Section 96 of the 2002 Act will apply if:</p> <ul style="list-style-type: none"> <li>• the FNO previously had an appeal under section 82(1) and could have raised the material now relied on at that appeal, or</li> <li>• the FNO was served with a section 120 notice in respect of a decision under section 82(1) and should have raised the material now relied on in response to that notice.</li> </ul> <p>If in either case the FNO did not raise the material and in the Secretary of State's opinion there is no satisfactory reason for them not having done so, the Secretary of State should consider whether, in the light of all of the relevant factors, it is appropriate to certify (R(J) v SSHD[2009]).</p> <p>Case owners must be aware that where an FNO has raised an exception and that exception is found not to apply, there will be an in country right of appeal in automatic deportation cases unless the UK Border Agency decide to certify under section 94 or section 96.</p> <p>For guidance on when to certify under section 94 (unfounded human rights or asylum claim) and section 96 (The One Stop Procedure) of the Nationality, Immigration and Asylum Act 2002, see related links:</p> <ul style="list-style-type: none"> <li>• Certification under section 94 of the NIA Act 2002</li> <li>• 3.0 - The One Stop Procedure: Warnings And Certificates.</li> </ul> <p>For more information on handling FNOs who have made asylum claims or who have been recognised as refugees, see related link: Asylum - Handling foreign national prisoners who have made asylum claims or who have been recognised as refugees.</p>	
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## Automatic deportation

### Article 8 - Evidence of family life

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This page tells you how to gather and consider evidence of family life in Article 8 cases when a foreign national offender (FNO) meets the automatic deportation criteria.</p> <p><b>General</b></p> <p>If nothing is raised on the ICD.0350AD but there is evidence of family life on the file, there is no legal obligation for the UK Border Agency to make further enquiries. If the evidence on file is sufficient, without further enquiry, to amount to an Article 8 claim, you must follow the process outlined on the page Proportionality of Deportation in Article 8 Claims (link on the left) to consider that claim. However, you must note the following:</p> <ul style="list-style-type: none"><li>• From 9 July 2012 the Immigration Rules set out clear criminality thresholds beyond which an offender will be deported. For further guidance about how to apply the rules, see related link: Criminality guidance for Article 8 ECHR.</li><li>• The mere existence of family members in the UK does not constitute an Article 8 claim or a barrier to deportation.</li><li>• It is the responsibility of the individual concerned to raise any issues they wish to rely on to prevent their deportation.</li><li>• You are not obliged to find out whether there are any such issues before deporting and must take a robust approach. However, whilst it is not a legal obligation to make enquiries, where it is obvious that a latent claim may exist, it will generally be practical to take a proactive approach in order to avoid later Article 8 claims and make sure the claim is properly assessed. In such cases you can take a pragmatic decision to be proactive by making enquiries to the prison to see whether family members have visited regularly and the outcome of these enquiries can be referred to in the decision letter. This will be especially important where children are involved.</li><li>• You may need to seek further information about the FNO's family life, for example from the current carer of the FNO's child or the Social Services. Care must be taken when seeking to obtain information direct from the minor child of an FNO. You must discuss this with your senior caseworker first. Information may only be obtained in these circumstances from children aged 12 and over.</li></ul>	<p><b>In this section</b></p> <p><a href="#">Proportionality of Deportation Article 8 Claims</a></p> <p><b>Related links</b></p> <p><b>See also</b></p> <p>Links to staff intranet removed</p>
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	These cases will normally get a suspensive right of appeal, unless certification under section 94 or section 96 is appropriate.	
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## Automatic deportation

### Exception for mentally disordered offenders

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This page tells you how to consider whether a foreign national offender (FNO) is exempt from automatic deportation because they are being treated under the sections of the Mental Health Act specified in section 33(6) of UK Borders Act 2007.</p> <p>Offender Management and Public Protection Group (OMPPG) advise the mentally disordered offenders (MDO) team when an FNO is subject to restriction orders, restriction directions or hospital directions under the Mental Health Act 1983. You must not be assigned these cases if you are not directly concerned with the MDO.</p> <p>OMPPG bring the case forward when the MDO's restrictions are due to be lifted, or they are coming to the end of their prison sentence. A file is raised or the existing file is requested. For more information on the MDO case process, see related link: Mentally disordered offenders.</p> <p><b>CID</b></p> <p>If you accept this exception, you must put in the appropriate case outcome. If you conclude that deportation may continue under the Immigration Act 1971, then the CID case must be given the outcome 'Automatic deportation not pursued (conducive/court recommended followed)' and a new case must be opened with the appropriate case type.</p>	<p><b>Related links</b></p> <p><b>See also</b></p> <p>Links to staff intranet removed</p>
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## Automatic deportation

### Exception for victims of human trafficking

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This page tells you how to consider whether a foreign national offender (FNO) is exempt from automatic deportation where removal would breach the UK's obligations under the Council of Europe Convention on Action against Trafficking in Human Beings.</p> <p>In the UK Border Agency, specially trained staff based in regional teams and elsewhere, act as competent authorities (CAs) to consider trafficking cases. CA training has been given to designated staff within CCD taking on the CA role. Staff wishing to find out who the trained competent authorities in their area are must contact their senior caseworker.</p> <p>If it is concluded that the exception does not apply, individuals will be given a right of appeal outside the UK against the decision that automatic deportation applies to them. Unlike cases where an exception due to asylum or human rights is raised, there is no provision for the individual to appeal against this decision from within the UK under the UK Borders Act 2007.</p> <p>For more information on processing cases within CCD when the FNO claims to be a victim of human trafficking, see related links:</p> <ul style="list-style-type: none"><li>• Victims of human trafficking - guidance for frontline staff</li><li>• Victims of Trafficking: guidance for the competent authorities</li><li>• 09 Identifying victims of trafficking</li><li>• Human trafficking.</li></ul>	<p><b>Related links</b> <b>See also</b> Links to staff intranet removed</p> <p><a href="#">Human trafficking</a></p>
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## Automatic deportation

### Commencing deportation action in automatic deportation cases

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This section tells you how to commence deportation action for foreign national offenders (FNOs) who are subject to automatic deportation, under the UK Borders Act 2007.</p> <p>For a process map to follow for FNOs that meet the automatic deportation criteria, see related link: Automatic deportation initial decision flowchart.</p> <p>For more information on commencing deportation action, see related links:</p> <ul style="list-style-type: none"><li>• Exceptions do not apply and asylum and human rights not raised</li><li>• Exception cases that do not raise asylum or human rights</li><li>• Cases that raise asylum or human rights.</li></ul>	<p><b>In this section</b></p> <p><a href="#">Exceptions do not apply and asylum and human rights not raised</a></p> <p><a href="#">Exception cases that do not raise asylum or human rights</a></p> <p><a href="#">Cases that raise asylum or human rights</a></p> <p><b>Related links</b></p> <p><a href="#">Asylum and human rights considerations</a></p> <p><b>Downloads</b></p> <p>Links to staff intranet removed</p>
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## Automatic deportation

### Exceptions do not apply and asylum or human rights not raised

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This page tells you how to start deportation action against foreign national offenders (FNOs) in cases where exceptions do not apply and asylum and human rights are not raised.</p> <p>This includes cases when:</p> <ul style="list-style-type: none"><li>• no exceptions are raised in the ICD.0350AD, and/or</li><li>• you are aware from existing records that there may be an asylum or human rights related issue but this is not raised on the ICD.0350AD and there is no specific asylum or human rights claim.</li></ul> <p>The submission (ICD.3811) must be drafted and approved by a senior caseworker before referring it to the chief executive for signature.</p> <p><b>CID</b> The following case outcomes must be recorded on CID against the case type 'Automatic Deportation' at the following points:</p> <p><b>Automatic Deportation Pursued</b> Once the decision is taken to pursue deportation.</p> <p><b>DO Signed</b> On the date the DO is signed.</p> <p><b>DO Enforced</b> Once the subject has been removed from the UK and the subject is appeals rights exhausted (ARE).</p> <p>The Events field of the Deportation/ Exclusion/ Exclusion Order sections of the Convictions screen must also be updated with the following outcomes as the case progresses (please note that CID still refers to the UK Border Agency as the 'BIA', hence the reference to the out of date name below):</p>	<p><b>Related links</b> <b>See also</b> <a href="#">Exceptions to automatic deportation</a></p> <p><b>External links</b> <a href="#">The Asylum and Immigration Tribunal (Procedure) Rules 2005</a></p>
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	<p><b>Subject Informed of Intention of Liability to Deport</b> ICD.350AD sent.</p> <p><b>DO and Submission dispatched to BIA Chief Executive</b> Date the email was sent to deportation inbox.</p> <p><b>Date Deportation Order Signed</b> By the UK Border Agency chief executive.</p> <p><b>Signed DO returned from BIA Chief Executive Office</b> Date email received from UK Border Agency chief executive.</p> <p><b>Date Deportation Order Served</b> Use the date on the confirmation of conveyance, if the FNO is detained, or the date that the DO was served on the FNO if non-detained.</p> <p>You must serve the following documents on the FNO:</p> <ul style="list-style-type: none"> <li>• Signed automatic deportation (ICD.3813) and accompanying notice (ICD.3805) for FNOs still in custody and ICD.3805SR for FNOs released or with solicitors or representatives: <ul style="list-style-type: none"> <li>○ The ICD.3805 is a combined notice and decision letter. The document will cover the reasons for the decision, such as why the UK Border Agency is deporting and why it is not accepted a human rights claim has been made, as well as being a decision notice.</li> </ul> </li> <li>• ICD.0771 tells the FNO if they are to be deported or detained on release.</li> <li>• A blank IAFT3 (IS.87) appeal form must also be sent to the FNO alongside the deportation order. The time limit for appealing is 28 days after removal from the UK.</li> </ul> <p>The FNO cannot lodge an appeal from within the UK. You must put arrangements in place to enable the FNO to be removed as quickly as possible once the deportation order is signed. Once the FNO has been deported they will have the right to appeal from outside the UK.</p>	
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	<p>The ICD.3805, which is a notice for an appeal outside the UK when no exception applies, makes it clear that the FNO's right of appeal can only be exercised from outside the UK and there is no scope to lodge an appeal from within the UK.</p> <p>If no exception applies, but the individual has nevertheless sought to lodge an appeal in the UK (in country) and the appeal has been accepted by the Immigration and Asylum Chamber (IAC), the presenting officer must argue that the IAC have no jurisdiction to accept the appeal as valid and ask for it to be struck out. Their attention should be drawn to 9(1)(b) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. See related link: The Asylum and Immigration Tribunal (Procedure) Rules 2005.</p>	
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## Automatic deportation

### Exception cases that do not raise asylum or human rights

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This page tells you how to commence deportation action against foreign national offenders (FNOs) where an exception under section 33 applies and asylum and/or human rights are not raised.</p> <p>When exceptions to automatic deportation are accepted then consideration must be given to whether they meet the criteria for deportation under the 1971 Immigration Act. This does not include cases that raise asylum and human rights (for guidance on dealing with those cases see the related link). In all other cases where exceptions are raised and accepted on grounds of age, EEA nationality, extradition, mental health or human trafficking the normal procedures for pursuing and obtaining a deportation order under the Immigration Act 1971 (the 1971 Act) must be followed. Briefly, these are:</p> <ul style="list-style-type: none"><li>• serve ICD.1070 and ICD.1914</li><li>• wait for the outcome of any appeal</li><li>• if the FNO does not appeal or loses the appeal, draft and send submission to the chief executive in line with the 1971 Act process.</li></ul> <p>The following documents, accepting the exception, but seeking deportation under the 1971 Act , must be served on the FNO:</p> <ul style="list-style-type: none"><li>• Letter accepting exception but seeking deportation under the 1971 Act:<ul style="list-style-type: none"><li>○ for Non- European economic area (EEA) nationals, ICD.3806</li><li>○ for EEA nationals, ICD.3809</li></ul></li><li>• ICD.0771 – tells the FNO if they are to be deported or detained on release.</li></ul> <p><b>CID</b></p> <p>In cases where an exception applies and deportation is being pursued under 1971 Act, CID must be updated as follows:</p> <p>First the automatic deportation case must be closed down using the case outcome</p>	<p><b>Related links</b></p> <p><b>See also</b></p> <p><a href="#">Exceptions to automatic deportation</a></p> <p><a href="#">Commencing deportation action in cases that raise asylum and human rights</a></p>
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	<p>'Automatic Deportation Not Pursued (Conducive/Court Recommended Followed)'. Then a new case must be created on CID. Which case type you will use will depend on which part of the 1971 Immigration Act or EEA regulations is being used.</p> <p>The case type will be either:</p> <ul style="list-style-type: none"><li>• 'Criminal Case - Conducive Grounds'</li><li>• 'Criminal Case - Court Recommendation', or</li><li>• 'Criminal Case - Public Policy (Security or Health)' – EEA cases.</li></ul> <p>Once the new record is created all new actions can then be recorded against this case type.</p>	
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## Automatic deportation

### Cases that raise asylum or human rights

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This page tells you how to commence deportation action against foreign national offenders (FNOs) in cases that raise asylum and/or human rights.</p> <p><b>Claim refused - clearly unfounded</b></p> <p>When a claim is clearly unfounded, the process is similar to deporting FNOs who do not benefit from an exception. This is apart from the following differences:</p> <ul style="list-style-type: none"><li>• You must make sure that the deportation order submission includes brief details of the asylum or human rights consideration.</li><li>• You must complete and serve the automatic deportation order (ICD.3813) and accompanying letter (ICD.3807 section 94 or ICD.3807 section 96, there are two versions of ICD.3807 depending on the certification being used). The ICD.3807 section 94 or ICD.3807 section 96 are for FNOs still in custody and the ICD.3807 section 94SR or ICD.3807 section 96 SR are for FNOs released or with solicitors or representatives. Case owners must note that the ICD.3807 is a combined notice and decision letter.</li><li>• ICD.0771 tells FNOs that they will be deported or detained on release.</li><li>• A blank IAF3 (ICD.2163) appeal form must only be sent with an ICD.3807 section 94 or ICD.3807 section 94 SR (cases certified under section 96 have no right of appeal). The time limit for appealing is 28 days after removal.</li><li>• You must prepare a removal pack and send it to the PORT removal directions (RD) desk where there is no right of appeal, or no right of appeal from within the UK.</li></ul> <p><b>Claim refused – not clearly unfounded</b></p> <p>If a claim is refused but not clearly unfounded, the process will still be similar to the process for deporting FNOs who do not benefit from an exception. This is apart from the following differences:</p> <ul style="list-style-type: none"><li>• You must make sure that the deportation order submission includes brief details of the asylum or human rights consideration.</li><li>• You must complete and serve the automatic deportation order (ICD.3813) and accompanying letter (ICD.3808). The ICD.3808 is for FNOs still in custody and the</li></ul>	<p><b>Related links</b></p> <p><b>See also</b></p> <p><a href="#">Asylum and human rights considerations</a></p>
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	<p>ICD.3808SR is for FNOs released or with solicitors or representatives. Case owners must note that the ICD.3808 is a combined notice and decision letter.</p> <ul style="list-style-type: none"> <li>• ICD.0771 tells the FNO that they will be deported or detained on release.</li> <li>• A blank IAF1 (ICD.1041) appeal form must also be sent to the FNO with the deportation order. The time limit for appealing is five days where the FNO is detained and 10 days where the FNO is not detained.</li> <li>• If the FNO loses their appeal and the appeals rights are exhausted (or doesn't lodge one) you must discuss the removal arrangements with the criminal casework directorate (CCD) prison operations and removals team (PORT).</li> </ul> <p>Although a deportation order has been issued, this will not revoke the FNO's leave until their appeal rights are exhausted. That is until their right of appeal within the UK has been finally resolved.</p> <p><b>CID</b></p> <p>The following case outcomes must be recorded against the case type 'Automatic Deportation' on the case maintenance field:</p> <ul style="list-style-type: none"> <li>• Automatic Deportation Pursued - HR/Asy Cert Section 94 - (ICD.3807 Section 94)</li> <li>• Automatic Deportation Pursued - HR/Asy Cert Section 96 - (ICD.3807 Section 96)</li> <li>• Automatic Deportation Pursued - HR/Asylum Not Certified - (ICD.3808)</li> <li>• DO Signed - (on the date the DO is signed)</li> <li>• DO Enforced - (on deportation from the UK).</li> </ul> <p>In both the ICD.3807 and ICD.3808, the same events field of the deportation, exclusion, exclusion order sections on the offences screen on CID must also be updated with the following outcomes as the cases progresses:</p> <ul style="list-style-type: none"> <li>• Subject Informed of Intention of Liability to Deport (date ICD.350 sent to FNO)</li> <li>• DO and Submission dispatched to UKBA Chief Executive (date email sent to deportation inbox)</li> <li>• Date Deportation Order Signed (by the UK Border Agency chief executive)</li> <li>• Signed DO returned from UKBA Chief Executive Office (date email received from the UK Border Agency chief executive officer)</li> </ul>	
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	<ul style="list-style-type: none"><li>• Date Deportation Order Served (on FNO).</li></ul>	
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## Automatic deportation

### Timing of deportation order – Outstanding appeal and effect of DO on leave

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This page tells you about the effect of an outstanding immigration appeal on the ability to make a deportation order under the UK Borders Act 2007.</p> <p>Section 34 of the UK Borders Act 2007 allows a deportation order to be made at a time chosen by the Secretary of State. However, there are certain limitations on this. See related links for section 34.</p> <p>Where the automatic deportation criteria apply, a deportation order can be made even though an appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 against an immigration decision could be brought or is pending.</p> <p>This includes late appeals accepted by the Immigration and Asylum Chamber (IAC) and pending under section 104(2)(b) of the Nationality, Immigrations and Asylum Act 2002. See related links.</p> <p>The UK Borders Act provides that where the automatic deportation criteria apply, a deportation order which is made while an in-country appeal can be brought or is pending does not invalidate any leave to enter or remain.</p> <p>In practice this means that whilst a deportation order can be made in these circumstances, the subject's leave is not invalidated until that appeal right is exhausted. This applies only to an immigration appeal brought while the appellant is in the UK. There is, however, nothing to prevent any of the following actions being taken while such an appeal is pending:</p> <ul style="list-style-type: none"><li>• the giving of a direction for the appellant's removal from the UK, or</li><li>• the taking of any other interim or preparatory action (for example, obtaining travel documents).</li></ul>	<p><b>Related links</b></p> <p><b>External links</b></p> <p><a href="#">UK Borders Act 2007 section 34</a></p> <p><a href="#">Nationality, Immigration and Asylum Act 2002 section 104</a></p>
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## Automatic deportation

### Further representations and applications to revoke the deportation order

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This page tells you where to find guidance on dealing with representations received after a deportation order is made under the UK Borders Act 2007. Where appeal rights are exhausted, such an application will be treated as an application to revoke the deportation order.</p> <p>A link to guidance with the full range of further representations scenarios, together with information on how to consider the revocation of a deportation order made under the 2007 Act will be available on this page, when this is published.</p>	
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## Automatic deportation

### Facilitated returns scheme

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This section tells you how to deal with foreign national offenders (FNOs) who have made an application under the facilitated returns scheme (FRS) and are subject to automatic deportation.</p> <p>People who are subject to automatic deportation cannot avoid deportation by applying for FRS. The scheme remains open to people who are subject to automatic deportation and they can take full advantage of the other benefits, including early removal where applicable.</p> <p>If a person who has been accepted onto the FRS raises an exception then see the related link: People applying under the facilitated returns scheme who raise exceptions.</p> <p>For more information on the FRS process, see related link: The facilitated returns scheme (FRS).</p>	<p><b>In this section</b></p> <p><a href="#">People applying under the facilitated returns scheme who raise exceptions</a></p> <p><b>Related links</b></p> <p><b>See also</b></p> <p>Links to staff intranet removed</p>
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## Automatic deportation

### People applying under facilitated returns scheme who raise exceptions

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This page tells you how to deal with foreign national offenders (FNOs) who have made an application under the facilitated returns scheme (FRS) who have also raised exceptions under section 33 of the UK Borders Act 2007.</p> <p>A FNO who has been accepted onto FRS must not be given a right of appeal within the UK. This is because their application for FRS indicates that they want to leave the UK and are not raising exceptions to automatic deportation. If, however, you are aware that an exception has been raised based on an asylum and human rights claim, the subject will qualify for a right of appeal within the UK and must not be allowed to continue on the FRS. This is unless they sign a disclaimer withdrawing their claim and any appeal and the UK Border Agency is satisfied that their removal would not contravene UK's international obligations.</p>	<p><b>Related links</b></p> <p><b>See also</b></p> <p><a href="#">Exceptions to automatic deportation</a></p> <p><b>External links</b></p> <p><a href="#">UK Borders Act 2007 s32 - s39</a></p>
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## Automatic deportation

### Detaining foreign national offenders

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This page tells criminal casework directorate (CCD) how to detain foreign national offenders (FNOs) under section 36 of the UK Borders Act 2007.</p> <p>Under the 2007 Act an FNO, including those with refugee status, can be detained in the following circumstances:</p> <ul style="list-style-type: none"><li>• while the Secretary of State considers whether automatic deportation applies</li><li>• when automatic deportation does apply, pending a deportation order being made</li><li>• once the deportation order has been made, the FNO may be detained pending removal.</li></ul> <p>The processes for paperwork are the same for detaining under UK Borders Act 2007 powers as under the Immigration Act 1971. See related link: Criminal casework: Detention.</p> <p>If a FNO is initially detained while consideration of automatic deportation takes place under section 36(1)(a) of the UK Borders Act 2007 or when a deportation order is being obtained under section 36(1)(b) of the 2007 Act, a fresh detention decision must be taken once the deportation decision has been taken. A fresh IS.91 must be served once a deportation order is made in order to make clear that the FNO is now being detained as the subject of a deportation order under paragraph 2(3) of Schedule 3 of the Immigration Act 1971, in accordance with section 36(2) of the UK Borders Act 2007.</p> <p>In these circumstances, you must serve:</p> <ul style="list-style-type: none"><li>• a new IS.91 within 48 hours of the basis of the decision changing, and</li><li>• a new ICD.1913AD - Reasons for Detention Letter, amended to reflect the change in legal powers and making clear the reasons for maintaining detention given on the last occasions the IS.91 was issued are maintained.</li></ul> <p>The next detention review must continue to be based on the date of the initial detention but you must make it clear that the legal basis for detention has changed.</p>	<p><b>Related links</b> <b>See also</b></p> <p>Links to staff intranet removed</p> <p><b>External links</b> <a href="#">UK Borders Act 2007 s32 - s39</a></p>
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	<p>Best practice is to serve the decision to deport and the deportation order prior to the end of the custodial sentence whenever possible. You must try wherever possible to make decisions no earlier than 18 months before the earliest release date, usually the early removal scheme (ERS) date. In shorter sentence or imminent release cases, decisions must be made as soon as possible, preferably before or within the ERS period.</p> <p>In practice this means that detention can be implemented any time after the ICD.0350AD has been issued. However, case owners must be aware that if the decision is made that automatic deportation does not apply and the FNO has not been recommended for deportation by the court, detention is unlawful until a notice of intention to deport letter (ICD.1070) has been issued. Consequently a fresh decision must be made or the FNO must be released.</p> <p><b>Detention consideration</b> The decision whether to detain under immigration powers follows the same consideration process as outlined in the current detention policy. For further information see related link: Criminal casework: Detention.</p> <p><b>Detention process</b> The decision to detain can be made when considering whether automatic deportation applies or, if automatic deportation does apply, pending the making of a deportation order. Detention on this basis must be for as short a period as possible to allow for the ICD.0350AD to be returned and considered. In such cases it is important to show that the UK Border Agency is actively taking steps to resolve the matter.</p> <p>In automatic deportation cases when an individual has claimed asylum, the power to detain can be used prior to the conclusion of the asylum claim. This is because asylum is one exception to automatic deportation. Consequently the consideration of an asylum claim is effectively the consideration of whether automatic deportation applies. For more information on when it is appropriate to detain a refugee, see related link: 04/09 Detention and Deportation of Refugees.</p> <p>Once the decision to detain is made, case owners must issue the authority to detain (IS.91)</p>	
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	<p>which has been revised to meet the requirements of detention under the 2007 Act and a revised reason for detention letter (ICD.1913AD).</p> <p>Detention reviews must continue every 28 days, and deportees will have a right to apply for bail at any time.</p> <p><b>Restriction conditions</b> Paragraph 2(5) of Schedule 3 of the Immigration Act 1971 relates to restrictions on residence, occupation and reporting. This also applies to a person liable to be detained under section 36(1)(a) and (b).</p> <p>The text of the UK Borders Act referred to in this page can be found in related links.</p>	
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## Automatic deportation

## Removal arrangements

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This page tells you about removal arrangements for foreign national offenders (FNOs) who have been served deportation orders under the UK Borders Act 2007.</p> <p>Once a deportation order has been obtained, and provided that there are no immediate obstacles to proceeding with a person's deportation, directions for removal will be given by the Secretary of State under paragraph 1 of schedule 3 of the Immigration Act 1971. If the person is serving a prison sentence then, wherever possible, arrangements for removal must be made to coincide with their release.</p>	<b>External links</b> <a href="#">Immigration Act 1971</a>
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## Automatic deportation

### Deportees who return

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This page tells you what happens when a person who has been deported under the UK Borders Act 2007 returns to the UK.</p> <p>A person is prohibited from entering the UK whilst a deportation order is in force. In the event that a person does pass through or circumvents immigration control, they will be deemed to have entered illegally. This is in line with the definition of an illegal entrant as set out in section 33(1) of the Immigration Act 1971. They may be removed by relying on the existing deportation order and removal directions can be set again under schedule 3. Such cases will normally be dealt with at port.</p> <p>Any leave to enter or remain granted whilst a deportation order is in force is invalid. See section 5(1) of the related link: Immigration Act 1971.</p>	<b>Related links</b> <b>External links</b> <a href="#">Immigration Act 1971</a>
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## Automatic deportation

### Contact

<a href="#">Automatic deportation criteria</a> <a href="#">Definition of imprisonment in the UK Borders Act 2007</a> <a href="#">Cases where deportation action started before 1 August 2008</a> <a href="#">Deportation under conducive and court recommended powers – the 1971 Act</a> <a href="#">Exceptions to automatic deportation</a> <a href="#">Workflow procedures</a> <a href="#">Case owner actions</a> <a href="#">Commencing deportation action in automatic deportation cases</a> <a href="#">Further representations and applications to revoke the deportation order</a> <a href="#">Facilitated returns scheme</a> <a href="#">Detaining foreign national offenders</a> <a href="#">Removal arrangements</a> <a href="#">Deportees who return</a>	<p>This page explains who to contact for more help with a specific case on automatic deportation.</p> <p>If you have read this guidance and still need more help with this category, you must first ask your senior caseworker or line manager.</p> <p>If they cannot answer your question, they or you may email the criminal casework directorate (CCD) process team.</p> <p>Changes to this guidance can only be made by the modernised guidance team (MGT). If you think the policy content needs amending you must contact the operational policy team, who will ask MGT to update the guidance.</p> <p>MGT will accept direct feedback on broken links, missing information or the format, style and navigability of this guidance. You can send these using the related link: Email: Modernised guidance team.</p>	<p><b>Related links</b> <b>See also</b> <a href="#">Changes to this guidance</a></p> <p><a href="#">Information owner</a></p> <p><b>External links</b> Links to staff intranet removed</p>
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## Automatic deportation

### Information owner

[Automatic deportation criteria](#)  
[Definition of imprisonment in the UK Borders Act 2007](#)  
[Cases where deportation action started before 1 August 2008](#)  
[Deportation under conducive and court recommended powers – the 1971 Act](#)  
[Exceptions to automatic deportation](#)  
[Workflow procedures](#)  
[Case owner actions](#)  
[Commencing deportation action in automatic deportation cases](#)  
[Further representations and applications to revoke the deportation order](#)  
[Facilitated returns scheme](#)  
[Detaining foreign national offenders](#)  
[Removal arrangements](#)  
[Deportees who return](#)

This page tells you about this version of the automatic deportation guidance and who owns it.

Version	6.0
Valid from date	14 March 2013
Policy owner	Criminal Casework Operation Process and Policy Team
Cleared by director	Megan Smart
Director's role	Director, CCD
Clearance date	6 March 2012
This version approved for publication by	Jan Hunter
Approver's role	Acting assistant director, modernised guidance team
Approval date	14 March 2013

Changes to this guidance can only be made by the modernised guidance team (MGT). If you think the policy content needs amending you must contact the CCD process team, who will ask MGT to update the guidance.

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

#### Related links

##### See also

[Changes to this guidance](#)

[Contact](#)

#### External links

Links to staff intranet removed