



Deportation - Irish Prisoners in the UK

- Some Irish prisoners continue to receive letters, or notices of intent to deport, from the UK Home Office Immigration Enforcement (HOIE).¹ Such letters may ask that you sign a document or provide the HOIE with additional information. Prisoners in receipt of letters from the HOIE threatening deportation should contact their solicitor or ICPO for advice.
- It is ICPO's experience that such letters are sent out as a matter of course. Irish prisoners in the UK are exempt from deportation, save in exceptional circumstances. The exemption exists because of the close historical, social and political ties between the UK and Ireland. As such, it is highly unlikely that an Irish citizen would be deported from the UK and ICPO is unaware of any case in recent years where such a person was in fact deported.
- In February 2007 the then Home Secretary announced that Irish nationals would only be considered for deportation in exceptional circumstances, so unless the prisoner has been recommended by the court for deportation or if there are exceptional circumstances (see paragraph 2.5 and Annex H of the Immigration, Repatriation and Removal Services PSI 52/2011 below) s/he cannot be removed under the Early Removal Scheme (ERS).
- A number of cases have come before the UK Courts in the past three years challenging the Home Office's position on the deportation of Irish prisoners. These include *Doherty's (Edmund) Application [2016] NI QB 62* in 2016, *Connell, R (on the application of) v Secretary of State for the Home Department* in 2018 and *Foley, R (On the Application Of) v Secretary of State for the Home Department* in 2019. The Courts dismissed each of these cases and the current policy of deporting Irish nationals only in exceptional circumstances remains in place.
- Outstanding matters with HOIE regarding deportation may adversely affect decisions of the Parole Board and your progress through the system. It would be advisable to contact HOIE asking that matters be resolved in view of any forthcoming parole hearing.
- Brexit: it is unclear what impact Brexit will have on Irish people serving a sentence in the UK. The UK and Irish governments signed an agreement in May 2019 on the Common Travel Area (CTA), which reaffirms their commitment to maintaining the CTA in all circumstances. The CTA allows British and Irish citizens to move freely and reside in either jurisdiction and pre-dates both countries joining the EU. The ICPO will continue to monitor developments and will provide updates if and when available.

The following are extracts from the Prison Service Instruction (PSI 52/2011) that deals with deportation:

PSI 52/2011 Immigration, Repatriation and Removal Services

Issue Date: 4 November 2011

Effective Date: 18 November 2011

Expiry Date: 4 November 2015²

Section 2.5 - Irish Nationals

‘Except for prisoners who are the subject of a court recommendation for deportation or where there are exceptional circumstances (see Annex H) Irish nationals, including those who also hold other nationalities, need not be referred to UKBA.’³

Annex H - Deportation of Irish Prisoners

‘Deportation of Irish prisoners will only be appropriate in exceptional circumstances. These cases, by definition, will be rare. However, as a guide, the following may be appropriate for deportation and should therefore continue to be referred to UKBA⁴ using the CCD Referral form:

Where an offence involves national security matters⁵ or crimes that pose a serious risk to the safety of the public or a section of the public. This might be where a person has been convicted of a terrorism offence, murder or a serious sexual or violent offence and is serving a sentence of 10 years or more (a custodial period of 5 years or more). This would include life sentences and those serving other indeterminate sentences for public protection with a tariff of 5 years or more.’

ICPO August 2019

This factsheet is for information purposes only and does not and is not intended to constitute legal advice. While every effort has been made to ensure that the content is accurate and up to date, the ICPO accepts no responsibility for errors and omissions.

¹ In 2013, the UK Borders Agency (UKBA) was replaced by UK Visas and Immigration (UKVI) and Home Office Immigration Enforcement (HOIE). The responsibilities of HOIE include the deportation of foreign national offenders.

² Although PSI 52/2011 expired on the 04 November 2015, it remains in force until it is replaced.

³ PSI 52/2011 was issued before the changes to UKBA and therefore uses this wording rather than Home Office Immigration Enforcement (HOIE).

⁴ See footnote 3 above

⁵ Offences committed under the Terrorism Act 2000, Crime and Security Act 2001, the prevention of Terrorism Act 2005 and the Terrorism Act 2006