



Deportation of foreign criminals a case for urgent action

Summary

1. Current arrangements are haphazard and unsatisfactory. Guidelines to the courts are unclear and statistics are seriously incomplete. It is simple for an offender to return under a false identity.
2. 9,000 of the 75,000 prisoners in custody are foreign nationals but only about 1,000 recommendations for deportation are made each year. The government does not appear to know how many are actually deported.
3. We recommend that there should be a presumption that deportation should be recommended for a wide range of offences attracting a sentence of twelve months or more as well as for offenders who are illegal immigrants. The trigger should be lower for a second or third offence. Central records should be kept, including biometric information which should be available to visa issuing posts overseas to prevent offenders applying for a visa under a false identity.

Detail

4. Present arrangements for the deportation of foreigners convicted of criminal offences are extremely unsatisfactory:
 - there are no clear guidelines to the Courts; the general principles have not been revised for 25 years
 - Only 5-600 recommendations have been made annually in recent years^[1].
 - There are no statistics for the number of deportations actually carried out, and no feedback to the Courts.
 - An offender can not only appeal against a recommendation for deportation but can then appeal against the subsequent deportation order. He can also claim asylum and appeal against a refusal of asylum and then seek judicial review of removal instructions following the failure of his claim. All this can be at public expense.
 - Deportation cannot be recommended as a sentence in its own right. Nor can it justify a reduction in the sentence.
 - Deportation recommendations are often considered towards the end of a custodial sentence, resulting in the offender spending longer in detention.
 - There is nothing to stop a deported criminal from returning to Britain under a false identity.

5. A **recommendation** for deportation is a matter for the Courts. The **decision** is for the Home Secretary who takes into account the circumstances in the offender's country of origin, humanitarian aspects and considerations of public policy. The offender may appeal to an immigration judge against the Home Secretary's decision.

6. The present position in law is that the Court must consider whether the accused's presence in the UK is to its detriment.^[2] In our view, this is the wrong yard stick. There should be a "zero tolerance" approach to serious criminal behaviour by foreign nationals. This should involve a presumption that deportation will be recommended for any offence that results in a twelve-month prison sentence. On a second conviction the "trigger" level should be a six-month sentence and on a third conviction it should be three months. At present, magistrates may only impose a maximum sentence of six months but this is to be raised to twelve months. Until such a change is made, the approach suggested above would mean that magistrates could only recommend deportation for a second offence.

7. At present, it is not possible to make deportation part of the sentence. The law should be changed to permit this so as to reduce the amount of time spent by foreign prisoners in Britain's heavily over crowded jails. (In the first quarter of 2005 there were 9,194 foreign nationals among a total of 74,962 prisoners.^[3] In 1996, out of 360 court recommendations, only 270 deportation orders were made; statistics of outcomes are, apparently, no longer routinely collected.^[4])

8. To avoid lengthy delays in custody at the end of the period of imprisonment, deportation proceedings should commence on the first day of the sentence.

9. For so long as the UK remains a signatory of the 1951 Refugee Convention, criminals cannot be denied the option of claiming asylum even after conviction. But any such applicants should remain in detention and should be put through the "fast track" procedure.

10. A serious weakness of the present system is that there is nothing to prevent criminals returning to Britain under a false identity. To help tackle this, all those convicted should have bio-metric information recorded and held centrally. As bio-metric visas are introduced overseas, visas applicants should be checked against this database. These records would also detect those re-offending under a different identity.

11. Central records should include the immigration status of all those convicted, the number of recommendations for deportation and the number carried out. The Courts should be informed of the outcome of their recommendations, as they are not at present.

12. There should also be a presumption that deportation should be recommended for certain classes of offences. These should include drug offences such as importation and supply (but not possession) of drugs, manufacture of Class A drugs, people smuggling offences, forgery of travel documents, serious offences of violence and sexual offences, fire arms, fraud, all sentences involving the handling of the international proceeds of crime and all defined immigration offences

13. There should be an automatic recommendation of deportation for offenders who are illegal immigrants and a presumption for offenders who are in Britain on a temporary basis, for example for work or study.

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NOTES

- [1] The number of recommendations for deportation in respect of convicted criminals made by the judiciary in the last three available years 2001-3 was - Crown Courts 609, 543, 609; Magistrates Courts 19, 24, 45. Source: Parliamentary Answer 14 June 2005 : Column 283W.
- [2] Consultation Paper issued by the Sentencing Advisory Panel, 8 March 2005.
- [3] Home Office Population in Custody Summary tables Q1 2005
- [4] Parliamentary Answer HL 4831 16 Nov 2004