

Criminal casework

Repatriation for foreign national offenders

Repatriation for foreign national offenders

About this guidance

About this guidance Requirements for repatriation Deportation orders Exclusion orders and exclusion from the UK	<p>This guidance provides information on the repatriation of foreign national offenders for staff in criminal casework.</p> <p>The following areas are covered in this guidance:</p> <ul style="list-style-type: none">• The repatriation process.• Who can voluntarily apply to be repatriated.• Prison transfer agreement (PTA) without the offenders consent.• Action to take when an application for repatriation is received or referred by the National Offender Management Service (NOMS).• The requirement to make a deportation order and how to do it.• Appeals against decisions on repatriation.• Notification of repatriation. <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>In this section</p> <p>Changes to this guidance</p> <p>Contact</p> <p>Information owner</p> <p>Related links</p> <p>Links to staff intranet removed</p>
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Repatriation for foreign national offenders

Changes to this guidance

About this guidance Requirements for repatriation Deportation orders Exclusion orders and exclusion from the UK	This page lists the changes to the repatriation for foreign national offender's guidance, with the most recent at the top.		Related links Repatriation without offender's consent See also Contact Information owner Links to staff intranet removed
	Date of change	Details of change	
	17 July 2013	Six month review by the modernised guidance team: <ul style="list-style-type: none">• Repatriation without offender's consent:<ul style="list-style-type: none">○ new sub heading 'Council Framework Decision 2008/909/JHA (EU PTA)' and content• Minor housekeeping changes.	
	31 January 2013	Six month review by the modernised guidance team: <ul style="list-style-type: none">• No changes made.	
		For previous changes to this guidance you will find all earlier versions in the archive. See related link: Repatriation of foreign national offenders - archive.	

Repatriation for foreign national offenders

Requirements for repatriation

About this guidance Requirements for repatriation Deportation orders Exclusion orders and exclusion from the UK	<p>This section tells you about the requirements for repatriation of foreign national offenders for staff in criminal casework.</p> <p>Repatriation can be voluntary or without the offender's consent.</p> <p>Voluntary process</p> <p>The Repatriation of Prisoners Act 1984 provides for the transfer of sentenced prisoners between the UK and other foreign jurisdictions. The Secretary of State for Justice can issue a warrant to transfer a prisoner under the act to another country that has a prisoner transfer agreement (PTA) with the UK.</p> <p>The UK has over 100 PTAs and the vast majority of these require the consent of the prisoner and the respective transferring state. Prisoners who wish to serve their sentence in their country of origin may submit an application to the National Offender Management Service (NOMS) through the prison. The prison will then liaise with cross border transfer section in NOMS to assess the request.</p> <p>To be eligible to apply the foreign national offender must:</p> <ul style="list-style-type: none">• Be from a country which has signed a repatriation agreement with the UK, as listed in the Council of Europe Website and NOMS list of countries who have a PTA. For more information, see related link: Prison Service instruction – 52/2011.• Be a national of the country to which repatriation is requested. In exceptional circumstances, consideration will be given to requests from non-national residents of the proposed country of repatriation, for example, family members of nationals from the country of repatriation.• Have a sentence that is final and enforceable, and all appeal rights exhausted.• Have at least six or 12 months of their sentence left to serve, depending on the terms of the relevant PTA arrangement, or if they are serving a life sentence.• Not have outstanding criminal proceedings against them in the UK.	<p>In this section</p> <p>Repatriation without offenders consent</p> <p>Receiving a request for repatriation or referred case from NOMS</p> <p>On allocation of the case</p> <p>Imminent repatriation</p> <p>Notification of repatriation</p> <p>Repatriation prior to the deportation order being served</p> <p>Links to staff intranet removed</p>
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	Before any repatriation, a deportation order needs to have been signed and served.	
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Repatriation for foreign national offenders

Repatriation without offender's consent

About this guidance Requirements for repatriation Deportation orders Exclusion orders and exclusion from the UK	<p>This page tells you the requirements of the prisoner transfer agreement (PTA) without the offender's consent.</p> <p>The additional protocol to the Council of Europe Convention on the transfer of sentenced persons, see related link, allows the transfer of offenders without their consent in two specific circumstances:</p> <ul style="list-style-type: none">• when the offender is subject to a deportation order, or• where the offender has fled from one jurisdiction to their state of nationality to avoid imprisonment. <p>The first bullet point above refers to criminal casework cases and additional protocol powers may also be enforced on this basis.</p> <p>To be considered for compulsory repatriation the foreign national offender must:</p> <ul style="list-style-type: none">• Be from a country which has signed a repatriation agreement with the UK. For more information, see related link: Council of Europe website.• Have a deportation order in place.• Be a national of that country to which repatriation has been requested.• Have a sentence that is final and enforceable and all avenues of appeal have been exhausted.• Be sentenced to four years or more imprisonment.• Be an offender serving determinate sentences. <p>Offenders who do meet the above criteria, but still have an outstanding criminal proceeding against them in the UK are not eligible for consideration of compulsory repatriation.</p> <p>Before any repatriation takes place criminal casework must make sure a deportation order has been signed and served when this is possible.</p>	<p>In this section</p> <p>Receiving a request for repatriation or referred case from NOMS</p> <p>On allocation of the case</p> <p>Imminent repatriation</p> <p>Notification of repatriation</p> <p>Repatriation prior to the deportation order being served</p> <p>Links to staff intranet removed</p>
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Council Framework Decision 2008/909/JHA (EU PTA)

This provides for the transfer of prisoners without consent amongst European Union (EU) member states and was brought into force on 5 December 2011, see related link.

Eleven member states have brought the EU PTA into force, these are:

- Austria
- Belgium
- Denmark
- Finland
- Italy
- Latvia
- Luxembourg
- Malta
- Netherlands
- Poland (voluntary only)
- Slovakia, and
- UK.

Poland has a derogation (exception) preventing compulsory transfers to their jurisdiction until 2015. The Republic of Ireland and the UK have agreed not to initiate compulsory transfers with Poland.

Compulsory transfers under the EU PTA are the same as those under the additional protocol. This is except for prisoners who have only been sentenced to one year in custody and have more than six months left to serve at the date of sentencing. These prisoners will be initially considered for transfer by the National Offender Management Service (NOMS).

NOMS may also consider the transfer of prisoners who are ordinarily resident in the receiving state. This does not require a deportation order in advance of transfer. These cases will be uncommon because of the difficulty in finding out where a prisoner was resident before arrest.

	For the countries listed above NOMS will consider transfers under both systems.	
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Repatriation for foreign national offenders

Receiving a request for repatriation or referred case from NOMS

About this guidance Requirements for repatriation Deportation orders Exclusion orders and exclusion from the UK	<p>This page tells you how to action requests for voluntary repatriation or prison transfer agreement (PTA) without consent of the foreign national offender (FNO).</p> <p>Voluntary repatriation When you receive a request for repatriation by letter or fax from the cross border transfer section (CBTS) in the National Offender Management Service (NOMS) you must locate and allocate the file immediately. You must flag the file as 'Repatriation Case / Urgent consideration required'. You must ignore any early removal scheme (ERS) date.</p> <p>Facilitated returns scheme (FRS) Some FNOs who apply for voluntary repatriation could be eligible to receive an integration payment, when returning to their country of origin under FRS.</p> <p>Each case will be considered on an individual basis, but there are two main requirements that must be met:</p> <ul style="list-style-type: none">• the FNOs sentence must have ended before the beginning of their repatriation management, and• a deportation order has been served. <p>For full details on the FRS process, see related link: Facilitated return scheme (FRS).</p> <p>Without the offenders consent CBTS will provide the workflow team with a management information (MI) sheet of FNOs who meet the above requirements.</p> <p>On receipt of the MI sheet, workflow will:</p> <ul style="list-style-type: none">• Check for any Home Office reference number.• Find out where the file is within criminal casework, or arrange for a file to be created.• Check the case meets criminal casework criteria for deportation.	<p>In this section</p> <p>Repatriation without offender's consent</p> <p>On allocation of the case</p> <p>Imminent repatriation</p> <p>Notification of repatriation</p> <p>Repatriation prior to the deportation order being served</p> <p>Related links</p> <p>Links to staff intranet removed</p>
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	<ul style="list-style-type: none"> • Update CID to say a request has been made from CBTS in NOMS to treat this case under the PTA and compulsory repatriate the FNO. • Flag the file to read 'Repatriation Case / Urgent consideration required' in red pen. • The ERS date does not need to be considered. • Allocate the file immediately, once it has been assessed against the requirements and collated to the silver standard. In cases where an ICD.0350 has not already been issued this must not be done. In auto deportation cases this would have been issued at the initial stages and any exceptions raised at that stage. <p>If the case has already left workflow, the CBTS notification will be forwarded to the relevant case working team for action.</p>	
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Repatriation for foreign national offenders

On allocation of the case

About this guidance Requirements for repatriation Deportation orders Exclusion orders and exclusion from the UK	<p>This page tells you what to do if you are allocated a case requesting repatriation of a foreign national offender (FNO).</p> <p>Voluntary repatriation</p> <ul style="list-style-type: none">• Contact the cross border transfer section (CBTS) in the National Offender Management Service (NOMS) to discuss timescales of both repatriation and consideration of any intention to make a decision to deport. All details must be confirmed in writing, by email or fax.• Check to make sure all appeal rights have been exhausted. This is any appeal against conviction or sentence. If in doubt contact CBTS, see related link, as they may wish to hold the case pending an outcome.• Decide if the case must be considered for deportation under the:<ul style="list-style-type: none">○ UK Borders Act 2007, for automatic deportation○ Immigration Act 1971, or○ Immigration (European Economic Area) Regulations 2006.• The liability to deportation notice must be faxed to the prison. You must tell the offender that repatriation and deportation will be considered simultaneously. You must add a sentence to the intention of liability notice to show this.• The Home Office is not legally required to serve an intention of liability to deportation in cases considered under the Immigration Act 1971 but it is good practice to do so. In cases considered under the UK Borders Act 2007, you must send the liability to deportation notice as this gives the FNO the opportunity to raise any exceptions to automatic deportation. It will then serve as a 'one stop notice', if the FNO subsequently decides to raise any exceptions.• You must update the offence screen on CID, to show a liability to deportation notice has been issued.	<p>In this section</p> <p>Repatriation without offender's consent</p> <p>Receiving a request for repatriation or referred case from NOMS</p> <p>Imminent repatriation</p> <p>Notification of repatriation</p> <p>Repatriation prior to the deportation order being served</p> <p>Links to staff intranet removed</p>
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Without the offenders consent

You must:

- Contact the CBTS in NOMS and discuss timescales of both repatriation and consideration of any intention to make a decision to deport. All details must be confirmed in writing, by email or fax.
- Decide if the case must be considered for deportation under the:
 - Immigration (European Economic Area) Regulations 2006
 - UK Borders Act 2007, for automatic deportation, or
 - Immigration Act 1971.
- Action the 'intention of liability to deport notice'. It must then be faxed to the prison.
- The offence screen on CID must be updated to show an intention of liability to deport notice has been issued.

Travel documentation

CBTS in NOMS will not automatically arrange for travel documentation. You must liaise with CBTS in NOMS to:

- identify if the subject has a valid travel document that can be used
- highlight if the travel documentation process has started
- identify if there would be problems obtaining a travel document, and
- agree CBTS in NOMS will arrange travel documentation if repatriation is imminent.

Restricted information – do not disclose – start of section

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

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Restricted information – do not disclose – end of section

Repatriation for foreign national offenders

Imminent repatriation

<p>About this guidance</p> <p>Requirements for repatriation</p> <p>Deportation orders</p> <p>Exclusion orders and exclusion from the UK</p>	<p>This page tells you the process to follow when an imminent repatriation has been agreed and processed.</p> <p>The repatriation and flight details are arranged by cross border transfer section (CBTS) in the National Offender Management Service (NOMS). The Home Office, including the detention services – immigration removal centre (IRC), has no involvement in these arrangements.</p> <p>If repatriation is imminent and the deportation order has yet to be served, you must immediately find out the offenders' location and the likelihood of removal to another prison before their flight. The vast majority of repatriation cases will be transferred to Her Majesty's Prison (HMP) Wandsworth or HMP Holloway before transfer out of the UK.</p> <p>As soon as you find the offender's location you must fax the deportation order to that location.</p>	<p>In this section</p> <p>Repatriation without offender's consent</p> <p>Receiving a request for repatriation or referred case from NOMS</p> <p>On allocation of the case</p> <p>Notification of repatriation</p> <p>Repatriation prior to the deportation order being served</p>
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Repatriation for foreign national offenders

Notification of repatriation

About this guidance Requirements for repatriation Deportation orders Exclusion orders and exclusion from the UK	<p>This page tells you what action to take when the transfer has been agreed.</p> <p>The cross border transfer section (CBTS) in the National Offender Management Service (NOMS) will tell you if repatriation has been agreed with the two countries, along with details of any prisoner transfers and flight details.</p> <p>Once the CBTS have advised repatriation has taken place, you must update all management information systems and fax copies of the deportation order to the overseas records office at the Department for Works and Pensions (DWP).</p> <p>Following the expected date of departure you must check with CBTS the foreign national offender (FNO) has actually been removed. Once this has been confirmed you must update records, minute the file and send it to lay-by.</p>	<p>In this section</p> <p>Repatriation without offender's consent</p> <p>Receiving a request for repatriation or referred case from NOMS</p> <p>On allocation of the case</p> <p>Imminent repatriation</p> <p>Repatriation prior to the deportation order being served</p>
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Repatriation for foreign national offenders

Repatriation prior to the deportation order being served

About this guidance Requirements for repatriation Deportation orders Exclusion orders and exclusion from the UK	<p>This page tells you what action to take if repatriation of a foreign national offender (FNO) has taken place without a deportation order being served.</p> <p>In some cases repatriation will take place before the deportation order can be made, due to the availability of documentation and flights. If the deportation order has been signed, and provided the individual was in the UK at the time of signing, it is still valid even though it has not been served on the FNO.</p> <p>If a deportation order has not been made you must make sure the offender is prohibited from freely re-entering the UK. For European Economic Area (EEA) nationals and members of their families this must be done through exclusion orders. All other foreign nationals must be made subject to exclusion decisions. For guidance on exclusion orders, see related link: Exclusion orders and exclusion from the UK.</p>	In this section Repatriation without offender's consent Receiving a request for repatriation or referred case from NOMS On allocation of the case Imminent repatriation Notification of repatriation Related links Exclusion orders and exclusion from the UK
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Repatriation for foreign national offenders

Deportation orders

About this guidance Requirements for repatriation Deportation orders Exclusion orders and exclusion from the UK	<p>This section tells you about deportation orders.</p> <p>For more information, see related links:</p> <ul style="list-style-type: none">• Decision to make a deportation order• Appeals against deportation order	<p>In this section</p> <p>Decision to make a deportation order</p> <p>Appeals against deportation orders</p> <p>Related links</p> <p>Links to staff intranet removed</p>
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Repatriation for foreign national offenders

Decision to make a deportation order

<p>About this guidance</p> <p>Requirements for repatriation</p> <p>Deportation orders</p> <p>Exclusion orders and exclusion from the UK</p>	<p>This page tells you how to make a decision on a deportation order before progressing repatriation requests from a foreign national offender under the Immigration Act 1971 and UK Borders Act 2007.</p> <p>You must only allow the set time frame for the signing and returning, as stated in the intention of liability to deportation notice.</p> <p>Cases considered for deportation under the Immigration Act 1971</p> <p>When the intention of liability notice has been returned and/or the period for responding has passed, you must:</p> <ul style="list-style-type: none">• issue a notice of decision to take deportation action, and• issue a reason for deportation letter, along with relevant appeals forms. <p>These cases get an in the UK (in-country) right of appeal against the decision to take deportation action. You must make contact with cross border transfer section (CBTS) in the National Offender Management Service (NOMS), as they may await the outcome of any appeal before proceeding any further with the request to repatriate. See related link: Email: CBTS.</p> <p>Cases considered for deportation under the UK Borders Act 2007</p> <p>When it is not accepted an exception to automatic deportation applies, or where an asylum or human rights claim has been accepted as 'arguable', the deportation order must be issued at the same time as the decision that automatic deportation provision can be applied.</p> <p>When it is not accepted an exception applies, the right of appeal can only be made from outside the UK. But in cases where an asylum or human rights claim has been accepted as 'arguable', there is a right of appeal within the UK. For further details see related link: Asylum – Handling foreign national prisoners who have made asylum claims or who have been recognized as refugees. You must contact CBTS to tell them of any appeals within the UK. See related link: Email: CBTS</p>	<p>In this section</p> <p>.Appeals against deportation orders</p> <p>Related links</p> <p>Links to staff intranet removed</p>
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	<p>Immigration (European Economic Area) Regulations 2006</p> <p>Criminal casework will consider cases for deportation if they meet the European Economic Area (EEA) criteria of having a sentence of:</p> <ul style="list-style-type: none"> • two years or more, or • one year, where the offence is listed in Annex B of the EEA process instruction, see related link: European Economic Area (EEA) foreign national offender cases. <p>EEA nationals can be deported on grounds of:</p> <ul style="list-style-type: none"> • public policy • public security, or • public health. <p>In line with regulation 21 of Immigration (European Economic Area) Regulations 2006. Where a decision is taken to deport a person under the regulations, section 3(5)(a) of the Immigration Act 1971 will apply and they will be given an in the UK (in-country) right of appeal.</p> <p>CBTS can start the process of repatriation in EEA cases, but will await the outcome of any appeal before considering return to their home country.</p>	
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Repatriation for foreign national offenders

Appeals against deportation orders

About this guidance Requirements for repatriation Deportation orders Exclusion orders and exclusion from the UK	<p>This page tells you what appeals there are against the issuing of a deportation order under the Immigration Act 1971, UK Borders Act 2007 and the Immigration (European Economic Area) Regulations 2006. For more information, see related links.</p> <p>You must contact the cross border transfer section (CBTS) in the National Offender Management Service (NOMS) when an appeal or an exception has been raised. Even if the foreign national offender (FNO) requests repatriation to serve their sentence abroad, they may want to appeal against the decision to make a deportation order against them. This is because they may wish return to the UK at a later date.</p> <p>In Immigration Act 1971 cases, the person will get a right of appeal in the UK. CBTS must be contacted to request the repatriation is deferred until after the outcome of the appeal.</p> <p>In UK Borders Act 2007 cases when there are no exceptions, the right of appeal is exercised outside the UK, so repatriation can go ahead.</p> <p>To contact CBTS, see related link: Email: CBTS</p>	<p>In this section</p> <p>Decision to make a deportation order</p> <p>Links to staff intranet removed</p>
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Repatriation for foreign national offenders

Exclusion orders and exclusion from the UK

About this guidance Requirements for repatriation Deportation orders Exclusion orders and exclusion from the UK	<p>This page tells you about consideration of exclusion orders and exclusion from the UK following repatriation of a foreign national offender.</p> <p>The Home Secretary can use their personal power to exclude foreign nationals, including European Economic Area (EEA) nationals exercising treaty rights in the UK and members of their families. In order to exclude non-EEA nationals, the Home Secretary needs to be satisfied the individual's presence in the UK would not be conducive to the public good (for example, on the grounds of criminal conviction).</p> <p>Exclusion is not an immigration decision, as defined by section 82 of the Nationality, Immigration and Asylum Act 2002, and does not have a right of appeal. However, any refusal of entry clearance or of leave to enter the UK based on the exclusion decision would have a right of appeal. Non-EEA foreign nationals who have been excluded by the Home Secretary may request a judicial review of the decision.</p> <p>For further guidance on exclusion decisions and exclusion orders see related link.</p>	Related links Links to staff intranet removed
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Repatriation for foreign national offenders

Contact

About this guidance Requirements for repatriation Deportation orders Exclusion orders and exclusion from the UK	<p>This page explains who to contact for more help with a specific case of repatriation for foreign national offenders.</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 the criminal casework operational process and policy team (CCOPPT), see related link: Email: 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 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>	Related links Changes to this guidance Information owner Links to staff intranet removed
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Repatriation for foreign national offenders

Information owner

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This page tells you about this version of the repatriation for foreign national offenders guidance and who owns it.

Version	7.0
Valid from date	17 July 2013
Policy owner	CBTS NOMS (Cross border transfer section, National offender management section)
Cleared by director	Richard Quinn
Director's role	Director criminal casework
Clearance date	17 August 2011
This version approved for publication by	Sonia Dower
Approver's role	Director, operational policy and rules
Approval date	12 July 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 criminal casework operational process and policy team (see 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

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