Other Resettlement issues for FNPs

Categorisation

The categorisation of prisoners is covered by PSI 40/2011 (adult male prisoners), PSI 39/2011 (adult female prisoners) and PSI 52/2011 (immigration, repatriation and removal services).

Security categories – adult male
The categories within prison are defined as:

Category A
Prisoners whose escape would be highly dangerous to the public or the police or the security of the State and for whom the aim must be to make escape impossible.

Category B
Prisoners for whom the very highest conditions of security are not necessary bur for whom escape must be made very difficult.

Category C
Prisoners who cannot be trusted in open conditions but who do not have the resources and will to make a determined escape attempt.

Category D
Prisoners who present a low risk; can be reasonably trusted in open conditions and for whom open conditions are appropriate.

Security categories – adult female
The security categories for women are not the same as for men. They are:

Category A
Prisoners whose escape would be highly dangerous to the public or the police or the security of the state and form whom the aim must be to make escape impossible.

Restricted Status
Any female, young person or young adult prisoner convicted or on remand whose escape would present a serious risk to the public and who are required to be held in designated secure accommodation.

Closed Conditions
Prisoners for whom the very highest conditions of security are not necessary but who present too high a risk for open conditions for whom open conditions are not appropriate.

Open Conditions
Prisoners who present a low risk; can reasonably be trusted in open conditions and for whom open conditions are appropriate.

How categorisation works
Upon sentence (or on remand in some cases) a prisoner's categorisation will be considered following the guidance set out in PSI 40/2011, paragraph 4.

Thereafter, all prisoners serving over 12 months should have regular reviews of their categorisation. These can be at six monthly or twelve monthly intervals, depending on how much time the prisoner has left to service (PSI 40/2011, para 5.5).

The general principle of categorisation is that a prisoner should always be assigned the lowest security category for which they meet all the criteria. The assessment is based upon their needs in terms of security and control and is not governed by the availability of suitable spaces within the prison estate. However, a prisoner may be held in a prison of a higher security category than that assigned to him.

The purpose of review of categorisation is 'to determine whether... there has been a clear change in the risks a prisoner presented at his last review and to ensure that he continues to be held in the most appropriate conditions of security.'

Allocation is a separate process to re-categorisation and is dependent on availability of suitable places and the pressures on the prison estate.

On occasion, there may be a non-routine re-categorisation if it is deemed that 'there has been a significant change in their circumstances or behaviour which impacts on the level of security required.' (PSI 40/2011, para 5.9).

Categorisation and FNPs
PSI 52/2011 states that FNPs should be classified in accordance with the general rules for categorisation (para 2.20).

PSI 40/2011 states that Immigration Enforcement's opinion should be sought when considering categorisation of an FNP and, in particular, that D categorisation cannot be considered until a response is received from Immigration Enforcement (Annex B, para 7).

PSI 52/2011 states that if a prisoner meets the criteria set out in PSI 52/2011, para 2.8, then assessment for categorisation should proceed 'on the assumption that

deportation will take place, unless a decision not to deport has already been taken by the UKBA' (para 2.23).

Therefore, legally the position is that there is no reason that an FNP should not be considered for Category D status, providing that information on all relevant factors including the possibility of deportation or removal have been taken into account. However, in practice this requirement does mean that it is rare for an FNP who is still under consideration for deportation to be given D category.

FNPs should have their categorisation reviewed as soon as possible if decision is made not to deport (PSI 40/2011 para 5.9).

Challenges to categorisation
Any prisoner who is dissatisfied with their categorisation or re-categorisation can challenge the decision by completing the requests and complaints from and giving it to the line manager of the assessor or board chair. The categorisation decision will then be reviewed by a manager senior to the officer who made the decision.

Allocation
The allocation process is separate to that of categorisation.

There are special provisions relating to the allocation of male FNPs which are set out in PSI 40/2011, Annex B, para 19, which states:

'Subject to paragraphs 20 to 22 below all sentenced adult male foreign national prisoners who are categorised C and have between three months and three years to earliest release date (including ERS date) should be allocated to one of the prisons listed in the attached table [Annex H to PSI 40/2011] at the earliest opportunity. In the first instance sendind establishments should seek to allocate to a prison listed in the priority allocation group. If this is not possible sending establishments should seek to allocate to a prison in the second priority group. If neither is possible, allocation should take place to any appropriate prison. All allocations are subject to specific allocation criteria for individual prisons'.

This does not apply if Immigration Enforcement have stated that they have no interest in deporting or removing the FNP in question. Also, their should be some consideration of individual needs or circumstances, in particular:

'Adult male category C FNPs should NOT generally be allocated to a prison in the priority allocation group if;
- They have less than three months or more than three years left to serve to earliest release date (including ERS date)
- They have outstanding medical appointments which cannot be serviced from the receiving prison
- There are other substantive reasons as to why a move to an FNP priority allocation

prison should not take place (for example compassionate grounds).' (PSI 40/2011, Annex B, para 22).

FNPs sentenced to under 12 months imprisonment who are not subject to deportation action must be considered for allocation to open conditions (PSI 52/2011, para 2.22).

Release On Temporary License

The issue of Release on Temporary License (ROTL) for FNPs is covered by PSI 65/2011 and PSO6300.

Essentially, FNPs are eligible for ROTL in just the same way as any other prisoner and granting of ROTL is at the discretion of the prison governor. However, if Immigration Enforcement are considering deportation, then the prison governor must request the Criminal Casework team's opinion on granting ROTL to the prisoner. Any opinion from Immigration Enforcement is advisory and is not binding. The final decision on grant of ROTL remains with the governor who should be presented with an adequate assessment of all the relevant factors to aid him/her in his/her decision.

Only FNPs whose immigration status allows them to work or study would be allowed ROTL for this purpose. Those without this permission may still undertake unpaid community work from prison (PS0 6300 para 5.5.1.),

Where an FNP meets the initial criteria for deportation but has not had a court recommendation for deportation nor been served with notice of intention to deport by Criminal Casework, then PSO 6300 states that unless Criminal Casework has made a decision that the prisoner will not be deported, the presumption when considering ROTL must be that deportation action will proceed on the completion of sentence. There is no requirement to seek Criminal Casework's opinion in such cases (PSO 6300 para 5.5.3.).

If a prison governor was perceived to be improperly delegating the ROTL decision to Immigration Enforcement by either refusing to make a decision without Criminal Casework's view or by treating that view as binding then the decision on whether to grant ROTL could be challenged as unlawful (legally known as 'fettering a discretion').

Home Detention Curfew

Home Detention Curfew (HDC) is commonly known as 'tagging'. It is the system which allows some prisoners to be released from prison earlier than usual and to spend the remainder of their sentence in the community, by agreeing to wear an electronic tag and to spend a certain period of time, usually 12 hours each night, in their designated home address.

The rules around HDC are largely set out in PSO 6700, although this has been supplemented by a number of other PSIs.

A prisoner who is serving a sentence between 3 months and 4 years in length should be considered for HDC up to 135 days before their Earliest Release Date or after serving at least one quarter of their total sentence (whichever is the latest date of those two), unless they fall within one of the statutory exceptions.

Most FNPs will not be eligible for Home Detention Curfew (HDC) because they fall within the statutory exception of a person who is 'liable to removal from the UK' as defined by s246(f) Criminal Justice Act 2003. Essentially if a FNP has not been served with any decision to deport and is not facing administrative removal then they are not statutorily excluded (even if Criminal Casework is still considering whether or not to deport them).

However, even if an FNP is not statutorily excluded, there are still two potential obstacles to a grant of HDC:

- PSI 52/2011 states that FNPs who have been notified by Immigration Enforcement that they are 'liable to deportation' and under consideration for deport (even if no decision yet served) should be presumed to unsuitable for HDC unless there are exceptional circumstances justifying release. Those FNPs should be given a risk assessment for HDC, but decision makers should proceed on the basis of an assumption that the FNP will be deported. If it appears fairly certain that an FNP will not be deported it may be worth pressing Criminal Casework to make a decision so that the possibility of HDC is not lost.
- The second barrier, a recent court case R (Francis) v SSJ & SSHD suggests that if a prisoner has been served an IS91 (detention authority) form then the Secretary of State for Justice is entitled to operate a policy of not granting HDC.