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55. Detention and Temporary Release

55.1. Policy

55.1.1. General

In the 1998 White Paper “Fairer, Faster and Firmer - A Modern Approach to Immigration and Asylum” it was made clear that the power to detain must be retained in the interests of maintaining effective immigration control. However, the White Paper confirmed that there was a presumption in favour of temporary admission or release and that, wherever possible, we would use alternatives to detention (see 55.20 and chapter 57). The White Paper went on to say that detention would most usually be appropriate:

- to effect removal;
- initially to establish a person's identity or basis of claim; or
- where there is reason to believe that the person will fail to comply with any conditions attached to the grant of temporary admission or release.

A process under which asylum applicants may be detained where it appears that their claim is straightforward and capable of being decided quickly commenced at Oakington in March 2000. Detention for this purpose was at that time commonly referred to as being under the ”Oakington criteria”. A detained Fast Track Process was subsequently introduced at Harmondsworth in spring 2003 and the former “Oakington criterion” was widened so as to be capable of applying to a fast track process at any removal centre. The policy in relation to the suitability of applicants for detention in fast track processes is set out in the DFT and DNSA – Intake Selection document (see paragraph 55.4 below).

These criteria (including the fast-track process) were reiterated in the 2002 White Paper “Secure Borders, Safe Haven”. They currently represent stated policy on the use of detention. To be lawful, detention must not only be based on one of the statutory powers and accord with the limitations implied by domestic and Strasbourg case law but must also accord with this stated policy.

As well as the presumption in favour of temporary admission or release, special consideration must be given to family cases where it is proposed to detain one or more family member(s) and the family includes children under the age of 18 (please see chapter 45 for ensured family returns

process). Similarly, special consideration must be given when it is proposed to use detention powers to hold unaccompanied children pending their hand over to a local authority, or to escort such children when removing them e.g. to an EU member state. Section 55 of the Borders, Citizenship and Immigration Act 2009 (s.55) requires UK Border Agency functions to be carried out having regard to the need to safeguard and promote the welfare of children. Staff must therefore ensure they have regard to this need when taking decisions on detention involving or impacting on children under the age of 18 and must be able to demonstrate that this has happened, for example by recording the factors they have taken into account. Key arrangements for safeguarding and promoting the welfare of children are set out in the statutory guidance issued under s.55.

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55.1.2. Criminal Casework Directorate Cases

Cases concerning foreign national offenders – dealt with by the Criminal Casework Directorate (CCD) - are subject to the general policy set out above in 55.1.1, including the presumption in favour of temporary admission or release. Thus, the starting point in these cases remains that the person should be released on temporary admission or release unless the circumstances of the case require the use of detention. However, the nature of these cases means that special attention must be paid to their individual circumstances. In any case in which the criteria for considering deportation action (the “deportation criteria”) are met, the risk of re-offending and the particular risk of absconding should be weighed against the presumption in favour of temporary admission or temporary release. Due to the clear imperative to protect the public from harm from a person whose criminal record is sufficiently serious as to satisfy the deportation criteria, and/or because of the likely consequence of such a criminal record for the assessment of the risk that such a person will abscond, in many cases this is likely to result in the conclusion that the person should be detained, provided detention is, and continues to be, lawful. However, any such conclusion can be reached only if the presumption of temporary admission or release is displaced after an assessment of the need to detain in the light of the risk of re-offending and/or the risk of absconding.

The deportation criteria are:

- For non-EEA nationals, those who have been convicted in the UK of a criminal offence

and received:

- a single sentence of 12 months **[regardless of when it was passed]*; or**
- an aggregate of 2 or 3 sentences amounting to 12 months in total **over the past five years**; **or**
- a custodial sentence of any length for a serious drugs offence (as defined in our policy) **[since 1 August 2008]**

*Save where the conviction is spent under the Rehabilitation of Offenders Act before a deportation order is signed.

- For EEA cases
  - A sentence of at least 24 months (12 months where the offence involves sex, drugs or violence);
  - A recommendation from the sentencing court.

NB: From 1st August 2008, non-EEA cases convicted and sentenced to 12 months imprisonment or more are liable to automatic deportation, and are also subject to CCD's detention policy as set out in this guidance.

Further details of the policy which applies to CCD cases is set out below.

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55.1.3. Use of detention

General

Detention must be used sparingly, and for the shortest period necessary. It is not an effective use of detention space to detain people for lengthy periods if it would be practical to effect detention later in the process once any rights of appeal have been exhausted. A person who has an appeal pending or representations outstanding might have more incentive to comply with any restrictions imposed, if released, than one who is removable.

CCD cases

As has been set out above, due to the clear imperative to protect the public from harm, the risk of re-offending or absconding should be weighed against the presumption in favour of temporary admission or temporary release in cases where the deportation criteria are met. In CCD cases concerning foreign national offenders, if detention is indicated, because of the higher likelihood of risk of absconding and harm to the public on release, it will normally be appropriate to detain as long as there is still a realistic prospect of removal within a reasonable timescale. If detention is appropriate, a foreign national offender will be detained until either deportation occurs, the foreign national offender (FNO) wins their appeal against deportation (see 55.12.2. for decisions which we are challenging), bail is granted by the Immigration and Asylum Chamber, or it is considered that release on restrictions is appropriate because there are relevant factors which mean further detention would be unlawful (see 55.3.2 and 55.20.5 below). In looking at the types of factors which might make further detention unlawful, caseowners should have regard to 55.1.4, 55.3.1, 55.9 and 55.10. **Substantial weight** should be given to the risk of further offending or harm to the public indicated by the subject's criminality. Both the likelihood of the person re-offending, and the seriousness of the harm if the person does re-offend, must be considered. Where the offence which has triggered deportation is included in the list at page 63, the weight which should be given to the risk of further offending or harm to the public is **particularly substantial** when balanced against other factors in favour of release. In cases involving these serious offences, therefore, a decision to release is likely to be the proper conclusion only when the factors in favour of release are particularly compelling. In practice, release is likely to be appropriate only in exceptional cases because of the seriousness of violent, sexual, drug-related and similar offences. Where a serious offender has dependent children in the UK, careful consideration must be given not only to the needs such children may have for contact with the deportee but also to the risk that release might represent to the family and the public.

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55.1.4. Implied Limitations on the Statutory Powers to Detain

In order to be lawful, immigration detention must be for one of the statutory purposes for which the power is given and must accord with the limitations implied by domestic and ECHR case law. Detention must also be in accordance with stated policy on the use of detention. Detention

involving or impacting on children under 18 must demonstrably comply with the statutory duty under section 55 of the Borders, Citizenship and Immigration Act 2009 which requires UKBA to have regard to the need to safeguard and promote the welfare of children whilst carrying out its functions.

55.1.4.1. Article 5 of the ECHR and domestic case law

Article 5(1) of the ECHR provides:

"Everyone has the right to liberty and security of person"

No one shall be deprived of his liberty save in the circumstances specified in Article 5(1) (a)-(f) and in accordance with a procedure prescribed by law. Article 5(1) (f) states that a person may be arrested or detained to prevent his effecting an unauthorised entry into the country, or where action is being taken against them with a view to deportation or extradition.

To comply with Article 5 and domestic case law, the following should be borne in mind:

a) the relevant power to detain must only be used for the specific purpose for which it is authorised. This means that a person may only be detained under immigration powers for the purpose of preventing his unauthorised entry or with a view to his removal (not necessarily deportation). Detention for other purposes, where detention is not for the purposes of preventing unauthorised entry or effecting removal of the individual concerned, is <u>not</u> compatible with Article 5 and would be unlawful in domestic law (unless one of the other circumstances in Article 5(1)(a) to (e) applies);

b) the detention may only continue for a period that is reasonable in all the circumstances for the specific purpose;

c) if before the expiry of the reasonable period it becomes apparent that the purpose of the power, for example, removal, cannot be effected within that reasonable period, the power to detain should not be exercised; and

d) the detaining authority (be it the immigration officer or the Secretary of State), should act with reasonable diligence and expedition to effect removal (or whatever the purpose of the power in question is).

Article 5(4) states that everyone who is deprived of his liberty shall be entitled to take proceedings

by which the lawfulness of his detention is decided speedily by a court. This Article is satisfied by a detainee's right to challenge the lawfulness of a decision to detain by habeas corpus or judicial review in England and Wales, or by judicial review in Scotland.

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55.1.4.2. Article 8 of the ECHR

Article 8(1) of the ECHR provides:

"Everyone has the right to respect for private and family life…."

Article 8 is a qualified right. Interference with the right to family life is permissible under Article 8(2) if it is (i) in accordance with the law; (ii) for a legitimate aim and (iii) proportionate. In family cases, the right extends to every member of the household and there should be consideration given to whether there is any interference with the rights of each individual and, if there is, whether it is lawful and proportionate to the legitimate aim.

It may be necessary on occasion to detain the head of the household or another adult who is part of the care arrangements for children, thus separating a family. Depending on the circumstances of the case, this may represent an interference with Article 8 rights. It is well established that the interests of the State in maintaining an effective immigration policy for the economic well-being of the country and for the prevention of crime and disorder, justifies interference with rights under Article 8(1). It is therefore arguable that a decision to detain which interferes with a person's right to family life in order to enforce immigration control and maintain an effective immigration policy pursues a legitimate aim and is in accordance with the law. It is only by considering the needs and circumstances of each family member that a determination can be made as to whether the decision is, or can be managed in a way so that it is, proportionate.

UKBA staff should be clear and careful when deciding that the decision to detain (and thereby interfere with family life) was proportionate to the legitimate aim pursued. Assessing whether the interference is proportionate involves balancing the legitimate aim in Article 8(2) against the seriousness of the interference with the person's right to respect for their family life. The assessment must also have regard to the need to safeguard and promote the welfare of children. Even though the decisions may have been taken to avoid detaining the children with their head of

family, or other adult who is part of their care arrangements, in the interest of their welfare, the impact of the separation must be considered carefully. Any information concerning the children that is available or can reasonably be obtained must be considered. The conclusion reached will depend on the specific facts of each case and will therefore differ in every case. Regular reviews of detention should consider proportionality with regard to each individual, including any new information that is obtained.

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55.2. Power to detain

The power to detain an illegal entrant, seaman deserter, port removals or a person liable to administrative removal (or someone suspected to be such a person) is in paragraph 16(2) of Schedule 2 to the 1971 Act (as applied by section 10(7) of the Immigration and Asylum Act 1999). Paragraph 16(2) states:

"If there are reasonable grounds for suspecting that a person is someone in respect of whom directions may be given under any of paragraphs 8 to 10 or 12 to 14, that person may be detained under the authority of an immigration officer pending a) a decision whether or not to give such directions; b) his removal in pursuance of such directions".

Section 62 of the Nationality, Immigration and Asylum Act 2002 introduced a free-standing power for the Secretary of State (i.e. an official acting on his behalf) to authorise detention in cases where he has the power to set removal directions.

The power to detain a person who is subject to deportation action is set out in paragraph 2 of Schedule 3 to the 1971 Act, and section 36 of the UK Borders Act 2007 (automatic deportation). This includes those whose deportation has been recommended by a Court pending the making of a deportation order, those who have been served with a notice of intention to deport pending the making of a deportation order, those who are being considered for automatic deportation or pending the making of a deportation order as required by the automatic deportation provisions, and those who are the subject of a deportation order pending removal. **Detention in these circumstances must be authorised at senior caseworker level in the Criminal Casework Directorate (CCD)** (see 55.5.2)**.**

Detention can only lawfully be exercised under these provisions where there is a realistic prospect of removal within a reasonable period. The decision to detain may have been taken under circumstances where an individual claimed to have a family life in the UK but there was no information reasonably available to allow independent verification or consideration. In such cases, information must be gathered as soon as possible and consideration given at the initial and subsequent detention reviews. **In cases where a family life in the UK is known to be subsisting and detention will result in the family being split, the split must be authorised by a Director on the basis of a written consideration of the welfare of any children involved.**

(The power to authorise the detention of a person who may be required to submit to examination, or further examination under paragraph 2 or 2A of Schedule 2 to the 1971 Act, pending his examination and pending a decision to give or refuse him leave to enter/cancel his leave to enter, is in paragraph 16(1) and (1A) of Schedule 2 to the 1971 Act. There is also a limited power to detain a person who is subject to further examination on embarking from the UK for up to 12 hours only pending the completion of the examination under paragraph 16(1B). These powers are not relevant to enforcement cases).

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55.3. Decision to detain (excluding pre-decision fast track and CCD cases)

1. There is a presumption in favour of temporary admission or temporary release - there must be strong grounds for believing that a person will not comply with conditions of temporary admission or temporary release for detention to be justified.

2. All reasonable alternatives to detention must be considered before detention is authorised.

3. Each case must be considered on its individual merits, including consideration of the duty to have regard to the need to safeguard and promote the welfare of any children involved.

55.3.A. Decision to detain-CCD cases

As has been set out above, public protection is a key consideration underpinning our detention policy. Where a foreign national offender meets the criteria for consideration of deportation, the

presumption in favour of temporary admission or temporary release may well be outweighed by the risk to the public of harm from re-offending or the risk of absconding, evidenced by a past history of lack of respect for the law. However, detention will not be lawful where it would exceed the period reasonably necessary for the purpose of removal or where the interference with family life could be shown to be disproportionate. In assessing what is reasonably necessary and proportionate in any individual case, the caseworker must look at all relevant factors to that case and weigh them against the particular risks of re-offending and of absconding which the individual poses. In balancing the factors to make that assessment of what is reasonably necessary, UKBA distinguishes between more and less serious offences. A list of those offences which UKBA considers to be more serious is set out at page 63.

More serious offences

A conviction for one of the more serious offences is strongly indicative of the greatest risk of harm to the public and a high risk of absconding. As a result, the high risk of public harm carries **particularly substantial weight** when assessing if continuing detention is reasonably necessary and proportionate. So, in practice, it is likely that a conclusion that such a person should be released would only be reached where there are exceptional circumstances which clearly outweigh the risk of public harm and which mean detention is not appropriate. Caseworkers must balance against the increased risk, including the particular risk to the public from re-offending and the risk of absconding in the individual case, the types of factors normally considered in non-FNO detention cases, for example, if the detainee is mentally ill or if there is a possibly disproportionate impact on any dependent child under the age of 18 from continued detention. Caseworkers are reminded that what constitutes a “reasonable period” for these purposes may last longer than in non-criminal cases, or in less serious criminal cases, particularly given the need to protect the public from serious criminals due for deportation.

Less serious offences

To help caseworkers to determine the point where it is no longer lawful to detain, a set of criteria are applied which seek to identify, in broad terms, the types of cases where continued detention is likely to become unlawful sooner rather than later by identifying those who pose the lowest risk to the public and the lowest risk of absconding. These provide guidance, but all the specific facts of each individual case still need to be assessed carefully by the caseworker. As explained above, where the person has been convicted of a serious offence, the risk of harm to the public through re-offending and risk of absconding are given substantial emphasis and weight. While

these factors remain important in assessing whether detention is reasonably necessary where a person has been convicted of a less serious offence, they are given less emphasis than where the offence is more serious, when balanced against other relevant factors. Again, the types of other relevant factors include those normally considered in non-FNO detention cases, for example, whether the detainee is mentally ill or whether their release is vital to the welfare of child dependants.

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55.3.1. Factors influencing a decision to detain

All relevant factors must be taken into account when considering the need for initial or continued detention, including:

- What is the likelihood of the person being removed and, if so, after what timescale?
- Is there any evidence of previous absconding?
- Is there any evidence of a previous failure to comply with conditions of temporary release or bail?
- Has the subject taken part in a determined attempt to breach the immigration laws? (e.g. entry in breach of a deportation order, attempted or actual clandestine entry)
- Is there a previous history of complying with the requirements of immigration control? (e.g. by applying for a visa, further leave, etc)
- What are the person's ties with the United Kingdom? Are there close relatives (including dependants) here? Does anyone rely on the person for support? If the dependant is a child or vulnerable adult, do they depend heavily on public welfare services for their daily care needs in lieu of support from the detainee? Does the person have a settled address/employment?
- What are the individual's expectations about the outcome of the case? Are there factors such as an outstanding appeal, an application for judicial review or representations which

afford incentive to keep in touch?

- Is there a risk of offending or harm to the public (this requires consideration of the likelihood of harm **and** the seriousness of the harm if the person does offend)?

- Is the subject under 18?

- Does the subject have a history of torture?

- Does the subject have a history of physical or mental ill health?

(See also sections 55.3.2 – Further guidance on deciding to detain in CCD cases, 55.6 - detention forms, 55.7 – detention procedures, 55.9 - special cases and 55.10 – persons considered unsuitable for detention).

Once detention has been authorised, it must be kept under close review to ensure that it continues to be justified.

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55.3.2. Further guidance on deciding to detain in CCD cases

55.3.2.1 This section provides further guidance on assessing whether detention is or continues to be within a reasonable period in CCD cases where the individual has completed their custodial sentence and is detained following a court recommendation, following a decision to deport, pending deportation, or under the automatic deportation provisions of the UK Borders Act 2007. It should be read in conjunction with the guidance in 55.3.1 above, with **substantial weight** being given to the risk of further offending and the risk of harm to the public. Whilst as a matter of practice, the need to protect the public has the consequence that CCD cases may well be detained pending removal, caseworkers must still carefully consider all relevant factors in each individual case to ensure that there is a realistic prospect of removal within a reasonable period of time. In family cases, each individual must be considered to see if there is interference with their Article 8 rights and, if so, whether it is proportionate. For example, thought should be given to whether it is appropriate to detain family members due to be deported or removed with the foreign national offender and, if so, when – please see chapter 45 for cases where one or more family

member(s) is under the age of 18. An up to date record of convictions must be obtained from the PNC in order to inform decisions to detain or maintain detention in CCD cases. Please also see 55.8 regarding detention reviews and 55.20.5 for instructions on managing contact where a CCD case is released on restrictions. Where a time served foreign national offender has a conviction for an offence in the list below, **particularly substantial weight** should be given to the public protection criterion in 55.3.1 above when considering whether release on restrictions is appropriate. In cases involving these serious offences, therefore, a decision to release is likely to be the proper conclusion only when the factors in favour of release are particularly compelling because of the significant risk of harm to the public posed by those convicted of violent, sexual, drug-related and other serious offences. In practice, release is likely to be appropriate only in exceptional cases. This does not mean, however, that individuals convicted of offences on the list can be detained indefinitely and, regardless of the effects of detention on their dependants. All relevant factors (see 55.3.1) must be considered when assessing whether there is a realistic prospect of removal within a reasonable timescale. See 55.3.2.4 to 55.3.2.14 for more detail on the way to approach the application of the factors in 55.3.1 in CCD cases.

55.3.2.2 Any decision not to detain or to release a time served foreign national offender on restrictions must be agreed at Grade 7/Assistant Director level and authorised by the UK Border Agency's Chief Executive or board member deputising in her absence. Cases should be referred on the form below, which should cover all relevant facts in the case history, including any reasons why bail was refused previously. If it is proposed to release a serious criminal to rejoin a family including dependent children under the age of 18, advice should have been sought from the Office of the Children's Champion and it is likely that a referral to the relevant local authority children's service will be necessary.

55.3.2.3 Please see 55.20.5 regarding contact management arrangements for those subject to release on restrictions.

Decisions to maintain detention where the FNO has provided evidence of a family life in the UK require a consideration of Article 8 issues and, if the decision results in a family split (i.e. rest of the family will not be reunited with the FNO in detention), it should be countersigned at Grade 5/Director level. Similarly, decisions to release high risk offenders on welfare grounds should be subject to Director level approval before a submission is sent to the Chief Executive.

Application of the factors in 55.3.1 to CCD cases

Imminence

55.3.2.4 In all cases, caseworkers should consider on an individual basis whether **removal is imminent**. If removal is imminent, then detention or continued detention will usually be appropriate. As a guide, and for these purposes only, removal could be said to be imminent where a travel document exists, removal directions are set, there are no outstanding legal barriers and removal is likely to take place in the next four weeks. Cases where removal is not imminent due to delays in the travel documentation process in the country concerned may also be considered for release on restrictions. However, where the FNO is frustrating removal by not co-operating with the documentation process, and where that is a significant barrier to removal, these are factors weighing strongly against release.

Where a family has been split and removal is imminent, consideration needs to be given to whether and, if so, how to reunite the family (see chapter 45 for cases involving children under the age of 18). If the reunification is to take place in the detention estate (i.e. the remaining family members are to be detained), it should be planned in advance with welfare staff at the removal centre. If it is to take place at the airport, then the caseworker should plan the event with the escort staff to minimise upset to any children involved.

Risk of absconding

55.3.2.5 If removal is not imminent, the caseworker should consider the **risk of absconding**. Where the person has been convicted of a more serious offence appearing in the list at 55.3.2.1, then this may indicate a high risk of absconding. An assessment of the risk of absconding will also include consideration of previous failures to comply with temporary release or bail. Individuals with a long history of failing to comply with immigration control or who have made a determined attempt to breach the UK's immigration laws would normally be assessed as being unlikely to comply with the terms of release on restrictions. Examples of this would include multiple attempts to abscond or the breach of previous conditions, and attempts to frustrate removal (not including the exercise of appeal rights). Also relevant is where the person's behaviour in prison or IRC (if known) has given cause for concern. The person's family ties in the UK and their expectations about the outcome of the case should also be considered and attention paid to the requirement to have regard to the need to safeguard and promote the welfare of any children involved. The greater the risk of absconding, the more likely it is that detention or continued detention will be appropriate. Where the individual has complied with attempts to re-

document them but difficulties remain due to the country concerned, this should not be viewed as non-compliance by the individual.

Risk of Harm

55.3.2.6 **Risk of harm to the public** will be assessed by NOMS unless there is no Offender Assessment System (OASYS) or pre-sentence report available. There will be no licence and OASYS report where the sentence is less than 12 months. NOMS will only be able to carry out a meaningful risk assessment in these cases where a pre-sentence report exists (details of which can be obtained from the prison) or where the subject has a previous conviction resulting in a community order. Cases owners should telephone the Offender Manager for an update in cases where the risk assessment has been obtained less than six months before (for example in a bail application). Where NOMS can provide an assessment, it can be obtained directly from the offender manager in the Probation Service in the same way that information is obtained in bail cases and should be received within 3 days. The bail process instruction includes details on how to contact the Offender Manager and identify the Probation Areas' Single Point of Contact (SPOC). The form below should be completed and sent by fax or e-mail to the Offender Manager with a copy in all cases to the SPOC. A record should be kept of the date the form is sent and the date it is returned. The completed form will be returned to the Case Owner by the Offender Manager once the assessment is complete. In cases of query, Offender Managers should be referred, in the first instance, to Probation Circular 32/2007 which includes a copy of the reference form and explains that CCD may seek information when considering detention. Further reference to NOMS will also be essential in cases where it is decided to end detention.

55.3.2.7 Individual cases of difficulty in obtaining licences, identifying Offender Managers or obtaining risk assessments which cannot be resolved by contact with the Prison Service (for the licence) or the Probation Service Single Point of Contact (for obtaining the risk assessment) should be referred to the Team Leader and/or the AD. If the problem cannot be resolved in the Team, then the AD should refer the case to the Process Team via the Process Team inbox.

The Process Team will follow up queries centrally with NOMS and provide advice on further action. In every case where the subject would have been the subject of a licence (sentences of 12 months or longer, sentences for shorter periods adding up to 12 months or longer, or offenders under 22 years or age) a risk assessment should be requested from the relevant Offender Manager and cases should not be taken forward without a reply from the Offender Manager being obtained.

55.3.2.8 Where NOMS are unable to produce a risk assessment and the Offender Manager advises that this is the case, Case Owners will need to make a judgement on the risk of harm based on the information available to them. Factors relevant to this will be the nature of the original offence, any other offences committed, record of behaviour in prison and or IRC and general record of compliance. A PNC check should always be made. Where there is a conviction for an offence on the list at 55.3.2.1 above, the nature of the offence is such that the person presents a high risk on the table below. Such high risk offences should be given particularly substantial weight when assessing reasonableness to detain. Those with a long record of persistent offending are likely to be rated in the high or medium risk. Those with a low level, one-off conviction and, with a good record of behaviour otherwise are likely to be low risk.

55.3.2.9 Where possible the NOMS assessment will be based on the Offender Assessment System (OASys) and will consist of two parts-as follows-

i) A risk of harm on release assessed as low, medium, high or very high (that is, the seriousness of harm if the person offends on release)
ii) The likelihood of re-offending, assessed as low, medium or high.

A marking of high or very high in **either** of these areas should be treated as an assessment of a high risk of harm to the public.

55.3.2.10 In cases marked medium or low in either or both category the following table should be used to translate the double assessment produced by NOMS into a single assessment for our purposes, this gives greater weight to the risk (i.e. seriousness) of harm than to the risk of re-offending.

Seriousness of harm if offends on release	VH	VH	VH	H	H	H	M	M	M	L	L	L
Likelihood of re-offending	H	M	L	H	M	L	H	M	L	H	M	L
Overall assessment	H	H	H	H	H	H	H	M	M	H	L	L

VH =Very high, H=High, M=Medium, L=Low

55.3.2.11 Those assessed as low or medium risk should generally be considered for management by rigorous contact management under the instructions in 55.20.5. Any particular individual factors related to the profile of the offence or the individual concerned must also be taken into consideration and may indicate that maintaining management by rigorous contact management may not be appropriate in an individual case. In cases involving serious offences on the list at 55.3.2.1 above, a decision to release is likely to be the proper conclusion only when the factors in favour of release are particularly compelling. In practice, release is likely to be appropriate only in exceptional cases because of the seriousness of violent, sexual, drug-related and similar offences.

55.3.2.12 Where the NOMs assessment is not based on an OASys Report NOMs will endeavour to provide other information on risk of harm and likelihood of re-conviction, stating their sources. The Offender Group Reconviction Scale (OGRS) may be one source of risk reconviction information provided. It estimates the statistical probability that offenders, with a given history of offending, will be reconvicted of a standard list offence within two years of release if sentenced to custody. It does not define the probability that a named offender will be reconvicted. OGRS uses an offender's past and current history of standard list offences only. There may be cases however, when Offender Managers are unable to provide any risk information-see paragraph 55.3.2.8 for action in these cases.

General additional considerations relating to bail applications

55.3.2.13 In cases where the individual has previously been refused bail by the Immigration and Asylum Chamber, the opinions of the Immigration Judge will be relevant. If bail was refused due to the risk of absconding or behavioural problems during detention, this would be an indication that the individual should not normally be released unless circumstances have changed. If bail was refused due to lack of sureties, the case owner might want to recommend release providing all the other criteria in this section indicate release is appropriate.

55.3.2.14 Where the Case Owner thinks an individual who has applied for bail is appropriate for release on bail the Case Owner should:

- refer to the Chief Executive's Office for confirmation that the individual meets the criteria and should be released;
- not oppose bail;

- prepare a bail summary explaining that the UK Border Agency do not oppose release on bail but asking that restrictions be applied (electronic monitoring and reporting twice a week).

The above list of factors is not exhaustive and that the caseworker should consider all relevant factors when deciding whether it is lawful to detain – whether removal will take place within a reasonable period.

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55.4. Fast Track Asylum Processes

The UK Border Agency has operated a fast track asylum process since March 2000. Detention for a short period of time to enable a rapid decision to be taken on an asylum/human rights claim has been upheld as lawful by domestic courts and the European Court of Human Rights [*Saadi v UK 13229/03*]. The first fast track processing centre was at Oakington. In November 2002, a process of handling cases which are capable of being certified as clearly unfounded under section 94 of the Nationality, Immigration and Asylum Act 2002 (commonly referred to as non-suspensive appeal (NSA) cases) was introduced at Oakington. If a case is certified as clearly unfounded, an applicant has no right of appeal against that decision whilst in the United Kingdom.

A Detained Fast Track process, which includes an expedited in-country appeals procedure for adult male claimants, commenced at Harmondsworth in spring 2003. In May 2005, the Detained Fast Track was expanded to include the processing of adult female claimants at Yarl's Wood. Claimants in the Detained Fast Track process that carries an in-country right of appeal may be detained only at sites specified in the relevant Statutory Instrument (currently the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 (as amended) which came in to force on 4 April 2005. The current designated sites are Harmondsworth, Yarl's Wood, Colnbrook and Campsfield. Detention other than for fast track processing must be arranged via the normal process.

Since the autumn of 2006, Yarl's Wood has also dealt with female detained NSA cases as well as female DFT cases. Oakington ceased to be a NSA location on 1 October 2008 and male detained NSA cases are now processed at Harmondsworth. In practice, neither the DFT nor the detained NSA cases involve the detention of children. Where there are child dependants, the

consideration about splitting families will apply.

The policy in relation to the suitability of applicants for detention in Fast Track processes is set out in the DFT and DNSA – Intake Selection document: http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/dftanddnsaintakeselection?view=Binary .

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55.5. Levels of authority for detention

Although the power in law to detain an illegal entrant rests with the IO, or the relevant non-warranted immigration caseworker under the authority of the Secretary of State, in practice, an officer of at least CIO rank, or a HEO caseworker, must give authority. Detention must then be reviewed at regular intervals (see 55.8). Cases involving the splitting of a family must be authorised by a Director (see 45.6.3).

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55.5.1. Authority to detain an illegal entrant or person served notice of administrative removal

An illegal entrant or person served with notice of administrative removal can be detained on the authority of a CIO/HEO (but see 55.5.3 and 55.8).

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55.5.2. Authority to detain persons subject to deportation action by CCD

The decision as to whether a person subject to deportation action should be detained under Immigration Act powers is taken at senior caseworker level in CCD. Where an offender, who has been recommended for deportation by a Court or who has been sentenced to at least 12 months imprisonment, is serving a period of imprisonment which is due to be completed, the decision on whether he should be detained under Immigration Act powers (on completion of his custodial

sentence) pending deportation must be made at senior caseworker level in CCD in advance of the case being transferred to CCD. A person should not be detained under immigration powers at the same time that they are detained under an order or sentence of a court. Therefore the sensible course is for any immigration decision to detain to be expressed as taking effect once any existing detention ends. This is sometimes referred to as "dual detention". It is important in criminal cases to monitor the offender's release date for service of further detention/restriction forms at the appropriate time. CCD staff should consider with prison and probation staff whether a prisoner has a substantive family life in the UK and if so should follow the relevant procedure.

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55.5.3. Authority to detain - special cases

Detention in the following circumstances must be authorised by an officer of at least the rank stated:

- Sensitive cases: Inspector/SEO or Assistant Director;
- Spouses of British Citizens or EEA nationals: initially, an Inspector/SEO, but if strong representations are made, Assistant Director (see 55.9.2);
- Unaccompanied young persons, under 18, whilst urgent alternative care arrangements are made (including age dispute cases where the person concerned is being treated as a child): initially, an Inspector/SEO but as soon as possible by an Assistant Director. The decision to detain in such exceptional cases will be taken solely for child protection reasons and must take account of the duty to have regard to the need to safeguard and promote the welfare of children: this must be demonstrable in line with the statutory guidance issued by the Secretary of State under section 55 of the 2009 Act. Such persons may only be detained overnight and in a place of safety as defined in the Children and Young Persons Act 1933 (for England and Wales), or the Children (Scotland) Act 1995 (for Scotland). For Northern Ireland, "place of safety" is defined as: a home provided under Part VII of the Children (Northern Ireland) Order 1995; any police station; any hospital or surgery; or any other suitable place, the occupier of which is willing temporarily to receive a person under the age of 18 - see 55.9.3.]

- Unaccompanied children who are to be returned to an EU Member State under the Dublin Regulation or, in the case of both asylum and non-asylum applicants, to their home country

may be detained in order to support their removal with appropriate escorts. Such detention will occur only on the day of the planned removal to enable the child to be properly and safely escorted to their flight and/or to their destination. It is solely for escorting purposes and will not involve overnight stays at IRCs or STHFs. Detention in such cases must be authorised by an Assistant Director;

- In CCD cases, an FNO under the age of 18 who has completed a custodial sentence may continue to be detained in the juvenile secure estate in exceptional circumstances where it can be shown that they pose a serious risk to the public and a decision to deport or remove has been taken. Such detention is subject to the advice of the Family Returns Panel and Ministerial authorisation;

- Families with minor children: In-country ensured returns and CCD cases – Inspector/SEO on the advice of the Family Returns Panel (see Chapter 45);

- Detention in police cells for longer than two nights: Inspector/SEO.

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55.6. Detention forms

The 1998 White Paper stated that written reasons for detention should be given in all cases at the time of detention and thereafter at monthly intervals. Recognising that most people are detained for just a few hours or days, it was stated that initial reasons would be given by way of a checklist similar to that used for bail in a magistrates' court.

The forms IS 91RA 'Risk Assessment' (see 55.6.1), IS91 'Detention Authority' (see 55.6.2), IS91R 'Reasons for detention' (see 55.6.3) and IS91M 'Movement notification' (see 55.6.4) replace all of the following forms:

The old IS91, IS150A, IS150B, IS160, IS161, IS166, IS167, IS91D, IS91E, IS91E (Annex) and IS91 (Fingerprinting).

CCD has a number of CCD specific forms: IS91 RA Part A CCD is the CCD equivalent of the IS 91 RA. The ICD 1913 is sent in place of the IS91R and the ICD 1913AD covers detention in

automatic deportation cases.

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55.6.1. Form IS 91RA Risk Assessment

Once it has been identified that the person is one who should be detained, consideration should be given as to what, if any, level of risk that person may present whilst in detention. IOs/ persons acting on behalf of the Secretary of State should undertake the checks detailed on form IS91RA part A 'Risk Factors' (in advance, as far as possible, in a planned operation/visit when it is anticipated detention will be required).

The results of these checks should be considered by the IO/ person acting on behalf of the Secretary of State along with information available regarding other aspects of behaviour (as detailed on the form) which may present a risk, and the conclusions regarding each aspect identified.

Where, under the ensured returns process, it is proposed to detain any child under the age of 18 with their parents or guardians, (see chapter 45 and section 55.9.4 below), the caseworker must actively search for any information relevant to the requirement to have regard to the need to safeguard and promote their welfare. Such a search is likely to involve a request for information from a local authority children services and a primary care trust. In health matters, the permission of the family is needed to access information. Any safeguarding or welfare issues relating to children under the age of 18 should be recorded on the Family Welfare Form (see chapter 45.1).

It is vital to the integrity of the detention estate that all potential risk factors detailed on the IS 91RA form are addressed, with the form being annotated appropriately. Conclusions should be recorded as to whether or not the individual circumstances may present a potential area of risk. Amplifying notes must be added in the 'comments' section as appropriate and the form must be signed and dated.

Once detention space is required the IS91RA must be faxed to the Detainee Escorting and Population Management Unit (DEPMU) where staff will assess risk based upon the information provided on the IS91RA part A and decide on the detention location appropriate for someone presenting those risks and/or needs. The issue of an IS91 'Detention Authority' will be authorised with the identified risks recorded in the 'risk factors' section of this form. Risk assessments

should also be completed on the appropriate forms for fast track asylum cases.

In cases where the potential risk factors cannot be addressed in advance they should be undertaken immediately and the IS91RA part A despatched as above. However, it may not always be possible to do this if the potential detainee has, for example, been arrested by the police or picked up in the field and either an IO cannot immediately attend or the checks cannot be completed due to the lateness of the hour. In such cases it will be appropriate to issue an IS91 to the police, as below, with the "risk factors" section of the form completed as far as possible. However, in such circumstances the IS91RA part A should be completed and forwarded to DEPMU as soon as possible and, in all cases, no later than 24 hours after entry into detention at a police station and always before entry into the immigration detention estate is sought.

Risk assessment is an ongoing process. Should further information become available to the LIT which impacts upon potential risk (either increasing or decreasing risk) during a detainee's detention, that information should be forwarded to DEPMU using form IS91RA part C. On receipt of this form (which can also be completed by other UKBA or removal centre management/medical staff) DEPMU will reassess risk and reallocate detention location as appropriate. Any alteration in their assessment of risk will require a new IS91 to be issued on which up-to-date risk factors will be identified. The LIT must fax this new IS91 to the detention location on receiving DEPMU's reassessment of alteration in potential risk.

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55.6.2. Form IS91 Authority to Detain

Once DEPMU has decided on detention location they will forward an IS91RA part B to the detaining office detailing the detention location and the assessment of risk. This must be attached to form IS91 and served by the IO/person acting on behalf of the Secretary of State on the detaining agent. This allows for the subject to be detained in their custody under Immigration Act powers. The IO/ person acting on behalf of the Secretary of State must complete the first three sections of the form, transferring the assessment of risk as notified by DEPMU onto section 3, complete the first entry of section 4 transfer record and sign and date the form on page 1. The detaining agent completes the further entries on section 4 of the form, the Transfer Record. The IO/ person acting on behalf of the Secretary of State must staple a photograph of the detainee to

the form and authenticate this by signing and dating it before handing the form, in a clear plastic pouch, to the detaining agent. Detaining agents have been instructed not to accept detainees without the correct documentation. The only exception to this will be when there is no UKBA presence at a police station or prison. In these circumstances, a copy of the IS91, complete with photograph, will need to be faxed. In such cases, DEPMU will advise as to where the original IS91 should be sent.

Form IS91 is issued once and only once for any continuous period of detention, irrespective of how many detaining agents there are during the course of a person's detention. The exception to this is cases where there is alteration in risk factors when DEPMU will authorise the issue of a new IS91, which should be sent to the detention location to be attached to the original form. Where there is a change in the detaining agent, for example from the police to the escort contractor, it is for the first detaining agent to complete the Transfer Record on the form and forward it to the second detaining agent along with the detainee. Form IS91 must be issued for each person detained including for each child/young person. The immigration officer/ person acting on behalf of the Secretary of State must complete all sections of the form as indicated. The completed form should then be handed to the detaining agent (e.g. the in-country escorting contractor). The detaining agent will not accept a detainee without correct original documentation.

IS91s are to be returned by the final detaining agency to the Detention Cost Recovery Unit (DCRU) of the Assurance, Performance and Resource Directorate (APRD), 6th Floor, Green Park House. Any IS91s that are returned to a local immigration team at the end of a period of detention must be forwarded to DCRU without delay.

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55.6.3. Form IS91R Reasons for Detention

This form is in three parts and must be served on every detained person, including each child, at the time of their initial detention. The IO/person acting on behalf of the Secretary of State must complete all three sections of the form. The IO/person acting on behalf of the Secretary of State must specify the power under which a person has been detained, the reasons for detention and the basis on which the decision to detain was made. The detainee must also be informed of his bail rights and the IO/person acting on behalf of the Secretary of State must sign, both at the bottom of the form and overleaf, to confirm the notice has been explained to the detainee (using

an interpreter where necessary) and that he has been informed of his bail rights.

It should be noted that the reasons for detention given could be subject to judicial review. It is therefore important to ensure they are always **justified and correctly stated**. A copy of the form must be retained on the caseworking file. If any of the reasons for detention given on the form IS91R change, it will be necessary to prepare and serve a new version of the form.

It is important that the detainee understands the contents of the IS91R. If he does not understand English, officers should ensure that the form's contents are interpreted. Failure to do so could lead to successful challenge under the Human Rights Act (Article 5(2) of the ECHR refers).

The six possible reasons for detention are set out on form IS91R and are listed below. The IO/ person acting on behalf of the Secretary of State must tick all the reasons that apply to the particular case:

- You are likely to abscond if given temporary admission or release
- There is insufficient reliable information to decide on whether to grant you temporary admission or release
- Your removal from the United Kingdom is imminent
- You need to be detained whilst alternative arrangements are made for your care
- Your release is not considered conducive to the public good*
- I am satisfied that your application may be decided quickly using the fast track asylum procedures

*Where this box is ticked in CCD cases, caseowners should additionally indicate whether the offence was more or less serious.

Fourteen factors are listed, which will form the basis of the reasons for the decision to detain. The IO/person acting on behalf of the Secretary of State must tick all those that apply to the particular case:

- You do not have enough close ties (e.g. family or friends) to make it likely that you will stay in one place
- You have previously failed to comply with conditions of your stay, temporary admission or release

- You have previously absconded or escaped
- On initial consideration, it appears that your application may be one which can be decided quickly
- You have used or attempted to use deception in a way that leads us to consider that you may continue to deceive
- You have failed to give satisfactory or reliable answers to an Immigration Officer's enquiries
- You have not produced satisfactory evidence of your identity, nationality or lawful basis to be in the United Kingdom
- You have previously failed, or refused to leave the United Kingdom when required to do so
- You are a young person without the care of a parent or guardian
- Your health gives serious cause for concern on grounds of your own wellbeing and/or public health or safety
- You are excluded from the United Kingdom at the personal direction of the Secretary of State
- You are detained for reasons of national security, the reasons are/will be set out in another letter
- Your previous unacceptable character, conduct or associations
- I consider this reasonably necessary in order to take your fingerprints because you have failed to provide them voluntarily

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55.6.4. Form IS91M Movement Notification

This form will only be used in very few cases where neither the detention nor the movement of a detainee is being arranged via DEPMU. The form must be completed and used to notify both the detaining agent and the escorting authority of the proposed move.

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55.7. Detention procedures

55.7.1. Procedures when detaining an illegal entrant or person served with notice of administrative removal

- Obtain the appropriate authority to detain;
- issue IS 98 and 98A (bail forms) and advise the person of his right to apply for bail;
- conduct 'risk assessment' procedures as detailed in paragraph 55.6.1
- complete IS91 in full for the detaining authority;
- complete and serve form IS91R on the person being detained, explaining its contents to the person (via an interpreter if necessary);
- confirm detention to DEPMU as soon as possible and they will allocate a reference number;
- complete IS93 for the port/local immigration team casework file;
- always attach a 'detained' flag, securely stapled, to the port/local immigration team casework file;
- review detention as appropriate.

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55.8. Detention reviews

Initial detention must be authorised by a CIO/HEO or Inspector/SEO (but see section 55.5). In all cases of persons detained solely under Immigration Act powers, continued detention must as a minimum be reviewed at the points specified in the appropriate table below. At each review, robust and formally documented consideration should be given to the removability of the detainee. Furthermore, robust and formally documented consideration should be given to all other information relevant to the decision to detain. Additional reviews may also be necessary on an ad hoc basis, e.g. where there is a change in circumstances relevant to the reasons for detention. Where detention involves or impacts on children under the age of 18, reviewing officers should have received training in children’s issues (i.e. Tiers 1 and 2 of Keeping Children Safe) and must demonstrably have regard to the need to safeguard and promote the welfare of children.

Rule 9 of the Detention Centre Rules 2001 sets out the statutory requirement for detainees to be provided with written reasons for detention at the time of initial detention, and thereafter monthly (in this context, monthly means every 28 days). The written reasons for continued detention at the one month point and beyond should be based on the outcome of the review of detention.

Apart from the statutory requirement above, detention should also be reviewed during the initial stages, i.e. in the first 28 days. This does not apply in CCD cases where detainees come from prison and their personal circumstances have already been taken into account by UKBA when the original decision to detain was made. However, CCD cases involving the detention of children must be reviewed at days 7, 10, 14 and every seven days thereafter, in conjunction with the Family Returns Unit, to ensure detention remains lawful and proportionate: in practice, this will apply only to those exceptional cases where an FNO under 18 is being detained pending deportation or removal.

Detention reviews are necessary in all cases to ensure that detention remains lawful and in line with stated detention policy at all times.

Each UKBA region is responsible for conducting its own detention reviews. Table 1, below, sets out the minimum requirements in respect of the specific stages and levels at which reviews must be conducted.

The review of detention involving Third Country Unit (TCU) and Criminal Casework Directorate (CCD) cases are subject to different arrangements which are outlined in Tables 2 and 3 respectively.

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Table 1: Review of Detention (non-CCD/TCU cases)

Period in Detention	Review Authorised by:
24 hours	Inspector/SEO
7 days	CIO/HEO
14 days	Inspector/SEO
21 days	CIO/HEO
28 days	Inspector/SEO
2 months	Inspector/SEO
3 months	Inspector/SEO
4 months	Inspector/SEO
5 months	Inspector/SEO
6 months	Assistant Director
7 months	Assistant Director
8 months	Assistant Director
9 months	Deputy Director
10 months	Deputy Director
11 months	Deputy Director
12 months and monthly thereafter	Director

If there is a significant/material change in circumstances between weekly reviews during the initial stages of detention, an Inspector/SEO must conduct a review. Where there is a significant/material change in circumstances during later stages of detention, a review must be conducted by the relevant grade for the length of time in detention at the point of the change.

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TCU Cases[1]

TCU cases are reviewed on a weekly basis as well as at other specific points indicated in Table 2, below. Detainees should be provided with written reasons for detention at the time of initial detention and monthly (every 28 days) thereafter.

[1] Except Damaged Fingerprint Cases and cases where the detainee has lodged an application for judicial review, which has not yet been resolved - these reviews are conducted in accordance with Table 1.

Table 2: Review of Detention in TCU Cases[1]

Period in Detention	Review Authorised by:
24 hours	CIO/HEO
7 days	CIO/HEO
14 days	CIO/HEO
21 days	CIO/HEO
28 days	Inspector/SEO
Weekly reviews between 28 and 40 days	Inspector/SEO
40 days	Assistant Director
Weekly reviews between 40 and 80 days	Inspector/SEO
80 days	Assistant Director
Weekly reviews between 80days and 6 months	Inspector/SEO
Weekly reviews between 6 and 11 months	Deputy Director
12 months and over	Director

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CCD Cases

There is no requirement for adult detention to be reviewed during the early stages (first 28 days) in CCD cases. Reviews should be conducted monthly (for review purposes this means every 28 days) at the levels indicated in Table 3, below.

Table 3: Review of Detention in CCD Cases

Period in Detention	Review Authorised by:
1 month	SEO/Inspector
2 months	Assistant Director
3 months	HEO/CIO
4 months	SEO/Inspector
5 months	HEO/CIO
6 months	HEO/CIO
7 months	Assistant Director
8 months	HEO/CIO

Period in Detention	Review Authorised by:
9 months	SEO/Inspector
10 months	Assistant Director
11 months	Deputy Director
12 months	Director
13 months	SEO/Inspector
14 months	Assistant Director
15 months	Deputy Director
16 months	SEO/Inspector
17 months	Assistant Director
18 months	Director
19 months	SEO/Inspector
20 months	Assistant Director
21 months	Deputy Director
22 months	SEO/Inspector
23 months	Assistant Director
24 months	Director
24 months plus	Return to cycle beginning 13 months

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55.8A. Rule 35 – Special Illnesses and Conditions

Rule 35 of the Detention Centre Rules 2001 sets out requirements for healthcare staff at removal centres in regards to:

- any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention;
- any detained person suspected of having suicidal intentions; and
- any detained person for whom there are concerns that they may have been a victim of torture.

Healthcare staff are required to report such cases to the centre manager and these reports are then passed, via UKBA contact management teams in centres, to the office responsible for managing and/or reviewing the individual's detention.

The purpose of Rule 35 is to ensure that particularly vulnerable detainees are brought to the attention of those with direct responsibility for authorising, maintaining and reviewing detention. The information contained in the report needs to be considered in deciding whether continued detention is appropriate in each case. If it appears that the matters being considered under Rule 35 represent a significant risk to children, then it should be referred to the case owner and the Children's Champion simultaneously for advice on how to safeguard the children and promote their welfare.

Upon receipt of a Rule 35 report, caseworkers must review continued detention in light of the information in the report (see 55.8 – Detention Reviews) and respond to the centre, within two working days of receipt, using the appropriate Rule 35 pro forma.

If the detainee has an asylum or HR claim (whether concluded or ongoing), consideration must be given to the instruction:

http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/rule35reports.pdf?view=Binary

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55.9. Special cases

55.9.1. Detention of women

Pregnant women should not normally be detained. The exceptions to this general rule are where removal is imminent and medical advice does not suggest confinement before the due removal date, or, for pregnant women of less than 24 weeks gestation, at Yarl's Wood as part of a fast-track asylum process.

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55.9.2. Spouses of British citizens or EEA nationals- non-CCD cases

Immigration offenders who are living with their settled British spouses may only be detained with the authority of an Inspector/senior caseworker in the relevant caseworking section. Where strong representations for temporary release continue to be received, the decision to detain must be reviewed by an Assistant Director as soon as is practicable. Where there are dependent children under the age of 18, special consideration must be given to the requirement to have regard to the need to safeguard and promote children's welfare in line with the guidance given above.

If an offender is married to an EEA national, detention should not be considered unless there is strong evidence available that the EEA national spouse is no longer exercising treaty rights in the UK, or if it can be proved that the marriage was one of convenience and the parties had no intention of living together as man and wife **from the outset of the marriage.** For further guidance, refer to chapter 53.5 and 53.5.1.

In CCD cases, the fact that the FNO is the spouse of a British Citizen or EEA national should not prevent detention.

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55.9.3. Young Persons

Unaccompanied children must not be detained other than in the circumstances below:

As a general principle, unaccompanied children (i.e. persons under the age of 18) must only ever be detained in the most exceptional circumstances and then only normally overnight, with appropriate care, whilst alternative arrangements for their care and safety are made. This exceptional measure is intended to deal with unexpected situations where it is necessary to detain unaccompanied children very briefly for their care and safety, e.g. when they are encountered in circumstances where there are no relatives or other appropriate adults immediately available to take responsibility for them; to separate them from adults thought to be a risk to them; or to prevent them from absconding pending a care placement being arranged. Such action is, therefore, intended to be solely for child protection purposes. As part of the decision making process in all such cases, staff must have regard to the need to safeguard and promote

the welfare of children and must be able to demonstrate that this has happened. In circumstances where responsible family or friends in the community cannot care for children they should be placed in the care of the local authority as soon as practicable.

In CCD cases, detention of an FNO under 18 may be authorised in exceptional circumstances where it can be shown that they pose a serious risk to the public and a decision to deport or remove has been taken. This is subject to the advice of the Family Returns Panel and Ministerial authorisation.

Unaccompanied children who are to be returned to an EU Member State under the Dublin Regulation or, in the case of both asylum and non-asylum applicants, to their home country may be detained in order to support their removal with appropriate escorts. Such detention will occur only on the day of the planned removal to enable the child to be properly and safely escorted to their flight and/or to their destination. The use of detention powers in such a case is solely for escorting purposes and will not involve overnight stays at IRCs or STHFs. Detention in such a case must be authorised by an Assistant Director.

Where an individual detained as an adult is subsequently accepted as being aged under 18, they should be released from detention as soon as appropriate arrangements can be made for their care in the community.

In all cases, the decision making process must be informed by the duty to have regard to the need to safeguard and promote the welfare of children.

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55.9.3.1. Persons claiming to be under 18

Sometimes people over the age of 18 claim to be children in order to prevent their detention or effect their release once detained. Information on the policy and procedures concerning persons whose ages have been disputed is available on the website at: http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/assessing-age?view=Binary

UK Border Agency will accept an individual as under 18 (including those who have previously

claimed to be an adult) unless one or more of the following criteria apply:

- there is credible and clear documentary evidence that they are 18 years of age or over;
- a full "Merton-compliant" age assessment by Social Services is available stating that they are 18 years of age or over. (Note that assessments completed by social services emergency duty teams are not acceptable evidence of age);
- their physical appearance/demeanour **very** strongly indicates that they are **significantly** over 18 years of age and no other credible evidence exists to the contrary.

UK Border Agency does not commission medical age assessments. However the claimant may submit medical or other evidence of age independently. This must be considered and due weight attached to it where appropriate. It should be noted though that the margin for error in medical assessments in these cases can be as large as 5 years either way, and the approaches of medical practitioners may vary widely. This is a complex area and, if in doubt, caseworkers should seek advice from NAM+ Register in the Immigration Group.

Once treated as a child, the applicant must be released to the care of the local authority as soon as possible. Suitable alternative arrangements for their care are entirely the responsibility of the local authority. Care should be taken to ensure the safety of the child during any handover arrangements, preferably by agreement with the local authority.

Where an applicant claims to be a child but their appearance **very** strongly suggests that they are **significantly** over 18 years of age, the applicant should be treated as an adult until such time as credible documentary or other persuasive evidence such as a full "Merton-compliant" age assessment by Social Services is produced which demonstrates that they are the age claimed, and the appropriate entry made in section 1 of the IS91.

In borderline cases it will be appropriate to give the applicant the benefit of the doubt and to deal with the applicant as a child.

It is UK Border Agency policy not to detain children other than in the most exceptional circumstances. However, where the applicant's appearance **very strongly** suggests that they are an adult and the decision is taken to detain it should be made clear to the applicant and their representative that:

- we do not accept that the applicant is a child and the reason for this (for example, visual assessment suggests the applicant is 18 years of age or over), and
- in the absence of acceptable documentation or other persuasive evidence the applicant is to be treated as an adult.

In these cases, form IS97M must be completed and sent to DEPMU, and the assessed date of birth must be recorded on CID so that all documentation shows the assessed date of birth rather than that claimed. Failure to do so will result in DEPMU refusing to allocate detention space in adult accommodation to those claiming to be children.

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55.9.4. Families

Plans for the ensured return of families with children under the age of 18, including CCD cases, should follow the ensured returns process set out in Chapter 45, including referral to the Family Returns Panel for advice. The options for ensured returns include, as a last resort, the use of Pre-Departure Accommodation (see 45.5.6). Stays at Pre-Departure Accommodation are limited to a normal maximum of 72 hours but may, in exceptional circumstances and subject to Ministerial authority, be extended up to a total of 7 days.

In some CCD cases, mothers with infant children may, if appropriate and in line with advice from the Family Returns Panel, continue to be detained in a prison mother and baby unit at end of sentence and pending deportation. This is subject to the same time limits as above.

There may be rare occasions on which it would be appropriate to use Tinsley House to accommodate a family instead of Pre-Departure Accommodation. These are as follows:

1. Where a family presents risks which make the use of Pre-Departure Accommodation inappropriate (see 45.5.6). Such a proposal would need to be referred to the Family Returns Panel for advice and would, in addition, require Ministerial authorisation. The same time limits as for Pre-Departure Accommodation apply.

2. Where CCD is returning a mother and baby from a prison mother and baby unit during the Early Removal Scheme (ERS) period but it is not practicable or desirable, owing to

time or distance constraints, to transfer mother and infant direct from prison to the airport for removal. Tinsley House may be used to accommodate the family on the night before their flight. This is because it would not be appropriate to separate mother and baby, and the mother cannot be moved to non-detained or pre-departure accommodation during the ERS period since she continues to be a serving prisoner who can only be released from prison for the purpose of removal. If Tinsley House is to be used in these circumstances, the CCD case owner must liaise with the Family Returns Unit (FRU) in good time before the proposed removal to ensure that accommodation is suitable and available. FRU will require a copy of the Family Welfare Form before the booking can be confirmed. Should the removal fail, the mother and child will be returned to the prison.

3. Where after reuniting a single parent foreign national offender with their child at the airport for removal, either straight from prison custody or immigration detention, the removal does not proceed. For this reason, the CCD case owner should always seek to retain the involvement of the person who has been caring for the child until the flight departs so that they can step in to take care of the child again until the removal can be rearranged. However, where this is not possible and it is not appropriate to release the parent, the family unit at Tinsley House may be used to accommodate the parent and child until alternative, community-based arrangements for the care of the child are made (e.g. with local authority Children's Services). Director level authority must be obtained before Tinsley House is used in these circumstances. The time limits above apply but, in most cases, the aim should be for the child's stay to be for no more than one night. As a contingency, FRU should be advised in advance of cases where CCD is reuniting a family at the airport and it is possible that accommodation at Tinsley House may be needed should the removal fail.

The latter two categories of cases do not constitute ensured return for the purposes of the family returns process so they do not need to be referred to the Family Returns Panel for advice. However, the Family Returns Unit will report these cases to the Panel retrospectively to enable them to maintain broad oversight of the Agency's use of detention in respect of families.

Forms IS91 (Authority to detain) and IS91R (Reasons for detention) (or their CCD equivalents) must be issued for each person detained, including for each child.

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55.10. Persons considered unsuitable for detention

Certain persons are normally considered suitable for detention in only very exceptional circumstances, whether in dedicated immigration accommodation or prisons. Others are unsuitable for immigration detention accommodation because their detention requires particular security, care and control.

In CCD cases, the risk of further offending or harm to the public must be carefully weighed against the reason why the individual may be unsuitable for detention. There may be cases where the risk of harm to the public is such that it outweighs factors that would otherwise normally indicate that a person was unsuitable for detention.

The following are normally considered suitable for detention in only very exceptional circumstances, whether in dedicated immigration detention accommodation or prisons:

- unaccompanied children and young persons under the age of 18 (but see 55.9.3 above);
- the elderly, especially where significant or constant supervision is required which cannot be satisfactorily managed within detention;
- pregnant women, unless there is the clear prospect of early removal and medical advice suggests no question of confinement prior to this (but see 55.4 above for the detention of women in the early stages of pregnancy at Yarl's Wood);
- those suffering from serious medical conditions which cannot be satisfactorily managed within detention
- those suffering serious mental illness which cannot be satisfactorily managed within detention (in CCD cases, please contact the specialist Mentally Disordered Offender Team). In exceptional cases it may be necessary for detention at a removal centre or prison to continue while individuals are being or waiting to be assessed, or are awaiting transfer under the Mental Health Act;
- those where there is independent evidence that they have been tortured;
- people with serious disabilities which cannot be satisfactorily managed within detention;
- persons identified by the Competent Authorities as victims of trafficking (as set out in Chapter 9).

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55.10.1. Criteria for detention in prison

The National Offender Management Service (NOMS) and the UK Border Agency have a Service Level Agreement governing the provision of bed spaces within prisons. Under that Agreement, NOMS make a number of bed spaces available for use by the UK Border Agency to hold immigration detainees. It is for the UK Border Agency to determine how those bed spaces are used and the type of detainees who are held in them.

The normal expectation is that the prison beds made available by NOMS will be used to hold time-served foreign national offenders (FNOs) before any consideration is given to transferring such individuals to the IRC estate. This position will apply if there are free spaces among the beds provided by NOMS and even if the criteria/risk factors outlined below are not presented by the FNOs concerned. More generally, decisions to allocate specific detainees, whether time-served FNOs or otherwise, to prison accommodation will be based on the presence of one or more of the risk factors/criteria below.

In the case of the following individuals, the normal presumption will be that they should remain in or be transferred to prison accommodation and they will be transferred to an IRC only in very exceptional circumstances:

- National Security – for example, where there is specific, verifiable intelligence that a person is a member of a terrorist group or has been engaged in/planning terrorist activities.

- Criminality – those detainees who have been involved in serious offences involving the importation and/or supply of Class A drugs, those convicted of sexual offending involving a minor.

- Specific Identification of Harm - those detainees who have been identified in custody as posing a risk of serious harm to minors, and those identified in custody as being subject to harassment procedures (ie individuals subject to the formal procedures under Prison Service Order 4400 preventing them from contacting their victim(s) whilst in custody).

In the case of the following individuals, they will usually be transferred to or remain in prison

accommodation subject to some exceptions:

- Criminality – those detainees who are subject to notification requirements on the sex offenders register. Exceptions to this category would include individuals sentenced to less than 12 months for a sexual offence, who may be considered for transfer to an IRC on a case-by-case basis, or individuals subject to notification requirements on the sex offenders register who have otherwise been assessed by UKBA as being suitable for transfer.

- Security – where the detainee has escaped from prison, police or immigration custody or escort, or planned or assisted others to do so.

- Control – engagement in, planning or assisting others to engage in/plan serious disorder, arson, violence or damage whilst in prison, police or immigration custody.

The following individuals may be unsuitable for transfer to an IRC and DEPMU staff must assess their suitability for transfer on a case by case basis:

- Behaviour during custody – where an immigration detainee's behaviour whilst in either an IRC or prison custody makes them unsuitable for the IRC estate, eg numerous proven adjudications whilst in prison for violence or incitement to commit serious disorder which could undermine the stability of the IRC estate, or clear evidence of such conduct whilst in an IRC. (Detainees who were originally convicted of a violent offence may nevertheless be considered for transfer to an IRC depending on the nature of that offence and provided their behaviour whilst in prison custody has not given rise to concerns).

- Health Grounds – where a detainee is undergoing in-patient medical care in a prison. Transfer will only take place when an IRC healthcare bed becomes available, provided the individual is medically fit to be moved and their particular needs can be met at the IRC in question.

(Note: The existence of any of the above risk factors indicates that a detainee should be held in prison accommodation rather than an IRC but the list is not exhaustive and DEPMU staff should also satisfy themselves that no other risks exist which would make it inappropriate for the detainee to be held in an IRC, rather than a prison.)

The normal expectation is that any remaining prison bed spaces made available under the Agreement with NOMS after allocation of prison beds to individuals presenting one or more of the criteria/risk factors above will be filled by time-served FNOs not falling into the above categories. Subject to risk assessment, such individuals will be placed on a waiting list, operated by DEPMU, for transfer to an IRC but will remain in prison accommodation pending that transfer. The transfer of such individuals to IRCs will take place only where the prison beds they are occupying are required either by individuals (FNO or otherwise) falling into one or more of the categories above or by more recently detained time-served FNOs (ie FNOs detained under Immigration Act powers on completion of or release from custodial sentence). In the absence of the criteria/risk factors set out above, the length of time that an FNO has been held in a prison bed solely as an immigration detainee will be the main factor in deciding when to transfer to an IRC. In other words, priority for transfer to an IRC will be given to those FNOs who have been held in prison beds the longest.

Separately from the use of the prison beds made available to UKBA under the Agreement with NOMS, and in the interests of maintaining security and control in the UKBA detention estate as a whole, a cap is placed on the total number of time-served FNOs who may be held in the detention estate at any one time. The cap may also be used as part of the day to day management of the UKBA detention estate in order to meet changing operational priorities for the use of IRC beds, which will have a consequence for the number of beds that will be available for allocation to time-served FNOs at any one time. As such, the level at which the cap is set is not static and will change as necessary to meet those priorities, as well as in the interests of security and control of the estate. Where the current level of the cap is reached, time-served FNOs will continue to be held in prison accommodation, even in the event that the prison bed spaces made specifically available to UKBA by NOMS are full: the expectation in such circumstances is that additional bed spaces would be sought from NOMS.

If transfer to an IRC is agreed, it should be effected as soon as reasonably practicable. Reasons for deciding not to transfer an individual must be recorded, as must the reasons for any delay in effecting agreed transfers.

Any individual may request a transfer from prison accommodation to an IRC. Prompt and evidenced consideration must be given to such a request and, if rejected by DEPMU, the individual concerned will be given written reasons for this decision.

If DEPMU decide that a detainee currently held in an IRC or short-term holding facility is not appropriate for that accommodation they will refer them to the Population Management Unit (PMU) of NOMS, who will consider their allocation to a prison. In the case of a detainee in Scotland, transfer may either be to a prison bed made available under the Agreement with NOMS or, with the agreement of the Scottish Prison Service, to a prison bed in Scotland, as appropriate. Detainees transferred to prison accommodation as a result will be given written reasons for their transfer. Detainees will not be referred for transfer on medical or care grounds.

Time-served FNOs in Scotland will normally be transferred to a prison bed made available under the agreement with NOMS or to an IRC, as appropriate, as soon as practicable after release from sentence. In some cases, the individuals concerned may, if appropriate and with the agreement of the Scottish Prison Service, remain in prison in Scotland.

A person normally considered unsuitable for an IRC may, exceptionally, be detained in an IRC for a short period of time in order, for example, to facilitate their removal where a flight leaves early and the individual needs to be held close to the airport, or to facilitate an interview with a consular official as part of a documentation exercise. Such instances are subject to the agreement of a DEPMU SEO. Full details must initially be detailed on the IS91RA part A and entered on the 'risk factors' section of form IS91 served on the detaining agent (see 55.6 above).

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55.11. “Dual” detention

55.11.1. Detention of illegal entrants and those subject to administrative removal who are facing or have been convicted of criminal offences

Whilst detention on criminal charges does not affect a person’s liability to removal as an illegal entrant or a person liable to administrative removal, it is not the practice to remove the person where criminal charges are extant. Officers must not seek to influence police decisions about whether or not to pursue criminal matters.

Where an illegal entrant or person subject to administrative removal is convicted of a criminal offence and recommended for deportation, this should be considered by CCD before removal is enforced. In the event of an illegal entrant/person subject to administrative removal being

convicted of a serious offence but not recommended for deportation by the Court, CCD may wish to consider non-conducive deportation under section 3(5)(a) of the Immigration Act 1971.

There is no immigration power to detain where a person is already detained under an order or sentence of a court, or is remanded in custody. Therefore the sensible course is for any immigration decision to detain to be expressed as taking effect once any existing detention ends. Such a person is not exempt from the arrangements for release on temporary licence (home leave) (see 55.19).

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55.11.2. Detention pending criminal proceedings

Where an illegal entrant or person served with notice of administrative removal is granted bail by the Court pending trial, there is no bar to continued detention under the 1971 Act, but full account must be taken of the circumstances in which bail was granted and an Inspector/SEO must authorise such detention.

Where an illegal entrant or person served with notice of administrative removal is remanded in custody awaiting trial but it is not necessary to detain him under immigration powers, serve IS96 granting him temporary release to the place of detention.

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55.11.3. Immigration detention in deportation cases

Paragraph 2(1) of Schedule 3 to the 1971 Act provides the power to detain a person who has been court recommended for deportation in the period following the end of his sentence pending the making of a deportation order. Paragraph 2(2) of Schedule 3 provides the power to detain a person who has not been recommended for deportation by a court but who has been served with a notice of intention to deport (an appealable decision) in accordance with section 105 of the Nationality, Immigration and Asylum Act 2002, pending the making of a deportation order. Under paragraph 2(3) of Schedule 3 to the 1971 Act, where a deportation order is in force against any person, they may be detained pending their removal or departure from the UK. From 1st August 2008, there are also powers in section 36 of the UK Borders Act 2007 which enable the Secretary

of State to detain while he considers whether the automatic deportation provisions of the Act apply, and if they apply, pending the making of the deportation order.

However, the person should not be detained under immigration powers at the same time that they are detained under an order or sentence of a court. Therefore the sensible course is for any immigration decision to detain to be expressed as taking effect once any existing detention ends. It is also important in criminal cases to monitor the offender's release date for service of further detention/restriction forms at the appropriate time.

There is no bar to detaining a person under CCD detention powers where the person is on police bail pending enquiries and has not yet been charged. Such a person will cease to be eligible for detention under Immigration Act powers in practice if he is detained by a court in the criminal proceedings once charged.

Where the prisoner to be transferred to immigration detention has been the sole or main carer of children and has been separated from them through a custodial sentence, careful consideration needs to be given to how, when and where they will be reunited with the children if the children are also subject to deportation as dependants, or are to accompany the deportee on deportation.

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55.12. Co-ordination of detention

Detention space is allocated via local detention gatekeepers through the detention co-ordinators based at DEPMU (single detainees) which is staffed 24 hours a day and by the Family Returns Unit (families with or without minor children) which is staffed 0800-1700 weekdays (responsibility reverts to DEPMU at all other times).

The DEPMU CIO/HEO and Family Returns Unit have the authority to:

- refuse to accept any person/family for detention in the immigration detention estate;

In addition the DEPMU CIO/HEO has the authority to:

- refuse to accept any person for transfer by the in-country escorting contractor;

- arrange for a detainee to be moved in order to meet local demands or to provide more secure accommodation;
- decide on the priority of tasks to be handled by the in-country escorting contractor.

Ports/LITs should initially approach their Command detention co-ordinator for approval to use one of the Command ring-fenced beds. When this approval has been given, DEPMU should be faxed the following information:

- full name, with family name in CAPITAL LETTERS;
- all risk factors on form IS91RA, part A;
- any relevant references – port/LIT, Home Office, Prison, Immigration and Asylum Chamber, previous removal centre;
- a contact name and telephone number so that DEPMU can inform the port/LIT of where the detainee has been placed.

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55.12.1. Detention space allocation priorities

DEPMU is responsible for allocating detainees to the most suitable accommodation.

Detention space priorities are managed amongst UKBA Teams through ring-fenced allocations. The ring-fenced allocation owners are: Border Force, CCD, each of the six regions, Fast Track, Third Country Unit (TCU), Asylum Screening Unit (ASU) and Non-Suspensive Appeals (NSA). Each ring fenced owner (RFO) manages their own allocation.

Detention allocation priorities are reviewed regularly and will change according to the business need, but the priority will always be to detain to remove.

55.12.2. Detention after an appeal has been allowed

If a detainee wins an appeal, but UKBA wishes to challenge the immigration judge's decision, it is sometimes considered necessary to maintain detention until the challenge is heard. While it may be justifiable to continue detention in the short term pending such a challenge, especially if there

is considered to be a risk of the person absconding or a risk of harm to the public, care should be taken to ensure detention on this basis does not continue beyond a reasonable time period.

Detention after an appeal has been allowed is not automatic and temporary release should always be considered. Any decision on what constitutes a reasonable period of time should be on a case by case basis. As with any case, detention and associated risk factors should be reviewed regularly to decide whether the detainee's circumstances have changed, and whether the person still presents a risk of absconding.

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55.13. Places of detention

Illegal entrants and persons subject to administrative removal may be detained in any place of detention named in the Immigration (Places of Detention) Direction 2011. This includes police cells, immigration removal centres, prisons or hospitals.

Some facilities, such as police cells (but see 55.13.2) are only suitable for detention for up to 5 nights continuously (7 if removal directions are set for within 48 hours of the 5th night). The Immigration (Places of Detention) Direction 2011 does not prevent a person already detained for the specific period in time-limited accommodation from being re-detained, but this must never be used as a device to circumvent the time limits on the use of short term holding facilities.

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55.13.1. Present accommodation

The immigration detention estate* currently comprises places at the following locations:

Removal Centres

Brook House	Males only
Campsfield House	Males only
Colnbrook	Males only
Dover	Males only
Dungavel	Males/females/families
Harmondsworth	Males only
Haslar	Males only
Morton Hall	Males only
Tinsley House	Males/families
Yarl's Wood	Females/families

Residential

Short term holding facilities are located at:

Colnbrook
Larne House, Northern Ireland
Pennine House, Manchester

Pre-Departure Accommodation

CEDARS

Northern Ireland

Adults who are detained in Northern Ireland are normally moved immediately to Larne House STHF or, when a PACE arrest and detention in a police cell has been necessary, as soon as practicable after the detainee is released from police custody. Individuals may be held in police cells until transfer to Larne House can be effected.

Detainees may be held at Larne House for up to 7 days when removal directions have been set to take place within that period and, whenever possible, will be removed directly via Northern Ireland airports within this period. Where removal will not take place within 7 days of a person being detained at Larne House, the maximum stay at Larne House will be up to 5 days, during which time the detainee will be moved to an IRC in Great Britain if their detention is to continue.

FNOs who have been released from sentence in Northern Ireland will normally be moved to a UKBA detention facility or NOMS accommodation, as appropriate, within 24 hours of their release, or as soon as practicable thereafter.

Prison Service Accommodation

See 55.10.1

* 'detention estate' is a general term covering removal centres, short term holding facilities and holding rooms at ports and airports

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55.13.2. Detention in police cells

Detainees should preferably only spend one night in police cells, with a normal maximum of two nights. In exceptional cases, a detainee may spend up to 5 nights continuously in a police cell (7 nights if removal directions have been set for within 48 hours of the 5th night) if, for instance, he is awaiting transfer to more suitable UKBA or Prison Service accommodation and the police are content to maintain detention. Such detention must be authorised by an Inspector/SEO, who must take into account the UKBA duty of care for detainees and the likelihood that police cells do not provide adequate facilities for this purpose in the long term.

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55.14. Detention for the purpose of removal

In cases where a person is being detained because their removal is imminent the lodging of a suspensive appeal or other legal proceedings that need to be resolved before removal can proceed will need to be taken into account in deciding whether continued detention is appropriate. Release from detention will not be automatic in such circumstances: there may be other grounds justifying a person's continued detention, e.g. a risk of absconding, risk of harm to the public or the person's removal may still legitimately be considered imminent if the appeal or other proceedings are likely to be resolved reasonably quickly. An intimation that such an appeal or proceedings may or will be brought would not, of itself, call into question the appropriateness of continued detention. (See chapter 60 for separate guidance on Judicial Review).

Following the death in 1993 of Joy Gardner while being detained for deportation, the then Home Secretary instituted a review of procedures in cases where the police are involved in assisting the UKBA with the removal of people under Immigration Act powers (the Joint Review of Procedures in Immigration Removal Cases). One of the provisions introduced immediately after the report of the Joint Review was issued was that there should be a period of at least one to two days between detention and the proposed removal of an offender. Only in exceptional cases will removal proceed on the day of arrest and this must be authorised by an Assistant Director (See section 2 of chapter 60 – Notice of Removal).

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55.15. Detention in National Security cases

When contacted by the relevant unit of the Special Cases Directorate (SCD) with a request to detain, staff will be provided with a copy of the notice sent to the person saying that he will be detained and setting out the reasons for his detention. This notice will alert staff to the fact that the person is being detained in the interests of national security and is therefore to be detained in Prison Service accommodation. Staff should ensure that Section 3 of form IS91 is completed when issued to the Prison Service authorities and that in addition to any other information put on this form, the following wording is inserted:

"(Name) has been detained under powers contained in the Immigration Act 1971 and the Home Secretary has personally certified that his detention is necessary for reasons of national security. (Name) should not be transferred from HM Prison (name of place of detention) to another Prison Service establishment or place of detention without prior reference to the UK Border Agency office named on this form."

Should the Prison Service contact the local immigration team because they are considering transferring the detainee to another prison, that office should advise the prison authorities to contact the Population Management Unit of NOMS indicating that they, in turn, should consult the SCD caseworking officer for background information, before the detainee is moved.

These cases are particularly sensitive and it is essential that the above procedure be followed.

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55.16. Incidents in the Detention Estate

DEPMU must be kept informed of all serious incidents in any removal centre, short-term holding facility, holding room or under escort, such as deaths, incidences of self harm, escapes, attempted escapes, food/fluid refusals and any other potentially high-profile occurrence. UKBA staff at all removal centres are responsible for reporting such incidents to the Operations arm of Detention Services. DEPMU staff are responsible for providing reports in respect of incidents which take place whilst under escort, at short term holding facilities and holding rooms.

In centres holding children, special care should be taken to report incidents because of their vulnerability. Reports in such cases should be sent additionally to FRU and to OCC for the attention of the Children's Champion.

Detailed instructions on the reporting of incidents to the Operations arm of Detention Services are issued separately to staff at DEPMU and at all removal centres.

Additionally, consideration should be given as to whether such actions may prompt reassessment of potential risk in which case form IS91RA part C should be sent to DEPMU as under 55.6.1 above.

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55.17. Bed Guards

All requests for bed guards must be made to the DEPMU CIO/HEO.

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55.18. Notification of detention to Consulates and High Commissions

All persons who are detained should be asked, by the UKBA officer (including when the individual has been detained initially by the police), if they wish to contact their High Commission or Consulate. Those who wish to do so should be given the appropriate telephone number. When a person is likely to be detained for more than 24 hours he should be asked if he wishes his High

Commission or Consulate to be notified of his detention. If he does, then form IS94 should be sent by first class post to the appropriate representative of the High Commission or Consulate. A case requiring urgent attention should be notified by telephone or fax to the High Commission or Consulate, in addition to the written notification.

Notification of detention to Consulates and High Commissions is the responsibility of the detaining officer at the local immigration team or port.

The UK has a bilateral consular convention relating to detention with a number of countries (listed below). The convention imposes an obligation on detaining authorities to notify the consular representative of a detainee even if the detainee has not requested this. When a national of such a country is likely to be detained for more than 24 hours, **and there is or has been no asylum claim or suggestion a claim might be forthcoming**, the appropriate High Commission or Consulate must be notified by the detaining officer, on form IS94 sent by first class post. The detainee must be notified of this disclosure.

A consular representative should, if the person detained agrees, be permitted to visit, converse privately with and arrange legal representation for him. A case requiring urgent attention should be notified to the High Commission or Consulate by telephone or fax, in addition to the written notification.
Communications from the person detained to his High Commission or Consulate should be forwarded without delay.

55.18.1. List of countries with which the United Kingdom has bilateral consular conventions relating to detention

Armenia
Austria
Azerbaijan
Belarus
Belgium
Bosnia-Herzegovina
Bulgaria
China
Croatia
Cuba
Czech Republic
Denmark
Egypt
Estonia
Kazakhstan
Kyrgyzstan
Latvia
Lithuania
Mexico
Moldova
Mongolia
Netherlands
Norway
Poland
Romania
Russia
Serbia
Slovenia

France
Georgia
Germany
Greece
Hungary
Italy
Japan
Spain
Sweden
Tajikistan
Turkmenistan
Ukraine
USA
Uzbekistan

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55.19. Home leave (Release on Temporary Licence) for prisoners subject to removal action

The grant of home leave (release on temporary license) for a person serving a custodial sentence is normally at the discretion of the Prison Governor.

When a Governor wishes to allow a prisoner home leave, but the detainee is subject to “dual” detention under Schedule 2 of the 1971 Act, he should contact a CIO at the port or local immigration team that authorised detention, giving 10 days notice of the decision to allow for any representations to be made as to why the prisoner should not be released. However, as the person is still a serving prisoner, the final decision rests with the Governor, even if an IS91 has been served.

Where a prisoner has been court recommended for deportation, has already been notified of a decision to make a deportation order, or may be liable to automatic deportation, the Governor requires the permission of CCD for the person to be released. Prisons should make such requests directly to CCD but any received by ports/local immigration teams should be forwarded for the attention of a senior caseworker.

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55.20. Temporary admission, release on restrictions and temporary release (bail)

A person who is liable to detention under the powers in the Immigration Acts may, as an alternative to detention, be granted temporary admission or release on restrictions. The policy is that there is a presumption in favour of granting temporary admission or release on restrictions

and that detention is used sparingly other than in cases where the deportation criteria are met, where it will be appropriate in many cases. Another alternative to detention is the granting of bail, which is covered separately in Chapter 57. The fundamental difference between temporary admission/release on restrictions and bail is that the former can be granted without the person concerned having to be detained, while the latter can only be granted once an individual has been detained and has applied for bail.

The power to grant temporary admission to illegal entrants and persons served with notice of administrative removal who are liable to detention under paragraph 16 is set out in paragraph 21(1) and (2) to Schedule 2 of the Immigration Act 1971. This provides that the grant of temporary admission in illegal entry or administrative removal cases may be subject to such restrictions (on residence, employment and reporting to the police or an IO) as may be notified to him in writing by an IO. It follows that IOs, with the authority of a CIO, are able to grant temporary admission in all illegal entry and administrative removal cases liable to detention under paragraph 16, apart from where the person is detained on embarkation. Port removal cases are covered in Chapter 31 of the Immigration Directorate Instructions.

A person who is the subject of deportation action who is detained or liable to detention may be placed on a restriction order, under paragraph 2(5) of Schedule 3 to the 1971 Act. This provides for similar conditions to be attached to the grant of release on restrictions in deportation cases to those in illegal entry and administrative removal cases, with the exception that it is for the Secretary of State to notify in writing any conditions attached to their release.

IOs may, under the authority of a designated Inspector, serve papers granting release on restrictions to a person who has been served with a notice of intention to deport by a local immigration team at the request of the relevant caseworking section, normally CCD. However only a person with delegated authority (i.e. designated Inspectors - see chapter 54) may sign any restriction order or amendment to a restriction order.

Caseworkers in the relevant section (who act on behalf of the Secretary of State) may grant release on restrictions to a person served with a notice of intention to deport under section 3(5), who have been recommended for deportation by a court, who are being considered for automatic deportation, or who are detained pending the making of a deportation order under the automatic deportation provisions or who are subject to a deportation order.

The LIT that served the notice of illegal entry or administrative removal should deal with variations to the conditions attached to the grant of release on restrictions in illegal entry and administrative removal cases. In deportation cases, variations should be notified by caseworkers in the relevant section. This is irrespective of whether or not the notice of intention to deport was served by an IO under the delegated authority arrangements.

When considering the release of families who have been detained with their children, the timing of the release may be important. The release should, where possible, be planned in such a way that it takes effect either in the morning, which will ensure that children are rested and thus better able to deal with the journey and settling into the release address, or at a time which would at least allow the family to reach their destination that same day. Consideration of the timing of release should take into account the age(s) of the child(ren) and the distance the family will have to travel.

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55.20.1. Employment restrictions

See chapter 23.10

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55.20.2. Reporting restrictions

Persons subject to reporting restriction should not be required to report to police stations if they could report to an immigration reporting centre instead. Immigration reporting centres which contain holding rooms are currently established at Becket House (London), Communications House (London), Dallas Court (Manchester), Drumkeen House (Northern Ireland), Eaton House (Heathrow), Electric House (Croydon), Festival Court (Glasgow), Loughborough, Lunar House (Croydon), Reliance House (Liverpool), Sanford House (Birmingham), Vulcan House (Sheffield) and Waterside Court (Leeds).

Where reporting to a police station is considered essential, this should not be more frequently than monthly (unless authorised by an Inspector/SEO in exceptional circumstances) **and the police station must be informed**. In non-CCD cases, If the case remains unresolved after 3 years and the offender has abided by the terms of his temporary admission or release on

restrictions, lift reporting restrictions (unless removal is imminent). In CCD cases, reporting should continue until removal or another decision is made on the case. A failure to attend by an offender will be reported by the police to the local immigration team for appropriate action. **When a case has been resolved, the appropriate police station must be informed.**

It is possible to impose reporting restrictions on unaccompanied children or young persons under 18, however reference should be made to Chapter 26 before doing so.

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55.20.3. Failing to comply with the terms attached to a grant of temporary admission, release on restrictions or bail

A person who fails to comply without reasonable excuse with the terms attached to the grant of temporary admission, release on restrictions or bail commits an offence under section 24(1)(e) of the Immigration Act 1971. A decision on whether to charge a person or prosecute currently rests with the Crown Prosecution Service.

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55.20.4. Procedures when granting temporary admission to an illegal entrant or person served notice of administrative removal

- serve form IS96, informing the subject of his release and the restrictions imposed upon him;
- serve form IS106, the release order, on the detaining agent;
- advise the Detention Co-ordinator of release where they have been notified of the initial detention.

Please see Chapter 31 of the Immigration Directorate Instructions for guidance on port removal cases.

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55.20.5. Procedures when releasing deportation cases on restrictions

55.20.5.1 When releasing Foreign National Offenders on Restriction Orders, Case Owners should follow the instructions below. This version of the process has been produced specifically for cases where detention or continued detention cannot be justified throughout the time it takes to effect deportation (please see 55.3); Case Owners should continue to follow the process set out in the main Bail Process Instruction (available on Horizon) when dealing with all other FNO bail applications.

55.20.5.2 The relevant Reporting Centre should be determined by reference to the LIT finder. Individuals will be required to report twice weekly and will be subject to electronic monitoring.

55.20.5.3 Prisoners will normally be released to a private address that they will have given the prison. When the Case Owner has confirmed that a prisoner is to be released on restrictions, they must do a PNC check (see PC 2/06) to ensure that we are aware of all offences prior to release and then fax the Contractors who will do a check on the property to ensure that it is suitable. This takes 24 hours.

55.20.5.4 When the check on the property is done, the paperwork (see 55.20.5.7 below) can go to the removal centre/prison who will issue the prisoner with a travel warrant which will allow him to make his own way to his accommodation. Within 24 hours of release the Contractors will contact the subject to commence the electronic monitoring.

55.20.5.5 If the prisoner's address is deemed unsuitable for tagging or he meets the criteria for release but is unable to provide an address, they may be released to asylum accommodation. The individual does not need to be an asylum seeker to be released into asylum accommodation. In this instance the Case Owner should contact Asylum Resources Directorate (ARD) to arrange for accommodation. They will liaise with the Accommodation Providers to find a suitable property for the subject and contact the Contractors to arrange for the property to be checked for suitability for tagging. If the property is deemed suitable then they will advise the Case Owner of the release address.

55.20.5.6 There is no need for the Case Owner to arrange transport to the asylum property as the prison/IRC will issue a travel warrant for the journey. Vouchers will be issued to individuals to cover food and other basic costs.

55.20.5.7 Case Owners must prepare the following paperwork (available on the DocGen):

- ICD 0343 – Restriction Order
- ICD 106 – Notifies the Prison/IRC to release the subject
- IS270 – Electronic Monitoring Factsheet

Once the documents have been signed they should be faxed to the holding centre. Copies should be sent to the place the subject is due to report.

If the subject is due to report to a Police Station which doesn't have an IO present, the Case Owner will need to send the station an ISE301.

Copies of all these documents should be kept on file.

Once the holding centre confirms that they have the paperwork the subject can be released.

NB It is only possible for CCD Case Owners to update CID once DEPMU have received notification that release has been approved and closed their CID screen down. It is important that CID is updated as soon as possible after release and the CCD Case Owner should contact DEPMU where there are delays.

55.20.5. 8 The Offender Manager must be notified in advance of the release date by phone. Offender Manager details should be on the licence which will be on the file. If there is not a copy of the licence on file then the prison should be contacted.
Notification of the outcome should also be sent in writing by email or fax and copied to the relevant Probation Area Single Point of Contact (SPOC). A form for this purpose is at annex C of the CCD Bail Instruction.

55.20.5.9 Case Owners are responsible for ensuring that when prisoners are released electronic monitoring arrangements are in place.

Attached below is an instruction that takes Case Owners through the process for arranging tagging, including contacting contractors, documents needed and updating CID.

55.20.5.10 Whilst released on restrictions the subject must comply with the restrictions set out in the ICD.0343 and electronic monitoring rules.

Electronic Monitoring can be breached as follows:

- At the induction stage
- Absence for part of a monitoring period
- Absence for an entire monitoring period
- Attempts to remove or tamper with equipment

55.20.5.11 Case Owners are also responsible for ensuring that they check on CID (and if necessary by phoning the relevant LIT) to check that the subject is complying with reporting restrictions and take action if a breach of the Restriction Orders takes place. The appropriate action to take in such cases is set out in the Instruction on Contact Management and Absconder Process.

55.20.5.12 It may be necessary to organise the re-detention of subjects for example where contact is not properly maintained, electronic monitoring fails or where removal is imminent. Full instructions on the process on how to re-detain a person can be found in the Instruction on Detention.

55.20.5.13 Once re-detention has been confirmed

- Ensure the a proper reasons for detention notification has been issued (a copy should be placed on the file) - See Detention Instruction
- Update CID
- Fax an EM6 to the Contractor to request that they cease electronic monitoring. This is important as until they receive notification to stop EM, Contractors will continue to charge for their services.
- Notify the High Commission or Consulate. - See Detention Instruction
- Commence the detention review process. - See Detention Instruction
- Notify the Offender Manager. - See Detention Instruction.

55.20.5.14 For cases where re-detention is authorised but cannot be effected:

See CCD Contact Management and Absconder Process Instructions.

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Revision History

Date change published	Officer/Unit	Specifics of change	Authorised by;	Version number after change (this chapter)
		OEM Revision		1
		Detention of ex-FNPs & general update		2
4/11/08	DSPU	(i) Fast track asylum processes (ii) Detention of unaccompanied children	(i) Brian Pollett (ii) Phil Woolas	3
22/01/09		Detention of ex-FNPs	Alan Kittle	4
09/03/09	DSPU	Title of list of offences annex (relating to 55.3.2.1) - name change; addition of 55.8A & amendment of 55.10.1	Alan Kittle	5
09/06/09	DSPSPU	Amendments to 55.6.3, 55.8, 55.9.3.1, 55.10, 55.13.1 & 55.18	DS Director	6
26/11/09	DSPSPT	General update to take account of s.55 duty	DS Director	7
21/01/10	GLAD CAT - E	55.8, 55.9.4, FDU authority for detention release.	CAT– E Deputy Director	8
02/03/10	DSPSPT	Addition to 55.10.1	DS Director	9
26/08/10	DSPSPT	Amendment to 55.10; Horizon links updated	DS Director	10
26/10/10	DSPSPT	Amendments to 55.10.1 and 55.13.1	DS Director	10.1
23/12/10	DSPSPT	Amendments to 55.8 (Table 3 – CCD detention review schedule	CDG Strategic Director	11
01/03/11	DSPSPT	Amendments to 55.5.3, 55.8, 55.9.3, 55.9.4, 55.12 – Ensured return of families with children.	DS Director	12
24/01/12	DSPSPT	Amendments to 55.9.4, 55.10.1, 55.13.1 and general update of terms such as FNPs and AIT.	DS Director/CDG Strategic Director	13

Annex A

Bournemouth Commitment

DRUGS OFFENCES *(excluding simple possession)*

Misuse of Drugs Act 1971 (c.38)

1. s. 4(2) or (3) (production and supply, including offer to supply, of controlled drugs);
2. s. 20 (assisting in or inducing commission outside United Kingdom of an offence punishable under a corresponding law);
3. s. 5(3) (possession with intent to supply)
4. s.19 (incitement)
5. s.6 (cultivation of cannabis).
6. s.8(a) (occupying or managing premises where the production or attempted production of a controlled drug is knowingly permitted on those premises)
7. s. 8(b) (occupying or managing premises where the supply, or attempted supply, of or the offer to supply a controlled drug is knowingly permitted on those premises)

Customs and Excise Management Act 1979 (c.2)

8. s. 50(2) or (3) (improper importation)
9. s. 68 (1) and (2) (improper exportation),
10. s.170 (fraudulent evasion)

in connection with a prohibition or restriction on importation or exportation having effect by virtue of section 3 of the Misuse of Drugs Act 1971 (c. 38);

Other Laws

11. s. 19 of Criminal Justice (International Co-operation) Act 1990 (using ship for illicit traffic in controlled drugs);
12. .s.12 of the Criminal Justice (International Co-operation) Act 1990 (manufacture or supply of substance specified in Schedule 2 to that Act). (Note: this offence relates to drug precursors as opposed to controlled drugs as defined by the Misuse of Drugs Act 1971]
13. s.1 of the Criminal Law Act 1977 (c. 45) or Article 9 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (S.I. 1983 1120 (N.I. 13)), or in Scotland at common law, of conspiracy to commit any of the offences listed at para 1-12 above;
14. s.1 of the Criminal Attempts Act 1981 (c. 47) or Article 3 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983, or in Scotland at common law, of attempting to commit any of the offences listed at para 1-12 above;
15. Part 2 Serious Crime Act 2007 (encouraging and assisting) any of the offences listed at para 1-12 above *;
16. Common law offences (includes aiding, abetting, counselling or procuring the commission of any of the offences listed above at para 1-12 above);

* yet to be commenced by MOJ

CRIMES WHERE RELEASE FROM IMMIGRATION DETENTION OR AT THE END OF CUSTODY WOULD BE UNLIKELY

Violence Against The Person

Murder

Manslaughter

Infanticide (Applies to infants aged under 12 months killed by the mother while of disturbed mind)

Homicide (Comprises murder, manslaughter and infanticide)

Attempted murder

Intentional destruction of a viable unborn child. Applies to the unborn child “capable of being born alive”. Previously termed “ Child destruction”.

Causing death by dangerous driving. (Limited to causing death by reckless driving between 1977 and 1991)

Causing death by careless driving when under the influence of drink or drugs.

More serious wounding or other act endangering life. (Includes, amongst other offences, wounding with intent to do grievous bodily harm (section 18 of the Offences against the Person Action 1861)).

Causing death by aggravated vehicle taking.

Other Violence Against The Person

Threat or conspiracy to murder.

Causing or allowing death of a child or vulnerable person.

Endangering a railway passenger.

Endangering life at sea. (some offences included)

Less serious wounding, including:

Wounding, inflicting grievous bodily harm, and assault occasioning actual bodily harm. This means non-intentional GBH is included as well as all assaults involving minor injury.

Other possession of weapons.

Other firearm offences.

Other knife offences.

Harassment.

Includes the summary offences of

Harassment;

Harassment, alarm or distress;

Fear or provocation of violence; and

Putting people in fear of violence

Racially or religiously aggravated less serious wounding

Racially or religiously aggravated harassment

Cruelty to and neglect of children.

Abandoning a child under the age of two years.

Child abduction.

Procuring illegal abortion.

Assault without injury on a constable.

Assault without injury including:

Common assault and battery: includes involving no injury.

Racially or religiously aggravated assault without injury.

Sexual Offences

ALL THOSE WHO ARE CURRENTLY ON THE SEX OFFENDERS REGISTER, EITHER FOR THE CURRENT CRIME OR ANY PREVIOUS CRIME

Most serious sexual crime

Indecent assault on a male-with effect from May 2004 split into:

Sexual assault on a male aged 13 and over

Sexual assault on a male child under 13.

Rape of a female-with effect from May 2004 split into:

Rape of a female aged 16 and over.

Rape of a female child under 16.

Rape of a female child under 13.

Rape of a male-with effect from May 2004 split into:

Rape of a male aged 16 and over.

Rape of a male child under 16.

Rape of a male child under 13.

Indecent assault on a female-with effect from May 2004 split into:
Sexual assault on a female aged 13 and over.
Sexual assault on a female child under 13.
Unlawful sexual intercourse with a girl under 13-up until May 2004.
Sexual activity involving a child under 13-with effect from May 2004.
Unlawful sexual intercourse with a girl aged under 16 – repealed with effect from May 2004.
Causing sexual activity without consent – with effect from May 2004.
Sexual activity involving a child under 16 – with effect from May 2004.
Sexual activity etc. with a person with a mental disorder – with effect from May 2004.
Abuse of children through prostitution and pornography – with effect from May 2004.
Trafficking for sexual exploitation – with effect from May 2004.
Gross indecency with a child – repealed with effect from May 2004.

Other sexual offences

Buggery – repealed with effect from May 2004.
Gross indecency between males – repealed with effect from May 2004.
Incest or familial sexual offences - previously termed " Familial sexual offences".
Exploitation of prostitution.
Abduction of a female – repealed with effect from May 2004. Previously termed "Abduction".
Soliciting of women by men.
Abuse of position of trust of a sexual nature – with effect from May 2004. Previously termed "Abuse of trust" and Abuse of position of trust".
Sexual grooming – with effect from May 2004.
Other miscellaneous sexual offences.

Robbery

Key elements of the offence of robbery (section 8 of the Theft Act 1968) are stealing and the use of force immediately to do so, and in order to do so.
All offences.

Burglary

(Entering a building as a trespasser in order to steal)
All offences relating to domestic property

Other Theft offences

Profiting from or concealing knowledge of the proceeds of crime.

Criminal damage

Arson

Drug Offences

All drug offences except minor possession

Other Miscellaneous offences

Blackmail

Kidnapping

Treason

Riot

Violent disorder

Absconding from lawful custody

Referral of Case suitable for Contact management

Identity

Full name:
Date of birth:
Nationality:
HO Ref:

Offences listed in date order, most recent first.

Offence Date Sentence

Current Detention status

Subject has been detained under IA powers since …. and is currently detained in…….

Full immigration history and current status

Deportation status

Current barriers to removal are:

Imminence of removal

Is removal imminent?

Compliance

Is the subject currently complying with efforts to remove?

Does the subject have a history of non-compliance?

Bail

Has bail been applied for?

Address

Risk of harm

NOMs will only be able to provide a risk assessment where the subject has Received a sentence of one year or more, or where there has been a pre-sentence report or where the subject has previously been sentenced to a community order and has had contact with an Offender Manager through that.
In other cases, CCD will produce an assessment based on offence type, sentence length, previous history (where known) and behaviour in prison and Immigration Removal Centre

According to the Pre-Sentence Report completed by the Probation Officer on his risk of harm has been assessed as:

Risk has been assessed by:

Additional factors

Chief Executive's comments

I agree to release this individual on restrictions

I do not agree to release this individual from detention

Signed …….. …….. **Date……**

Chief Executive : Border and Immigration Agency