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Independent Monitoring Boards  
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**DC 02/08**  
**IMM 02/08**

## **TO IMB CHAIRS IN PRISONS AND IRCs**

c.c. Clerks to IMBs  
Governors in Prisons and IRCs  
National Council  
National Tutors

Dear Chair,

### **UPDATE AND GUIDANCE ON FOREIGN NATIONAL PRISONERS**

This DC provides a brief update on the Foreign National Prisoner (FNP) situation and guidance on monitoring the care and treatment of FNPs.

#### Recent Developments

2. In April 2007 the National Council submitted a report on the then current state of FNPs to both the Prisons Minister and Immigration Minister. The report can be accessed on the IMB web-site if you click on National Council and then Reports. This resulted in meetings with Pat Baskerville, Head of Offender Policy and Rights Unit at NOMS, and Jackie Leitchford, Head of CCD (Criminal Casework Directorate) of BIA (Borders & Immigration Agency, formerly the Immigration Department).

3. Paul Carroll, Area Manager of Kent and Sussex, has been appointed operational lead on FNPs by the Deputy Director General of the Prison Service. This is a positive step and establishments holding FNPs should now be able to obtain a lead on issues that they have previously had to deal with on a piecemeal basis.

4. As at 3 December 2007 there were just under 11,500 FNPs held in prison establishments in England and Wales. There were at the same time 1700 post SED (sentence expiry date) detainees of whom around 500 were being held in prisons, the remainder having been transferred to the IRC estate. Although post SED detainees

in prisons fell below 300 for a short time, this trend could not be sustained after a decision was taken to cap the numbers transferred to the IRC estate to avoid creating an imbalance between ex-prisoners and the detainee population for which the IRCs were intended

5. The UK Borders Act 2007 was passed in October 2007 and will come into effect in early 2008. It allows for those convicted and sentenced to over 12 months to be subject to automatic deportation unless an exemption applies. Clearly this will cause some distress to FNPs when it is implemented.

#### Visits to CCD

6. CCD wrote to all IMBs on 1 February 2007 to extend an invitation to visit their operation in Croydon. Some Boards have already done so and CCD has asked me to remind you that the invitation remains open. Those Boards who have visited CCD have found it helpful from a monitoring standpoint to see the process for dealing with FNPS and have been able to provide useful information to CCD to help deal with some of the difficulties that are being experienced. If you believe it would be helpful for a member of your Board to visit CCD please contact **Tina May at CCD on 0208 196 3347** or [tina.may@homeoffice.gsi.gov.uk](mailto:tina.may@homeoffice.gsi.gov.uk).

#### Contact Details

7. The **CCD hotline** for any issues except FRS: **0208 196 3350/3443** Mon to Fri 9am to 5pm

8. **Facilitated Return Scheme hotline: 0208 760 3761/3753** Mon to Fri 9am to 5pm. This scheme has proved very popular and is being extended.

9. The new **Stakeholder Manager at CCD** is Penny Gilbert. Please contact Penny if you have any problems with the CCD service. Her contact details are:

CCD Stakeholder Manager  
Communications and Stakeholder Management Team  
Criminal Casework Directorate  
Border & Immigration Agency  
1st Floor West, Whitgift Block B  
Croydon CR9 2AR

**Phone: 020 8760 4471                      Fax 020 8760 3093**  
**email : penny.gilbert3@homeoffice.gsi.gov.uk**

10. Finally, Penny has given me the number which government agencies and departments use. Although we are independent of government this number may be useful if other routes do not produce a solution:

**Evidence & Enquiry line: 0845 601 2298.** Open Mon to Fri 6.45 am – 9pm;  
Sat and Sun 8am – 4pm. The line is only closed on Christmas Day.

#### Guidance on monitoring FNPS

11. Annex A includes information on the policies and procedures Boards should expect in their establishments as well as best practice guidance on monitoring the care and treatment of FNPs. The Annex is not prescriptive nor exclusive and you

may well have come across other issues that should be addressed. This is an area where, potentially, every individual case is different.

12. If you have any concerns or would like more information or advice please contact me or, if the matter relates to the IRC estate, Peter Booth.

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Peter Booth  
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### What should Boards be monitoring?

1. Your establishment should have an **FN Co-ordinator**. This may not necessarily be a full-time post. Most establishments have FNPs. Some have hundreds, others only a few. Monitor that the co-ordinator receives the appropriate amount of facility time and that it is enough to do the job properly.
2. Your establishment should also be drawing up, if it hasn't already done so, a **local Foreign National Policy**. The IMB National Council has been asked by NOMs for input on its experience of best practice. Please contact me if you wish to have any input into this.
3. Some Boards have asked about special training covering monitoring of FNPs. The problem has been that establishment policies have, up until now, developed piecemeal. **PSO 4630** governs FNs. There are **PSIs 01/2007** and **21/2007**, the latter issued in May 2007, which give a base against which to monitor. **PSI 46/2007**, paras 10 to 12, touches on granting Cat D status to FNPs sentenced to less than 12 months. Training on FNPs is being offered in May 2008 as a specific part of a pilot workshop for an IMB Experienced Member II course.
4. Please ensure you are receiving the **FN bi-monthly bulletin** which is produced by the Ministry of Justice. It contains useful updates on policy and practical advice and issues for establishments which is useful to know about for monitoring purposes. It is available on the Prison Service Intranet on the following pathway: Information Store> Publications > Foreign Nationals or if you would like a hard copy speak to your establishment or contact/ask your clerk to contact: [christopher.binns@homeoffice.qsi.gov.uk](mailto:christopher.binns@homeoffice.qsi.gov.uk)
5. Annex B sets out the Protocol agreed between the Borders & Immigration Agency and NOMs for the management of ex foreign national prisoners detained under immigration legislation and deemed unsuitable for transfer to the IRC estate. Boards should monitor the SED detainees held in the prison estate against this, bearing in mind that every case is considered individually.
6. Issues Boards should be looking at specifically in relation to FNPs include:
  - Language**
  - a) Do FNs understand what is happening to them/processes/instructions / are translators required needed/ are other prisoners used and if so is there proper understanding/translation/bullying?
  - b) Is language line used? Establishments tend not to want to use it because of expense but prisoners must be able to understand what is happening to them. More up to date software is now available if your establishment has a large group of FNPs are they investing in this software? Is it maintained?
  - c) Is there an establishment list of language skills available in the prison? Is it up to date? Is it known to staff? Is it used?
  - d) Does the establishment have translated PS information packs?
  - e) Is there an opportunity for them to obtain reading material/videos/DVDs in their own language? This may not be possible in establishments with very small numbers. Are libraries catering for them?

### **Contact**

- a) What are the establishment practices for telephone calls on reception? What free calls do prisoners receive? Are international phone cards available for purchase? Do these satisfy the needs of prisoners? What are the connection charges as a percentage of the cost of the card?
- b) Visits – I recently heard of a case where a family had travelled from France to see their son and turned up at the establishment. They were staying 3 days and had come specially to visit. Is the system clear to FNPs? Is the establishment as flexible as they can be in this sort of situation. There are organisations who will visit prisoners/detainees to help with any issues they have eg. AVID. I hope to be able to give more information on this shortly.
- c) Legal representation – is their situation understood? Are they aware they can have legal representation, albeit this resource is increasingly difficult to obtain? In IRC estates in particular is any help offered?

### **Deportation Issues**

- a) CCD are running surgeries in many establishments. Monitor the frequency bearing in mind the criteria of the population. If prisoners are 8 years from the end of their sentence CCD are not going to be interested in them yet. They are prohibited by case law from looking at individual cases prior to 18 months before the end of sentence (on the basis the individual may become rehabilitated). Alternatively if you have a population with only 4 years or under sentences CCD should be visiting more frequently. Should you feel the surgeries taking place are insufficient the establishment should contact the Stakeholder Manager at CCD who will be happy to get CCD to review the provisions being currently made.
- b) Talk to prisoners about their issues. Are they happy with the surgeries and the information /help they receive.
- c) Do the deportation papers that they draw up on the FNs go with their file on transfer to the IRC estate? CCD tell me that sometimes they don't and IRC estates are starting again.

### **Other Issues**

- a) On removal to IRC/deportation/release are FNs humanely treated? Are they given proper notification by the establishment? Is time spent with them explaining what is going to happen to them? Do they understand it? Are FNs victimised in any way?
- b) Is there adequate recognition of safer custody needs in the FNP population? Of the total number of apparently self-inflicted deaths for the calendar year of 2007, 23 or 25% were FNPs. This percentage is a marked increase on 2006 when there were 6 FN SIDs. The last death was on Christmas Day. It was an 18 year old from Somalia who was served with deportation papers on Christmas Eve.
- c) Talk to the prisoner reps. Are there FN reps as well as Race Relation reps on the wings? Do Management meet with the reps? Are their complaints actioned?
- d) Menu – is there provision of varied menus? Discuss with prisoners whether there are issues with menus. Do they understand the menu? Pictures can be used to help or other prisoners could be asked to translate menus in advance.
- e) Are their religious requirements met?
- f) Are they excluded from any courses/work /education because of their status?

## **THE MANAGEMENT OF FOREIGN NATIONAL DETAINEES HELD IN PRISON CUSTODY**

### **INTRODUCTION**

This protocol confirms the agreement between the Borders and Immigration Agency (BIA) and the National Offender Management Service (NOMS) for the management of ex-Foreign National Prisoner detainees detained solely under immigration legislation and who are also deemed unsuitable for the Removal Centre estate. On the expiry of their sentence, foreign national prisoners who are outside the criteria detailed below will be removed from the country or transferred to a Removal Centre, by the Immigration Service.

**Prior to transfer to an IRC all time served prisoners detained will be risk assessed by BIA staff to establish their suitability for such locations. Those not deemed suitable will be referred to the Population Management Section (PMS) of NOMS with a request they remain in prison custody.**

### **CRITERIA FOR DETENTION IN PRISON**

Immigration Detainees should only be held in prison establishments when they present specific risk factors that indicate they are unsuitable for Immigration Removal Centres, for reasons of security or control.

Immigration Detainees will only normally be held in prison accommodation in the following circumstances:

- ❖ National Security – where there is specific (verified) information that a person is a member of a terrorist group or has been engaged in terrorist activities.
- ❖ Criminality – those detainees who have been involved in the importation of Class A drugs, committed serious offences involving violence, or committed a serious sexual offence requiring registration on the sex offenders' register.
- ❖ Security – where the detainee has escaped prison or immigration custody, or planned or assisted others to do so.
- ❖ Control – engagement in serious disorder, arson, violence or damage, or planning or assisting others to so engage.

The above criteria are an initial guide to indicate the suitability of detainees for the IRC estate. It must be recognised that the behaviour of ex-FNP detainees will be the key factor as some who would be excluded by the above criteria may be sufficiently well behaved to merit transfer.

It must be assumed that regardless of the guidelines any ex-prisoner who had been deemed suitable as a Cat. D will be acceptable for the IRC estate.

When a detainee meets the above criteria they should be referred to PMS who will consider their allocation to a prison.

### **REMOVAL ARRANGEMENTS**

Prisons will advise Immigration Service via PMS of potential detainees 14 days in advance of any expected release date (ie CRD, ARD, PED, NPD – whichever is appropriate) to allow for appropriate immigration action to be taken. This is not in place of agreed arrangements to notify BIA of all foreign nationals in prison at commencement of sentence.

At the release point of any sentence and if released from prison custody after being on remand, unless removal is due to take place within 14 days, Immigration Service Detention Escorting and Population Management Unit (DEPMU) will aim to transfer all suitable detainees into the removal estate. This must take place within 14 days of the release date (ie CRD, ARD, PED, NPD, release from remand – whichever is appropriate), provided that IND has been informed 14 days in advance of the release point of any sentence.

**REVIEW OF DETENTION**

NOMS and Criminal Casework Directorate of BIA will keep a joint list of Immigration Detainees and BIA will review them on a monthly basis. Where a change in risk factors of any detainees (for example, improved custodial behaviour) has been recorded and notified to BIA, the transfer of such persons into the removal estate will be considered further by BIA.

Pat Baskerville  
Head of Offender Policy and Rights Unit  
HMPS, NOMS .....*signed*.....

Jackie Luetchford .....*signed*.....  
Director, Criminal Casework Directorate ,BIA

Date: ... May 2007.....