



Eligibility for Open Conditions and for ROTL of Prisoners Subject to Deportation Proceedings		
This instruction applies to :-		Reference :-
NOMS Agency staff (Headquarters) Prisons		AI 25/2014 PSI 37/2014
Issue Date	Effective Date	Expiry Date
14 August 2014	14 August 2014	14 August 2018
Issued on the authority of	NOMS Agency Board	
For action by (Who is this Instruction for)	All staff responsible for the development and publication of policy and instructions <input checked="" type="checkbox"/> NOMS HQ <input checked="" type="checkbox"/> Public Sector Prisons <input checked="" type="checkbox"/> Contracted Prisons* <input checked="" type="checkbox"/> Governors <input checked="" type="checkbox"/> Heads of Groups <i>* If this box is marked, then in this document the term Governor also applies to Directors of Contracted Prisons</i>	
Instruction type	Legal compliance	
For information	All staff in NOMS HQ and prison establishments.	
Provide a summary of the policy aim and the reason for its development/revision	<p>This Instruction amends the policy on the categorisation and allocation to Category D/Open and eligibility for ROTL of prisoners who are subject to deportation or removal proceedings. Amendments have been made to Prison Rules and to the corresponding YOI Rules both on the Classification of Prisoners and on Temporary Release.</p> <p>Prisoners in closed conditions who have a Deportation Order against them and who have either exhausted appeal rights in the UK or whose appeal rights <i>must</i> be exercised from abroad: <u>must not</u> be classified as suitable for open conditions; and, <u>must not</u> be granted temporary release (ROTL).</p> <p>Prisoners in closed conditions who do not meet the criteria above but who are liable for deportation or removal proceedings, <i>must</i> be subject to a more rigorous risk assessment prior to consideration for open conditions or ROTL. Open conditions or ROTL will only be appropriate where it is clear that the risk is very low.</p>	

	<p>Prisoners already in Open Conditions: The bar on allocation to open/ROTL does not apply to prisoners already allocated to open conditions. However, any prisoner whose deportation status changes whilst in open conditions <i>must</i> be re-assessed for suitability to remain in open conditions/receive ROTL. They may remain in open conditions subject to being assessed as continuing to be of “very low risk of absconding”.</p> <p>Restrictions do not apply to foreign national prisoners who are not liable for deportation because: they do not meet the initial criteria for deportation or for removal; or, they have been considered for deportation by the Home Office and it has been decided that they may remain in the UK. These prisoners <i>must</i> be considered for open conditions/ROTL in the same manner as other prisoners.</p>
<p>Contact</p>	<p>Keith Roberts – Security Policy Unit (see section 1.17 for full contact details)</p>
<p>Associated documents</p>	<p>See amended documents below, and also:</p> <p>PSI 65/2011 Foreign National Prisoners Liable to Deportation PSI 18/2012 Tariff Expired Removal Scheme (TERS) PSI 21/2012 Release on Temporary Licence Life and Indeterminate Sentence Prisoner (LISP) 4 guidance</p>
<p>Replaces the following documents which are hereby cancelled: - None</p>	
<p>Audit/monitoring: - Deputy Directors of Custody and Controllers will monitor compliance with the mandatory actions set out in this Instruction.</p>	
<p>Introduces amendments to the following documents : -</p> <p>PSI 39/2011 Categorisation and Recategorisation of Women Prisoners PSI 40/2011 Categorisation and Recategorisation of Adult Male Prisoners PSI 41/2011 Categorisation and Recategorisation of Young Adult Male Prisoners PSI 52/2011 Immigration, Repatriation and Removal Services PSI 41/2012 Sentence Planning PSI 04/2013 The Early Removal Scheme and Release of Foreign National Prisoners PSO 4630 – Immigration and Foreign Nationals PSO 4700 Indeterminate Sentence Manual PSO 6300 Release on Temporary Licence</p>	

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1. Executive summary

Background

- 1.1 This Instruction amends the policy on the categorisation and allocation to Category D/Open conditions and eligibility for ROTL of prisoners who are subject to deportation or removal proceedings. Amendments have been made to Prison Rules and to the corresponding YOI Rules both on the Classification of Prisoners and on Temporary Release. The full text of the rule amendments is set out at [Annex A](#).
- 1.2 ***Prisoners in closed conditions*** who have a *Deportation Order* against them and who have either exhausted appeal rights in the UK or whose appeal rights must be exercised from abroad¹:
- *must not be classified as suitable for open conditions;*
 - *must not be granted temporary release (ROTL).*
- 1.3 ***Prisoners in closed conditions*** who do not meet the criteria above but who are liable for deportation (see definition below) or removal² proceedings, must be subject to a more rigorous risk assessment prior to consideration for open conditions or ROTL. Risk assessments must be undertaken (taking into account the guidance at [Annex E](#)) on the assumption that deportation will take place. Each case must be individually considered on its merits but the need to protect the public and ensure the intention to deport is not frustrated is paramount. Open conditions or ROTL will only be appropriate where it is clear that the risk is very low.
- 1.4 The term “**liable for deportation**” applies to prisoners who:
- are confirmed by the Home Office as meeting the initial criteria for deportation based on such factors as sentence length (whether the prisoner has been informed of this or not); or
 - have received a formal notice of liability for deportation; or
 - have received a deportation order with appeal rights in the UK remaining; or
 - fall below the threshold for deportation but are being considered for or made subject to removal from the UK²
- 1.5 **Restrictions do not apply to** foreign national prisoners who are not liable for deportation because:
- they do not match the initial criteria for deportation; or
 - they have been considered for deportation by the Home Office and it has been decided that they may remain in the UK.
 - there are no removal procedures underway against them.
- These prisoners must be considered for open conditions/ROTL in the same manner as other prisoners.*
- 1.6 **Prisoners already in Open Conditions:** The restrictions and prison rule outlined at para 1.2, above, do not apply to prisoners already allocated to open conditions. These prisoners will have undergone already the more rigorous risk assessment and will have been tested in open conditions. *However, any prisoner whose deportation status changes whilst in open conditions must be re-assessed for suitability to remain in open conditions/receive*

1 From October 2014 the new Home Office Immigration Act 2014 will mean more prisoners becoming UK Appeal Rights Exhausted at an earlier stage in sentence.

2• Those prisoners falling below the threshold for deportation (in terms of sentence length, etc) may be still liable for removal. Those liable to removal are often illegal entrants under section 33(1) of the Immigration Act 1971 or other immigration offenders (e.g. over-stayers) under Section 10(1) of the Immigration & Asylum Act 1999. See Annex F for further details.

ROTL in line with the guidance at [Annex E](#) but may remain in open conditions subject to being assessed as continuing to be of “very low risk of absconding”.

Desired Outcomes

Prisoners in closed conditions

- 1.7 Any prisoner in closed conditions who has a Deportation Order made against them and who has no further right of appeal against the Order from within the UK:
- must not be categorised/allocated to Category D/open conditions (**paras 2.6 – 2.10**)
 - *if they are an Indeterminate Sentence Prisoner (ISP) - must not have their case referred to the Parole Board for a recommendation on suitability for open conditions and they are ineligible to submit an application for transfer to open conditions under the exceptional transfer to open criteria. (para 2.8)*
 - *must be recategorised to closed conditions if they have been categorised to Category D/open conditions but are still in closed conditions awaiting transfer to the open estate by the time appeal rights against the Order are exhausted in the UK (para 2.9)*
 - *must not be granted Release on Temporary Licence (ROTL) and must have any approved ROTL cancelled. (paras 3.5 – 3.8)*
 - *Any prisoner in closed conditions who is out of the prison on a temporary licence when a notification of a change in deportation status is received, and who is not due back to the prison that same day when the notice is received by the prison, must be recalled. Prisons must assess what action to take if the prisoner is due back on that same day the notice is received. The role of the prison must be to minimise risk to the public and the risk of frustrating potential or imminent deportation. If the prison is satisfied that the best way of doing this is to allow the prisoner to return normally from ROTL that same day, then that is permissible (para 3.7)*
- 1.8 Any prisoner in closed conditions who is liable for deportation (see para 1.4, above):
- *must be categorised to Category D/Open conditions only where the risk assessment indicates a very low risk of their seeking to avoid deportation by absconding (paras 2.11-2.14, [Annex E](#))*
 - *must be granted ROTL only where the risk assessment indicates a very low risk of their seeking to avoid deportation by failing to return from temporary release (paras 3.9-3.10, [Annex E](#))*

Prisoners in open conditions

- 1.9 Any prisoner in open conditions, either before or after the date of commencement of the rule changes and this Instruction coming in to force, who:
- is subsequently confirmed as meeting the initial criteria for deportation (whether they have been informed or not);
 - has been sent a formal notice that they are liable for deportation;
 - has a Deportation Order against them where appeal rights in the UK have not been exhausted or,
 - has a Deportation Order against them and has been informed that appeal rights in the UK have been exhausted;
 - may fall below the threshold for deportation but is being considered for removal from the UK,
- need not be removed from the open estate but must have their security category reviewed, against the guidance at [Annex E](#), to assess their continued suitability for conditions of low security. Only those prisoners who present a very low risk of seeking to avoid the intention to deport by absconding will be suitable to remain in Category D/open conditions. (paras*

2.15-2.19). *ROTL must be suspended until the prisoner's continued suitability for open conditions is considered (para 3.11).*

Application

- 1.10 This PSI applies to all prisoners being considered for or subject to deportation and removal proceedings as set out above.
- 1.11 It does not apply to those who have completed the custodial element of their sentence and who are held solely under the provisions of IS 91. These persons are not subject to ROTL and categorisation policy and will be detained in the closed estate.

Mandatory Actions

- 1.12 *Governors must ensure that all staff responsible for any establishment function impacted by these changes are familiar with this instruction and the mandatory actions contained within.*
- 1.13 *Staff undertaking risk assessments for categorisation to D/open conditions or ROTL must use the updated forms (at [Annex C](#) & [D](#)) to request information from the Home Office on the immigration status of the prisoner.*
- 1.14 *All establishments must have procedures in place to ensure that when information on the deportation status of prisoners is received from the Home Office, it is recorded accurately on NOMIS and that relevant security alerts are activated immediately any changes to that status are notified by Home Office Immigration Enforcement (HOIE). See paras 5.1 – 5.3.*
- 1.15 *Where a prisoner's deportation status is unclear, contact should be made with HOIE using the relevant form or, in urgent cases using the contact details below.*

Resource Impact

- 1.16 There will be some short term impact on resources particularly in establishments holding large numbers of Foreign National Prisoners (FNPs) while the deportation status of those already categorised as suitable for open/ROTL is checked. Alerts have been set up on NOMIS to make that task easier (para 5.2). The number of prisoners likely to be affected by these provisions in the future is not expected to be significantly larger than now and any resource impact is not anticipated to be significant across the estate as a whole.

Contacts

- 1.17. For further information about this Instruction generally and categorisation policy specifically, please contact:

Keith Roberts, Security Policy Unit.

keith.roberts@noms.gsi.gov.uk

Tel: 0300 047 6206

For queries regarding ROTL policy please contact the ROTL helpline:

Junior Ogueri 0203 334 5043

Suleman Qureshi 0203 334 5044

Verginia Georgieva 0203 334 4689

sppu.early.release@justice.gsi.gov.uk

For queries regarding the Immigration status of prisoners please contact:

Home Office Criminal Casework Directorate

Telephone: 0208 760 8655 (number manned 9am till 5pm)

Fax : 0208 760 8650

Email CCD.CAT-D@UKBA.GSI.GOV.UK

For queries regarding Indeterminate Sentence Prisoners and their suitability for open conditions please contact:

Public Protection Casework Section (PPCS)

Tel: Richard Modelly 03000 474500

(approved for publication)

Ian Mulholland
Acting Director of Public Sector Prisons, NOMS

OPERATIONAL INSTRUCTIONS

2 CATEGORISATION & ALLOCATION

- 2.1 This instruction introduces a new Prison Rule and corresponding YOI Rule and revised policy. It impacts the eligibility and risk assessment for Category D/open conditions of prisoners subject to deportation proceedings. It is essential that before considering categorisation to open conditions, the prison confirms with Home Office Immigration Enforcement (HOIE) the prisoner's current deportation status which will determine his or her eligibility for open conditions.
- 2.2 Those prisoners with a Deportation Order in closed conditions and who have exhausted all appeal rights in the UK³, are prohibited from open conditions and cannot therefore be considered for the open estate. *If a notification is received that appeal rights have been exhausted (either an individual notice to the prisoner or from information requested from the Home Office on the CCD3 form) then the relevant security alert, "Appeal Rights Exhausted (ARE)" must be activated on the prisoner's NOMIS record.*
- 2.3 *Those prisoners who have not exhausted deportation appeal rights in the UK but who are liable for deportation must have their categorisation considered on an individual basis subject to assessment against the strengthened risk assessment set out in [Annex E](#).* If a notification is received that a prisoner is liable for deportation (either an individual notice to the prisoner or from information requested from the Home Office on the CCD3 form) then the relevant security alert, "Liability for Deportation", must be activated on the prisoner's NOMIS record.
- 2.4 The prisons and units currently considered to provide open conditions for the purposes of this instruction are listed at [Annex B](#). This list may change over time as prison roles change and establishments must be alert to these changes.
- 2.5 The application of the rule and policy as they affect prisoners in different categories is set out below.
- A. *Prisoners in closed conditions who have a Deportation Order made against them and who have either exhausted appeal rights in the UK or whose appeal rights must be exercised from abroad.***
- 2.6 Any prisoner in closed conditions who has a Deportation Order made against them and who has no further rights of appeal against the Order from within the UK, is prohibited by Prison Rule 7 (1a) / YOI Rule 4 (2) from being classified as suitable for open conditions, and therefore must not be categorised or allocated to Category D/Open conditions. These prisoners are expected to be removed from the UK at the appropriate point in their sentence and therefore do not require the resettlement opportunities in the UK which are an integral part of the open estate. In addition, the allocation of any prisoner to the open estate carries with it some degree of risk of abscond, and it would be inappropriate and unnecessary to introduce such a risk for prisoners who have no need for the particular regime opportunities associated with open conditions.
- 2.7 Any prisoner to whom the rule applies must continue to have their categorisation reviewed at the prescribed intervals set out in PSI 39/2011 and PSI 40/2011 or whenever there is a significant change in their circumstances, to confirm that their deportation status has not changed and to ensure that security needs are being met appropriately. Young Adult

³ From October 2014 the new Home Office Immigration Act 2014 will mean more prisoners becoming UK Appeal Rights Exhausted at an earlier stage in sentence.

Offenders, who do not have routine recategorisation reviews, must be reviewed in line with the policy set out in PSI 41/2011.

- 2.8 ***Unless the prisoner is being assessed for conditions of higher security, then his or her deportation status must be confirmed with HOIE using form CCD3 (see [Annex C](#)) for determinate sentence prisoners (DSPs).*** Public Protection Casework Section of Offender Management and Public Protection Group (PPCS) will use their own pro-forma for ISPs. If it is confirmed that the Deportation Order remains in force with no further rights of appeal against the Order from within the UK, then the prisoner cannot be classified as suitable for open conditions. ISPs to whom this applies cannot have their suitability for open conditions considered by the Parole Board as part of the parole process and are ineligible to submit an application for transfer to open conditions under the exceptional transfer to open criteria.
- 2.9 Any prisoner in closed conditions who has been categorised to Category D/Open but who is still awaiting allocation to the open estate by the time their rights of appeal against deportation are exhausted in the UK must be recategorised to closed conditions. In the case of indeterminate sentence prisoners, the process at Chapter 4 of PSO 4700 must be followed.
- 2.10 If the Deportation Order is revoked then the prisoner must be assessed for open conditions in line with recategorisation guidance set out in PSI 39/2011, 40/2011 or 41/2011 as applicable.

B. Prisoners in closed conditions who are liable for deportation

- 2.11 The term “liable for deportation” applies to prisoners who:
- are assessed by the Home Office as meeting the initial criteria for deportation based on such factors as sentence length (whether the prisoner has been informed of this or not);
 - have received a formal notice of liability for deportation;
 - have received a deportation order with appeal rights in the UK remaining;
 - fall below the threshold for deportation but are being considered for or made subject to removal from the UK.
- 2.12 *Any prisoner in closed conditions who is liable for deportation must continue to have their security category reviewed at the prescribed intervals described in PSIs 39/2011 and 40/2011. Young Adult Offenders do not have routine categorisation reviews but may nonetheless be considered for open conditions if the sentence planning process indicates that this is appropriate.*
- 2.13 *Risk assessments must be undertaken on the assumption that deportation will take place. Each case must be considered on its individual merits, but the need to protect the public and ensure that deportation is not frustrated is paramount. The presumption is that prisoners who are liable for deportation will not be suitable for open conditions unless they are assessed as presenting a very low risk of seeking to avoid the intention to deport by absconding. Risk must be assessed in line with guidance in PSI 39/2011, 40/2011, 41/2011 (as appropriate) and the guidance at [Annex E](#) of this instruction. Form CCD3 or the PPCS pro-forma must be sent to HOIE to confirm the prisoner’s deportation status and to obtain any information relevant to the risk assessment process.*
- 2.14 *Any prisoner in closed conditions who has been categorised to Category D/Open but who is still awaiting allocation to open conditions when the prison are advised that they are liable for deportation, must have their categorisation to Category D/Open re-assessed in line with the guidance provided at [Annex E](#) to confirm their continued suitability for open conditions.*

They must not be allocated to the open estate until this re-assessment has been completed.

C. Prisoners in open conditions

- 2.15 Any prisoner in open conditions, either before or after the date of commencement of the rule changes and this Instruction coming in to force, who:
- is subsequently assessed as meeting the initial criteria for deportation (whether they have been informed or not);
 - has been sent a formal notice that they are liable for deportation;
 - has a Deportation Order against them where appeal rights in the UK have not been exhausted or,
 - has a Deportation Order made against them and has been informed that appeal rights in the UK have been exhausted;
 - may fall below the threshold for deportation but is being considered for or made subject to removal from the UK,

need not be removed from the open estate but must have their security category reviewed.

- 2.16 *The change in deportation status represents a significant change in circumstances and the prisoner must have their continued suitability for conditions of low security in open conditions reviewed. The review must take account of guidance at [Annex E](#) and must be informed by updated information from HOIE by way of the CCD3 form. The process must be fully recorded on the prisoner's RC1, RC2 or RC3 as appropriate.*

- 2.17 *HOIE will provide any notification of change in a prisoner's deportation status direct to the governor of the open prison for the governor to serve on the prisoner. The governor must then assess whether receipt of this notification will increase the prisoner's immediate risk of absconding. The assessment must be based on staff's knowledge of the prisoner and his or her motivation to avoid deportation. On the basis of this dynamic assessment, the governor must decide whether it is safe to complete the review in the open prison or whether the prisoner needs to be returned to the closed estate while the review is undertaken. The order must be served on the prisoner within 48 hours of receipt (see PSI 52/2011, para 2.14) which should enable this assessment to be completed and any necessary security measures put in place. Where it is decided that the prisoner needs to be returned to closed conditions while the review is carried out, the Governor must ensure that the prisoner is securely located until re-allocation can be arranged. The prisoner's Offender Manager must be notified of any transfer.*

- 2.18 *Where the prisoner is returned to the closed estate while the review is carried out, the categorisation review must be completed by the receiving prison with significant input from the sending prison and fresh information from HOIE (via the CCD3 form) and in line with the guidance at [Annex E](#). Additionally, in the case of an ISP, the process in Chapter 4 of PSO 4700 must be followed and a "Life and Indeterminate Sentence Prisoner" (LISP4) form must be completed promptly to inform PPCS and the Offender Manager of this action. The prisoner will retain their Category D/Open classification until the review has been completed. The fact that a prisoner may be temporarily returned to the closed estate to enable a review of their security category to be undertaken in secure conditions must not influence the eventual outcome of that review. Where it is decided that the prisoner is sufficiently low risk to return to the open estate, the prisoner must be returned to open conditions as soon as possible. If the outcome of the categorisation review is that the prisoner must be recategorised to closed conditions then he or she must continue to have categorisation reviews in line with the mandatory timescales prescribed in PSI 39/2011 and 40/2011 in order to confirm whether there has been any change to their deportation status.*

- 2.19 *The review and decision must be fully recorded on RC1, RC2, RC3 as appropriate.*

RELEASE ON TEMPORARY LICENCE (ROTL)

- 2.20 This instruction introduces a new Prison Rule and corresponding YOI Rule and revised policy. It impacts the eligibility and risk assessment for ROTL of prisoners subject to deportation proceedings. *It is essential that before considering ROTL, the prison confirm the prisoner's current deportation status which will determine his or her eligibility. Once the first application for ROTL is received in relation to a foreign national prisoner a ROTL 9 form must be submitted to HOIE unless there is already confirmation that a decision has been taken not to seek their removal from the UK.* For subsequent applications, the prisoner's deportation status on NOMIS should be reviewed before any release (see para 4.1 below).
- 2.21 Those prisoners in closed conditions with a Deportation Order and who have exhausted all appeal rights in the UK are prohibited from ROTL. If a notification is received that appeal rights have been exhausted (either an individual notice to the prisoner or from information requested from the Home Office on the ROTL9 form) then the relevant security alert, *"Appeal Rights Exhausted (ARE)" must be activated on the prisoner's NOMIS record.*
- 2.22 *Those prisoners who have not exhausted deportation appeal rights in the UK but who are liable for deportation must have their release on licence considered on an individual basis subject to assessment against the strengthened risk assessment set out in [Annex E](#). If a notification is received that a prisoner is liable for deportation (either an individual notice to the prisoner or from information requested from the Home Office on the ROTL9 form) then the relevant security alert, "Liability for Deportation", must be activated on the prisoner's NOMIS record.*
- 2.23 The application of the rule and policy as they affect prisoners in different categories is set out below.
- A. *Prisoners in closed conditions who have a Deportation Order and who have either exhausted appeal rights in the UK or whose appeal rights must be exercised from abroad.***
- 2.24 Any prisoner in closed conditions who has a Deportation Order against them against which all rights of appeal within the UK are exhausted (ARE) is prohibited by Prison Rule 9 (1A) / YOI Rule 5 (1A) from ROTL. Such prisoners are expected to be removed from the UK at the appropriate point in sentence and do not therefore require the resettlement opportunities that are an integral part of the ROTL system. In addition, a ROTL for any purpose carries a degree of risk that the prisoner will fail to return to prison. It would be inappropriate and unnecessary to introduce such a risk for prisoners who have no need of the resettlement opportunities that ROTL offers.
- 2.25 There may be cases where a decision has been made to release on ROTL a Category C/closed prisoner who has a Deportation Order made against them, but the prisoner has not yet been released by the time he or she exhausts all rights of appeal against the Order from within the UK. *In these cases the ROTL decision must be rescinded, any licence that has been issued revoked and the prisoner notified of the decision on form ROTL 5. Where the prisoner has already had a period of approved ROTL, any future ROTL must be cancelled.*
- 2.26 *Any prisoner who has already been released on ROTL and is away from the prison when the prison is notified that their appeal rights against deportation have been exhausted, must be recalled to prison if they are not due back from ROTL on the same day the notification is received. Prisons must make an assessment of the action to take in respect of a prisoner who is due back on the same day that the notice is received by the prison. The role of the prison must be to minimise risk to the public and the risk of the prisoner*

absconding to evade deportation. If the prison is satisfied that the best way of doing this is to allow the prisoner to return normally from ROTL that same day then that is permissible.

- 2.27 *Where there is a compelling reason to allow the temporary absence from prison of a Category C/closed prisoner who has no further rights of appeal in the UK against deportation such as those that might justify a special purpose licence (see section 2.6 of PSO 6300), or Childcare Resettlement Licence (see section 2.5 of PSO 6300), consideration must be given to allowing the absence under normal secure escort arrangements (NSF Function 2 applies).*

B. Prisoners in closed conditions who are liable for deportation

- 2.28 The term “liable for deportation” applies to prisoners who:
- are confirmed by the Home Office as meeting the initial criteria for deportation based on such factors as nationality and sentence length (whether the prisoner has been informed of this or not); or
 - have received a formal notice of liability for deportation; or
 - have received a deportation order with appeal rights in the UK remaining; or
 - fall below the threshold for deportation but are being considered for or made subject to removal from the UK.
- 2.29 *Risk assessments for ROTL must be undertaken on the assumption that deportation will take place. Each case must be considered on its individual merits, but the need to protect the public and ensure that deportation is not frustrated is paramount, and the presumption is that prisoners who are liable for deportation will not be suitable for ROTL unless they are assessed as presenting a very low risk of seeking to avoid the intention to deport by failing to return. The prisoner must be risk assessed in line with the requirements of PSO 6300 and the guidance at [Annex E](#). The ROTL 9 form must be used to obtain Home Office Immigration Enforcement (HOIE) confirmation of the prisoner’s deportation status and for any additional information relevant to the risk assessment.*

C. Prisoners in Open Conditions

- 2.30 Prisoners who are already in open conditions and are subsequently confirmed as being liable for deportation (see para 2.11) will not become automatically either ineligible or unsuitable for ROTL. *However, the change in deportation status represents a significant change in circumstances and the prisoner must have their security category reviewed in line with paras 2.15-19 above.* Only once it has been confirmed that the prisoner may remain in open conditions may the application for ROTL be considered. If it is confirmed that the prisoner may remain in open conditions, the ROTL application may be considered under the usual and not the strengthened risk assessment process because the latter will have been conducted during the security category review. There may, however be factual information offered by HOIE which has a bearing in relation to the particular ROTL sought; for example, around family ties.

3 LIAISON BETWEEN NOMS & HOME OFFICE

- 3.1 In order to properly apply Prison Rules 7 (1A), 9 (1A) / YOI Rules 4 (2), 5 (1A) there needs to be a reliable system of communication between NOMS and the Home Office in order to ensure that a prisoner’s up to date deportation status is properly recorded. Prison establishments will request information from the Home Office using Form CCD3 (see [Annex C](#)) for those prisoners being considered for categorisation and allocation to open conditions and using form ROTL 9 (See [Annex D](#)) for those prisoners being considered for ROTL. The forms will be emailed or faxed to Home Office Immigration Enforcement (HOIE) who will return the completed form within 5 working days of receipt. Any subsequent change to the prisoner’s deportation status will be notified to the establishment within 24 hours of the change being made.

- 3.2 *In accordance with PSI 52/2011, when a FNP is transferred to another establishment HOIE must be advised by the receiving prison of the change in prison establishment by completing Part 1 C of the CCD Referral Form within 5 days of reception.*
- 3.3 *As part of their contingency plans establishments must ensure that HOIE are informed of any prisoner who is liable for deportation or with a deportation order who absconds, escapes or fails to return from temporary release.*

4 RECORD KEEPING

- 4.1 *All establishments must have procedures in place to ensure the deportation status of all prisoners is recorded accurately on NOMIS and any other records, and that these records are updated immediately any changes are notified by Home Office Immigration Enforcement (HOIE). These procedures must be set out in the establishment's Local Security Strategy (LSS).*
- 4.2 *Establishments must activate the security alerts on the prisoner's NOMIS record to show:*
- ***“Liability for Deportation”.** This includes prisoners who are assessed as meeting the initial criteria for deportation (whether they have been informed or not); sent a formal notice that they are liable for deportation; have a Deportation Order made where appeal rights in the UK have not been exhausted or, may fall below the threshold for deportation but are being considered for or made subject to removal from the UK). The dates of any notifications or forthcoming /ongoing appeals must also be noted.*
 - ***“Deportation Order, Appeal Rights Exhausted (ARE)”** together with the date of notification of this, is intended to show that appeal rights have been exhausted in the UK. Appeals still active abroad do not count and should not stop the ARE alert from being set. This information is recorded by the Home Office and should be notified to the prison and prisoner as it happens. The information will also be returned on the CCD3 and ROTL9 forms.*
- 4.3 *Establishments must ensure that these records are kept under review, and that any changes to deportation status are recorded on NOMIS as soon as possible. Prisoners must be informed of the results of any review undertaken for categorisation or ROTL purposes and the reasons why the review has been undertaken (i.e. because of a change in immigration status notified by the Home Office).*

Extract of Changes to Prison and YOI Rules

Prison Rules

(Changes in **Bold**)

Rule 7.— Classification of prisoners

(1) **Subject to paragraph (1A) to (1D)**, prisoners shall be classified, in accordance with any directions of the Secretary of State, having regard to their age, temperament and record and with a view to maintaining good order and facilitating training and, in the case of convicted prisoners, of furthering the purpose of their training and treatment as provided by rule 3.

(1A) Except where paragraph (1D) applies, a prisoner who has the relevant deportation status must not be classified as suitable for open conditions.

(1B) If, immediately before the relevant time—

(a) a prisoner has been classified as suitable for open conditions; and

(b) the prison has received notice that the prisoner has the relevant deportation status,
the prisoner's classification must be reconsidered in accordance with this rule as soon as practicable after the relevant time.

(1C) If—

(a) a prisoner has been classified as suitable for open conditions (whether before or after the relevant time); and

(b) the prison receives notice after the relevant time that the prisoner has the relevant deportation status,

the prisoner's classification must be reconsidered in accordance with this rule as soon as practicable after the prison receives that notice.

(1D) This paragraph applies if a prisoner has been classified as suitable for open conditions and is located in open conditions immediately before the prisoner's classification is reconsidered, whether under paragraph (1B) or (1C) or otherwise.

(1E) For the purposes of this rule, a prisoner has the relevant deportation status if—

(a) there is a deportation order against the prisoner under section 5(1) of the Immigration Act 1971(4); and

(b) no appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002(5) ("the 2002 Act") that may be brought or continued from within the United Kingdom in relation to the decision to make the deportation order—

(i) could be brought (ignoring any possibility of an appeal out of time with permission), or

(ii) is pending (within the meaning of section 104 of the 2002 Act(6)).

(1F) In paragraph (1E), the reference to the decision to make the deportation order includes a decision that section 32(5) of the UK Borders Act 2007(7) applies in respect of the prisoner.

(1G) In this rule, "the relevant time" means 5.00 p.m on 13th August 2014.

(4) 1971 c. 77. There have been amendments but none are relevant.

(5) 2002 c. 41. Section 82(1) was amended by section 26(2) of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 (c. 19). It is also prospectively amended by section 15 of the Immigration Act 2014 (c. 41) but those amendments are not yet in force.

(6) Section 104 was amended by paragraph 20 of Schedule 2 to the Asylum and Immigration (Treatment of Claimants etc.) Act 2004, section 9 of the Immigration, Asylum and Nationality Act 2006 (c. 13) and paragraph 26 of Schedule 1 to S.I. 2010/21. It is also prospectively amended by para 47 of Schedule 9 to the Immigration Act 2014 but those amendments are not yet in force.

(7) 2007 c. 30.

Rule 9.— Temporary release

(1) **Subject to paragraph (1A)**, the Secretary of State may, in accordance with the other provisions of this rule, release temporarily a prisoner to whom this rule applies.

(1A) A prisoner who has the relevant deportation status must not be released under this rule unless the prisoner is located in open conditions immediately before the time of release.

(8) A prisoner released under this rule may be recalled to prison at any time whether the conditions of his release have been broken or not.

(8A) If, immediately before the relevant time, a prisoner has been released under this rule and the prison has received notice that the prisoner has the relevant deportation status, the prisoner must be recalled unless—

- (a) the period for which the prisoner has been released is due to expire on 13th August 2014; or**
- (b) the prisoner was released from open conditions.**

(8B) If a prisoner has been released under this rule (whether before or after the relevant time) and the prison receives notice after the relevant time that the prisoner has the relevant deportation status, the prisoner must be recalled unless—

- (a) the period for which the prisoner has been released is due to expire on the day on which the prison receives that notice; or**
- (b) the prisoner was released from open conditions.**

(11) In this rule:

- (a) any reference to a sentence of imprisonment shall be construed as including any sentence to detention or custody; and
- (b) any reference to release on licence or otherwise under Part II of the 1991 Act includes any release on licence under any legislation providing for early release on licence.
- (c) any reference to a prisoner who has the relevant deportation status is to be read in accordance with rule 7(1E) and (1F); and**
- (d) any reference to the relevant time is to be read in accordance with rule 7(1G).**

The Young Offender Institution Rules

(Changes in **Bold**)

Rule 4. Classification of inmates

(1) Subject to paragraph (2), inmates may be classified, in accordance with any directions of the Secretary of State, taking into account their ages, characters and circumstances.

(2) Except where paragraph (5) applies, an inmate who has the relevant deportation status must not be classified as suitable for open conditions.

(3) If, immediately before the relevant time—

- (a) an inmate has been classified as suitable for open conditions; and**
- (b) the young offender institution has received notice that the inmate has the relevant deportation status,**

the inmate's classification must be reconsidered in accordance with this rule as soon as practicable after the relevant time.

(4) If—

- (a) an inmate has been classified as suitable for open conditions (whether before or after the relevant time); and**
- (b) the young offender institution receives notice after the relevant time that the inmate has the relevant deportation status,**

the inmate's classification must be reconsidered in accordance with this rule as soon as practicable after the young offender institution receives that notice.

- (5) This paragraph applies if an inmate has been classified as suitable for open conditions and is located in open conditions immediately before the inmate's classification is reconsidered, whether under paragraph (3) or (4) or otherwise.
- (6) For the purposes of this rule, an inmate has the relevant deportation status if—
- (a) there is a deportation order against the inmate under section 5(1) of the Immigration Act 1971; and
 - (b) no appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") that may be brought or continued from within the United Kingdom in relation to the decision to make the deportation order—
 - (i) could be brought (ignoring any possibility of an appeal out of time with permission), or
 - (ii) is pending (within the meaning of section 104 of the 2002 Act).
- (7) In paragraph (6), the reference to the decision to make a deportation order includes a decision that section 32(5) of the UK Borders Act 2007 applies in respect of the inmate.
- (8) In this rule, "the relevant time" means 5.00 p.m on 13th August 2014.

Rule 5. Temporary release

(1) **Subject to paragraph (1A)** the Secretary of State may, in accordance with the other provisions of this rule, release temporarily an inmate to whom this rule applies.

(1A) An inmate who has the relevant deportation status must not be released under this rule unless the inmate is located in open conditions immediately before the time of release.

(8) An inmate released under this rule may be recalled at any time whether the conditions of his release have been broken or not.

(8A) If, immediately before the relevant time, an inmate has been released under this rule and the young offender institution has received notice that the inmate has the relevant deportation status, the inmate must be recalled unless—

- (a) the period for which the inmate has been released is due to expire on 13th August 2014; or
- (b) the inmate was released from open conditions.

(8B) If an inmate has been released under this rule (whether before or after the relevant time) and the young offender institution receives notice after the relevant time that the inmate has the relevant deportation status, the inmate must be recalled unless—

- (a) the period for which the inmate has been released is due to expire on the day on which the young offender institution receives that notice; or
- (b) the inmate was released from open conditions.

(12) In this rule—

- (a) any reference to an inmate who has the relevant deportation status is to be read in accordance with rule 4(6) and (7); and
- (b) any reference to the relevant time is to be read in accordance with rule 4(8).

LIST OF PRISONS/UNITS PROVIDING OPEN CONDITIONS

HMP and YOI ASKHAM GRANGE
HMP BLANTYRE HOUSE
HMP BRIXTON (CAT D UNIT)
HMP EAST SUTTON PARK
HMP FORD
HMPYOI HATFIELD
HMP HEWELL GRANGE RESETTLEMENT UNIT
HMP and YOI HOLLESLEY BAY
HMP KENNET
HMP KIRKHAM
HMP KIRKLEVINGTON GRANGE
HMP LEYHILL
HMP NORTH SEA CAMP
HMP NORWICH (BRITANIA UNIT)
HMP PRESCOED
HMP SPRING HILL
HMP STANDFORD HILL
HMP SUDBURY
HMYOI THORN CROSS
HMP and YOI STOKE HEATH (CLIVE UNIT)



CCD3

Request for Information

Consideration of Prisoner for Categorisation and Allocation to/from Category D/Open

Section 1 to be completed by the establishment and e- mailed:

- Directly to the CCD case worker if known, or to
- CCD.CAT-D@HOMEOFFICE.GSI.GOV.UK Fax: 0208 760 8650

Section 1			
Prison		Prison Tel No:	
Named Contact:		Email/Fax:	
Prisoner's Name:		NOMIS No:	
Date of Birth:		Declared Nationality:	
Known Aliases:		Other info linked to aliases	
Home Office Ref:		Port Ref (If Known):	
Sentence Date:		Sentence Length:	
Offence(s):		Proposed Release Address:	
Earliest Release Date:			

Name:	
Signed:	
Position:	

Date submitted	
5 day deadline	

Sections 2 & 3 to be completed by HOIE and faxed/mailed to the prison contact

The purpose of the CCD3 is to obtain information which will inform consideration of the prisoner's suitability for open conditions. The information provided will be considered by the prison as part of the wider risk assessment process.

By ticking the relevant box below, please confirm whether there has been:

Section 2			
	YES	NO	DATE
An assessment that the prisoner meets the initial criteria for deportation (whether the prisoner has been advised of this or not)			
Does the prisoner have:			
A formal notice of liability for deportation			
A Deportation Order made: appeal rights in UK remain			
A Deportation Order made: appeal rights in UK exhausted			
A decision that the prisoner does not meet the criteria for deportation but is liable to removal proceedings			
Authority to detain (IS91) issued			

Section 3
<p>Please provide information/evidence which may be relevant to the prison's assessment of the prisoner's suitability for open conditions.</p> <p>This will include information indicative of risk of abscond from open conditions as well as positive indicators such as willingness to comply with the deportation process or whether no relevant information is known to the caseworker.</p> <p>Factors that are relevant to risk may include: information about family ties (in the UK or country of origin); strong community links; compliance / non compliance with immigration conditions including bail; any previous abscond from IRC; behaviour during any previous detention in IRC; any history of verbal/documentary deception to gain leave to enter/remain or evade removal from the UK; whether evidence of nationality or identity has been produced; whether there is an appeal against deportation / return to country of origin sought; known aliases in addition to any noted in section 1; removal from the UK is imminent/ unlikely in the near future; any other relevant factors or whether there is little information known.</p>

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Name:	
Signed:	
Position:	
Date:	

Date CCD3 to prison:	
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Request for Information

Consideration of Prisoner for Release on Temporary Licence

Section 1 to be completed by the establishment and e- mailed:

- Directly to the CCD case worker if known, or to
- CCD.CAT-D@HOMEOFFICE.GSI.GOV.UK Fax: 0208 760 8650

Section 1			
Prison		Prison Tel No:	
Named Contact:		Email/Fax:	
Prisoner's Name:		NOMIS No:	
Date of Birth:		Declared Nationality:	
Known Aliases:		Other info linked to aliases	
Home Office Ref:		Port Ref (If Known):	
Sentence Date:		Sentence Length:	
Offence(s):		Proposed Release Address:	
ROTL Eligibility Date:			
Earliest Release Date:			

Name:	
Signed:	
Position:	

Date submitted	
5 day deadline	

Sections 2 & 3 to be completed by HOIE and faxed/emailed to the prison contact

This prisoner is eligible to be considered for release on temporary licence from prison from the ROTL Eligibility Date (ROTLED) above and, if found suitable, may be released at any point and on several occasions between that date and the earliest release date given above. The purpose of the ROTL 9 is to obtain information which will inform consideration of the prisoner's suitability for ROTL. The information provided will be considered by the prison as part of the wider risk assessment process.

By ticking the relevant box below, please confirm whether there has been:

Section 2			
	YES	NO	DATE
An assessment that the prisoner meets the initial criteria for deportation (whether the prisoner has been advised of this or not)			
Does the prisoner have:			
A formal notice of liability for deportation			
A Deportation Order made: appeal rights in UK remain			
A Deportation Order made: appeal rights in UK exhausted			
A decision that the prisoner does not meet the criteria for deportation but is liable to removal proceedings			
Authority to detain (IS91) issued			

Section 3
<p>Please provide information/evidence which may be relevant to the prison's assessment of the prisoner's suitability for ROTL.</p> <p>This will include information indicative of risk of failing to return from ROTL as well as positive indicators such as willingness to comply with the deportation process or whether no relevant information is known to the caseworker.</p> <p>Factors that are relevant to risk may include: information about family ties (in the UK or country of origin); strong community links; compliance / non compliance with immigration conditions including bail; any previous abscond from IRC; behaviour during any previous detention in IRC; any history of verbal/documentary deception to gain leave to enter/remain or evade removal from the UK; whether evidence of nationality or identity has been produced; whether there is an appeal against deportation / return to country of origin sought; known aliases in addition to any noted in section 1; removal from the UK is imminent/ unlikely in the near future; any other relevant factors or whether there is little information known.</p>

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Name:	
Signed:	
Position:	
Date:	

Date ROTL 9 to prison:	
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ANNEX E

Assessing the risk presented by prisoners who are subject to immigration procedures.**Which prisoners should this process be applied to**

1. The guidance below concerns the “strengthened” risk assessment required prior to making decisions on granting ROTL to, or categorising to open conditions, those prisoners who are facing deportation or removal procedures (as defined in the main body of this PSI - paras 1.3 – 1.5). It should also be used for making decisions on retaining in open conditions prisoners whose deportation status changes (para 1.9 and para 14 below). *Risk assessments must be undertaken on the presumption that deportation/removal will take place. These prisoners must not be categorised/continue to be categorised to open conditions or granted ROTL unless they are judged to be of very low risk of absconding and therefore frustrating the intention to deport or to remove from the UK.*

Which prisoners do not need the strengthened risk assessment

2. The strengthened risk assessment does not need to be undertaken on prisoners in closed conditions with a deportation order and who have no avenue of appeal remaining within the UK – these prisoners are not allowed under prison rules to be considered for ROTL or open conditions (unless they are already located in open conditions - see paras 13 to 17 below) and there is therefore no need for a risk assessment.
3. The following Foreign National Prisoners will receive a normal risk assessment for ROTL and open conditions where information returned from the Home Office show them to fall into one of the following categories - those who:
 - The Home Office have confirmed do not match the initial criteria for deportation; or
 - have been considered for deportation by the Home Office and it has been decided that they may remain in the UK.
 - there are no removal procedures underway against them.

The strengthened risk assessment process – how it differs

4. *Individual risk assessments must be undertaken for each prisoner in line with policy set out in PSO 6300 (for ROTL) and in PSIs 39/2011, 40/2011 and 41/2011 (for Categorisation). Before a risk assessment is undertaken up-to-date information must be requested from the Home Office (see para 11) using the standard forms provided for ROTL (ROTL 9) and for categorisation (CCD3).*
5. The purpose of the form is to ask HOIE for evidence/information about any issue which might impact on the prisoner’s likelihood/incentive to abscond/fail to return or conversely, information which might indicate that the prisoner is unlikely to abscond and has previously complied with immigration conditions.
6. Any information provided by HOIE which might indicate that the prisoner is likely to use the lower security conditions to abscond from prison /ROTL in order to evade possible removal action must be considered in the round as part of the wider risk assessment of the prisoner. That assessment will take account not only of abscond risk, but also risk of harm to the public and whether the prisoner’s specific risks/behaviours can be managed in conditions of low security. A prisoner may, for example, be at very low risk of abscond in relation to their deportation status, but may present a very high risk of abscond/ROTL failure because of problems with alcohol/drugs.

7. *Before being categorised suitable for open conditions or granted ROTL, all prisoners (not just those facing deportation/removal procedures) must be assessed as low risk of abscond and low risk of harm to the public in the event of an abscond or failure to return. In the case of categorisation, consideration must also be given to any control issues which might impact on the security and good order of the prison and the safety of those within it.*
8. *Those facing deportation/removal must not only meet these criteria, in order to be assessed suitable for categorisation to open conditions or ROTL, they must additionally be assessed against the risk factors set out in this instruction which are intended to take account of any additional risks associated with their deportation status. Some prisoners liable for deportation will have an increased incentive to abscond/fail to return (over and above any general abscond risks) as a means of evading the removal process.*
9. There is a presumption that prisoners who are being considered by the Home Office for deportation (or for removal), will be categorised suitable for ROTL and for transferring or remaining in open conditions only where there is a very low risk of their seeking to frustrate the intention to deport/remove by absconding. *In assessing these prisoners there must be an assumption that the deportation/removal will take place.*
10. There are additional factors to consider with prisoners facing removal or deportation including:
 - The risk that they will use the low security of the open estate or temporary release to evade not only custody but also possible removal/deportation action.
 - This risk may be heightened in circumstances where it is known the prisoner is unwilling to be removed/deported from the UK and has previously sought to frustrate or evade the immigration process, for example - through their previous failure to comply with immigration restrictions, immigration bail or via the terms of leave in the UK, or because they have previously absconded from an IRC.
 - Previous failures within prison also need to be considered, not only in terms of failures to return from previous ROTL but also late returns and other failures to comply with prison rules and regulations that may indicate an inclination to abuse the privilege afforded by open conditions or ROTL and abscond or fail to return when considered in conjunction with their deportation status.
 - Any previous failure of this nature in prison or immigration custody should normally be seen as proof of not falling within the “very low risk” of abscond category.
 - Risk may be lessened where the prisoner is known to be cooperative and is seeking to return to his or her home country.
 - Other factors indicating lower risk may include strong family ties in this country or other factor that might indicate that the prisoner would not wish to jeopardise his chances of successfully appealing and remaining in this country.

Obtaining additional risk information – closed or open prisons

11. Policy already requires that Home Office Immigration Enforcement (HOIE) is contacted in advance of making a decision regarding categorisation or applications for ROTL of any foreign national prisoner. The purpose of this contact is to obtain any information relevant to the individual risk assessment process and specifically, in relation to the risk of abscond. HOIE are therefore asked to provide any information on the likelihood of removal action; any indication that the prisoner is contesting removal action; whether the normal avenue of appeal have been exhausted or time-expired; history of failure to comply with immigration conditions; previous absconds from immigration custody; history of deception to enter/remain or evade removal or failure to comply with the directions of HOIE.

12. *Prisons must ensure, in line with current policy, that the appropriate forms are sent to and have been completed and returned by HOIE before any consideration is made of a prisoner's suitability for ROTL or open conditions. The information provided by HOIE is to be assessed as one part of the wider risk assessment of the prisoner, but prisons must be satisfied that there is a very low risk of the prisoner seeking to frustrate the intention to deport by absconding.*

Security considerations for those already in open prison

13. Prison rules prohibit those prisoners in closed conditions with a deportation order from being categorised as suitable for open conditions if they have exhausted their appeal rights within the UK. There is no such general ban on those prisoners already in the open estate when the appeal process is exhausted and open prisons have the option of retaining these prisoners in open conditions if they satisfy the very low risk criteria outlined above.
14. *Prisons must, however re-consider the risk assessment for these prisoners when a change of circumstances occurs. This includes prisoners who receive:*
- *a decision that their appeal has been dismissed or whose appeal rights within the UK have been exhausted;*
 - *a notification of liability to deport;*
 - *a deportation order;*
 - *any other notification of removal (e.g. as an illegal entrant).*
15. If the prison judges that receipt of any of the above notifications might result in an immediate risk of abscond or failure to return from ROTL, then it may be necessary for the prisoner to be securely detained and returned to the closed estate where his or her categorisation must be reviewed as quickly as possible by the receiving prison with input from the sending prison and updated information from HOIE. The fact that a prisoner may be temporarily returned to the closed estate to enable a review of category to be undertaken in secure conditions must not influence the eventual outcome of that review. Where it is decided that the prisoner is sufficiently low risk to return to the open estate, the prisoner should retain his or her Category D/Open status and be returned to open conditions as soon as possible so as to minimise disruption to resettlement activity.
16. Where the prison assess that it is safe to review the prisoner's categorisation/ROTL eligibility while they remain in open conditions, then the prisoner should remain in the open estate but have any planned ROTL cancelled until the review is completed. *This review must be completed as soon as possible to avoid unnecessary disruption to resettlement activity should the prisoner subsequently be assessed as appropriate for open/ROTL.*
17. *In the case of Indeterminate Sentence Prisoners (ISPs), the process set out in Chapter 4 of PSO 4700 must be followed and a "Life and Indeterminate Sentence prisoner" (LISP4) form must be completed promptly, to inform PPCS of this action.*

Immigration Terminology

See also PSI 52/2011, Annex F, page 40 for an explanation of the deportation process.

Deportation

- A **Deportation Order** requires a person to leave the country and prohibits any re-entry unless the order is revoked.
- **Deportation orders** are most often made against those foreign nationals who have committed criminal offences. They are made under section 5(1) of the Immigration Act 1971, and can be made when the Court recommends deportation (section 3(6) of that Act) or because deportation is deemed to be conducive to the public good (section 3(5)). In some cases, deportation must be deemed to be conducive to the public good and a deportation order must be made (section 32(5) of the UK Borders Act 2007).
- If it is decided that deporting the prisoner would be conducive to the public good they will then be issued with a **Notification of Liability to Deport**. At this stage only a summary consideration of the case has been made, based on information currently available, and no final decision to deport has been made.
- On receiving this the prisoner is invited to submit representations against the notification.
- The Home Office then considers the case in detail together with any representations made and if it is concluded that the prisoner should be deported then a **decision to make a Deportation Order** is taken followed by the signing and serving of the **Deportation Order**.
- The prisoner may then appeal against the decision and/or the **Deportation Order** (unless any asylum or human rights claim has been certified either as clearly unfounded, in which case the prisoner can only appeal after they have left the UK, or on the basis that there has been an earlier right of appeal, in which case there is no further right of appeal).
- On unsuccessful conclusion of the appeal the prisoner may be deported at any point as long as a Deportation Order has been validly made and served.
- If the appeal is successful the **Deportation Order** (if it has already been made) is revoked.

Removal

- **Removal** is different to deportation even though the terms are often interchanged.
- Those **liable to removal** are often illegal entrants under section 33(1) of the Immigration Act 1971 or other immigration offenders (e.g. over-stayers) under Section 10(1) of the Immigration & Asylum Act 1999.
- Those prisoners falling below the threshold for deportation (in terms of sentence length, etc) may be still liable for removal.
- For removal to take place, the person has to be served a **decision to remove** and **removal directions**. All relevant factors must be then considered by the Home Office who are required to give at least 72hrs notice of any planned removal.