



Home Office

Pending prosecutions

Version 1.0

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About this guidance

This guidance explains pending prosecutions in the UK and how to determine whether a pending prosecution is a barrier to taking immigration action.

A 'pending prosecution' is defined for the purposes of this guidance as where a person:

- has been arrested or charged in respect of one or more criminal offences and one or more of these offences has not been disposed of either by the police or the courts
- is the subject of a live investigation by the police for a suspected criminal offence
- is the subject of a live investigation by another relevant investigatory agency, such as governmental departments or agency
- has been convicted of an offence but has subsequently appealed that conviction and the appeal proceedings have not concluded

For foreign prosecutions see the guidance on extradition.

Contacts

If you have any questions about the guidance or think that it has factual errors, then email the Migrant Criminality Policy team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance, Rules and Forms team.

Publication

Below is information on when this version of the guidance was published:

- version **1.0**
- published for Home Office staff on **10 August 2022**

Changes from last version of this guidance

This item replaces the previous guidance entitled 'Impending Prosecutions v.7.0' and has been retitled and widely-revised. Key content updates are:

- include devolved and governmental prosecutorial agencies
- consolidate pending prosecution policies from various policy areas
- include private prosecutions

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Confirming a pending prosecution

This section tells you what to do if a check of the Police National Computer (PNC) indicates a pending prosecution.

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The best way to confirm the presence of a pending prosecution is through a PNC check. You must confirm that the PNC trace is the same person as the individual subject to an immigration decision by checking the biographical details and particulars of the case are the same as the PNC report. If you receive a positive PNC check, you must contact the relevant police force or other relevant investigatory agency for any further information. The Criminal Record Offence (CRO) number will help you find the name of the police station, but not the name of the appropriate police officer. If you are unsure which police force to contact, you may contact the court as cited on the PNC check for this information.

There are also other ways to determine whether a pending prosecution is present. For example, a biometric/IDENT1 check could also confirm the presence of a pending prosecution. However, you may only find out about a pending prosecution when a police officer contacts the Home Office.

When a pending prosecution is confirmed

You must tell your operational assistant director/grade 7 and/or specialist casework team about any case involving a pending prosecution, and make sure all actions are recorded on the Case Information Database (CID)/Atlas. You must keep a record of the pending prosecution on CID using the SSX12 special conditions flag.

Private prosecutions

There may be cases where an individual brings a private prosecution against a public body or another individual, although these cases are rare. Private prosecutions cannot be confirmed through a PNC check and will likely only be confirmed through engagement with the individual (prosecuting or defending) or their representatives.

Before deciding to pause any immigration decision you must consider the nature of the private prosecution, what the potential outcomes are and whether any will have an effect on that immigration decision. A private prosecution may still be a barrier to removal, whether it is brought by or against the individual subject to removal. As with a prosecution from a prosecutorial agency, you must receive permission from those

prosecuting to discontinue the case before removal. If this is not forthcoming, the removal cannot take place until the private prosecution has been concluded.

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Related external links

[Sentencing Council](#) guidelines

Action to take when a pending prosecution is confirmed

This section tells you how to proceed once a pending prosecution is known.

You must consider each case on an individual basis, taking into account:

- the current stage the application, administrative removal consideration or deportation has reached
- any previous convictions
- the alleged offence

Before making a decision to proceed with a case, you will need to know the potential maximum sentence the person may receive should they be convicted.

You must refer to the [Sentencing Council](#) guidelines to assess the severity of the offence the individual has been alleged to have committed. The potential maximum sentence can be seen as the maximum of the sentencing range for a category 1 offence. This should be considered as a reference to indicate the potential maximum sentence, however it is not a single comprehensive source.

The potential maximum sentence a person may receive will form an important part of the assessment as to whether it is proportionate to pause any immigration decision until the prosecution has been concluded. For more serious alleged offences, suitability criteria could be engaged if the potential maximum sentence is handed down on conviction and therefore it would be appropriate to pause decision-making until the prosecution is concluded. For lower-level alleged offences, especially where there is no previous history of criminality, pausing an application or decision may be disproportionate considering suitability criteria may not be engaged, even if convicted.

A decision to pause a decision or application will take into account a wide range of factors, including previous offending history, whether the alleged offending caused serious harm, as well as the personal circumstances of the person such as the length of time they have lived in the UK.

Deportation

You must check the Police National Computer (PNC) before any further action is taken to see if the person has a pending prosecution. You cannot deport a person who has a pending prosecution without the consent of both:

- your assistant director
- the police

as well as whichever one of the following applies:

- [the Crown Prosecution Service \(CPS\)](#) in England and Wales
- [Crown Office and Procurator Fiscal Service \(COPFS\)](#) in Scotland
- [Public Prosecution Service \(PPS\)](#) in Northern Ireland
- any other investigatory agency involved in a pending prosecution

At least one from each of the above must also be involved in circumstances where the person has been convicted of an offence but has subsequently appealed that conviction.

Once you have enough details on the pending prosecution from the PNC check or from the police directly, you must consider temporarily suspending further action pending the outcome of any court case. It will depend on the specifics of each case as to when any temporary suspension should begin. In the majority of deportation cases, it will likely be most appropriate following the issue of the initial deportation ('stage 1') notice. This will make the person liable to deportation aware that deportation is being actively considered.

Where a decision has been made to suspend further action, you may then delay issuing a decision to make a deportation order ('stage 2' notice) and obtaining a deportation order until you know the outcome of the pending prosecution. Once that is known, you must take the additional information into account and ensure it is considered appropriately in your supplementary decision letter.

In some cases, you may consider that it is appropriate to progress the case beyond the stage 2 decision and obtain a deportation order, but only enforce it once the outcome of the pending prosecution is known. For example, this might be where a conviction for the crime in question would not meet the criteria for deportation, and therefore not enhance the decision to deport based on previous behaviours. This requires the agreement of your local assistant director and the prosecutorial agency concerned.

In certain cases, you may feel that the public interest overall would be better served by enforcing the offender's deportation imminently, rather than awaiting the outcome of the pending prosecution. In such a case, you must set out your justification to your assistant director, and if they agree, contact the prosecutorial agency involved with a view to reaching an agreement on how to proceed. If it is decided the public interest would be better served by imminent deportation, you must confirm with the relevant prosecutorial agency that prosecution has been terminated or otherwise withdrawn prior to deportation. Advice on how to contact the correct department within the relevant agency can be provided by the police officer dealing with the case, the court involved or staff at the PNC or prosecutorial authority.

Circumstances where it might be considered preferable to deport, or proceed to a decision to make a deportation order, ahead of the pending prosecution's resolution may include, but are not limited to:

- where existing grounds for deportation are based on one or more convictions for serious offences or serious harm, and the offence pending consideration is of a minor nature, for example a summary only offence

- where existing grounds for deportation are based on persistent and repetitive low-level offending, and the offence pending consideration is of a similarly-low-level nature

There will be cases where the public interest falls in favour of deferring deportation in order to allow the processes of justice to run their course.

Circumstances where it might be considered preferable to defer deportation to await the resolution of the pending prosecution may include, but are not limited to:

- where the grounds for deportation were considered based on one or more convictions for minor offences
- where, regardless of the strength of the existing grounds for deportation, the offence pending consideration is of a serious nature (more than 4 years potential maximum sentence as per the [Sentencing Council](#) guidelines)
- the foreign national offender (FNO) has an appeal hearing concerning their conviction
- the FNO is awaiting a determination from the National Referral Mechanism (NRM) as a potential victim of modern slavery or human trafficking - for more information on this type of scenario, please see the modern slavery guidance

You must engage with the relevant prosecutorial agency and police force before making any decision to proceed with deportation or to defer deportation. When presenting a case to the prosecutorial agency for proceeding with deportation notwithstanding the pending prosecution, you must secure their agreement before continuing. If you cannot reach agreement with the prosecutorial agency to deport ahead of the resolution of a prosecution, you must abide by their decision and not seek to enforce a deportation order until the outcome is known. It is important to be aware that for certain offences the Home Office view of what is classified as a minor offence may not align with prosecutorial policy and vice versa. The details of their decision, and the reasons why, must be recorded on the Case Information Database (CID)/Atlas.

Foreign National Offender Returns Command Pending Prosecution team

The Identification, Law Enforcement Engagement team (ILEET) in the Foreign National Offender Returns Command (FNO RC) have a designated pending prosecution team that can attempt to expedite a pending prosecution where it is the only barrier to deportation.

ILEET will deal with any case (Scotland, Northern Ireland, England and Wales, detained, non-detained, early removal, historic) but they must meet the following criteria:

- the case must have a realistic route to removal within the next 6 months
- there must be no future court dates on the Police National Computer (PNC)

A realistic route to removal means that by concluding the pending prosecution the FNO could be removed within 6 months and there are no other known barriers. In the referral email you must explain why the case meets the criteria and provide all other relevant details.

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Any referral that has not been resolved by ILEET within 2 months will be passed back to the referring team/decision-maker with all the information required (such as name of contact) to allow follow up on the pending prosecution at a later date.

If you wish to have an update on a case after a court date has passed, you must make a new referral and ILEET will restart their investigations.

Nationality

Citizenship will not normally be granted to a person who has a pending prosecution, but this does not prevent you from establishing whether the other requirements for citizenship are met. If the application still falls to be refused without reference to the latest offence, a decision may be made on the case. Otherwise, you must pause the application until the outcome of the prosecution is known.

If the application is refused for other reasons, you must inform the applicant that any further application for citizenship is unlikely to be successful while any criminal charge remains pending.

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Where an application is made in a British overseas territory, the governor will confirm whether the applicant has a pending prosecution in their territory. The details will be provided in a covering letter.

EU Settlement Scheme

Where an application would not fall for referral to Immigration Enforcement (IE), even if the pending prosecution present should lead to a conviction, a decision must be made on the application in light of all other available evidence. Where the applicant has a pending prosecution which could lead to a conviction and a refusal on suitability grounds **and** does not otherwise meet the criteria for referral to IE in respect of any other offence, you must pause the application until the outcome of the prosecution is known.

Applications must be progressed when all of the following conditions are met:

- there is only one pending prosecution
- the maximum potential sentence upon conviction is less than 12 months, according to the maximum category 1 sentence in line with the [Sentencing Council](#) guidelines for the alleged offence
- there are no previous convictions

Where the application is progressed before the outcome of the pending prosecution is known, this does not prevent consideration being given to deportation in the event the person is convicted.

In all other paused cases, once the outcome of the pending prosecution is known, the application must be considered under the scheme in accordance with the EU Settlement Scheme (EUSS) guidance.

Where the applicant has a pending prosecution and has other convictions not previously considered for deportation which, not including the pending prosecution, meet the criteria for referral to IE, the application must be referred to IE to consider deportation. Where a decision to make a deportation order in respect of the applicant is being considered, that consideration must be concluded before any decision is made on their application under the EUSS.

Asylum

This instruction does not relate to prosecutions under [section 31 of the Immigration and Asylum Act 1999](#). Guidance on considering prosecution in a case where the suspect claims or has claimed asylum can be found at: section 31 Immigration and Asylum Act 1999: defence against prosecution.

There is no specific time frame within which a decision on a person's asylum claim must be made in circumstances where there is a criminal prosecution pending against them, either in the UK or abroad. However, in line with [paragraph 333A of the Immigration Rules](#), where a decision cannot be made on an asylum claim within

6 months of the date it was recorded, then you must write to the claimant and inform them of the delay. You must also inform the claimant, and their legal representative, of the reason for the delay – citing the specific details of the pending prosecutions which can be shared under Article 9.2(f) of the General Data Protection Regulation (GDPR).

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There are a number of facts that will determine how long a claim from a person with a pending prosecution recorded against them must be held undecided, including:

- the stage the criminal proceedings have reached
- when the relevant criminal justice system is in a position to resolve it
- the severity of the crime in question, including the possible resulting sentences

It is preferable to make an asylum decision once all relevant facts are available. Therefore, claims from those with a prosecution pending are normally held for as long as required. To avoid claims unnecessarily being placed on hold, where the crime is not so severe as to warrant possible exclusion under Article 1(F) of the Refugee Convention or the potential sentence does not meet the definition of a 'particularly serious crime' in [section 72 of the Nationality, Immigration and Asylum Act 2002](#) and would likely have no impact on the outcome of the asylum claim, a decision can be taken to grant an outstanding claim ahead of the final resolution of any criminal proceedings.

Furthermore, in the interest of not placing claims on hold unnecessarily, where the outstanding claim falls for outright refusal under the Immigration Rules as it stands based on existing evidence, it may be resolved without waiting for the criminal court's decision. If this is the agreed approach, you must confirm that the prosecutorial agency has terminated or otherwise withdrawn their prosecution before any removal action is taken. Any decisions taken before the conclusion of a criminal trial must be clearly noted on the Case Information Database (CID)/Atlas to ensure that the relevant facts are on record for presenting officers (PO) should the decision be appealed.

Where the claimant has a pending prosecution which could lead to a conviction which would meet :

- the threshold for exclusion under Article 1F of the Refugee Convention
- the criteria in Article 33(2)
- the threshold for revocation of refugee status under paragraph 339AA-B
- the suitability criteria under the family/private life rules

The claim must normally be paused until the outcome of the prosecution is known.

Such scenarios might include where the prosecution concerns:

- a particularly serious crime
- the claimant has had a series of minor offences recorded

Occasionally, there may be very compelling individual circumstances which tip the balance in favour of deciding an asylum claim on the evidence available without awaiting the criminal court's verdict even where the crime is so severe as to possibly warrant exclusion under Article 1(F) of the Refugee Convention or the sentence would meet the threshold in [section 72 of the Nationality, Immigration and Asylum Act 2002](#). However, this should be rare and all such cases must be discussed with your grade 7/assistant director and asylum policy before a decision is made.

A record must be kept of any grant of refugee status or other form of leave that is made before a criminal case is concluded. It must be monitored so that if a prosecution results in a conviction and penalty the case must be referred as appropriate to FNO RC or the Status Review Unit. Where appropriate, consideration must be given to revoking refugee status.

Leave to Remain

If a person has a pending prosecution for an offence or series of offences, you must consider whether to pause the application until the outcome of the prosecution is known.

However, you must only pause the application if the outcome of the pending prosecution or sentencing would materially affect how you decide the application. For example, if the person already has criminality which means their application must be refused, an additional conviction or sentence would make no difference to the outcome of their application. Where a person has a low-level conviction which would mean their application could be refused on a discretionary basis, but the offence for which they are being prosecuted carries a potential maximum sentence (see category 1 sentences for the offence under the [Sentencing Council](#) guidelines) which would mean a mandatory refusal or a refusal on the grounds of being a persistent offender or causing serious harm, you must pause the case until the outcome of the court proceedings (taking into account other relevant factors, of which the maximum potential sentence is just one).

Where there is no previous criminality, but the potential maximum sentence for the first alleged offence (see category 1 sentences for the offence under the [Sentencing Council](#) guidelines) could engage deportation considerations upon conviction, you must pause the case until the outcome of the court proceedings.

Where there is no previous criminality and the potential maximum sentence would not engage deportation consideration, you must consider whether it would be proportionate to pause the application pending the conclusion of the prosecution. This could include whether the application is time sensitive or if the person's current

leave status limits their ability to work, as well as other considerations. The considerations relevant to any particular set of circumstances will depend on the facts of the case.

Where a case has been paused pending the outcome of a prosecution, you must review the case every 90 days to establish whether the outcome of the prosecution has been recorded on the PNC.

Pending appeals

Before any appeal hearing, POs must establish the current position of the pending prosecution by refreshing the PNC results. If between the date of decision and the court hearing the claimant has been found guilty of a crime then the PO must bring this to the attention of the immigration court and, if necessary, reflect this in their submissions. In deportation cases a new conviction may change the legislation under which deportation is pursued.

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[The Crown Prosecution Service](#) for England and Wales
[Crown Office and Procurator Fiscal Service](#) for Scotland
[Public Prosecution Service](#) for Northern Ireland

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Communication with the police or court

This section tells you about keeping in touch with the police or court if there is a pending prosecution and an immigration decision needs to be paused.

You must take the following action in a case with a pending prosecution:

- keep in touch with the police station dealing with the case so you are up to date with the current situation, including any date set for a hearing in court - set yourself a reminder on the Case Information Database (CID)/Atlas
- if charged for an offence and listed at court, contact the Magistrates Court by email or phone, for Crown Court cases check the Xhibit portal
- how often you need to keep in touch will depend on what stage the prosecution is at – if the trial is still some time away, contact will not be needed as frequently as when the trial or sentencing is ongoing/imminent
- you must seek updates from those dealing with the case using your Home Office email account, this will assure them that you are seeking an update in an official capacity and allows you to keep an audit trail of communication (sensitive details regarding a prosecution will rarely be divulged over the phone)
- if the person provides evidence that their pending prosecution has been concluded, you will need to confirm this with the police or prosecutorial authority - if this evidence is correct, you can request that the pending prosecution trace on the PNC be removed from the person's record
- if the person is likely to receive a sentence, consider asking the prosecutorial agency if it could be a custodial sentence
- in deportation cases, if the only barrier to deporting the foreign national offender (FNO) from the UK is the pending prosecution and it is not appropriate to detain the person under immigration powers, you must ask the police if the person has been remanded in custody on any further charges - for more information on immigration powers, see: Detention general instructions.

For individuals being held on remand:

- monitor any remand closely
- make sure the police are aware they must inform you if they or the court intend to grant bail - you must consider urgently whether immigration detention or immigration bail would be appropriate
- immediately notify the offender manager of the National Probation Service (NPS) or Community Rehabilitation Company (CRC) if bail is granted, you must:
 - contact them with the result of the bail hearing on the same day - if this is not possible it must be no later than the day after the hearing
 - send notification of the outcome in writing by email or fax - this makes sure the offender manager can set up appropriate arrangements to supervise the release from detention (they must then set up appropriate arrangements for supervision after detention)
 - record the outcome of the bail hearing on CID/Atlas

- notify the NPS probation area's single point of contact (SPOC) in writing either by email or fax.

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Immigration detention and further offences committed after release

This section tells you what to do when an individual is detained under immigration powers and has a pending prosecution.

If the individual is detained, you must make sure you carry out regular detention reviews until either:

- the outcome of the criminal hearing
- all barriers to deportation except the pending prosecution have been resolved

For more information on detention reviews, see: Detention General instructions.

You must make sure detention is still lawful. Detention is only appropriate if there is still a realistic prospect of removal within a reasonable timescale.

If you consider detention is no longer lawful you must refer the case to your director, via your assistant director. If release is authorised, it must be under immigration bail with appropriate reporting restrictions and/or electronic monitoring.

If a further offence is committed following release agreed by the Home Office or Immigration and Asylum Chamber (IAC), you must bring the case to the attention of an assistant director/grade 7.

If a person is released from detention on immigration bail and subsequently absconds, you must consider whether to pause or progress any immigration decision on a case-by-case basis taking into account the severity of the alleged offending. Any decisions can be served to file in the absence of communication with the individual or their legal representatives.

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Convicted of a new offence

This section tells you what to do when a foreign national receives a conviction that has not previously been considered.

If the case has been on hold in an area of the Home Office that is not FNO Returns Command (FNO RC), you must make a referral to FNO RC if the person has been convicted of a crime (including where they receive a custodial or non-sentence of any length) or if they accepted a caution. All foreign nationals given a custodial sentence are referred by the prison to FNO RC within 10 days of sentencing.

Following referral, FNO RC will decide whether to pursue deportation on the basis of the person's criminality. If FNO RC decide not to pursue deportation, any outstanding applications at the time of conviction will be returned to the original caseworker. Where deportation is pursued, FNO RC will consider the outstanding application alongside any representations made by the FNO. Any outstanding application will be decided in line with the relevant criteria and guidance for that respective application.

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If a stage 1 deportation decision has already been made, but a deportation order has yet to be signed or to take effect, you must review the case and issue a new stage 1 decision that takes full account of the new conviction or convictions if the relevant legislation under which deportation proceedings has changed. If subsequent convictions do not change the legislation under which the FNO is being considered for deportation (for example, the 12 month automatic deportation threshold is not met and deportation is still under the [Immigration Act 1971](#)), there should not be a need to reissue the stage 1 decision and the convictions can be included in the stage 2 decision.

However, if following a further conviction, the automatic deportation threshold is met where it was not before, meaning that deportation is now considered under the [UK Borders Act 2007](#) and not the [Immigration Act 1971](#), a new stage 1 decision must be served which takes account of the new conviction and change in legislation. In both instances, if a stage 2 decision has already been served and the FNO concerned receives a new conviction, a new stage 2 decision must be served reflecting the new conviction. This will not however attract a new right of appeal.

If there is an outstanding appeal or judicial review you must inform the Immigration and Asylum Chamber (IAC) or other judicial body of the additional conviction immediately, so they are aware of the situation at any future appeal hearing.

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