

Sentence planning with FNPs liable to deportation: supporting early removal and repatriation

1. This practice guidance is intended to improve the quality of assessment and sentence planning undertaken in custody by offender supervisors and offender managers with Foreign National Prisoners (FNPs) liable for deportation. The main purposes of this Guidance are to:
 - contribute to improving the effectiveness of the removal process for FNPs during the custodial part of their prison sentence, and
 - improve resettlement planning for those FNPs who are removed and those who are allowed to stay in the UK.
2. A key principle of work with FNPs is that NOMS staff and Home Office Immigration Enforcement (HO IE) staff should complement, not duplicate, each others efforts.
3. This guidance may be used on first contact by offender management staff with FNPs at the start of sentence, usually after the prisoner has been identified as a FNP at reception, or later in sentence when plans need to be reviewed. For clarity, when the guidance refers to an offender supervisor it equally applies to an Offender Manager where the Offender Manager has prime responsibility for a case in custody.

For further information on removal and deportation, see the relevant sections of 'A resource for the resettlement of Foreign National Prisoners' of which this Guidance is a part.

NOMS
Offender Management and Public Protection Group
August 2014

Background

1. Staff in prison and probation have a key role working with Home Office Immigration Enforcement (HO IE) in supporting the early removal of Foreign National Prisoners (FNPs) where the Home Office intends to deport them. The prison is responsible for informing HO IE when a FNP is received. HO IE will then inform the FNP and the prison of those who are subject to automatic deportation, and will request information on others (primarily EEA prisoners) where a decision is needed on deportation. HO IE Criminal Casework section (HO IE CC) will start active deportation proceedings later in the custodial part of the sentence, normally no sooner than the final 18 months before the earliest date for removal.
2. The legislation and processes concerning removal can be complex. FNPs may be unaware of whether deportation is being considered and confused about the different removal processes and how they apply in their individual case. Decisions regarding whether a FNP is in scope for deportation, and then taking deportation action, are the responsibility of the Home Office. Prompt and clear communication between HO IE and the FNP is paramount in removing obstacles to deportation.
3. During longer prison sentences, there will be periods where the HO IE appears less actively involved in a FNP's case. FNPs may incorrectly assume that HO IE is taking no action about their deportation. Offender Supervisors can keep FNPs focused on the importance of resettlement planning for their removal by raising the likelihood of deportation at an early stage.
4. FNPs will have different attitudes to returning to their home country, ranging from those who would positively welcome it to those who are opposed to leaving the UK for a variety of reasons, sometimes including fear of returning to their home country. Offender supervisors will need to tailor their approach according to the motivation and circumstances of the FNP. Offender supervisor's skills may be of most use with offenders who are uncertain about their situation and preferences, rather than those who are actively cooperating with the HO IE or who are completely opposing deportation.
5. It is important that FNPs gain a basic understanding of those removal schemes that could apply to them and of the benefits that would encourage them to use a voluntary process i.e. voluntary Prisoner Transfer Agreements, Facilitated Returns Scheme (FRS), or to cooperate with a mandatory process i.e. compulsory Prisoner Transfer Arrangements, Early Removal Scheme (ERS), Tariff-Expired Removal Scheme (TERS). These different schemes contain various features which might affect the FNP's attitude to deportation, such as practical and financial assistance with resettlement; spending less time in custody and return to family.

6. Sentence planning should encourage FNPs in scope of deportation to make plans for resettlement abroad, normally in their home country. The majority of FNPs in scope of deportation are motivated to return to their country of origin, cooperate with their removal through ERS or FRS, and will actively engage with discussion and planning for resettlement outside the UK. However, sentence plans also need to acknowledge that some FNPs liable for deportation will not want to cooperate with deportation proceedings and may be reluctant to consider resettlement outside the UK. Nevertheless, the majority of FNPs who meet HO IE CC criteria for deportation are subsequently deported either through ERS or FRS or after a period held in immigration detention.

7. However, a proportion of FNPs in-scope of deportation may be discharged into the community, either after a successful appeal, a HO IE decision not to pursue deportation or a Tribunal decision to release into the community under immigration bail pending deportation action. Resettlement plans must therefore consider options in the UK as well as overseas. Such plans must not pre-judge the decisions of the HO IE or the Immigration and Asylum Chamber. Decisions on whether a FNP is deported or not are made by the HO IE and the Immigration and Asylum Chamber, not by NOMS staff in prison or the community.

8. More generally, FNPs should be subject to the same Offender Management processes as UK nationals, taking into account individual circumstances, community links and the importance of contact with families. These processes will include
 - A start of sentence assessment and plan (where sentenced to 12 months or more)
 - Motivating and encouraging compliance and progress in meeting sentence plan objectives
 - Preparation for release towards the end of custody period (where not already managing the case)
 - Pre-release involvement by probation provider
 - Oversight by probation provider during licence period whether Foreign National Prisoner is in the community or detained under Immigration Act powers
 - Ongoing assessment and review.

9. Offender supervisors should ensure that HO IE CC is aware of all significant factors and changes that could affect deportation decisions and progress in deporting. Also, where an offender supervisor becomes aware of evidence of human trafficking they should immediately inform the Head of OMU or other senior manager.

Foreign National Prisoner Checklist for offender supervisors - start of sentence

The following checklist identifies key actions. Not all will be necessary in all cases, and in some prisons Foreign National Leads or embedded/visiting Home Office staff may undertake some of these tasks. Offender Supervisors and Offender Managers should select and prioritise those actions that are relevant to the circumstances of the offender they are working with.

- 1) Establish or re-establish :
 - i) with the FNP - their nationality, relationship with UK and home country
 - ii) with HO IE - their plans regarding deportation and what/when their next contact with the FNP will be.
- 2) Gain an initial view of the FNP's aims and ambitions; and what motivates them.
- 3) Explain, where relevant, Early Removal Scheme (ERS), Tariff Expired Removals Scheme (TERS), compulsory Prisoner Transfer Agreements (PTA) and the other relevant schemes for removal, deportation and repatriation, if and as they apply to the FNP's home country.
- 4) Discuss, where relevant, the benefits of voluntarily using the Facilitated Return Scheme (FRS) and voluntary Prison Transfer Schemes.
- 5) Identify if the FNP has passport, national ID or other ID. Check whether HO IE has these documents. If not encourage the FNP to provide them to the HO IE. Inform the HO IE of the situation (see PSI 52/2011)
- 6) Check whether the FNP knows how to access consul/embassy should they want contact. Also, inform those FNPs where it is a legal responsibility for Prisons to inform their Embassy of their detention regardless of their wishes.
- 7) Establish what assistance the FNP needs to enable them to cooperate (whether actively or minimally) with removal/repatriation processes.
- 8) Identify appropriate sentence plan goals, with an emphasis on resettling abroad and cooperating with HO IE staff, alongside objectives to address likelihood of reoffending and risk of serious harm, in line with PSI 41/2012.
- 9) Establish as a contingency plan where and how the FNP would live if not deported, or if released on licence prior to deportation.
- 10) Record the FNP's intentions in case record systems and OASys.
- 11) Communicate as necessary with the FNP coordinator/Home Office staff in prison/ HO IE CC
- 12) Encourage the FNP to cooperate with HO IE staff and facilitate communication without delay.

Frequently asked questions

What features of schemes will motivate some Foreign National Prisoners?

- Earliest return to home country (Prison Transfer Agreements)
- Up to 270 days less custody, and no licence period, for determinate prisoners (Early Removals Scheme)
- Release at tariff date, for indeterminate prisoners (Tariff Expired Removal Scheme)
- Financial support for resettlement abroad for non EEA nationals (Facilitated Returns Scheme)
- Able to receive visit from family (Prison Transfer Agreements)
- Better able to plan resettlement where they will be living -i.e. establish/re-establish contact with family & friends and prospective employers and support groups & other individuals in home community. (Prison Transfer Agreements)

How do prisons and HOIE share information to establish that a prisoner is a foreign national?

PSI 52/2011 requires prisons to inform the HO IE Criminal Casework via a CC Referral Form, of a newly sentenced prisoner who they know or believe to be a foreign national. The HO IE CC will complete section 2 of the form and return it to the prison. This form will be in the prisoners 'Core record' and nationality should be recorded in P-NOMIS. At any stage, NOMS staff can contact the CC Helpline on 020 8760 8655 to check whether a prisoner is a foreign national whom deportation proceedings are being pursued.

Do all FNPs in scope of deportation end up being deported?

The majority of FNPs referred to the HO IE are deported, usually under the Early Removal or Facilitated Returns Schemes. Of those FNPs who appeal against their removal, the majority of appeals are unsuccessful and they are removed. With the 2014 Immigration Act, further restricting appeals 'in-country', the proportion of FNPs in scope of deportation who may be released into the community on immigration bail and/or on licence if relevant, pending deportation proceedings, is expected to reduce further.

What information on a FNP is provided to the HO IE CC?

Arrangements for the provision of NOMS information to the HO IE Criminal casework are principally governed by PSI 52/2011 and PSI 34/2014/PI 52 2014. HO IE CC case owner may request OASys, if available, from either NOMS prison or probation staff, via a RRI form request.