

CHAPTER 8

ENFORCEMENT ACTION TAKEN AGAINST EEA NATIONALS AND FAMILY MEMBERS

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ANNEX A

A. DETENTION AND RESTRICTION ORDERS, AND DETENTION REVIEW

SECTION 1 – ILLEGAL ENTRY

1. Introduction

Section 33(1) of the 1971 Act, as amended by the 1996 Act, defines an illegal entrant as a person -

- (a) unlawfully entering or seeking to enter in breach of a deportation order or of the immigration laws, or
- (b) entering or seeking to enter by means which include deception by another person, and includes also a person who has entered as mentioned in (a) or (b) above.

1.1 Categories of illegal entry

This definition covers the following categories of illegal entry:

- entry without leave (e.g. clandestine entry, absconders, unwitting evasion of the control)
- verbal deception
- documentary deception
- no evidence of lawful entry (NELE)
- entry in breach of a deportation order
- illegal entry from the Republic of Ireland
- illegal entry from the Channel Islands and the Isle of Man

Persons who have already been served with notices as an illegal entrant will be either:

- detained; or
- on temporary admission/release, subject to restrictions as to their place of residence and with a requirement to report to the police or an immigration official on a regular basis, e.g. weekly, monthly.

Further information on illegal entrants is provided in the Enforcement Instructions and Guidance, available on the UK Border Agency website.

<http://www.bia.homeoffice.gov.uk/policyandlaw/guidance/enforcement/>

2. EEA nationals and family members

An EEA national and his family members have a right to free movement and residence within the Member States, subject to certain limitations and conditions, which are described more fully in Chapters 1 and 2. An EEA national does not require entry clearance or leave to enter the United Kingdom. However an EEA national may be subject to illegal entry action if he enters or seeks to enter the United Kingdom in breach of an extant deportation order (see paragraph 5 below).

2.1 Accession States

On 1 January 2007 Bulgaria and Romania became the newest members of the European Union. If a national of one of these countries was served papers as an illegal entrant prior to 1 January 2007 those papers no longer have effect and no further illegal entry action must be taken against the person on that particular basis.

For further information on Accession State nationals please see Chapter 7

2.2 Release from detention/altering reporting instructions

Where an EEA national is exercising Treaty Rights in the United Kingdom his family members (who may not themselves be EEA nationals) are afforded the same rights to free movement and residence. Accordingly that family member should not normally be detained or placed on reporting restrictions.

If a person who has been arrested and detained on suspicion of being an immigration offender subsequently claims to be the family member of an EEA national it will normally be appropriate to release the person from detention if we have seen:

- 1) Evidence of EEA sponsor's nationality (e.g. a valid ID card or passport)
- 2) Evidence of the relationship (e.g. marriage or civil partnership certificate, birth certificate)
- 3) Evidence that the EEA sponsor is exercising a Treaty right

If the case is not straightforward it may be necessary to contact European Casework for further advice.

2.3 Applications made by illegal entrants

The UK Border Agency may receive EEA related applications from or on behalf of illegal entrants. For example an illegal entrant wishing to marry in a civil ceremony or enter into a civil partnership with an EEA national in the United Kingdom might apply to the UK Border Agency for a certificate of approval. Alternatively an illegal entrant who claims to be the family member of an EEA national may apply to the UK Border Agency for a residence card (*see Chapter 2, Sections 3 & 4*). Responsibility for the decision on the application lies with the European Casework Group.

If immigration officers are required to make enquiries on behalf of European Casework clear guidance should be given as to the nature and conduct of those enquiries.

European Casework must notify the immigration officer(s) of the outcome of an illegal entrant's application, particularly if a residence card has been issued as enforcement action cannot be

pursued and reporting restrictions will have to be cancelled. Contact should normally be made via the relevant local enforcement office dealing with the person.

3. Sham marriages or other relationships

See paragraph 3 Section 2, Administrative Removal.

4. Counterfeit, forged or fraudulently obtained documents

See paragraph 4, Section 2 Administrative removal.

5. Entry in breach of a deportation order

While an EEA national does not require entry clearance or leave to enter the United Kingdom, **if** he has previously been deported from the United Kingdom on grounds of public policy or public security **and** enters or seeks to enter in breach of the extant deportation order he is an illegal entrant as defined in section 33(1) of the Immigration Act 1971 and will be liable to removal as such. The right of appeal against the decision to remove is provided for by Regulation 26. By virtue of Regulation 27(1)(d) this will be an out of country right of appeal **unless** 27(3) applies, ie the person raises grounds asylum or human rights claim that is not certified as clearly unfounded.

5.1 Procedures for dealing with an illegal entrant

An EEA national or family member who returns to the United Kingdom while a deportation order is still in force against him (extant) will either be

- stopped on entry by an immigration officer, ie before he passes through the immigration control, or
- encountered after entry having managed to pass through or circumvent the control on arrival

On Entry

Where the person has been stopped on entry he will be deemed to have sought to enter in breach of a deportation order and the On Entry procedures set out in Chapter 7, Section 3 of the Immigration Directorate Instructions (IDIs) should be followed.

After Entry

Where the EEA national or family member is encountered after he has entered the United Kingdom in breach of a deportation order made on public policy or public security grounds and the basis on which the order was made still remains, the person should be served with the following:-

- an IS151A (EEA), **Notice to a person liable to removal**. This notifies the person of his immigration status and liability to detention and removal.
- an IS151A Part 2 (EEA), **Notice of Decision**. This also notifies the person of his right of appeal from outside the United Kingdom against the decision to remove.
- an ICD 2163 (also known as AIT 3 or IS87 Non UK) **Notice of Appeal to the Asylum and Immigration Tribunal**.

Once a person has been served with the IS151A (EEA) he will either be;

- detained; or

- given temporary admission/release, subject to restrictions as to his place of residence and with a requirement to report to the police or an immigration official on a regular basis, eg weekly, monthly. Refer to Chapter 22a of the Enforcement Instructions and Guidance for advice on reporting restrictions.

As the IS151A (EEA) is also used for those who are to be removed by way of directions under section 10 of the Immigration and Asylum Act 1999 (Regulation 24(2) refers) it is important to ensure that the correct box is ticked at part B on the form, identifying the person as someone who is liable to removal by virtue of Regulation 24(4).

5.2 Level of authority to serve papers

Service of the IS151 (EEA) forms in casework units must be authorised by an HEO senior caseworker (equivalent grade to chief immigration officer). The forms should be accessed via Document Generator.

5.3 Asylum or human rights claim made

If the person makes an asylum or human rights claim he may be entitled to appeal from within the United Kingdom against the decision to remove him. The relevant forms to serve are set out below.

If the person makes an asylum or human rights claim which is not certified as clearly unfounded, he should be served with the **IS151A (EEA)** as above but instead of the IS151A Part 2 (EEA) and ICD 2163 will need to be served with –

- an IS151A Part 2 (EEA) UK, **Notice of decision** and
- an ICD 1041 (also known as an AIT 1 or IS87(UK)) **Notice of Appeal to the Asylum and Immigration Tribunal.**

While a person's appeal from within the United Kingdom could be brought (within the time prescribed for doing so) or is pending he cannot lawfully be removed or required to leave but for further information on appeals and certification please see Chapter 9 Appeals.

6. Removal arrangements

Once the person is removable the case should be passed to the local enforcement office covering the area in which the person lives.

Directions for a person's removal are given by an immigration officer to the relevant carrier requiring the carrier to remove or make arrangements for the person's removal from the United Kingdom to a particular country or territory. The person will be notified separately of these arrangements for his removal by way of form IS151D.

SECTION 2 – ADMINISTRATIVE REMOVAL UNDER SECTION 10 OF THE 1999 ACT

1. Introduction

Section 10 of the Immigration and Asylum Act 1999, contains the provisions under which certain

categories of people who are in the United Kingdom unlawfully may be subject to administrative removal procedures. Those categories are described at paragraph 2 below.

2. The power to remove under section 10

Under section 10(1) of the Immigration and Asylum Act 1999 a person who is not a British citizen may be removed from the United Kingdom, in accordance with directions given by an immigration officer, if -

- he has failed to observe a condition of his limited leave to enter or remain or has remained beyond the period of his limited leave (Section 10(1)(a) of the 1999 Act)
- he uses deception in seeking leave to remain, irrespective of whether he is successful or not (Section 10(1)(b) of the 1999 Act)
- his indefinite leave to enter or remain has been revoked under section 76(3) of the Nationality, Immigration and Asylum Act 2002 as someone who has ceased to be a refugee (Section 10(1)(ba) of the 1999 Act)
- he is the family member of a person being removed under Section 10 (Section 10(1)(c) of the 1999 Act)

Further information on section 10 administrative removal can be obtained from the Enforcement Instructions and Guidance, available via the UK Border Agency website.

3. EEA Nationals and family members

An EEA national and his family members have a right to free movement and residence within the Member States, subject to certain limitations and conditions, which are described more fully in Chapters 1 and 2. An EEA national does not require entry clearance or leave to enter the United Kingdom.

3.1 Accession States

On 1 January 2007 Bulgaria and Romania became the newest members of the European Union. If a national of one of these countries was served with section 10 papers prior to 1 January 2007, e.g. as an overstayer, those papers will no longer have effect.

For further information on Accession State nationals please see Chapter 7

3.2 Release from detention/altering reporting instructions

Where an EEA national is exercising Treaty Rights in the United Kingdom his family members (who may not themselves be EEA nationals) are afforded the same rights to free movement and residence. Accordingly that family member should not be detained or placed on reporting restrictions.

If a person who has been arrested and detained on suspicion of being an immigration offender subsequently claims to be the family member of an EEA national it will normally be appropriate to release the person from detention if we have seen:

- 1) Evidence of EEA sponsor's nationality (e.g. a valid ID card or passport)
- 2) Evidence of the relationship (e.g. marriage or civil partnership certificate, birth certificate)

3) Evidence that the EEA sponsor is exercising a Treaty right

If the case is not straightforward it may be necessary to contact European Casework for further advice.

3.3 Applications made by people liable to section 10 administrative removal

The UK Border Agency may receive EEA related applications from or on behalf of non EEA nationals liable to section 10 administrative removal. In this case we are referring to section 10 action taken exclusively under UK immigration legislation, not under EC law. For example an overstayer wishing to marry in a civil ceremony or enter into a civil partnership with an EEA national in the United Kingdom might apply to the UK Border Agency for a certificate of approval. Alternatively he may claim to be the family member of an EEA national and apply to the UK Border Agency for a residence card (see Chapter 2, Sections 3 & 4). Responsibility for the decision on the application lies with the European Casework Group.

If immigration officers are required to make enquiries on behalf of European Casework clear guidance should be given as to the nature and conduct of those enquiries.

European Casework must notify the immigration officer(s) of the outcome of the person's application, particularly if a residence card has been issued as enforcement action cannot be pursued and reporting restrictions will have to be cancelled. Contact should normally be made via the relevant local enforcement office dealing with the person.

3.4 Sham marriages or other relationships

Article 35 of the Directive allows Member States to take appropriate measures to guard against "abuse of rights or fraud, such as marriages of convenience". Section 2(1) of the Regulations provides that "civil partner" and "spouse" do not include a party to a civil partnership/marriage of convenience, that is a partnership or marriage contracted for the sole purpose of enjoying the right of free movement and residence.

Where a person is suspected of having entered into a sham marriage or civil partnership or where an unmarried partners' relationship is not considered to be genuine, any investigations concerning the relationship must only be carried out with the authorisation of European Casework.

3.5 Caution interview

An immigration officer will normally conduct a full caution interview in accordance with PACE (Police & Criminal Evidence Act) where a person has been arrested on suspicion of an immigration related offence. As described at paragraph 3.2 above there may be occasions when the person is arrested in advance of the person claiming to be the family member of an EEA national. Where necessary in such cases the immigration officer will need to seek advice from European Casework as to whether an interview under caution should be conducted. This is likely to be in cases where the non EEA national has been unable to provide the required evidence of his/her relationship with the EEA national, or where the immigration officer has other reason to believe that the relationship is not genuine.

If during an interview under caution the person clearly admits to having entered into a sham marriage/civil partnership or has otherwise relied on a relationship which is not genuine in order

to obtain the benefits derived by the family member of an EEA national, that person may be dealt with under UK immigration legislation, rather than the EC law. Therefore depending on his current immigration status, he might be a person subject to section 10 administrative removal (see categories at paragraph 2 above), an illegal entrant or other type of immigration offender and would be dealt with as such in terms of removal procedures. Where the person is considered to be someone liable to section 10 administrative removal or an illegal entrant the case should be referred to the relevant local enforcement office for action.

3.6 No admission

If despite an interview under caution the person makes no admission of having entered into a sham relationship and is otherwise able to provide evidence that he is related as claimed to an EEA national it will normally be necessary to continue to deal with him under EC law (however see paragraph 4 below relating to counterfeit or forged documents examined by NDFU).

3.7 Non caution interviews

Where the person has produced evidence in support of his claim to be related to an EEA national (counterfeit or forged documents excepted) a non caution interview, eg where the person has voluntarily agreed to answer questions about his relationship, will not on its own be sufficient for dealing with the person other than under EC law, even if he admits that the relationship is not genuine. This is because a person can later retract or deny having made such a verbal admission, or may say that he did not properly understand what he was being asked.

3.8 Written admission

A written statement containing an admission that the claimed relationship with an EEA national is not genuine can be accepted as sufficient evidence if it is signed by the person or provided on his behalf and signed by his legal representative. However if the person's true identity and nationality are in doubt and have not been confirmed by the written statement, proof will be required in order to pursue any removal action.

Where a signed written statement has been provided and the person's identity and nationality are established, then provided he has no other claim to Treaty Rights he may be dealt with under UK Immigration legislation in terms of any enforcement action, removal decision and appeal rights.

4. Counterfeit, forged or fraudulently obtained documents

Where there is reason to believe that documents provided by an EEA national or family member as proof of nationality, identity or a relationship are counterfeit, forged or have been fraudulently obtained, then that person may be dealt with under UK immigration legislation provided –

- he has made an admission under caution to this effect **and**
- it has been possible to confirm his true identity and nationality (which is not that of an EEA national)

In the case of suspected counterfeit or forged documents where there has been no admission under caution to this effect an acceptable alternative will be if -

- the National Document Fraud Unit has undertaken a full and detailed examination of the

document and provides a report which concludes that the document is either counterfeit or a forgery.

However it will still be necessary to establish the person's true identity and nationality. Unless the above criteria apply, the person must still be dealt with under EC law and any decision to remove will be under regulation 19(3)(a) (see paragraph 6 below).

5. Factors to be taken into account when deciding whether administrative removal under section 10 powers is appropriate

The Immigration Rules (paragraph 395C) require that all known relevant factors will be taken into account before a decision to remove by way of directions under section 10 is taken. The factors to be considered include:

- a. Age;
- b. Length of residence in the United Kingdom;
- c. Strength of connections with the United Kingdom;
- d. Personal history, including character, conduct and employment record;
- e. Domestic circumstances;
- f. Previous criminal record and the nature of any offence of which the person has been convicted;
- g. Compassionate circumstances;
- h. Any representations received on the person's behalf.

Due regard must also be had to the United Kingdom's obligations under both the 1951 Convention relating to the Status of Refugees and the European Convention on Human Rights.

6. Removal in accordance with the EEA Regulations

If a person who had been admitted to or acquired a right to reside in the United Kingdom under the EEA Regulations subsequently turns out not to have or ceases to have a right to reside here, he may be removed under regulation 19(3)(a) as if he were someone to whom section 10(1)(a) of the 1999 Act applied (Regulation 24(2) refers). This may include those EEA nationals and their dependent family members who have been resident in the United Kingdom for more than three months and are not exercising a Treaty right. It will not apply to those being removed on grounds of public policy, public security or public health. Such persons will be liable to deportation (see Chapter 8 Section 3 Deportation).

6.2 Removal under UK immigration legislation

Although a decision to remove taken under regulation 19(3)(a) treats the person "as if he were a person to whom section 10(1)(a) of the 1999 Act applied" this is not to be confused with a decision taken solely under UK immigration legislation that the person is to be removed under section 10.

Where a non EEA national, subject to immigration control, last entered the United Kingdom in a capacity outside the EEA Regulations and has not since acquired a right to reside here under the EEA Regulations, any decision to remove him will be taken under UK immigration legislation. For example a visa national "overstays" his period of limited leave to enter as a visitor, then applies for a residence card on the basis of marriage to an EEA national. He is unable to provide proof of his claimed relationship to the EEA national and the application is refused. As the person was neither admitted to nor acquired a right to reside in the United Kingdom under the EEA Regulations, for the purpose of enforcement action he should be dealt with as an overstayer

under section 10 of the 1999 Act and **not** the EEA Regulations.

For information on section 10 administrative removal see chapters 50 - 51 of the Enforcement Instructions and Guidance, available on the UK Border Agency website.

6.2 Administrative removal process for EEA cases

Where it has been established that a person is liable to removal under regulation 19(3)(a) of the EEA Regulations he should be served with the following :-

- an IS151A (EEA), **Notice to a person liable to removal**. This notifies the person of his immigration status and liability to detention and removal.

Once a person has been served with such a notice he will normally be given temporary admission/release, subject to restrictions as to his place of residence and with a requirement to report to the police or an immigration official on a regular basis, eg weekly, monthly.

For guidance on reporting restrictions refer to Chapter 22a of the Enforcement Instructions and Guidance.

As the IS151A (EEA) form is also used for those who enter in breach of a deportation order it is important to ensure that the correct box is ticked at part A on the form, identifying the person as someone who is liable to removal by virtue of Regulations 19(3)(a) and 24(2).

If after consideration of the person's case removal is considered to be the appropriate course of action that person should be served with:-

- an IS151B (EEA) **Notice of Decision**, ie the EEA decision to remove. This also notifies the person of his right to appeal from within the United Kingdom against the EEA decision.
- an ICD 1041 (also known as AIT 1 or IS87 (UK)) **Notice of Appeal to the Asylum and Immigration Tribunal (UK)**.

In accordance with Regulation 24(6) the person will be allowed a period of 1 month to leave the United Kingdom voluntarily beginning on the date of notification of the decision to remove. In practice this will be from the date on which he is deemed to have received the IS151B (EEA). During this period and while any appeal against the decision to remove could be brought or is pending, the person cannot be removed from the United Kingdom.

6.3 Level of authority to serve papers

Service of the IS151A (EEA) and IS151B (EEA) forms in casework units must be authorised by an HEO senior caseworker (equivalent grade to chief immigration officer). The forms should be accessed via Document Generator.

6.4 Appeal rights

The right of appeal under the Regulations is provided for by virtue of Regulation 26.

The entitlement to appeal under the Regulations against an EEA decision only applies if:

- the person claiming to be an EEA national produces a valid national identity card or passport issued by an EEA State,
- the person claiming to be the family member of an EEA national produces an EEA family permit or other proof of his relationship to the EEA national.

While a person's appeal from within the United Kingdom could be brought (within the time prescribed for doing so) or is pending he cannot lawfully be removed or required to leave.

For further information on appeals see Chapter 9.

6.5 Removal arrangements

Once the person is removable the case should be passed to the local enforcement office covering the area in which the person lives.

Directions for a person's removal are given by an immigration officer to the relevant carrier requiring the carrier to remove or make arrangements for the person's removal from the United Kingdom to a particular country or territory. The person will be notified separately of these arrangements for his removal by way of form IS151D.

The costs of complying with removal directions (so far as reasonably incurred) are to be met by the Secretary of State

6.6 Person subject to administrative removal who returns

Unlike someone who has been deported, provided that they otherwise qualify for admission under the Regulations or Immigration Rules, those subject to administrative removal under section 10 do not need to have the decision to remove them rescinded before they may return to the United Kingdom.

SECTION 3 DEPORTATION

1. Introduction

According to the European Parliament & Council Directive 2004/38/EC "Union citizenship should be the fundamental status of nationals of Member States when they exercise their right of free movement and residence." A person who would be entitled to reside in the United Kingdom by virtue of the EEA Regulations may only be removed on the grounds of public policy, public security or public health. These provisions are reflected in Regulations 19, 20, 21 and 24 of the Immigration (European Economic Area) Regulations 2006.

Deportation cases involving EEA nationals normally arise when the UK Border Agency is notified (usually by the police, a prison or a court) that an EEA national or the non-EEA family member of an EEA national has been convicted of an offence. The caseworker must then decide whether deportation on public policy, public security or public health grounds is justified.

All deportation action against EEA nationals or family members of EEA nationals is taken under the EEA Regulations and the person concerned is treated as if he or she were a person to whom section 3(5)(a) of the Immigration Act 1971, including where a court has recommended deportation. This is in line with regulations 19(3)(b) and 24(3).

Some EEA nationals are not liable to deportation i.e.:

- British citizens;
- persons who are exempt from control under section 8 of the 1971 Act (e.g. diplomats);
- nationals of the Republic of Ireland who were ordinarily resident in the United Kingdom at the coming into force of the 1971 Act and who, at the time of the Secretary of State's decision, had

been ordinarily resident in the United Kingdom and Islands for the last five years. The "last five years" is to be taken as a period amounting in total to five years exclusive of any time during which the person claiming exemption from deportation was serving a custodial sentence of six months or more. Section 7 of the 1971 Act (as amended by Section 75 of 2002 Act) refers.

No deportation action may be taken against such persons.

In addition to the exemption contained in section 7 of the 1971 Act, caseworkers should be aware of the criteria for the deportation of Irish nationals announced by way of the Ministerial statement of 19 February 2007. Further information can be found in chapter 17.5 of the OEM. www.ind.homeoffice.gov.uk/documents/oemsectionb/chapter17

2. Public policy, public security, public health

Decisions taken to expel (deport) a person on one of these three grounds must be taken in accordance with a set of principles set out in Council Directive 2004/38/EC and transposed by Regulation 21 of the EEA Regulations 2006. An EEA decision to deport a person on the grounds of public policy, public security or public health must not be taken to secure economic ends.

2.1 Public Health

Under Article 29 of the Directive the only diseases justifying measures restricting freedom of movement are:-

- those with epidemic potential as defined by the relevant instruments of the World Health Organisation, or
- other infectious disease or contagious parasitic disease that is the subject of protection provisions applying to nationals of the host Member State.

For the purpose of the Immigration (EEA) Regulations 2006, the relevant instrument of the World Health Organisation is the International Health Regulations (2005). Diseases subject to protection provisions are those "notifiable" diseases listed in the Public Health (Control of Disease) Act 1984 and the Public Health (Infectious Diseases) Regulations 1988 to which section 38 of the 1984 Act applies.

Section 38 of the Public Health (Control of Disease) Act 1984 provides a justice of the peace with the power to order that a person known to be suffering from a specified disease be detained in hospital where such measures are deemed necessary. The diseases for which this power is available are:-

acquired immune deficiency syndrome, acute encephalitis, acute poliomyelitis, anthrax, cholera, diphtheria, dysentery (amoebic or bacillary), leprosy, leptospirosis, measles, meningitis, meningococcal septicaemia (without meningitis), mumps, paratyphoid fever, plague, rabies, relapsing fever, rubella, scarlet fever, smallpox, tuberculosis of the respiratory tract in an infectious state, typhoid fever, typhus, viral haemorrhagic fever, viral hepatitis, and whooping cough.

2.1.1 Deportation on grounds of public health

It will be exceptional that a person who has already entered the United Kingdom would be deported on the basis of public health grounds since containment of the disease would be a prime concern. It should also be noted that where a person's medical condition is advanced as a

reason to delay or prevent removal the UK Border Agency's wider enforcement policy requires that it be ascertained from a doctor whether the person is fit to travel. This applies equally to EEA nationals.

Cases involving possible deportation on public health grounds will be dealt with by European Casework. Cases should be considered on an individual basis and as with all deportation cases those factors set out at paragraph 4.1 below must also be taken into account.

Where a disease occurs after 3 months of the person's arrival in the United Kingdom this will not justify his removal from the territory.

If there is reason to believe that grounds of public health may justify deportation it will be important to take into account any medical reports provided in respect of the individual and any recommendations made by health experts. Regard must also be had to any legislation or Regulations that may be in force at the time which directly relate to the containment or prevention of disease.

2.2 Public Policy and Public Security

For an EEA national or family member to be deported on public policy or public security grounds we need to be satisfied that the person's conduct represents **a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society**.

2.2.1 Public policy

In order to determine which crimes **may** fall within the scope of grounds of public policy, reference can be made to The Nationality, Immigration and Asylum Act 2002 (Specification of Particularly Serious Crimes) Order 2004, Schedule 15 of the Criminal Justice Act (CJA) 2003, Schedule 16 CJA for Scotland and Schedule 17 CJA for Northern Ireland. However do not assume that a crime listed in any of these automatically warrants a person's deportation or that other crimes not listed would preclude deportation.

2.2.2 Public security

Although the Directive does not define public security it is accepted in European Community law that a Member State has a right to protect itself from threats to national security posed, for example, by terrorists. Offences covered by the Terrorism Act 2000, the Anti-Terrorism, Crime and Security Act 2001, the Prevention of Terrorism Act 2005 and the Terrorism Act 2006 will be relevant.

Other crimes that are likely to pose a risk to the safety of the wider community or a section of the public may also fall within the scope of public security. However where a person has acquired a right to reside permanently in the United Kingdom the seriousness of the crime and the likelihood of that person remaining a threat to the public will need to be carefully assessed to ensure that a decision to deport can be justified under the Regulations (*see below*).

2.2.3 Right to reside permanently

Where a person has acquired a right to reside in the United Kingdom permanently under Regulation 15, any decision to deport must only be taken on **serious** grounds of public policy or public security.

In the case of an EEA national who has resided in the United Kingdom for a continuous period of 10 years prior to a decision to deport, he may only be deported on **imperative grounds of public security**. Imperative grounds of public security will also be the only justification for deporting a person under the age of 18, unless the relevant decision is necessary in the best interests of the child as provided for by the UN Convention on the Rights of the Child.

Where a person has been convicted the nature of the offence alone will not necessarily be a reliable guide as to whether it would warrant the person's removal from the United Kingdom. However the length of sentence and the judge's sentencing comments may be helpful indicators. Where available, reports provided by independent experts assessing a person's propensity to re-offend or the likelihood of his successful rehabilitation in the community may also be helpful. Each case must be considered on its own merits.

2.2.4 Minor offences

A single minor offence, particularly if it is a first offence will not, by itself, be sufficient to justify the deportation of an EEA national. However, if an EEA national is convicted of more than one minor offence and there is a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society (generally evidenced by a propensity to re-offend) deportation may be considered. Where no action is to be taken, minute the file to explain why and then lay by or refer to SCW with a proposal to send a warning letter ICD.0260 (EEA).

2.2.5 Warning Letters

- A warning letter makes it clear that the behaviour in question is not acceptable to the United Kingdom;
- Warns that if the behaviour is repeated consideration will be given to deportation action.

A warning letter should not be sent for a minor offence. It should be used where a borderline decision was taken not to deport.

2.2.6 Key points

In considering whether a person's conduct merits deportation we should be satisfied that:

- the person has been convicted of a serious offence normally attracting a custodial sentence of 12 months or more where the conviction was for a drugs, sex or violent offence or in other cases where the sentence received was for 24 months or more, or
- the person has been convicted of more than one minor offence, or
- the person has been recommended for deportation by the sentencing court* and in any case,
- there is a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. To this end, there should generally be evidence of a propensity to re-offend. This could be based on the subject's history and previous convictions, or expert assessments (e.g. reports or statements by the court, police, prison, parole board, probation service).

Although previous convictions may be relevant in so far as they show a pattern of habitual behaviour and propensity to re-offend it must be noted they do not in themselves justify deportation of EEA nationals and family members.

The decision to deport must be a proportionate response and must be based solely on the personal conduct of the person concerned. Additional factors which must be taken into account when assessing whether deportation is justified are set out at paragraph 4.1 below.

* Although a court may recommend deportation any decision to remove under regulation 19(3)(b) requires the person to be treated as if he were a person to whom section 3(5)(a) of the 1971 Act applied.

2.3 Dependants/family members of an EEA national

Under section 3(5)(b) of the Immigration Act 1971 the family member of a person who is deported or has been ordered to be deported will himself be liable to deportation. However this is not the case with EEA nationals and their family members, as the decision to deport must be based on the personal conduct of the person concerned. The situation may therefore arise whereby one member of a family is faced with deportation whilst the remaining members will either be entitled to remain here exercising their Treaty Rights, or by virtue of no longer having a right to reside under the Regulations will be liable to removal in accordance with Regulation 24(2).

Any decision that would result in the family being split must be fully justified with proper consideration being given to the resultant interference in the enjoyment of the right to family life.

3. Initial action – conviction cases

3.1 Information required

The following information will usually be required before making a decision on whether or not to deport.

- Person's current address, including prison if in custody
- Confirmation as to whether an appeal has been lodged against the conviction or sentence (inc the recommendation to deport).
- Nominal Index Card (NIC) relating to the prisoner's reception into custody and release date
- Court certificate confirming the offences and length of imprisonment
- Police report confirming the circumstances of the offence(s); or
- Custom and Excise report if they were the prosecuting authority
- Judge's Sentencing Remarks
- Details of any previous convictions; and
- Whereabouts of any passport that they hold.
- CCT 2 – Referral from prison (Form)
- Parole and probation reports

3.2 Release dates

- No action to obtain a deportation order should generally be taken more than 18 months before the earliest date of release.
- If there are less than two calendar months until the date of release, the file should be actioned immediately with a view to reaching a decision on deportation before that date.

For CCD cases:-

- If there are less than two calendar months until the date of release the file should be passed to a collator for assessment and allocation to the imminent release team.
- If there are more than two calendar months before the release date the file should be collated and then be placed in the appropriate Allocation Hold.
- If a life sentence has been given then the Lifers Unit should be contacted for the minimum tariff date. The file should then be placed in the Lifers Hold until the date 3 years prior to minimum tariff date.

Once a person has been served with a notice of a decision to make a deportation order he may then be detained under immigration powers where necessary (see paragraph 5 below).

3.3 Detained cases

If the subject is DETAINED i.e. being held under the Immigration Act rather than under the sentence of a Court, the file must be actioned **immediately and passed by hand at all stages**. The file should be clearly flagged with a large red 'DETAINED' flag. The subject will not automatically be detained on completion of his/her sentence on the strength of the court recommendation as there is no presumption for detention. It is therefore important that a decision is taken on whether to detain or release on a restriction order shortly before the subject completes his custodial sentence. The appropriate detention paperwork must be faxed to the prison along with a letter to the subject giving the reasons for his/her detention. [See *Annex A for further guidance*].

4. Handling of cases

Where an EEA national is serving a prison sentence any decision to deport should not be taken until 18 months prior to their release date. In the case of Chindamo, the Tribunal ruled that the Secretary of State's decision to deport Chindamo after he had served only 2 ½ years of a life sentence was unlawful since his release was too far in advance for the Secretary of State to know what his circumstances would be at the time of release.

4.1 Factors to be taken into account in deciding whether to deport

When considering whether an EEA national or the family member of an EEA national who is resident in the United Kingdom should be deported on Public policy or Public security grounds a number of additional factors must be taken into account. The factors for consideration as set out in Regulation 21(6) are:-

- Person's age;
- Person's state of health;
- Family and economic situation of the person;
- length of residence in the United Kingdom (*note paragraph 2.2.3*);
- Persons social and cultural integration into the United Kingdom and the extent of his links with his country of origin.

4.2 Service of notice of a decision to make a deportation order

a. Once all the necessary information is obtained, the factors listed at paragraph 4.1 above should be weighed up. The file should be minuted to record that consideration. A “Reasons for Deportation” letter should also be prepared, to give the full reasons for the decision.

b. A notice of a decision to make a deportation order ICD.1070 (EEA) and an ICD.1041 Notice of Appeal to the Asylum and Immigration Tribunal (UK) should be sent direct to the prison by fax. If the subject is not in custody the papers should be served by 1st class recorded delivery to the subject’s last known release address.

c. If the subject is not in custody, or is due for release soon, consideration should be given to detention or to release on restrictions under Immigration Act powers (see paragraph 5).

d. Update Casework Information Database

4.3 Period allowed for voluntary departure

With the exception of those cases that clearly demand the person’s deportation as a matter of urgency or where the person is detained pursuant to the sentence or order of any court, the person is to be allowed a period of 1 month to leave the United Kingdom voluntarily beginning on the date of notification of the decision to make a deportation order. This is in accordance with Regulation 24(6).

During this period and while any appeal against the decision to make a deportation order could be brought or is pending, a deportation order may not be made against the person.

4.4 Repatriation and extradition requests

Occasionally a deportation case will also be subject to extradition or repatriation proceedings. These will not affect the consideration of deportation which should continue alongside the extradition or repatriation procedures.

5. DETENTION AND ALTERNATIVES TO DETENTION

5.1. Power and authority to Detain

The powers to detain a person who is subject to deportation action are set out in paragraph 2 of Schedule 3 to the Immigration Act 1971. This includes those people whose deportation has been recommended by a Court, those who have been served with a notice of a decision to make a deportation order (sometimes referred to as notice of intention to deport) and those who are the subject of a deportation order. Caseworkers should note that this includes EEA nationals and their family members. Initial detention in these circumstances must be authorised at senior caseworker level.

Caseworkers should refer to Chapter 55 of the Enforcement Instructions and Guidance for information and guidance on detention matters including factors influencing a decision to detain, special cases, continued detention and detention reviews.

European Casework should apply the same levels of authority for detention, detention reviews and bail as used by CCD.

5.2 Continued detention

The continued detention of all cases involving those persons in sole detention under Immigration Act powers must be subject to administrative review at regular intervals. In cases involving EEA nationals or their family members where detention is under Schedule 3, detention reviews are the responsibility of the unit dealing with the case, eg, European Casework, Criminal Casework. It must always be considered whether continued detention is necessary when detention is being reviewed. Where detention is no longer necessary the prison or other place of detention should be notified that the person may be released.

5.3 Alternatives to detention

5.3.1 Restriction orders

As stated above an EEA national or family member, who is the subject of deportation action is liable to detention. Such a person may, as an alternative to detention, be granted release on restrictions. To allow the most effective use to be made of the available detention space full use must be made of this alternative unless detention is clearly warranted.

A person who is the subject of deportation action who is detained or liable to detention may be granted release on a restriction order under paragraph 2(5) of Schedule 3 to the 1971 Act. The restriction order may require the person to reside at a particular address and report at regular intervals to the police or an immigration officer at a specified location, time and date. The person should be notified of any conditions attached to their grant of release, using ICD.0343.

Caseworkers in the relevant units may grant release on restrictions to all those served with a notice of intention to deport, or against whom a deportation order is in force (and who are therefore liable to be detained), including EEA nationals or their family members. All restriction orders must be authorised by a **senior caseworker**.

Caseworkers should note that it is not necessary to grant release on restrictions in all cases where a person is made subject to enforcement action. If there is no evidence to suggest that the person will not keep in contact with the Directorate whilst their case is considered they can be left at liberty with no restrictions being imposed. However, in cases where caseworkers decide to grant release on restrictions our policy is to require all such people to report at regular intervals to a police station or immigration reporting centre. This may for example be on a weekly or monthly basis, depending on where the person has to report and what is deemed to be reasonable. In the case of a family only the head of the household needs to report. Persons on restrictions should not be required to report to a police station if they could report to an immigration reporting centre instead. Where reporting to a police station is considered essential, the police station must be informed.

A person who fails, without reasonable excuse, to comply with the terms attached to a restriction order commits an offence under section 24(1)(e) of the Immigration Act 1971 and is liable to prosecution. The decision on whether to charge a person or prosecute rests with the police or Crown Prosecution Service.

5.3.2 Electronic monitoring

Section 36 of the Asylum and Immigration (Treatment of Claimants) Act 2004 provides for the use of Electronic Monitoring (EM) of adults (persons at least 18 years of age).. A decision to apply EM must be taken by (at least) a Chief

Immigration Officer/Higher Executive Officer. High profile or contentious cases however, should be referred to an Assistant Director before applying EM.

Three types of electronic monitoring are currently available; Voice recognition, Tagging and Tracking.

5.3.3 Bail

A person who is detained under Immigration Act powers (or his representative) may apply for bail.

For information on bail please refer to Chapter 57 of the Enforcement Instructions and Guidance. <http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/>

6. Appeals

6.1 Appeals against a decision to make a deportation order

Where a decision is taken to remove a person on grounds of public policy, public security or public health a right of appeal to the Asylum and Immigration Tribunal (AIT) is provided for by virtue of Regulation 26.

A deportation order cannot be lawfully obtained so long as an appeal may be lodged against the decision to make it nor, if an appeal is lodged, while that appeal is pending. See also paragraph 4.4 above regarding period allowed for a voluntary departure.

6.2 Key points

- If appeal to the AIT is DISMISSED, hold for 5 days to check for application for reconsideration before submitting for a deportation order.
- If the subject of an ALLOWED appeal is DETAINED and this is the end of the appeal process, arrangements should be made for immediate release.

For further information on appeals see Chapter 9 of the ECIs.

7. MAKING A DEPORTATION ORDER

After the notice of a decision to make a deportation order has been served the subject has 10 working days within which to lodge a notice of appeal against the decision. [Note: the Procedure Rules 2005 require that an appeal should be made within 5 days if the applicant is in immigration (but not custodial) detention].

Submission for a deportation order **MUST NOT BE MADE WHILST THERE IS AN OUTSTANDING APPEAL AGAINST THE DECISION TO DEPORT, OR STILL TIME WITHIN WHICH AN APPEAL MAY BE MADE.**

A submission should be made to the Secretary of State for signature of a deportation order provided:-

- The time allowed for bringing an appeal against the decision to make a deportation order has expired with no appeal having been brought, or
- there is no appeal pending **and**
- any period allowed for leaving voluntarily either does not apply or has expired without the person leaving

OR

- a lodged appeal is finally dismissed and any period allowed for leaving voluntarily either does not apply or has expired without the person leaving

A draft submission (or 'summary') should be prepared in a standard format, using ICD.0357. This should be emailed to Private Office with a deportation order ICD.0346 for signature and return.

7.1 Implementation of deportation orders

The action to be taken once the deportation order is signed will depend on the person's circumstances. Where the person is either detained under the Immigration Act, nearing completion of their prison sentence, arrangements should be made with the prison to serve a copy of the deportation order. The original order is retained on file. If the subject is living in the community, arrangements should be made with the Local Enforcement Office (LEO) nearest the prison or the other place of detention to serve the order as a matter of urgency to enable deportation to be implemented.

7.2 Review of deportation

If 2 or more years have lapsed since the deportation order was made, without the order having been enforced the case must be reviewed to ensure that the person's deportation is still justified.

8. Persons who return in breach of a deportation order

8.1 Deportation orders made on public policy or public security grounds

A person who has been deported from the United Kingdom is prohibited from re-entering the United Kingdom while the deportation order remains in force. An EEA national (or family member of an EEA national) who enters or seeks to enter in breach of a deportation order may be removed from the United Kingdom by virtue of Regulation 24(4).

8.2 Procedures for dealing with an EEA national or family member who returns in breach of a deportation order

An EEA national or family member who returns to the United Kingdom while a deportation order is still in force against him (extant) will either be

- stopped on entry by an immigration officer, ie before he passes through the immigration control, or
- encountered after entry having managed to pass through or circumvent the control on arrival

On Entry

Where the person has been stopped on entry he will be deemed to have sought to enter in breach of a deportation order and the On Entry procedures set out in Chapter 7, Section 3 of the Immigration Directorate Instructions (IDIs) should be followed.

After Entry

Where the EEA national or family member is encountered after he has entered the United Kingdom in breach of a deportation order the procedures for dealing with an illegal entrant as set out in Section 1, paragraph 5.1 of this Chapter should be followed.

8.3 Deportation orders made on other grounds

It may be the case that a person was previously deported on grounds other than public policy or public security, at a time when he was neither an EEA national nor the family member of an EEA national, but he has since acquired a right of residence in the United Kingdom under EC law. Examples of reasons for deportation on non public policy or non public security grounds could include the following:-

- Overstaying
- Failure to observe a condition attached to the limited leave
- Obtaining leave to remain by deception
- Under section 3(5)(b) of the 1971 Act on the basis of being the family member of a person who was deported.

It might also be the case that the person's deportation was deemed to be conducive to the public good (section 3(5)(a) of the 1971 Act) but the considerations applied were not directly comparable to public policy or public security considerations under EC law.

It will be important to review the reasons for which the extant deportation order was originally made and enforced. Unless it was made on grounds of public policy or public security which still apply **and** which satisfy the terms of the Directive, the existing deportation order should be revoked (see paragraph 9).

9. Revocation of deportation orders

Applications for the revocation of a deportation order should be made from outside the United Kingdom, after the deportation order has been enforced, **UNLESS** the order was made on one of the grounds set out in Section 8.3 above or where there has been a material change in circumstances.

The Regulations do not stipulate any particular length of time that an order should remain in force and each application for revocation must be decided on its own merits.

Although the Regulations do not specify a time limit for considering applications for revocation of deportation orders, Article 32(1) of the Directive sets out a six month time limit. We should aim to comply with this time limit.

Where a deportation order has been enforced against an EEA national or the family member of an EEA national, ie the person has been deported, any application that the person makes from abroad for the deportation order to be revoked will be considered by European Casework.

Applications for revocation which are made before the deportation order is enforced will be dealt with by the casework unit handling the case, eg CCD or European Casework.

9.1 Deportation orders made on grounds other than public policy or public security

If the deportation order was clearly not made on any grounds of public policy or public security (see paragraph 8.3 above) and the subject has since acquired a right of residence under EC Law the order should be revoked immediately.

If the deportation order was made either on conducive grounds or on the recommendation of a court then it may only be maintained if this can be justified on public policy/public security grounds. This should be the initial consideration before taking into account factors set out below.

9.2 Factors to be taken into account

When considering an application for revocation of a deportation order all known circumstances of the case must be taken into account including the following;

- the grounds on which the order was made
- the representations made in support of the application
- national interests and/or
- the interests of the community which must be balanced against the interests of the applicant.

All cases should be decided on the known circumstances of the case and further enquiries will **not** normally be appropriate unless there is evidence that further offences may have been committed abroad (this may be confirmed by a check with Interpol through the Overseas Visitors Records Office (OVRO)).

9.3 Endorsement of order

Once a decision has been made to revoke a deportation order the back of the **original** order should be endorsed by an **SEO senior caseworker** with a stamp to read:

"In pursuance of the power conferred upon him by Section 5(2) of the Immigration Act 1971, the Secretary of State hereby revokes his deportation order."

The endorsement should be signed and dated to show the endorsing officer's name, rank and group. Once any necessary action has been taken to notify the deportee or ECO of the revocation the file should be routed as follows:

1. Update Case Information Database to record the reason for revocation
2. IS to cancel circular, if appropriate
3. File to Lay by."

9.4 Notification of decisions

Decisions on applications made to the Home Office for revocation should be notified to the applicant or his representative. If the application has been made at an overseas post the decision should be communicated through the entry clearance officer.

Where it is decided to revoke the deportation order, a letter should be sent explaining this.

Where it is decided to refuse to revoke the deportation order the following forms should be used, according to the circumstances of the application for revocation;

9.5 Refusal of revocation application made before the deportation order is enforced

Applications for revocation of a deportation order should be made from abroad after the deportation order has been enforced. In the event that a person submits an asylum or human rights claim in advance of the order being enforced, the claim should be considered in the normal way to determine whether it would justify allowing the person to remain in the United Kingdom.

Where an asylum claim made by a person with a right to reside under the Regulations is refused this may lead to a right of appeal in its own right, independent of the decision to refuse to revoke the deportation order, unless the claim is certified as clearly unfounded. This is in accordance with paragraph 4(3) of Schedule 2 to the Regulations. For information on appeals and certification please see Chapter 9.

Any decision to refuse to revoke the deportation order will attract a right of appeal from outside the United Kingdom.

- A notice of decision ICD.1078(EEA) should be served together with an ICD.2163 (also known as AIT 3 or IS87 Non UK) Notice of Appeal to the Asylum and Immigration Tribunal.

9.6 Refusal of revocation application made from abroad

A notice of decision ICD.2929(EEA) and an ICD.2163 Notice of Appeal should be sent direct to the applicant or to his representative if the application was made to the Home Office or to the entry clearance officer for onward transmission if the application was made through him.

10. Channel Islands and the Isle of Man deportation orders

Following the case of ROQUE it was held that the Channel Islands and the Isle of Man are **not** bound by EC law when deporting EEA nationals and their family members.

Where an EEA national or the family member of an EEA national is the subject of an Islands' deportation order and the basis for that deportation order would amount to grounds of public policy or public security under the Immigration (EEA) Regulations 2006, the following may apply:-

1. Person is outside the United Kingdom

The person may still be in the Islands pending deportation or may already have been deported to a third country. In either case if he attempts to enter the United Kingdom and is stopped on arrival at the port he may be liable to be refused admission on grounds of public policy or public security under regulation 19(1). Any decision to refuse admission on the basis of the Island's deportation order must be in accordance with regulation 21. Such a decision would attract a right of appeal from outside the United Kingdom by virtue of regulation 27(1)(a), unless 27(2) applies.

2. Person is inside the United Kingdom

If having been deported from the Islands the person subsequently gains admission to the United Kingdom but given the basis for the Islands' deportation order falls to be considered for removal from the United Kingdom on public policy or public security grounds, he may be liable to removal under regulation 19(3)(b). The case will need to be considered as a new decision to remove under the 2006 Regulations, although the information relating to the Islands' deportation order

will be material to the new decision. A decision to remove under regulation 19(3)(b) will attract a right of appeal from within the United Kingdom under regulation 26.

ANNEX A

DETENTION AND RESTRICTION ORDERS, AND DETENTION REVIEW

1. Background

Once a person has been served with a notice of decision to make a deportation order (ICD.1070) that person may also be served with a detention order (ICD.0257) and be made subject to detention (but see 2 below) or a restriction order (ICD.0343) requiring them to live at a given address and report regularly to the local police or immigration reporting centre or be subject to electronic monitoring.

2. Considerations for detention/restriction

The purpose of this is to prevent people from "going to ground" to avoid being served with a deportation order and removed. Decisions to restrict or detain should therefore be based on the likelihood of that person remaining contactable. If there is a reliable or secure address such as a family home or a probation hostel, then it would not generally be appropriate to detain, though a restriction order is often reasonable.

Consideration must also be given to whether or not detention can be justified if the person has been given 1 month's notice in which to leave the United Kingdom voluntarily (see paragraph 4.4 above) and that period has not yet expired.

3. Service of detention/restriction orders

Normally the ICD.1070 (EEA) (notice of decision to make a deportation order) will be served prior to the subject completing his custodial sentence. A detention or restriction order can be faxed to the prison for service shortly before the release date together with an IS91 and "Reasons for Detention" letter/notice. Service is occasionally arranged simultaneously with service of the ICD.1070 (EEA). Occasionally it is appropriate to fax an ICD.1070 (EEA) together with a detention or restriction order direct to a prison or police station. The Case Information Database should be updated accordingly.

4. Persons recommended for deportation by a court

4.1 A person recommended for deportation on the sentence of the court may be detained under the Immigration Act 1971 beyond the expiry of his prison sentence on the basis of the court recommendation. However:

- It is not our policy to deport an EEA national or the family member of an EEA national under section 3(6) of the 1971 Act. All deportation action against such people is taken under section 3(5)(a) of the Act.
- As we do not deport under section 3(6), it is not appropriate to detain or restrict a person by virtue of a court recommendation. Accordingly if we wish to detain or restrict we should arrange service of ICD.0257 (detention order) or ICD.0343 (restriction order), together with ICD.1070 as set out in paragraph 3 above.

5. Handling of detained cases

5.1 Detention cases need to be monitored closely and actioned as quickly as possible. The file should be flagged with a large red "detained" flag, which should be marked to show the date of initial detention, and the place of detention.

5.2 If the detained person appeals against the notice of intention to deport, **BAIL** may be applied for. In these circumstances we may be requested to confirm that we wish to maintain detention, and summarise our reasons for doing so on the file minutes. The file may then be passed back to the appropriate unit to prepare papers for a bail hearing.

5.3 It is therefore essential that we update the Case Information Database of any detention action.

6. Detention review

Initial detention of an EEA national or the family member of an EEA national must be authorised by a senior caseworker. Continued detention thereafter must be regularly reviewed in line with the information contained in Chapter 55 of the Enforcement Instructions and Guidance.

7. Transfer of detained persons

7.1 It is occasionally necessary for prisons to transfer persons detained under immigration powers to another prison as some prisons are unable to hold such persons beyond the expiry of their custodial sentence.

7.2 To carry out such a transfer the prison needs authority to release the prisoner into the custody of Group 4 and the receiving prison requires authority to accept the prisoner.

7.3 If a prison needs to transfer a prisoner they may contact us to advise of the transfer. The IS91 completed at the date of detention allows this transfer to take place.

7.4 In practice, so long as the prison has the IS91 they will make all the arrangements for the transfer with the Prison Population Management Service.

7.5 Once detained the casework unit will decide if the subject is suitable for transfer into Immigration Service accommodation. The prison will be asked to complete a risk assessment (IS91RA) before the detained team in the casework unit decide whether there is capacity in the IS detention estate to transfer the subject and whether the subject is suitable. If authorised the transfer will be arranged by DEPMU.