

Foreign nationals in the prison system

Who is classed as a foreign national prisoner?

The term 'foreign national prisoner' is applied to anyone in prison in this country who is remanded or convicted for criminal charges and does not have an absolute legal right to live or remain in the UK. If you have British citizenship you are not a foreign national, although if you were not born in Britain, the Prison Service may still inquire into your status to ascertain that you are indeed a citizen. People with dual nationality are treated as British, although their details are still passed to the UK Border Agency (BA) as in exceptional circumstances they may be considered for removal of their naturalisation.

Even if there was no mention of deportation in court when you were sentenced, once any foreign national is sentenced to a criminal term of more than very short duration, their case is referred to the BA, which then considers whether to deport the person. If you have been granted indefinite leave to remain on asylum or family grounds, you should still not assume that you will be allowed to remain in this country if you have been convicted of a criminal offence. You should insure that you notify your immigration solicitor of your situation and seek their advice. This is particularly important since 1 August 2008 when the automatic deportation provisions in the UK Borders Act 2007 came into force. Non-European Economic Area (EEA) citizens who have been sentenced to a prison term of 12 months or more can now be automatically deported when their sentences end unless they can show that this would breach their rights under the Human Rights Act. EEA citizens can also be deported, although they are exempt from automatic deportation and the decision to remove has to be taken on grounds of 'public policy, public security or public health'. Irish citizens can only be deported in exceptional circumstances

Immigration Act detainees

If you are only held in prison under the Immigration Act you will have the same status and privileges as an unconvicted prisoner. This applies both if you have been neither convicted nor remanded in custody for a criminal offence and if you have completed a custodial sentence and are awaiting deportation.

Detainees can be held either in prisons or in immigration removal centres; however BA will not accept detainees convicted of serious violent, sexual or drug offences, those who pose a threat to children, and those who are considered to have been a threat to security or control in prison.

Categorisation

All prisoners are categorised according to the risk they are considered to pose if they should escape. In all the higher security categories, the procedures for categorisation are exactly the same for foreign nationals as for British citizens. However this changes when it comes to Category D or open prison status. Until 2002 there was a blanket policy that no-one due to be deported was allowed to go to an open prison, however following a successful legal challenge, the position changed and moves to open prisons for deportees became governed by PSI 35/2002, which stipulates that deportation status cannot be the sole factor for refusing allocation to open conditions, Deportation remains a major factor in the risk assessment process, but it may be taken into account only in so far as it is might be indicative of the likelihood of abscond and not as a determinative factor precluding allocation to open conditions

In 2006 the Prison Service issued further guidance in a new version of PSO 4630, which deals with Immigration and Foreign Nationals in Prisons. In relation to categorisation this states:

“The overriding purpose of security classification is to ensure that prisoners are retained in custody with a level of security which is consistent with the need to prevent escape and to protect the public. Any increased likelihood of deportation for foreign nationals given a custodial sentence may increase the risk of escape or absconding. This risk should be taken into account when considering foreign national prisoners for Category D and allocation to open conditions....Each case must be individually considered on its merits but the need to protect the public and ensure the intention to deport is not frustrated is paramount. Category D will only be appropriate where it is clear that the risk is very low.”

Prior to agreeing that you can be transferred to a Category D prison, the prison you are in has to send a CCD3 form to the Criminal Casework Directorate (CCD) asking for any information held by the CCD which might be relevant to risk.

Early Removal Scheme (ERS)

The Early Removal Scheme came into force in July 2004. It is set out in PSI 27/2004 and was amended by PSI 17/2008 (which doubled the maximum ERS period from 135 days to 270 days) and PSI 45/2008, which made certain categories of previously exempt prisoners eligible for the scheme.. All foreign nationals serving determinate sentences of over three months under the Criminal Justice Act 1991 or Standard Determinate Sentences under the Criminal Justice Act 2003 are now eligible for consideration for early removal.

Those serving four years and over for a violent or sexual offence will be subject to a risk assessment prior to the granting or otherwise of ERS. The Early Release and Recall Section conduct this risk assessment using the same criteria as parole. All other deportees will be presumed suitable for ERS, unless there are exceptional and compelling circumstances, or there is a consecutive term for contempt or in default of payment (fine or confiscation order) or outstanding criminal charges. The decision to approve

early removal must be taken by a governor and the Parole Clerk must notify the deportee and the Border Agency.

[Fuller guidance on ERS and Parole for prisoners liable for deportation is contained in PSO 6000, chapter 9.]

Repatriation

The Repatriation of Prisoners Act 1984 brought into effect the Convention on the Transfer of Sentenced Persons, which enables foreign national prisoners to be transferred back to the country of which they are a national and serve their sentence there. Sentenced prisoners from countries which are signatories to the Convention are eligible to apply for repatriation if they have at least six months left to serve and have no outstanding appeals.

If you want to apply for repatriation you should apply on a complaint form to the governor of the prison where you are held, giving details including your full name, date of birth, address in your home country, passport number and the place and date of issue. The request is forwarded to the Cross Border Transfer Section, which consults with the Secretary of State and the government of the country to decide whether repatriation is considered appropriate by all parties. The time that has been served here is taken into account, and you take with you any remission earned in this country. If the sentence given in this country is longer than a sentence that could be imposed for the same offence in their home country, it can be changed to the nearest equivalent sentence lawfully imposed in that country, although this may not be longer than the original sentence.

Phonecalls

PSO 4400 states that foreign national prisoners or those with close family abroad must be permitted a free five minute call once a month if they have had no domestic visits in the preceding month.

PRISONERS' ADVICE SERVICE PO BOX 46199 LONDON EC1M 4XA TEL: 020 7253 3323 / 0845 430 8923
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