

## **Criminal casework**

# **Deportation of family members of foreign national offenders**

## Deportation of family members of foreign national offenders

### About this guidance

<a href="#">Considering evidence of family ties and deportation eligibility</a>	<p>This guidance gives you more detail on the legal provisions for deportation of family members of foreign national offenders (FNOs) and the considerations undertaken by caseworkers when managing such cases.</p>	<b>In this section</b>
<a href="#">Deporting the child of an adult deportee</a>	<p>Section 3(5)(b) of the Immigration Act 1971 allows the deportation of family members if they are the family members of a person who is or has been ordered to be deported. The Immigration Rules (HC 395) at paragraph 363(ii) state that the circumstances in which a person is liable to deportation includes 'where the person is the spouse or civil partner or a child under 18 of a person ordered to be deported'.</p>	<a href="#">Changes to this guidance</a>
<a href="#">Contacting child welfare agencies</a>	<p>Section 5(3) of the 1971 Act states a deportation order (DO) cannot be made against a family member if it is more than eight weeks since the deportee was removed from the UK. However, under section 36(5) of the UK Borders Act 2007, automatic deportation cases have a slightly different timing. Under section 37 of the 2007 Act a DO cannot be made against a family member if it is more than eight weeks since the deportee was considered 'appeal rights exhausted'. If possible, you must coordinate appeals made by a FNO under the 2007 Act and by their family members under the 1971 Act.</p>	<a href="#">Contact</a>
<a href="#">Evidence of family ties</a>	<p>Changes to this guidance – This page tells you what has changed since the previous version of this guidance.</p>	<a href="#">Information owner</a>
<a href="#">Managing the return of families</a>	<p>Contacts – This page tells you who to contact for help if your senior caseworker or line manager can't answer your question.</p>	<b>Related links</b>
<a href="#">Completing the family welfare form</a>	<p>Information owners – This page tells you about this version of the guidance and who owns it.</p>	<p>Links to staff intranet removed</p>
<a href="#">Human rights and other considerations</a>	<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 out more information.</p>	
<a href="#">Deporting or removing parents that pose a threat to their own children</a>		

## Deportation of family members of foreign national offenders

### Changes to this guidance

[Considering evidence of family ties and deportation eligibility](#)

[Deporting the child of an adult deportee](#)

[Contacting child welfare agencies](#)

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[Completing the family welfare form](#)

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[Deporting or removing parents that pose a threat to their own children](#)

This page lists changes to the deportation of family members of foreign national offenders (FNOs) guidance, with the most recent at the top.

Date of the change	Details of the change
29 May 2013	Six month review by the modernised guidance team: <ul style="list-style-type: none"><li>• Minor housekeeping changes.</li></ul>
9 November 2012	Six month review by the modernised guidance team: <ul style="list-style-type: none"><li>• Minor housekeeping changes.</li></ul>
	For previous changes to this guidance you will find all earlier versions in the archive. See related link: Children and family members - Archive.

#### Related links

#### See also

[Contact](#)

[Information owner](#)

Links to staff intranet removed

## Deportation of family members of foreign national offenders

### Considering evidence of family ties and deportation eligibility

<a href="#">Considering evidence of family ties and deportation eligibility</a> <a href="#">Deporting the child of an adult deportee</a> <a href="#">Contacting child welfare agencies</a> <a href="#">Evidence of family ties</a> <a href="#">Managing the return of families</a> <a href="#">Completing the family welfare form</a> <a href="#">Human rights and other considerations</a> <a href="#">Deporting or removing parents that pose a threat to their own children</a>	<p>This page tells you about the kinds of evidence a caseworker must see when considering deportation of foreign national offenders (FNOs) and their family members.</p> <p>You must consider any available evidence to suggest the family functions as a unit. For example, is there a strong subsisting relationship between the parties? Evidence supporting this assessment can be gathered and reviewed over a period of time, and opportunities to obtain further up-to-date information from relevant sources must be taken. Examples of this include, but are not limited to:</p> <ul style="list-style-type: none"><li>• Replies to the questionnaire attached to the notice of liability to deportation (ICD.0350).</li><li>• Information from the local authority children's services (LACS) department.</li><li>• Information provided by the Prison Service or Youth Offending Team, such as visitation reports, letters, telephone call records, and discussions with staff covering their time in custody.</li><li>• Information provided by the immigration removal centre (IRC) if the FNO is detained under immigration powers.</li><li>• Information from the Children and Family Court Advisory and Support Service (CAFCASS).</li><li>• Any additional information supplied by the family members themselves.</li></ul> <p>This information helps criminal casework to give balanced consideration to both deportation and the safeguarding welfare needs of any children involved. A record must be maintained using the family welfare form (ICD.3629). See link on left: Completing the family welfare form.</p> <p>Paragraph 364 of the Immigration Rules outlines the factors caseworkers must take into account when considering deportation of a main subject (for criminal casework, this is a FNO).</p> <p>Paragraphs 365 to 368 deal with the considerations for deportation of family members and give the Secretary of State power in certain circumstances to make a deportation order (DO)</p>	Links to staff intranet removed
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	<p>against the spouse, civil partner or child of a person against whom a DO has been made. For more information, see related link: Immigration Rules – paragraph 362-395.</p> <p>The Secretary of State may decide not to deport the spouse or civil partner of a deportee if they have:</p> <ul style="list-style-type: none"> <li>• qualified for settlement in the UK in their own right, and/or</li> <li>• been living apart from the deportee (other than when in custody or detention).</li> </ul> <p>A child of a deportee will not normally be deported if they:</p> <ul style="list-style-type: none"> <li>• are living apart from the deportee with their mother or father</li> <li>• have left the family home and established themselves on an independent basis, and/or</li> <li>• were in a marriage or civil partnership before deportation became a prospect.</li> </ul> <p>You must also consider:</p> <ul style="list-style-type: none"> <li>• if there is any contact between the parent(s) and their children</li> <li>• if the heads of the family are legally married or cohabiting</li> <li>• in the case of male deportees, are they recognised as a legal parent of the child despite not being married to their mother, and</li> <li>• if the child is in the care of a local authority, particularly if this is by order of a family court.</li> </ul> <p>In FNO cases, you must establish if contact was limited with the child or children before the main subject began their custodial sentence. You must establish the reasons for this by contacting the relevant local authority children's services, if applicable. For example, were the spouse and/or children at risk from the prisoner? You may be able to find some information from the other sources listed above.</p>	
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## Deportation of family members of foreign national offenders

### Deporting the child of an adult deportee

<a href="#">Considering evidence of family ties and deportation eligibility</a> <a href="#">Deporting the child of an adult deportee</a> <a href="#">Contacting child welfare agencies</a> <a href="#">Evidence of family ties</a> <a href="#">Managing the return of families</a> <a href="#">Completing the family welfare form</a> <a href="#">Human rights and other considerations</a> <a href="#">Deporting or removing parents that pose a threat to their own children</a>	<p>This page tells you about the specific issues that apply when you are considering deporting a child of a foreign national offender (FNO) who is subject to deportation.</p> <p>The Home Office's immigration departments have a legal duty under section 55 of the 2009 Borders, Citizenship and Immigration Act for the need to safeguard and promote the welfare of children in the discharge of its functions. In many cases, keeping the family unit together will be in the interests of the child, but not necessarily in all cases. The Secretary of State will not decide to deport the child together with the deportee if:</p> <ul style="list-style-type: none"><li>• The child is living apart from the deportee, with their mother or father, but not as a result of deportation action itself, or they are in the care of the local authority children's services (LACS).<ul style="list-style-type: none"><li>○ There must be clear evidence the relationship no longer subsists, either before or since the offence. Documentary evidence must be obtained, such as proof of legal separation or divorce proceedings, and/or evidence of care proceedings from the LACS. For more information, see related link: GOV.UK - LACS.</li><li>○ If a child is in the temporary care of LACS, they can be removed with the parent(s), if LACS have no objections.</li><li>○ If a child is in the permanent care of LACS, this can be accepted as proof the relationship between the child and parents does not involve any direct dependency. However, the full circumstances of each individual case must be considered carefully before this conclusion is drawn.</li><li>○ Deportation or otherwise removing the child can involve negotiations with the family court. It is possible the care plan for the child includes contact arrangements with the prospective adult deportee. This must be carefully assessed on a case-by-case basis, it may be arguable that it remains proportionate to suggest such contact needs to be by other means than the deportee remaining in the UK.</li></ul></li><li>• The child has spent most of their life in the UK and is nearing the age of 18.<ul style="list-style-type: none"><li>○ The longer a child has been in the UK (regardless of the legality of their stay), the more settled they are likely to be and it is less likely they will have a meaningful basis for a private life in another country, particularly if they have spent most of their</li></ul></li></ul>	<p><b>Related links</b> <b>See also</b></p> <p>Links to staff intranet removed</p>
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	<p>formative years (broadly this means age 0 to 10) in the UK.</p> <ul style="list-style-type: none"> <li>○ If the child is not already registered or in the process of applying for British citizenship, they may have an entitlement to it. If in doubt, the case must be escalated for advice. For more information, see related link: Escalation process.</li> <li>• The child has left home and established themselves on an independent basis, and/or the child married before their deportation as a dependant of a deportee came into prospect.</li> </ul> <p>You must also take into account the following:</p> <ul style="list-style-type: none"> <li>• The ability of the spouse to maintain themselves and any children in the UK, or to be maintained by relatives or friends without reliance on public funds, for the foreseeable future, not just a short period.</li> <li>• The practicalities of any plans for the child's care and maintenance in the UK if one or both of the parents were deported.</li> <li>• Any representations made by or on behalf of the spouse or child.</li> <li>• Any other considerations that may apply in that specific case and which might reasonably delay removal (for example, imminent public examinations).</li> </ul>	
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## Deportation of family members of foreign national offenders

### Contacting child welfare agencies

<a href="#">Considering evidence of family ties and deportation eligibility</a> <a href="#">Deporting the child of an adult deportee</a> <a href="#">Contacting child welfare agencies</a> <a href="#">Evidence of family ties</a> <a href="#">Managing the return of families</a> <a href="#">Completing the family welfare form</a> <a href="#">Human rights and other considerations</a> <a href="#">Deporting or removing parents that pose a threat to their own children</a>	<p>This section tells you how to contact child welfare services when you are considering deporting children of foreign national offenders (FNOs).</p> <p>For more information, see related links:</p> <ul style="list-style-type: none"><li>• Local authority children's services</li><li>• Children and Family Court Advisory and Support Services.</li></ul>	<p><b>In this section</b></p> <p><a href="#">Local authority children's services</a></p> <p><a href="#">Children and Family Court Advisory and Support Services</a></p>
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## Deportation of family members of foreign national offenders

### Local authority children's services

<a href="#">Considering evidence of family ties and deportation eligibility</a> <a href="#">Deporting the child of an adult deportee</a> <a href="#">Contacting child welfare agencies</a> <a href="#">Evidence of family ties</a> <a href="#">Managing the return of families</a> <a href="#">Completing the family welfare form</a> <a href="#">Human rights and other considerations</a> <a href="#">Deporting or removing parents that pose a threat to their own children</a>	<p>This page tells you how you can contact the local authority children's services (LACS) to obtain further information about child welfare.</p> <p>If there is evidence a foreign national offender (FNO), liable to deportation, has family members especially children, living in this country, you must contact the relevant LACS department to obtain key information about the family unit's circumstances and the issues that might affect deportation action.</p> <p>This is particularly important if there is evidence of, or suspicion of, maltreatment of a child. The relevant LACS may already be aware of such issues and are actively dealing with the matter. You must do this before referring the case to the office of the children's champion (OCC).</p> <p>If you contact LACS by telephone you must be patient as it can be difficult to establish contact with the right team or individual and you may be passed between different people. You need to remember social workers complete much of their work away from the office so take this into account when waiting for responses from individuals. It may be possible to use email as an alternative.</p> <p>To trace the correct contact details for LACS, you can use the GOV.UK link. The criminal casework process and policy team (CCOPPT) also hold a hard copy of the current directory.</p> <p>When making telephone or email queries to LACS it is helpful to begin by explaining the Home Office's immigration departments have a statutory duty to safeguard and promote the welfare of children under section 55 of the Borders, Citizenship and Immigration Act 2009, and that this duty is very similar to the LACS' section 11 duty towards children. The query from Immigration Enforcement to the LACS is to make sure they are fulfilling this duty.</p> <p>When dealing with family cases, you must check with LACS if a family are known to them. Where they are known to LACS it is important to find out the reason for this as it may be relevant to the case. For example information that:</p>	<b>Related links</b>  <a href="#">Children and Family Court Advisory and Support Services</a>  Links to staff intranet removed
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- a family known to LACS due to financial difficulties only, does not need taking into account
- a family where one of the parents has a history of abandonment, is relevant to Immigration Enforcement's consideration.

When referring to OCC, this information must be completed on the ICD.4361 template.

If a FNO is being deported, and they have children remaining here who are in local authority care, it is vital you establish the type of care is relevant and what the plan is for the child. Some types of LACS care are relatively temporary. In some cases the care plan for the child may involve the FNO who is being deported. In this case, the FNO's deportation would have a big impact on the care plan, and on the child.

If the child is in LACS care with a plan for adoption or if they have been adopted it is vital that LACS are informed that the offender will be, or has been, deported and where they have been deported to. This is because in some cases, annual letter contact between LACS and birth parent needs to be arranged.

For further information on identifying possible cases of abuse and referring them to relevant agencies, see related link: [Guidance on referring children to welfare agencies](#). For more information on how to identify and contact the correct LACS, see related link: [GOV.UK - LACS](#).

To make sure all the relevant issues around a family's circumstances are properly captured, you may need to complete a template, available through the OCC, when making referrals to LACS. For more information, see related link: [Office of children's champion](#).

The form aims to identify issues such as:

- health
- welfare and education, and
- if a child has special needs which might affect any deportation or removal action.

	<p>The referral form must also include the following details if they apply:</p> <ul style="list-style-type: none"> <li>• Any potential indicators of harm that have been identified, as listed in the statutory guidance on section 55 of the Borders, Citizenship &amp; Immigration Act 2009 (for more information, see related link: <a href="#">Borders, Citizenship and Immigration Act 2009</a>).</li> <li>• If a child appears to have no adult to care for them and the local authority has not been notified.</li> <li>• If a private fostering arrangement has been identified and there is doubt over whether the local authority is aware.</li> <li>• If a child has been a potential victim of human trafficking.</li> <li>• If a child is believed to have gone missing.</li> </ul>	
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## Deportation of family members of foreign national offenders

### Children and Family Court Advisory and Support Services

<a href="#">Considering evidence of family ties and deportation eligibility</a> <a href="#">Deporting the child of an adult deportee</a> <a href="#">Contacting child welfare agencies</a> <a href="#">Evidence of family ties</a> <a href="#">Managing the return of families</a> <a href="#">Completing the family welfare form</a> <a href="#">Human rights and other considerations</a> <a href="#">Deporting or removing parents that pose a threat to their own children</a>	<p>This page tells you how to contact the Children and Family Court Advisory and Support Services (CAFCASS) to obtain further information about child welfare.</p> <p>CAFCASS look after the interests of children involved in family related legal proceedings. They work with children and their families and advise the courts what they consider to be the best interests of the children.</p> <p>Following the judgment of 'ZH (Tanzania)' in February 2011 Immigration Enforcement is legally required to establish a child's best interests and place these at the heart of any consideration around deportation or removal of families with children. This is why it is important to obtain the advice of bodies such as CAFCASS if they have an involvement.</p> <p>You may need to work with the family courts through CAFCASS to find out if the family, or some of its members, are subject to any court proceedings or legal obligations that might affect deportation or removal. For more information, see related link: CAFCASS.</p> <p>Although this step may need to be taken because of your duty to safeguard and promote child welfare, it does not necessarily mean it will not be appropriate for deportation to proceed if the family courts are involved. This needs careful consideration and balancing of all the known factors including those passed on by CAFCASS which may deal with the degree of harm a child is thought to face, and if criminal proceedings are proposed against an abusive parent.</p> <p>Where there are outstanding family court proceedings, criminal casework must make decisions on the foreign national offender (FNO) and related family members as promptly as possible.</p>	<p><b>Related links</b> <b>See also</b></p> <p><a href="#">Local authority children's services</a></p> <p>Links to staff intranet removed</p>
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## Deportation of family members of foreign national offenders

### Evidence of family ties

<a href="#">Considering evidence of family ties and deportation eligibility</a> <a href="#">Deporting the child of an adult deportee</a> <a href="#">Contacting child welfare agencies</a> <a href="#">Evidence of family ties</a> <a href="#">Managing the return of families</a> <a href="#">Completing the family welfare form</a> <a href="#">Human rights and other considerations</a> <a href="#">Deporting or removing parents that pose a threat to their own children</a>	<p>This page tells criminal casework caseworkers what action to take if there is insufficient evidence of family ties.</p> <p>If a decision is taken to proceed with deportation action against a foreign national offender (FNO), and a notice of liability to deport (ICD.0350 or 0350AD) has been served, evidence of family ties will already be on the Home Office file. This is in the form of a completed questionnaire attached to the ICD.0350 notice. Details must also be noted on CID. It must also note the various sources of information outlined in the link on the left: Considering evidence of family ties and deportation eligibility.</p> <p><b>Seeking further evidence</b></p> <p>If you believe there is still insufficient evidence of family ties, or more information is still needed to establish if the family still function as a unit, you must consider whether to carry out an interview at the prison or immigration removal centre with the FNO and/or the family members concerned. Usually, the family members will be resident in the community. Assistance with these requests is obtained from either criminal casework's prison operations and removals team (PORT) in the case of the FNO, or, in the case of non-detained family members, the relevant immigration compliance and engagement (ICE) team (formerly known as local immigration team (LIT)).</p> <p>You must make the request using the tasking request form (ICD.4448). This needs various essential details about the FNO and their family members to enable PORT or an ICE team to provide the appropriate facilities for the interview, and make sure they have all relevant information before the meeting takes place. Any further information that will be useful for operational staff must be added in the 'additional information' section at the end. This includes any specific questions or information that criminal casework would like to raise at interview.</p> <p>If, after examining all the available evidence, it is considered there is sufficient evidence of family ties, and these do not outweigh the case for the deportation of the FNO, deportation can proceed in the relevant category either under the Immigration Act 1971 or the UK</p>	<p><b>Related links</b> <b>See also</b></p> <p>Links to staff intranet removed</p>
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	<p>Borders Act 2007 (having had regard to paragraph 364 of the Immigration Rules).</p> <p>For the process in each category, see related links:</p> <ul style="list-style-type: none"> <li>• Case owner instruction</li> <li>• Automatic deportation.</li> </ul> <p><b>Deporting family members</b></p> <p>If criminal casework also decide to deport the family members under section 3(5)(b) of the Immigration Act 1971, having regard to paragraphs 365 to 368 of the Immigration Rules, the following must be served to them:</p> <ul style="list-style-type: none"> <li>• decision to make a deportation order (ICD.1070)</li> <li>• reasons for deportation letter (ICD.1914)</li> <li>• notice of appeal (ICD.1041), and</li> <li>• appeal disclaimer (ICD.3066).</li> </ul> <p>If the family members are, or will be, on reporting restrictions and comply, the documents must be served to them in person at the reporting centre. If they are on restrictions but have ceased to comply, the documents must be posted to the last known address (in the case of children under 18, for the attention of the parent or responsible adult where appropriate). If children are in care the documents must be posted to the social worker responsible for the child's welfare. In cases where documents are sent by post they must be sent recorded delivery and, wherever possible, a signature must be obtained as proof of delivery.</p> <p>You must make it clear to family members they can leave the UK voluntarily if they do not wish to appeal, or their appeal is dismissed. It is best to undertake this at the earliest opportunity, to establish if there is a genuine intention to comply without the need for any enforced return action.</p> <p><b>Removing family members</b></p> <p>If a decision is made to remove the family members either:</p> <ul style="list-style-type: none"> <li>• administratively under section 10(1)(a) or (b) of the Immigration and Asylum Act 1999</li> </ul>	
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	<p>having had regard to paragraphs 395C of the Immigration Rules, or</p> <ul style="list-style-type: none"> <li>• as illegal entrants under section 24(1)(a) of the Immigration Act 1971.</li> </ul> <p>The responsibility for managing these decisions falls to the relevant ICE team, who cover the area where the family member(s) live. The ICE team will act in line with the instructions given in the enforcement instructions and guidance. For more information, see related link: Enforcement instructions and guidance. Similar procedures for the service of relevant notices apply to those described above.</p> <p>The criminal casework caseworker and ICE team equivalent must work closely to make sure the deportation of the FNO and removal of their family are coordinated wherever this is practical.</p> <p>When it becomes necessary to manage the deportation of a FNO and removal of family members (following dismissal of any appeals), criminal casework must act in accordance with the four-stage family returns process ('voluntary', 'assisted', 'required', 'ensured') and in tandem with the relevant ICE team. If the family decide not to depart voluntarily, a variety of measures must be explored. For more information on how this process works and how best to manage it, see related link: Managing the return of families with children.</p>	
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## Deportation of family members of foreign national offenders

### Managing the return of families

<a href="#">Considering evidence of family ties and deportation eligibility</a> <a href="#">Deporting the child of an adult deportee</a> <a href="#">Contacting child welfare agencies</a> <a href="#">Evidence of family ties</a> <a href="#">Managing the return of families</a> <a href="#">Completing the family welfare form</a> <a href="#">Human rights and other considerations</a> <a href="#">Deporting or removing parents that pose a threat to their own children</a>	<p>This page tells you about the policy and procedure for managing returns of family members of foreign national offenders (FNOs) liable to deportation, including the scope for detention of family members.</p> <p>When family members have exhausted all appeal rights, or not appealed, they will be liable for:</p> <ul style="list-style-type: none"><li>• deportation as dependants under the Immigration Act 1971, or</li><li>• removal under the Immigration Act 1971 or Immigration and Asylum Act 1999.</li></ul> <p>This makes them liable to contact management and detention. However, detention is not appropriate for a family which includes a child under the age of 18.</p> <p>In very rare cases, ministers may authorise holding families if individuals within the family pose significant public protection risks. Contact management such as reporting or electronic monitoring, is not applicable in all cases. For more information, see related link: Enforcement: Operational enforcement activity.</p> <p>Moving a family towards return to their country of origin is now operated on a tiered basis, aimed at:</p> <ul style="list-style-type: none"><li>• maintaining contact</li><li>• fostering compliance, and</li><li>• ultimately reducing need for enforcing departures.</li></ul> <p>The aim is to avoid immigration detention wherever possible.</p> <p>If the family is only made up of adults, detention remains a possibility if they fail to comply with any restrictions, or are deemed to be very high risk.</p> <p>Detention of children is no longer used except in the most exceptional high-risk cases. If</p>	<p><b>Related links</b> <b>See also</b></p> <p>Links to staff intranet removed</p>
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	<p>children are part of the family unit, in nearly every case, Immigration Enforcement will engage with the family and manage their return without resorting to immigration removal centres. Slightly different procedures apply when the child is a FNO and the main deportee.</p> <p>For more information on the alternatives to detention in the family returns process, see related links:</p> <ul style="list-style-type: none"><li>• Managing the return of families with children</li><li>• Criminal casework: Detention</li><li>• Enforcement: Operational enforcement activity.</li></ul>	
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## Deportation of family members of foreign national offenders

### Completing the family welfare form

<a href="#">Considering evidence of family ties and deportation eligibility</a> <a href="#">Deporting the child of an adult deportee</a> <a href="#">Contacting child welfare agencies</a> <a href="#">Evidence of family ties</a> <a href="#">Managing the return of families</a> <a href="#">Completing the family welfare form</a> <a href="#">Human rights and other considerations</a> <a href="#">Deporting or removing parents that pose a threat to their own children</a>	<p>This page tells you about completing the family welfare form, which acts as a log of all relevant family information applicable to the immigration case throughout its active life.</p> <p>Before you begin proceedings to deport or remove a family unit that includes children, you must complete a family welfare form (ICD.3629). This shows an audit trail for each stage of the decision-making process, starting with the initiation of deportation or removal action, and ending in either the deportation or removal of the foreign national offender (FNO) and their family, or, if appropriate, not pursuing such action.</p> <p>You must complete the form as thoroughly as possible, based on the information you have obtained from various sources. These sources are outlined in related link: Escalation process, and link on left: Considering evidence of family ties and deportation eligibility.</p> <p>The form must:</p> <ul style="list-style-type: none"><li>• be updated as knowledge about the circumstances of the family's case changes or is corrected</li><li>• stay with the family throughout the deportation, removal, detention, and/or management process</li><li>• be kept as current as possible.</li></ul> <p>This makes sure elements can be managed using the most appropriate methods, sensitive to a family's needs wherever possible, and safeguard and promote the welfare of children, even where it has been determined that the family must return home.</p> <p>The key stages for completing the ICD.3629 are as follows:</p> <ul style="list-style-type: none"><li>• The criminal casework caseworker decides:<ul style="list-style-type: none"><li>○ there is sufficient evidence the family are still functioning as a unit, and</li><li>○ to deport or remove family members alongside the FNO deportee.</li></ul></li><li>• The criminal casework caseworker liaises with:</li></ul>	<b>Related links</b> <b>See also</b>  Links to staff intranet removed
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	<ul style="list-style-type: none"> <li>○ the prison operations and removals team (PORT)</li> <li>○ the relevant immigration compliance and engagement (ICE) team (formerly known as local immigration team (LIT)), or</li> <li>○ immigration removal centre (IRC),</li> </ul> <p>if further action on the case is needed and to inform them they are completing the first version of the form and saving it on CID.</p> <ul style="list-style-type: none"> <li>• The criminal casework caseworker completes the ICD.3629 on the CID document generator with as much information as they can. This includes advice from the office of the children's champion (OCC), especially if it is intended to separate the family. Separation requires the authorisation of an assistant director within criminal casework, and this must be noted on the form. For more information on this process see related link: How to process a family separation referral.</li> <li>• The criminal casework caseworker saves the form to CID, enabling PORT, the ICE team and/or IRC to access it, and be forewarned of all relevant issues that might affect their operational handling of the case. These areas will add to and amend the form as they progress the family's case towards conclusion.</li> </ul> <p>More information can be found in chapter 45.1 of the enforcement instructions and guidance, see related link: 45 Family cases.</p>	
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## Deportation of family members of foreign national offenders

### Human rights and other key considerations

<a href="#">Considering evidence of family ties and deportation eligibility</a>	<p>This section tells you about the need for Immigration Enforcement caseworkers to balance their duty to deport foreign national offenders (FNOs) and their family members, with their duties under human rights law, and to safeguard and promote the welfare of children.</p>	<b>In this section</b>
<a href="#">Deporting the child of an adult deportee</a>	<p>The provisions of the UK Borders Act 2007 place a legal obligation on the Secretary of State to deport foreign national offenders from this country if the deportation threshold is met and none of the exceptions set out in the Act apply.</p>	<a href="#">Human rights (Article 8)</a>
<a href="#">Contacting child welfare agencies</a>	<p>This duty is taken seriously by criminal casework making it a primary consideration in their daily activities. There is also the presumption under paragraph 364 of the Immigration Rules the public interest requires deportation if the Secretary of State deems the person's deportation to be in the public interest ('conducive to the public good').</p>	<a href="#">‘ZH’ (Tanzania) and children’s best interests</a>
<a href="#">Evidence of family ties</a>		<b>Related links</b>
<a href="#">Managing the return of families</a>	<p>This does not mean every foreign national convicted of an offence, who is liable to deportation, will be deported. In all cases the public interest in removing FNOs must be carefully balanced against the rights of the individual and their family members. This means assessing the proportionality of deportation or removal in the context of Article 8 of the European Convention on Human Rights.</p>	Links to staff intranet removed
<a href="#">Completing the family welfare form</a>		
<a href="#">Human rights and other considerations</a>	<p>If children under 18 are involved in the family unit, both Article 3 of the United Nations Convention on the Rights of the Child and the provisions of the Borders, Citizenship &amp; Immigration Act 2009 mean their best interests must be a primary consideration. Deportation and/or removal may remain a justified and proportionate response, even if it is shown those interests are best served by the child remaining in the UK. This is providing those best interests are outweighed by the cumulative effects of other considerations, including the public interest in deporting foreign criminals.</p>	
<a href="#">Deporting or removing parents that pose a threat to their own children</a>	<p>If this is the case, the management of families with children towards departure must still be undertaken with full regard to safeguarding and promoting child welfare.</p> <p>These considerations will continue to apply to all decisions taken during the immigration</p>	

	<p>process:</p> <ul style="list-style-type: none"><li>• whether family members are being deported or removed with the FNO or otherwise</li><li>• whether the FNO or any other family member is to be detained, and/or</li><li>• whether the family unit is to be separated for any of these purposes.</li></ul> <p>For more information, see related links:</p> <ul style="list-style-type: none"><li>• Separating families for deportation and detention purposes</li><li>• Detention of families.</li></ul>	
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## Deportation of family members of foreign national offenders

### Human rights (Article 8)

<a href="#">Considering evidence of family ties and deportation eligibility</a> <a href="#">Deporting the child of an adult deportee</a> <a href="#">Contacting child welfare agencies</a> <a href="#">Evidence of family ties</a> <a href="#">Managing the return of families</a> <a href="#">Completing the family welfare form</a> <a href="#">Human rights and other considerations</a> <a href="#">Deporting or removing parents that pose a threat to their own children</a>	<p>This page tells you about the human rights issues taken into account when considering the deportation or removal of a foreign national offender (FNO) and their family.</p> <p>When considering the deportation of a FNO, you must consider any convention rights that are likely to be relevant to that person's case, despite the severity of their crimes, and even where an explicit claim has yet to be made by the FNO or their representative.</p> <p>In FNO family cases, an assessment must be made to see if a private and family life under Article 8 of the European Convention on Human Rights (ECHR) exists. If one or both exist, and that deportation or removal would interfere with them, consideration must be given to whether the enforcement of departure through such means is a proportionate response. This means weighing the severity and frequency of the person's offences, be they immigration and/or civil, against evidence of their personal and family circumstances and how living in another country would impact on this.</p> <p>Considerations under Article 8 are necessarily complex to balance and will be decided on the specifics of a case. The more severe the offence(s) and longer the sentence, the greater the weight for deportation. The greater the ties, family or otherwise, and longer the stay, the greater the weight against deportation. General guidance on Article 8 and balancing proportionality arguments can be found in the asylum casework's considering human rights claims instruction (for more information, see related link). This also covers assessment under Article 3 and other core ECHR articles.</p> <p>For more information, see related links:</p> <ul style="list-style-type: none"><li>• Human Rights Act 1998</li><li>• The ECHR (1950).</li></ul>	<p><b>Related links</b></p> <p><a href="#">‘ZH’ (Tanzania) and children’s best interests</a></p> <p>Links to staff intranet removed</p>
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## Deportation of family members of foreign national offenders

### 'ZH' (Tanzania) and children's best interests

<a href="#">Considering evidence of family ties and deportation eligibility</a> <a href="#">Deporting the child of an adult deportee</a> <a href="#">Contacting child welfare agencies</a> <a href="#">Evidence of family ties</a> <a href="#">Managing the return of families</a> <a href="#">Completing the family welfare form</a> <a href="#">Human rights and other considerations</a> <a href="#">Deporting or removing parents that pose a threat to their own children</a>	<p>This page tells you about the findings of the judgment in the case of 'ZH (Tanzania)' and the priority given to children's best interests in the consideration of the deportation and removal of families.</p> <p><b>Relevant legislation</b></p> <p>A competent consideration of a case under article 8 of the European Convention on Human Rights (ECHR) will include consideration of the best interests of any children, as set out in article 3 of the United Nations Convention of the Rights of the Child (UNCRC), and section 55 of the Borders, Citizenship and Immigration Act 2009.</p> <p>Article 3 of the UNCRC says that in any administrative decision affecting a child, the best interests of that child must be a primary consideration. Section 55 of the 2009 Act established the duty to safeguard and promote child welfare in domestic UK immigration law.</p> <p>The aim is always to try and carry out immigration duties and functions with the minimum interference with a family's private life. This helps families to maintain continuity of care and development of children, even when immigration law rules they must be returned to their country of origin.</p> <p>The effect of section 55 of the 2009 Act was further clarified by the Supreme Court in the case of ZH (Tanzania) v SSHD (2011) UKSC 4 (1 February 2011). The judgment gives direction on the weight to be given to the best interests of children who are affected by the decision to remove or deport one or both of their parents from this country. The judgment also gives direction on what circumstances it is permissible to remove or deport a non-British citizen parent where the effect will be that a child who is a citizen of the UK will also have to leave.</p> <p><b>Key points of the 'ZH' judgment</b></p> <p>The key points of the ruling are as follows:</p>	<p><b>Related links</b></p> <p><b>See also</b></p> <p><a href="#">Human rights (Article 8)</a></p> <p>Links to staff intranet removed</p>
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	<ul style="list-style-type: none"> <li>• The 'best interests of the child' broadly means the well-being of the child. A consideration of where those best interests lie involves asking if it is reasonable to expect the child to live in another country. An important part of discovering the best interests of the child is to discover the child's own views.</li> <li>• Although nationality is not a definitive factor in every case, it is of particular importance in assessing the best interests of any child.</li> <li>• The importance of citizenship must not be played down. As citizens, children have rights which they will not be able to exercise if they move to another country. They will lose the advantages of growing up and being educated in their own country, their own culture and their own language. They will have lost all this if they come back as adults. It is not enough to say a young child may readily adapt to life in another country.</li> <li>• In making the proportionality assessment under article 8 of the ECHR, the best interests of the child must be considered first, although they can be outweighed by the cumulative effect of other considerations.</li> <li>• British citizenship will almost always be a very significant and weighty factor against moving children who have that status to another country with a parent who has no right to remain here, especially if the effect is that they will inevitably lose the benefits and advantages of this citizenship for the rest of their childhood.</li> <li>• The fact that a child is a British citizen also has an independent value, unconnected to the debate in relation to best interests and this must be weighed in the balance in any decision that may affect where a child may live.</li> </ul> <p><b>Further Home Office guidance on 'ZH'</b> Guidance for the Home Office on 'ZH' and how it should be applied is being prepared by the Home Office central policy unit.</p> <p>In the meantime all decision makers must make sure all deportation decisions involving children provide evidence to show the best interests of the child have been a primary consideration. Deportation decisions must show that the section 55 duty and article 8 have been given proper consideration, in appropriate cases.</p> <p><b>Proportionality of removing a British child's parents</b> Where the deportation of a parent of a British child is concerned, the citizenship of the child will weigh particularly heavily in that consideration. Even if the initial assessment is that the</p>	
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	<p>removal of the parent engages a child's article 8 rights, or that child's best interests in section 55 terms suggest the parent should be allowed to remain in the UK, it will still be reasonable to remove the parent (and either require the child to leave as well, or to remain in the UK with the other parent or a guardian) provided that:</p> <ul style="list-style-type: none"> <li>• the public interest in the parent's removal makes it a proportionate interference with the child's article 8 rights, and</li> <li>• the factors requiring the parent's removal outweigh the child's best interests under section 55.</li> </ul> <p><b>Assessing a child's best interests</b></p> <p>All relevant decisions must show article 8 and section 55 have been properly considered. As part of that assessment, Immigration Enforcement must demonstrate the best interests of any child affected have been a primary consideration. Any proper assessment of those 'best interests' will include consideration of questions such as:</p> <ul style="list-style-type: none"> <li>• How old is the child?</li> <li>• Is it reasonable to expect the child to live in another country?</li> <li>• How long has the child been resident in the UK, and what is the level of the child's integration in the UK?</li> <li>• How long has the child been absent from the other country?</li> <li>• Where and with whom will the child live?</li> <li>• What arrangements are in place for looking after the child in the other country?</li> <li>• What is the strength of the child's relationships with their parents and other family members which will be severed if the child has to move away?</li> </ul> <p>The Secretary of State must not take for granted the child's interests are the same as their parents. Depending on the age of the child and whether the child wishes to express their views, there will be situations where the child's own views will need to be heard.</p>	
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Deportation of family members of foreign national offenders

Deporting or removing parents that pose a threat to their own children

<a href="#">Considering evidence of family ties and deportation eligibility</a>	<div>This section tells you what to take into account when considering the deportation or removal of a foreign national offender (FNO) parent who is known to pose a threat to their own child or children.</div> <div>Restricted – do not disclose – start of section</div> <div>The information in this page has been removed as it is restricted for internal Home Office use only.</div>	<b>In this section</b>
<a href="#">Deporting the child of an adult deportee</a>		<a href="#">Notifying a UK-based parent of a deported foreign national offender</a>
<a href="#">Contacting child welfare agencies</a>		<a href="#">Referring cases to the criminal casework intelligence unit (CCIU)</a>
<a href="#">Evidence of family ties</a>		<b>Related links</b>
<a href="#">Managing the return of families</a>		<b>See also</b>
<a href="#">Completing the family welfare form</a>		<a href="#">Human rights (Article 8)</a>
<a href="#">Human rights and other considerations</a>		Links to staff intranet removed
<a href="#">Deporting or removing parents that pose a threat to their own children</a>		

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

Restricted – do not disclose – end of section

# Deportation of family members of foreign national offenders

## Referring cases to the criminal casework intelligence unit (CCIU)

<a href="#">Considering evidence of family ties and deportation eligibility</a> <a href="#">Deporting the child of an adult deportee</a> <a href="#">Contacting child welfare agencies</a> <a href="#">Evidence of family ties</a> <a href="#">Managing the return of families</a> <a href="#">Completing the family welfare form</a> <a href="#">Human rights and other considerations</a> <a href="#">Deporting or removing parents that pose a threat to their own children</a>	<p>This page tells criminal casework caseworkers how to refer cases where a foreign national offender (FNO) parent, who is known to pose a threat to their own child or children, to its intelligence unit for further investigation.</p> <div><div>Restricted – do not disclose – start of section</div><p>The information in this page has been removed as it is restricted for internal Home Office use only.</p></div>	<p><b>Related links</b> <b>See also</b></p> <p><a href="#">Human rights (Article 8)</a></p> <p><a href="#">Notifying a UK-based parent of a deported foreign national offender</a></p> <p><a href="#">Deporting or removing parents that pose a threat to their own children</a></p> <p>Links to staff intranet removed</p>
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The information in this page has been removed as it is restricted for internal Home Office use only.

Restricted – do not disclose – end of section

## Deportation of family members of foreign national offenders

### Notifying a UK-based parent of a deported foreign national offender

<a href="#">Considering evidence of family ties and deportation eligibility</a> <a href="#">Deporting the child of an adult deportee</a> <a href="#">Contacting child welfare agencies</a> <a href="#">Evidence of family ties</a> <a href="#">Managing the return of families</a> <a href="#">Completing the family welfare form</a> <a href="#">Human rights and other considerations</a> <a href="#">Deporting or removing parents that pose a threat to their own children</a>	<p>This page tells criminal casework caseworkers how to tell a UK parent if a foreign national offender (FNO), who is a threat to their children, has been deported and the local authority children's services (LACS) no longer have any involvement with the case.</p> <p>There are cases where it is in the best interests of the children to tell a UK-based parent of the deportation of a FNO parent who is considered to be a threat to their children. If LACS retain an active involvement in the family's case they should be responsible for such notification. If they have stopped any involvement, the duty of notification will fall to Immigration Enforcement.</p> <p>In such cases, you must tell the UK-based parent of the FNO's deportation in writing. This disclosure is in line with the duty to safeguard and promote welfare of children under section 55 of the Borders, Citizenship and Immigration Act 2009. For more information, see related link: Section 55 of the Borders, Citizenship and Immigration Act 2009.</p> <p>Following the successful deportation of the FNO, it may come to your attention, possibly through the intelligence unit, the FNO is seeking to return to the UK, or is believed to have already done so by illegal means. The caseworking team responsible for the original deportation must tell the UK-based parent of this at the earliest opportunity, as it could have obvious safeguarding issues for the children.</p>	<p><b>Related links</b> <b>See also</b></p> <p><a href="#">Human rights (Article 8)</a></p> <p><a href="#">Referring cases to the criminal casework intelligence unit (CCIU)</a></p> <p>Links to staff intranet removed</p>
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## Deportation of family members of foreign national offenders

### Contact

<a href="#">Considering evidence of family ties and deportation eligibility</a> <a href="#">Deporting the child of an adult deportee</a> <a href="#">Contacting child welfare agencies</a> <a href="#">Evidence of family ties</a> <a href="#">Managing the return of families</a> <a href="#">Completing the family welfare form</a> <a href="#">Human rights and other considerations</a> <a href="#">Deporting or removing parents that pose a threat to their own children</a>	<p>This page explains who to contact for more help with deportation of family members of foreign national offenders (FNO) cases.</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 the question cannot be answered at that level, they or you may email criminal casework operational process and policy team (CCOPPT) using the related link: Email CCD process team for guidance on the policy.</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 CCOPPT, who will ask the MGT to update the guidance, if appropriate.</p> <p>The 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 link: Email Modernised guidance team.</p>	<p><b>Related links</b> <b>See also</b></p> <p><a href="#">Changes to this guidance</a></p> <p><a href="#">Information owner</a></p> <p>Links to staff intranet removed</p>
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## Deportation of family members of foreign national offenders

### Information owner

[Considering evidence of family ties and deportation eligibility](#)

[Deporting the child of an adult deportee](#)

[Contacting child welfare agencies](#)

[Evidence of family ties](#)

[Managing the return of families](#)

[Completing the family welfare form](#)

[Human rights and other considerations](#)

[Deporting or removing parents that pose a threat to their own children](#)

This page tells you about this version of the deportation of family members of foreign national offenders (FNO) guidance and who owns it.

Version	6.0
Valid from date	29 May 2013
Policy owner	Criminal casework operational process and policy team (CCOPPT)
Cleared by director	Angela Kyle
Director's role	CCD Director
Clearance date	19 October 2011
This version approved for publication by	Richard Short
Approver's role	Assistant director, modernised guidance team
Approval date	23 May 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 CCOPPT using the related link: Email CCD process team, who will ask the MGT to update the guidance, if appropriate.

The 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 link: Email Modernised guidance team.

### Related links See also

[Changes to this guidance](#)

[Contact](#)

Links to staff intranet removed