

Criminal casework Concluding family cases

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This guidance tells you about the various legal barriers which may arise during the pursuit of deportation in foreign national offender (FNO) family cases, and the ways in which immigration enforcement (IE) may seek to conclude such cases.

Types of case conclusion in the criminal casework directorate include:

- Deportation of the FNO and all family members.
- Deportation of the FNO without family members, or with only some.
- Deportation of the FNO and family not pursued, but referred to a local immigration team for possible alternative removal action.
- Deportation of the FNO and family not pursued, removal not pursued, so leave to remain granted.

Changes to this guidance – This page tells you what has changed since the previous version of this guidance.

Contacts – This page tells you who to contact for more help if your senior caseworker or line manager can't answer your question.

Information owners – This page tells you about this version of the guidance and who owns it.

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.

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This page lists the changes to the concluding family cases guidance, with the most recent at the top.

| Date of the change | Details of the change |
|--------------------|---|
| 11 November 2013 | Six month review by the modernised guidance team: |
| | Minor housekeeping and plain English changes throughout. |
| 28 May 2013 | Six month review by the modernised guidance team: |
| | Minor housekeeping changes. |
| 12 November 2012 | Six month review by the modernised guidance team: |
| | Minor housekeeping changes. |
| | For previous changes to this guidance you will find earlier versions in the archive. See related link: Children and family members - Archive. |

Related links

See also

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This section tells you about legal barriers which can delay the conclusion of cases of foreign national offenders (FNOs) with family in the UK, and which require additional consideration.

At any stage of the deportation and removal consideration process, you can receive further representations from families and their representatives against any decision to deport or remove them from the UK. These representations must be considered on their individual merits.

As part of the deportation consideration in family cases, you must check if any children of the family are subject to ongoing court proceedings, or are already subject to an order of a court regarding their care and residency. You can obtain this information from the relevant local authority children's services (LACS) and the Children and Family Court Advisory and Support Service (CAFCASS).

Although immigration law takes precedence over the Children Act 1989 proceedings or court orders and their equivalents in the UK's devolved administrations, they must always be taken into account when considering deportation action. See related link: Children Act 1989.

Contact or residence orders cannot in themselves prevent the removal of a child from the UK, but such orders, and any outstanding or completed family court proceedings, will be relevant in the overall assessment, and some weight must be given to them. For more information, see related link: Court orders and Article 8.

The courts can be cautious about granting residence orders for children who are subject to immigration control. It is important to make sure the court is able to consider this at the earliest possible stage. CAFCASS must be contacted to arrange for this evidence to be made available to the relevant court.

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This page tells you about residence orders which can be made for children who are part of a foreign national offender's (FNO's) family in the UK.

A residence order made by a family court for a minor determines where they will live, and with whom. When an adult is granted a child residence order they automatically get parental responsibility for that child, if they did not already have it. Parental responsibility obtained through a residence order will continue until the order expires.

A residence order usually lasts until the child is 16 years of age, unless the circumstances of the case are exceptional and the court decides the order should continue for longer.

A residence order prevents any child, who is the subject of the order, being removed from the UK (for more than one month) without the written agreement of everyone with parental responsibility or an order of the court.

If you are considering the removal or deportation of a child who is subject to a residence order you must discuss the case with a senior caseworker and the office of the children's champion (OCC) to find out what action is appropriate on a case by case basis. You cannot remove a child without the conditions of the residency order being satisfied or without a court order.

For more information on court orders and their effects, see related link: Children and Family Court Advisory and Support Service - Contact and Residence.

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Contact orders

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This page tells you about contact orders which can be made for children who are part of a foreign national offender's (FNOs) family in the UK.

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A contact order requires the person with whom a child lives to allow that child to visit, stay or otherwise have contact with a person named in the order. This may be an estranged parent,

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or other relative.

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Contact orders usually continue until the child reaches 16. The courts will only make orders beyond that age in exceptional cases.

Links to staff intranet removed

You must take into account an existing contact order for a FNO when deportation decisions are made. Some contact orders only allow for contact by letter, video link or telephone. In these cases you will need to show how this can be achieved from abroad before deportation or removal takes place. Cases with ongoing contact proceedings are covered in the section Court orders and Article 8, see related link.

For more information on court orders and their effects, see related links: Children and Family Court Advisory and Support Service - Contact and Residence.

Court orders and Article 8

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This page tells you how to balance the existence of court orders with considerations under Article 8 of the European Convention on Human Rights (ECHR) for deportation.

Where a foreign national offender (FNO) is involved in ongoing family proceedings in the UK, for example, about contact with their child, it may, or may not, be appropriate to remove them until the outcome of those proceedings is determined.

You must consider each case on its facts. Whilst involvement in, or orders made in, Children Act 1989 proceedings do not deprive the Secretary of State of powers of deportation and removal, you must take such factors into account when deciding whether to exercise those powers, and whether doing so would be a proportionate response, in light of article 8 or article 6 of the ECHR.

You must consider whether the offences committed may be relevant to any contact particularly if the offences were in connection to the children involved in the ongoing proceedings. In some cases immigration enforcement can argue in the courts that removal would not be in breach as the proceedings can be pursued from abroad by telephone, through lawyers.

In other cases it may be appropriate to grant discretionary leave to remain on article 8 or article 6 grounds for a short period to allow the FNO to remain in the UK for the case to be concluded. For guidance on discretionary leave, see related link.

Restricted – do not disclose – start of section

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

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| About this guidance | This page tells you how to make sure foreign national offenders (FNOs), whom immigration enforcement (IE) do not intend to deport or remove or who have won appeals against a decision to deport or remove, have their stay in the UK regularised appropriately. | Links to staff intranet removed |
|--|--|---------------------------------|
| Legal barriers Granting leave to remain | It also explains where to find more information about this. | |
| Action post-deportation or removal | If enforcement action is not being pursued, you must check the immigration status of each family member and assess whether further action is needed. If a served deportation order invalidated previous leave, or where family members are overstayers' or illegal entrants, you must consider granting leave. | |
| | For more guidance on granting leave in FNO cases where deportation is not possible for legal reasons, see related link: Criminal casework: Grants of leave. | |
| | For more general guidance on discretionary leave see related link: Discretionary Leave. | |

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| About this guidance | This page tells you the action you must take following the successful deportation or removal of a foreign national offender (FNO) and any family members from the UK. | Links to staff intranet removed |
|------------------------------------|---|---------------------------------|
| <u>Legal barriers</u> | It also explains where to find more information about this. | |
| Granting leave to remain | When criminal casework has successfully deported a FNO, and any members of their family | |
| Action post-deportation or removal | (who were removed with assistance by an immigration compliance and engagement (ICE) team, formerly known as local immigration team), you must make sure certain actions are completed with regard to closing the criminal casework case and maintaining accurate and complete agency records. | |
| | For full details on these actions and how to complete a FNO case post-deportation, see related link: Post removal action. | |

guidance team.

Contact

This page explains who to contact for more help with concluding family cases in criminal Related links About this guidance casework. See also egal barriers If you have read this guidance and still need more help with this category, you must first ask Changes to this your senior caseworker or line manager. quidance Granting leave to remain If they cannot answer your question, they or you may email criminal casework operational Information owner Action post-deportation process and policy (CCOPP) using related link: Email CC process team. or removal Links to staff intranet Changes to this guidance can only be made by the modernised guidance team (MGT). If removed you think the policy content needs amending you must contact CCOPP, 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

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This page tells you about this version of the concluding family cases guidance and who owns it.

| Version | 6.0 |
|---------------------------|---|
| Valid from date | 11 November 2013 |
| Policy owner | Official – sensitive: information removed |
| | |
| Cleared by director | Official – sensitive: information removed |
| Director's role | Official – sensitive: information removed |
| Clearance date | 19 October 2011 |
| This version approved for | Official – sensitive: information removed |
| publication by | |
| Approver's role | Official – sensitive: information removed |
| Approval date | 01 November 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 CCOPP (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 See also

Changes to this guidance

Contact