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WAREHOUSES FOR THE DEPORTABLE – FOREIGN NATIONAL PRISONERS IN THE UK

Introduction

On the 25th April 2006, the then Home Secretary Charles Clarke MP confirmed that between 1999 and 2006, over 1,000 foreign national prisoners have been released in the UK without being considered for deportation.¹ The admission caused a political furore, resulting in Mr Clarke resigning from his post, and led to the introduction of a raft of legislative, policy and practice initiatives which in effect created a whole separate system for the ‘management’ of foreign national offenders in the UK. The central aim of this newly-created system is to effect as many expulsions as possible (through deportation or removal under immigration rules).

Annually, the UK detains over 10,000 foreign national offenders. Thousands are also deported or otherwise removed during or after their sentence. While this group is very diverse, foreign national prisoners share many vulnerabilities in prison, including language barriers, problems with family contact, difficulties in accessing services and assistance and the ever-present threat of deportation. Their experience of prison is often one that is solely defined by preparation for expulsion, with much of the available research documenting isolation and exclusion during the prison sentence.

This article firstly discusses the legal and policy implications of the foreign national prisoner ‘scandal’ of 2006, before presenting some of the evidence available from research and prison monitoring reports on the experiences of foreign

¹ ‘Foreign criminals “not deported”’, *BBC News On-line*, 25 April 2006 (available at: http://news.bbc.co.uk/1/hi/uk_politics/4942886.stm).

national offenders in the UK.² It goes on to discuss the treatment of this group in the context of the wider criminalisation of 'foreignness' in the UK in recent years. It concludes that changes in penal policy and practice since 2006 mean that expulsion of foreign national prisoners from both the wider community and from the 'prisoner society' begins long before the deportation order is issued.

The legislative and policy response to the foreign national prisoners 'scandal'

While the number of foreign national prisoners in the UK has been increasing steadily since the 1990s, their situation became the focus of a wider public debate in 2006 when the then Home Secretary, Charles Clarke MP, confirmed that some 1,013 prisoners from outside of the UK were released into the community post-sentence, without being considered for deportation.³ What followed was a near-relentless effort on the part of the Government, the National Offender Management Service (NOMS) and the UK Border Agency (UKBA) to re-focus their practice on ensuring that foreign national prisoners are deported (or removed 'administratively'; an action short of formal deportation, undertaken under immigration legislation) after or during their sentence. To that end, successive Governments introduced a number of legislative and policy measures, which included: the UK Borders Act 2007; the Legal Aid, Sentencing and Punishment of Offenders Act 2012, as well as modified Early Removal Schemes and Facilitated Removal Schemes in England and Wales, Scotland and Northern Ireland. This section discusses those developments.

New laws

Since the introduction of the Immigration Act 1971, any foreign national offender (and in fact anyone whose deportation is deemed by the Home Secretary as "conducive to public good", regardless of the presence of a criminal conviction) could be subject to deportation, either on the direction from the court or following a decision by the Home Office. The power of the Home Secretary to make a deportation order under the 1971 Act is a discretionary one. However, this discretion was removed in the case of certain categories of foreign national offenders by the UK

² This article focuses on the situation in prisons. However, foreign national offenders are also detained post-sentence in the UK in Immigration Removal Centres (IRCs), awaiting deportation. While not discussing their situation in detail, I refer to this group as appropriate.

³ H.S. Bhui, *Foreign National Prisoners: Issues and Debates*, in: H.S. Bhui (ed.), *Race and Criminal Justice*, Sage, London 2009. See also 'Foreign criminals "not deported"', *BBC News On-line*, 25 April 2006 (available at: http://news.bbc.co.uk/1/hi/uk_politics/4942886.stm).

Borders Act 2007, which introduced what is commonly referred to as an “automatic deportation”.⁴

According to the UK Borders Act 2007, the Home Secretary ‘must’ make a deportation order against any individual who is not a British citizen and who is convicted in the UK and sentenced to at least 12 months imprisonment for a serious offence.⁵ Deportation of those who fulfil the criteria will normally be considered as “conducive to public good” for the purposes of the Immigration Act 1971. While, as stated above, the 2007 Act removes the discretion from the Home Secretary in making the deportation order, the 2007 Act itself contains a range of exceptions, and in particular prevents deportation where the removal would breach the person’s rights under the European Convention on Human Rights or the UN Refugee Convention.⁶ Between August 2008 and 31 December 2012, 1,444 foreign national prisoners against whom a decision to deport was taken appealed it successfully on human rights grounds alone.⁷ At the same time, however, 7,941 individuals have been deported.⁸

Another exception under the UK Borders Act 2007 concerns a situation where deportation would violate the rights of citizens of the European Economic Area (EEA), guaranteed by the European Community Treaties. In principle, EEA citizens are entitled to enjoy free movement within the EEA and are entitled to work and reside in any EEA country together with members of their families (including those who are not EEA nationals).⁹ However, the host states can remove a person if they can prove that there are public policy, public security or public health grounds to do so.¹⁰ Generally, when decision to deport is being made, the UK Border Agency staff (acting on behalf of the Secretary of State) must be “satisfied that the person’s conduct represents a genuine, present and sufficiently serious threat” affecting public policy, security or public health.¹¹ Additionally, those EEA citizens who have a permanent right to reside in the UK can only be deported if

⁴ Although with the number of exceptions in the law, it is more appropriate to talk about “automatic *consideration* for deportation”.

⁵ Section 32 of the 2007 Act.

⁶ Sections 33.2 and 33.3 of the 2007 Act.

⁷ House of Commons, *Hansard, Written Answers for 23 April 2013*, House of Commons, London, 2013 (Column 793W).

⁸ House of Commons, *Hansard, Written Answers for 23 April 2013...* (Column 786).

⁹ The right to reside is usually connected to employment, self-employment or seeking employment; students also enjoy the right to reside (Directive 2004/38/EC on the right of Citizens of the European Union and their family members to move and reside freely within the territory of the EU).

¹⁰ L. Dubinsky, *Foreign National Prisoners: Law and Practice*, Legal Action Group, London 2012, p. 126. See also Regulation 21 of the *Immigration (European Economic Area) Regulations 2006* which transposed the 2004 EU Citizens Directive into UK domestic law.

there are *serious* grounds of public policy or public security for those residing for up to 10 years and *imperative* grounds for those who have permanently resided for over 10 years.¹² Overall, between 2010 and 2012, 3,640 EEA foreign national prisoners have been subject to removal from the UK; 1,749 were removed having served sentences of less than 24 months.¹³

Challenges to deportation on human rights grounds have become significantly more difficult with the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which removed eligibility for legal aid (i.e. publicly funded advice and representation for those unable to cover costs from their own financial means) from those who pursue a challenge on the basis of the deportation violating their right to family life (Article 8 of the ECHR). Plans to further limit access to legal aid for prisoners wanting to challenge their treatment in prison or prison conditions are also now part of a wider reform of legal aid system, together with proposals to exclude those who have not been resident in the country for at least 12 months.¹⁴

Early Removal Schemes and Facilitated Removal Schemes

Early release schemes applicable to foreign nationals are not new. The Criminal Justice Act 1991 introduced early release arrangements to “take foreign prisoners who are serving more than four years and are subject to deportation out of the normal parole scheme, with the potential effect of gaining their speedier repatriation”.¹⁵ The most recent schemes have been introduced by the Criminal Justice Act 2003 and currently operate in England and Wales and in Scotland. In Northern Ireland, proposals for the introduction of such scheme were consulted on by the Department of Justice in 2012¹⁶ but it is yet to be introduced. The ERS in England and Wales is mandatory and includes in its remit all foreign national prisoners (non-European and EU/EEA citizens) in relation to whom a deportation decision

¹¹ Home Office, *Criminal Casework Directorate: European Economic Area (EEA) Foreign National Offender (FNO) Cases*, The Home Office, London 2013, p. 2.

¹² UK Border Agency, *European Casework Instructions*, UK Border Agency, London 2013, Chapter 8, Section 3, paragraph 2.2.3.

¹³ House of Commons, *Hansard, Written Answers for 12 March 2013*, House of Commons, London 2013 (Column 146W).

¹⁴ ‘No legal aid for prisoners, says Chris Grayling’, *The Independent On-line*, 5 September 2013 (available at: <http://www.independent.co.uk/news/uk/politics/no-legal-aid-for-prisoners-says-chris-grayling-8799084.html>).

¹⁵ D. Cheney, *Policy and Practice in Work with Foreign National Prisoners*, „Probation Journal” (July 1994), p. 87.

¹⁶ See also an evidence session on the ERS for Northern Ireland on 29 March 2012 (available at: http://www.niassembly.gov.uk/Documents/Official-Reports/Justice/2011-2012/120329_Foreign-NationalPrisonersEarlyRemovalSchemeProposals.pdf, accessed 9.06.2013).

or removal decision has been made and who are serving determinate sentences.¹⁷ Those prisoners who have been sentenced to life imprisonment and those serving indeterminate sentences for public protection are subject to a similar process on completion of their tariff under separate regulations.¹⁸ Prisoners eligible for the ERS in England and Wales can be released – for the sole purpose of deportation or removal – up to 270 days before the half-way point of their original sentence providing that they have served at least a quarter of their sentence.¹⁹ The UK Border Agency reported in 2011 that 43% of removals from the UK in 2010 happened within the early removal period.

In Scotland, the ERS became operational in November 2011 and is still voluntary, i.e. the prisoner has to agree to be removed before the end of his or her sentence.²⁰ To be considered for ERS, the prisoner must be serving a sentence of less than four years; serve at least a quarter of the custodial part of their sentence before a removal can take place and must be serving a sentence of at least three months before being able to be considered.²¹ Eligible prisoners can be removed up to 180 days before the half-way point of their sentence and their removal can be effected at any time between that 180 day mark and the end of the custodial part of their sentence is served.²² In Northern Ireland, the proposals introduced by the Department of Justice in 2012 suggested a hybrid scheme, based on elements of the arrangements operating in England and Wales and in Scotland.

The Facilitated Return Scheme (FRS) was introduced in October 2006 and works alongside the ERS. The FRS is only available to non-EU/EEA citizens and, according to the Home Office, was put in place to make the removal of non-EU/EEA prisoners “easier” and it

“[...] is to encourage [those prisoners] to leave the UK at the earliest possible opportunity, so reducing the time and costs associated with time spent in prison and immigration detention”²³

¹⁷ Home Office, *Criminal Casework Directorate: The Early Removal Scheme*, London, The Home Office, 2013, p. 2; National Offender Management Service, *The Early Removal Scheme and Release of Foreign National Prisoners (PSI 04/2013)*, NOMS, London 2013, p. 3.

¹⁸ Those prisoners are removed under the Tariff Expired Removal Scheme (TERS). Recent statistics show that between October and December 2012, 36 indeterminate sentence prisoners have been removed under this scheme (Ministry of Justice, *Offender Management Statistics Quarterly Bulletin October to December 2012*, London, Ministry of Justice, 2013, p. 12).

¹⁹ Home Office, *Criminal Casework Directorate: The Early Removal Scheme...*, p. 2.

²⁰ Home Office, *Criminal Casework Directorate: The Early Removal Scheme...*, p. 10.

²¹ Department of Justice, *Consultation on the introduction of a scheme to allow for the early removal of Foreign National Prisoners*, Belfast, Department of Justice, 2012, p. 4.

²² Department of Justice, *Consultation...*, p. 5.

²³ Home Office, *Criminal Casework Directorate: Facilitated Return Scheme (FRS)*, The Home Office, London 2013, p. 2.

Those wanting to avail of the FRS must be subject to a deportation order (in that sense, it is not an alternative to deportation) or be subject to administrative removal under immigration law.²⁴ While prisoners who avail of the scheme are still subject to the same deportation or removal decisions (and their consequences for, for example, future travel to the UK), the FRS offers financial and in kind incentives for prisoners to leave and attempts to facilitate their reintegration in the country of origin, with assistance provided by the International Organisation for Migration (IOM).²⁵

Policy initiatives

While the legislative response, focusing on deportation and removal, was swift, any attempts to improve the situation of foreign national prisoners detained in the UK have been extremely slow. In England and Wales, despite repeated calls by HM Chief Inspector of Prisons, there is still no national Prison Service policy for the management and support for this group of prisoners.²⁶ Prison Service Orders (PSOs) and Prison Service Instructions (PSIs) focus largely on the procedures to be followed in dealing with prisoners subject to the Early Removal Scheme²⁷ with those who are liable to deportation²⁸ and those who are escorted for asylum and immigration hearings.²⁹ While some progress has been made in the development of appropriate policies at individual prison level, this is still far from a uniform practice and where policies have been developed they are often not properly implemented.³⁰

There does not appear to be any publicly available policy on the treatment and support for foreign national prisoners in Scotland. The Northern Ireland Prison Service (NIPS) published their draft policy in 2008 when it was provided for consultation³¹ and it was being implemented between 2009 and 2010.³² The current status of the policy is, however, unclear.

²⁴ *Ibidem*; see also: L. Dubinski, *Foreign National Prisoners...*, p. 87.

²⁵ Home Office, *Criminal Casework Directorate: Facilitated Return Scheme...*, p. 8 and p. 10.

²⁶ HM Chief Inspector of Prisons, *Foreign National Prisoners: A Thematic Review*, HMCIP, London 2006; HM Chief Inspector of Prisons, *Annual Report 2011-2012*, HMCIP, London, 2012.

²⁷ PSO 04/2013; PSO 59/2011 and PSO 01/2007.

²⁸ PSO 65/2011.

²⁹ PSO 02/2009.

³⁰ HM Chief Inspector of Prisons, *Annual Report 2011-2012...*

³¹ Northern Ireland Prison Service, *Northern Ireland Prison Service's Draft Foreign National Prisoner Strategy 2008-2010*, NIPS, Belfast 2008.

³² Northern Ireland Prison Service, *Annual Report and Accounts 2008-2009*, NIPS, Belfast 2009; Northern Ireland Prison Service, *Annual Report and Accounts 2009-2010*, NIPS, Belfast 2010.

‘Hubs and spokes’ – prisons for foreign national prisoners

While there is no national strategy for the management of and support for foreign national prisoners in custody, the authorities in England and Wales introduced arrangements for the concentration of foreign national prisoners in certain establishments in the prison estate.

Initially two prisons, HMP Bullwood Hall in Essex and HMP Canterbury in Kent were designated to hold foreign prisoners only, as part of a “plan to deport as many foreign prisoners as possible” and their existence was first revealed in a briefing by then Chief Inspector of Prisons, Dame Anne Owers, in 2007.³³ However, it has been previously suggested that the Prison Service adopted an “informal policy of grouping all foreign national women in four jails, Morton Hall, Drake Hall, Buckley Hall and Downview” to which women were transferred often without warning or preparation.³⁴

Since then, a Service Level Agreement (SLA) between NOMS and UKBA has been put in place “to support the effective management and speedy removal of Foreign National Prisoners”.³⁵ The SLA introduced what was called the “rationalisation plan” of establishing a number of prisons to hold large numbers of foreign national prisoners, with embedded UK Border Agency staff to enable more efficient casework regarding deportation and removal (‘hub’ prisons). Two prisons were to continue to hold only foreign national prisoners (HMP Canterbury and HMP Bullwood Hall) and the “rationalisation plan” also created six regional ‘hubs’ – HMP Risley, HMP Hewell, HMP Morton Hall, HMP The Mount, HMP The Verne and HMP Wormwood Scrubs³⁶ – and designated 35 prisons of different security categories as ‘spokes’ prisons holding considerable numbers of foreign national prisoners.³⁷ All foreign national prisoners with more than a month but less than three years to serve were to be transferred with immediate effect to the ‘hubs and spokes’ system. The introduction of the plan and transfers raised a number of

³³ ‘Jails adapted for foreign inmates’, *BBC News On-line*, 24 October 2007 (available at: <http://news.bbc.co.uk/1/hi/uk/7059283.stm>). HMP Canterbury was closed in March 2013.

³⁴ Prison Reform Trust, *Forgotten Prisoners: The Plight of Foreign National Prisoners in England and Wales*, Prison Reform Trust, London 2004, p. 6.

³⁵ National Offender Management Service/UK Border Agency, *Service Level Agreement to Support the Effective Management and Speedy Removal of Foreign National Prisoners*, NOMS/UKBA, London 2009.

³⁶ *Ibidem*, p. 20. Morton Hall has since been re-rolled as an Immigration Removal Centre (IRC) in 2011. More recent plans include the re-rolling of The Verne as an IRC in 2013 (Ministry of Justice Press Release ‘Modernisation of the prison estate’, 4 September 2013, available at: <https://www.gov.uk/government/news/modernisation-of-the-prison-estate>).

³⁷ National Offender Management Service/UK Border Agency, *Service Level Agreement...*, pp. 21-22.

concerns regarding the blanket application of the policy, without consideration of individual circumstances of the prisoners in question.³⁸ After a number of legal challenges, the Ministry of Justice agreed that individual transfers would not progress without consideration of individual circumstances such as family ties.³⁹

In the context of a discussion of the treatment of foreign national prisoners in the UK it is important to note this group includes anyone who does not hold a British passport. As Cooney notes,⁴⁰ this means that they constitute a very diverse group, with a variety of connections to the UK and different legal statuses, to include: third country nationals whose partners and children are British citizens; people who arrived in the UK as children with their families or unaccompanied; asylum seekers with indefinite leave to remain; European and Irish nationals with the right to reside; victims of trafficking; people who held legal permission to reside in the UK which expired during their prison sentence; those who were stopped, arrested and imprisoned at the point of entry into the UK for travelling with false documents.⁴¹ The personal histories of prisoners can include a complex set of circumstances that make them – and sometimes their families – particularly vulnerable if removed from the UK; for example the lack of connections to the country of origin or history of violence experienced in the country of origin. Prisoners belonging to this group also have differing language skills, impacting on their ability to communicate while in detention.⁴² The lack of effective policies and practice in support of foreign national prisoners during sentence; the focus on deportation, and the differential treatment in prisons resulting from such focus, means that their experience of imprisonment is often one of exclusion, isolation, uncertainty and fear. Those experiences are discussed in the next section.

Foreign national prisoners and their experiences of imprisonment in the UK

England and Wales

The population of foreign national prisoners in England and Wales accounted for 8% of the overall prison population in 1995 and the numbers peaked in 2006.⁴³

³⁸ L. Dubinski, *Foreign National Prisoners...*, p. 533.

³⁹ *Ibidem*.

⁴⁰ F. Cooney, *Double Punishment: The Treatment of Foreign National Prisoners*, "Prison Service Journal", January 2013, No. 205, p. 45.

⁴¹ M. Bosworth, *Deportation, Detention and Foreign National Prisoners in England and Wales*, "Citizenship Studies" 2011, Vol. 15, No. 5, p. 585.

⁴² *Ibidem*.

⁴³ G. Berman, *Prison Population Statistics*, Library of the House of Commons, London 2012, p. 8.

As of 31st March 2013, the number of foreign nationals in prisons stood at 10,725, accounting for 13% of the overall population held in detention.⁴⁴ In 2012, prisoners came from 156 different countries, with Jamaica, Poland and the Republic of Ireland being the top three countries of origin.⁴⁵

While the population of foreign national prisoners in England and Wales has been growing steadily in the last two decades, research interest in their experiences is relatively new. In 2004, the Prison Reform Trust reported that foreign national prisoners faced many challenges, from language barriers to difficulties maintaining contact with families. Prisoners suffered isolation within the prisons, mental health difficulties, anxiety caused by unresolved immigration issues and the threat of deportation and lack of preparation for release. Many faced lack of respect and racism within prison walls. Foreign national prisoners also reported their lack of understanding of the criminal justice process and of life in prisons in the UK.⁴⁶ The Trust's assessment was that prison staff were "generally unaware of the very distinct needs of foreign national prisoners" and that "policy and practice [was] inconsistent and substandard".⁴⁷ At the time, "it was an exception rather than the rule for a prison to have policies in place under the strategic leadership of a dedicated foreign national co-ordinator".⁴⁸

The first thematic review of the treatment of foreign national prisoners in England and Wales by the Chief Inspector of Prisons showed "systemic failures, at all levels, in the support, care and management of foreign national prisoners".⁴⁹ The Chief Inspector noted that, in spite of her repeated appeals to the Prison Service and NOMS in the five years preceding the report, neither service developed national standards for the treatment of foreign national prisoners, with the Prison Service in fact rejecting any need for such standards to be introduced.⁵⁰

Against the lack of engagement from the two organisations with the issue, the Chief Inspector outlined the variety of difficulties faced by foreign national prisoners, the most pressing of which was contact with their families. A third of foreign national prisoners stated that they have not had a visit since arriving at the prison, with nearly 20% stating they didn't know what their visit entitlement was.⁵¹

⁴⁴ Ministry of Justice, *Offender Management Statistics...*, p. 9. This number includes those who are held in Immigration Removal Centres after sentence (IRCs); when these are excluded, the percentage of foreign national prisoners is around 12% (Ministry of Justice, 2013, p. 9).

⁴⁵ Ministry of Justice, *Offender Management Statistics...*, p. 9.

⁴⁶ Prison Reform Trust, *Forgotten Prisoners...*, p. 4.

⁴⁷ *Ibidem*, p. 5.

⁴⁸ *Ibidem*.

⁴⁹ HM Chief Inspector of Prisons, *Foreign National Prisoners...*, p. 2.

⁵⁰ *Ibidem*, p. 1.

⁵¹ *Ibidem*, p. 7.

Thirty-seven percent of respondents said they had problems using the telephones and sending and receiving letters.⁵² While prisons provided free phone calls for prisoners whose families were abroad (usually one phone call a week for no longer than 10 minutes), these were most often given in lieu of visits which meant that prisoners with families or close friends in the UK *and* abroad had to choose who they were going to stay in contact with at any given time.⁵³ Problems with family contact were more acute for women than for men (77% of women prisoners reporting this as an issue in comparison to 59% of adult foreign national men).⁵⁴ Language difficulties also affected visits by family members who sometimes could not understand what was required of them in order to attend a visit.⁵⁵

Language barriers were, inevitably, linked to many problems in the understanding of prison life and the ability to use any available services. This extended to very basic issues such as not understanding menus in the canteen and not being able to choose food.⁵⁶ Prisoners reported feeling isolated and depressed because of lack of English; lack of translated materials and interpretation and inability to communicate with other prisoners and staff.⁵⁷ Lack of English and lack of interpretation also frustrated their attempts to understand their immigration status and to find out information about the process of being considered for deportation.⁵⁸

Foreign national prisoners reported being subjected to racist and discriminatory treatment by both staff and other prisoners and while the Chief Inspector acknowledged that these issues also affect British prisoners from Black and minority ethnic backgrounds, foreign national prisoners who were from ethnic groups other than white appeared to suffer a “further jeopardy” because of their race, with “negative stereotyping of black people and foreign nationals [emerging] as the strongest underlying reasons for perceptions of prejudicial treatment in relation to nationality and skin colour”.⁵⁹ In relation to differential treatment because of prisoners’ religion, Muslim prisoners experienced the most prejudice.⁶⁰

The Chief Inspector’s *Thematic Review* also gave an important overview of the perspectives of staff charged with the care of foreign national prisoners in custody. While in relation to the many issues faced by prisoners – including language barrier and lack of family contact – staff views largely mirrored those of prisoners,

⁵² *Ibidem*.

⁵³ *Ibidem*.

⁵⁴ *Ibidem*, p. 8.

⁵⁵ *Ibidem*, p. 7.

⁵⁶ *Ibidem*, p. 8.

⁵⁷ *Ibidem*, p. 8.

⁵⁸ *Ibidem*, p. 7.

⁵⁹ *Ibidem*, p. 21.

⁶⁰ *Ibidem*, p. 12.

it was in the area of racism and discrimination where they diverged, with most staff comments (69%) referring to displays of racism between prisoners rather than from staff towards prisoners.⁶¹ Around 15% of staff thought that foreign national prisoners were not respected in comparison to 77% of prisoners stating same. Around a quarter of respondents amongst staff interviewed for the report stated that white foreign national prisoners were treated differently to Black or Asian prisoners, some holding the view that those of white ethnic group were “more accepted”.⁶² Around 20% of staff thought that there were differences in treatment based on religion, with Muslims experiencing discrimination more often than others.⁶³

While finding that some positive practices in the treatment and support for foreign national prisoners were slowly being developed, “Access to services that could ensure equality of treatment by meeting prisoners’ specific needs was poor” and levels of awareness of services amongst prisoners and staff tended to be low (with few exceptions):

“In interviews, fewer than a third of prisoners were aware of interpreters, support groups, foreign national coordinators, prisoner representatives or outside agencies. Most were aware of ESOL classes and facilities to contact families. Staff were usually ignorant of available resources, lacked training and guidance, and said they were unsure about how to make progress”.⁶⁴

Women prisoners tended to be more aware than their male counterparts of the availability of interpreters, information in other languages, support from outside agencies and the ESOL provision in prisons, while awareness of internal support groups and prisoners’ representatives was higher in male prisons.⁶⁵ Overall, foreign national prisoners were less likely to have personal officers, with Black foreign national prisoners being even less likely to have met their personal officer in their first week (15%) in comparison to white prisoners (22%).⁶⁶

Staff identified the language barrier as the most prevalent problem in their work with foreign national prisoners, with language difficulties impacting on the equality of access to the prison regime. Prison staff reported that they attempted to tackle isolation amongst prisoners by placing people who spoke the same language together; they have not, however, reported any frequent use of interpretation or

⁶¹ *Ibidem*, p. 15.

⁶² *Ibidem*, p. 16.

⁶³ *Ibidem*, p. 17.

⁶⁴ *Ibidem*, p. 19. ESOL stands for ‘English for Speakers of Other Languages’.

⁶⁵ *Ibidem*, p. 21.

⁶⁶ *Ibidem*, p. 22.

translations.⁶⁷ Staff reported that they tried to deal with prisoners' immigration queries, either by referral to foreign national coordinators or diversity officers or by contacting the immigration authorities directly; however it was clear from interviews with staff that they felt under-trained and frustrated at the lack of accessible assistance in those matters.⁶⁸ Staff also underlined the many practical issues faced by them in trying to assist foreign national prisoners in, for example, family contact, specifically mentioning the bureaucracy of getting permissions for international phone calls and dealing with time differences when facilitating calls abroad.⁶⁹

The Chief Inspector's overall assessment of addressing the needs of foreign national prisoners was damning: the *Thematic Review* found that available resources were underused; there was no consistent policy or training provided to staff, hampering the development of good practice in this area; prison staff were often unaware of the basic provision such as phone interpretation or the possibility of calling in face-to-face interpreters; 25% of staff were unaware of the existence of foreign national coordinators in the prisons in which they worked; most staff were also unable to give any examples of positive practices in the approach to foreign national prisoners.⁷⁰ Specialised staff, such as foreign national coordinators, assessed their own work as making a positive impact on the treatment of prisoners; however, they often felt unsupported, particularly in relation to any leadership on a regional or national level.⁷¹ Despite some improvements in the identification and recording of nationality across the prison system, almost a 1,000 prisoners' national identity information remained unrecorded.⁷² The *Thematic Review* found that the cooperation between the Prison Service and the then Immigration and Nationality Directorate (now UK Border Agency) dealing with cases of deportations after sentence was very poor and there was "a huge degree of confusion, ignorance and miscommunication among both prisoners and staff about this issue, in spite of the numbers of prisoners affected and the seriousness of the consequences".⁷³ Prisoners faced with deportation received little information from either their solicitors, the prison or the immigration authorities; prison records were inconsistent in noting information about deportation and in some instances the information was inaccurate and there was significant lack of organizations / solicitors being able to provide independent professional advice.⁷⁴ Prisoners did not have access to immigration

⁶⁷ *Ibidem*, p. 23.

⁶⁸ *Ibidem*, p. 23.

⁶⁹ *Ibidem*, p. 24.

⁷⁰ *Ibidem*, pp. 24-25.

⁷¹ *Ibidem*, p. 28.

⁷² *Ibidem*, p. 29.

⁷³ *Ibidem*, p. 34.

⁷⁴ *Ibidem*, p. 35.

staff and were either not able to understand or act on the documentation provided to them regarding their deportation cases.⁷⁵ Some prisoners have been wrongly identified by staff as those liable to deportation which caused anxiety and stress to the prisoners concerned. Fewer than half of the prisoners interviewed were given any information about the Early Removal Scheme.⁷⁶ Custody or parole clerks in the prisons, who were responsible for the implementation of the Early Removal Scheme, were poorly supported by managers, unaware of available training and relied on their own systems of implementation in the absence of training and guidance and sufficient contact from the immigration authorities.⁷⁷

The uncertainty about immigration status was the biggest issue impacting on preparation of prisoners for release and resettlement – an issue of concern to both prisoners and staff. Foreign national prisoners were generally less likely to receive any resettlement support and “Within the foreign national group, black foreign nationals were particularly likely to say that they did not know where to obtain help with resettlement difficulties”.⁷⁸ When interviews were conducted with 19 prisoners who were close to their release date, having served sentences of 12 months or over,⁷⁹ they stated that they engaged with ESOL provision and work in the prison to prepare themselves for release. Those who were to be deported after sentence stated that they were worried about the situation in their home countries, about being isolated on arrival (with some of the prisoners having resided in the UK for a considerable time) and not being able to understand the life in countries they were being sent to.⁸⁰ Some were also worried about what was going to happen to their families in the UK upon their deportation. As there was much confusion at the time of the *Thematic Review* about the engagement by the Probation Service with foreign national prisoners, prisoners themselves reported little support coming from the Service; they were however very appreciative of the help they received from voluntary and community sector organizations.⁸¹ The Chief Inspector found that while specialized resettlement staff in prisons were generally aware of prisoners’ resettlement needs, they lacked an understanding of the impact of immigration issues on preparation for release. Conversely, the foreign national coordinators, while aware of the impact of immigration uncertainties, were unlikely to be connected in practice to those working on resettlement and therefore unable

⁷⁵ *Ibidem*, p. 36.

⁷⁶ *Ibidem*, p. 37.

⁷⁷ *Ibidem*, p. 38.

⁷⁸ *Ibidem*, p. 41.

⁷⁹ That is those who at the time would normally be entitled to resettlement support.

⁸⁰ HM Chief Inspector of Prisons, *Foreign National Prisoners...*, p. 44.

⁸¹ *Ibidem*, p. 45.

to contribute to release planning.⁸² More generally, the foreign national coordinators felt that immigration issues curbed the opportunities for resettlement work as prisoners were often removed or transferred before any work could be done with them.⁸³ The specialised resettlement staff, on the other hand, identified the lack of information on previous convictions, language barriers and practical barriers to reintegration (like the inability to get employment post-release) as the main issues thwarting their attempts at providing assistance.⁸⁴

The *Thematic Review* made a number of recommendations designed to support the development of a cohesive, national strategy for the treatment of foreign national prisoners which did not “begin and end with the question of the legal powers and the processes of deportation”.⁸⁵ Amongst those were: the need for dedicated immigration staff to be assigned to each prison so staff can direct enquiries to them; the need for the Immigration and Nationality Directorate (now UK Border Agency) to provide training and guidance to prison reception staff and to custody administration staff in handling immigration-related documentation; the need to develop a national strategy for the management and support for prisoners, which provided clear guidance to the different prisons, with clear connections to wider diversity strategies to address racism and discrimination; the need for the development of new and innovative ways to support family contact, especially with families abroad (such as video-conferencing) and the need to develop resettlement support, also for prisoners who were likely to be deported post-sentence to enable them to settle into their new communities.⁸⁶

While the fieldwork for the *Thematic Review* was undertaken before the foreign national prisoners ‘scandal’ hit the headlines in April 2006, the follow-up report captured the consequences of the Government’s reaction to the “deportation crisis”.⁸⁷ In her foreword, the then Chief Inspector of Prisons, Anne Owers, summarised how the measures taken by the various agencies charged with the management of foreign national prisoners, raised fear and anxiety amongst this group, with increased instances of self-harm and the feelings of “despair”.⁸⁸ In the midst of the ‘crisis’, all foreign national prisoners who were in open prisons and even those who were on license in the community were returned to Category C (medium

⁸² *Ibidem*, p. 47.

⁸³ *Ibidem*, p. 48.

⁸⁴ *Ibidem*, pp. 48-49.

⁸⁵ *Ibidem*, p. 1.

⁸⁶ *Ibidem*, pp. 68-71.

⁸⁷ H.S. Bhui, *Alien Experience: Foreign National Prisoners After the Deportation Crisis*, “Probation Journal” 2007, Vol. 54, No. 4.

⁸⁸ HM Chief Inspector of Prisons, *Foreign National Prisoners: A Follow-Up Report*, HMCIP, London 2007, p. 5.

security) prisons. The “trawl was so indiscriminating that it included some British citizens (who are not deportable in any circumstances), Irish and EEA nationals (who are deportable only in limited circumstances), and those who had committed only minor offences, but had lengthy residence and family ties only in the UK”.⁸⁹ Individuals have been separated from their families, including from small children, and held in prisons or the immigration detention estate, unsure of what was going to happen to them and what their futures were.⁹⁰

The follow-up to the thematic review makes for a disturbing read. It documented increased instances of individuals being detained without appropriate legal authority and in cases where detention was not warranted.⁹¹ This included detention of British citizens whose identities were not appropriately checked.⁹² In other cases, the immigration authorities presented incorrect documentation regarding deportation, including trying to deport individuals to countries of which they were not citizens.⁹³ Prisoners and prison staff were largely left without appropriate information about the status of deportation cases and contact with the immigration authorities was extremely poor.⁹⁴ Prisoners were extremely concerned about the impact of deportation on their families, with many reporting that their only family was in the UK, family members often being British citizens.⁹⁵ Some prisoners who wanted to be released to leave the UK at the end of their sentences were unable to do so because of delays in processing their removal paperwork. Eighty-six percent of foreign national prisoners interviewed for the follow-up report stated that “the experience of open-ended detention immigration detention [post-sentence] had left them feeling depressed and considering self-harm and suicide”.⁹⁶ Unresolved immigration issues hampered engagement with prison regimes and any attempts at preparation for release.⁹⁷

Five years on, in their most recent *Annual Report 2011-12*, the Chief Inspector of Prisons for England and Wales noted that prisoners from Black and minority ethnic backgrounds, Muslim and foreign national prisoners continue to perceive their treatment and conditions in custody as poorer than the prison population as a whole.⁹⁸ The Chief Inspector specifically addressed the situation in the ‘hubs and

⁸⁹ *Ibidem*.

⁹⁰ *Ibidem*.

⁹¹ *Ibidem*, p. 10.

⁹² *Ibidem*, p. 11.

⁹³ *Ibidem*, p. 12.

⁹⁴ *Ibidem*, p. 13.

⁹⁵ *Ibidem*, p. 15.

⁹⁶ *Ibidem*, p. 16.

⁹⁷ *Ibidem*, pp. 17-19.

⁹⁸ HM Chief Inspector of Prisons, *Annual Report 2011-2012*, HMCIP, London 2012, p. 7.

spokes' prisons noting that, for example at HMP Risley (a hub prison) there was a good presence from the UK Border Agency;⁹⁹ there was, however, limited access to independent immigration advice and "generally low level of support for foreign national prisoners".¹⁰⁰ Two 'spokes' prisons, Maidstone and Haverigg were criticised for inadequate provision for foreign national prisoners; however, the report also noted that foreign national prisoners reported some good outcomes at a 'hub' prison, HMP Wormwood Scrubs which introduced peer support networks as part of their practice.¹⁰¹ While the report stated that UK Border Agency staff engaged better with prisoners in the 'hub and spokes' system, the Chief Inspector noted that the provision relating to immigration issues in the rest of the prison system deteriorated and "was simply unsatisfactory".¹⁰² More concerning was the fact that almost no prison inspected that year (2011-12) carried out any analysis of the needs of foreign national prisoners in their populations; the information provided to them was often scarce and difficulties with interpretation services and inappropriate use of other prisoners to provide translation continued.¹⁰³ One of the prisoners interviewed in HMP Wandsworth, holding 578 foreign national prisoners at the time of the inspection, was quoted as saying:

"I was given no information where I was, why and for how long. I wasn't informed how to use the telephone or canteen. I was given no information about visits or how my bed sheets will be changed".¹⁰⁴

The Chief Inspector also noted that many prisoners continued to be held in the prison estate under immigration power of detention after sentence and awaiting their deportation. One prisoner at HMP Wandsworth was held for three years after the completion of his sentence and it was "still too common for prisoners to be given very short notice of continued detention, with the intention to remove, beyond the end of their sentence".¹⁰⁵

Specifically with reference to women foreign national prisoners, the Chief Inspector noted that support for this group varied.¹⁰⁶ Provision was significantly under-developed even at what is meant to be a nationally the designated centre for women foreign national prisoners – HMP Downview – where in addition to poor

⁹⁹ It has to be noted here that UKBA staff are 'embedded' in those prisons so their regular presence is required.

¹⁰⁰ HM Chief Inspector of Prisons, *Annual Report 2011-2012...*, p. 42.

¹⁰¹ *Ibidem.*

¹⁰² *Ibidem.*

¹⁰³ *Ibidem*, p. 43.

¹⁰⁴ *Ibidem.*

¹⁰⁵ *Ibidem.*

¹⁰⁶ *Ibidem*, p. 68.

provision, services from Hibiscus (an organisation working with migrant women in prisons) had been withdrawn. While in some of the inspected prisons women prisoners were well supported by specialised staff, engagement with those who did not speak English by staff on accommodation wings was poor.¹⁰⁷ In most prisons women could only avail of free weekly phone calls to families abroad if they did not receive a visit during that week; this limited their opportunities to keep in touch with families.¹⁰⁸

Many of the issues reported by the Chief Inspector in 2011-12 continued despite them being raised in previous years. The *Annual Report 2010-11*, noted additionally that proportionately more prisoners from Black and minority ethnic background, Muslim prisoners and foreign national prisoners reported being placed in segregation or ‘care and separation’ units.¹⁰⁹ Sixty-six percent of foreign national prisoners stated that they felt respected by staff, in comparison to 77% of British nationals¹¹⁰ and across all types of prisons inspected in that year, 45% of foreign national prisoners felt less safe in custody than their British counterparts.¹¹¹ The Chief Inspector also noted high levels of isolation due to lack of English and continued difficulties in access to information in languages other than English.¹¹² While noting some progress in the provision of constructive regime in two prisons reserved exclusively for foreign national prisoners (Bulwood Hall and Canterbury), the Chief Inspector reported that prisoners and staff alike were frustrated about the lack of information and decisions about deportation. This resulted in differential approach to, in particular, preparation for resettlement, with a focus on reintegration in the UK but lack of support for those facing expulsion at the end of their sentence.¹¹³

The harshest assessment of the situation of foreign national prisoners since the thematic review of 2006 was meted out by the Chief Inspector of Prisons in her *Annual Report* for 2008-09. The report came in the first year of the operation of the ‘hubs and spokes’ system (the “rationalisation programme”) and criticised the introduction of the system “without any prior consultation, announcement or indeed equality impact assessment”.¹¹⁴ The report also criticised the service level agreement between NOMS and UKBA for focusing exclusively on expulsion of

¹⁰⁷ *Ibidem*.

¹⁰⁸ *Ibidem*. See also: Prison Reform Trust, *No Way Out. A Briefing Paper on Foreign National Women in Prisons in England and Wales*, Prison Reform Trust, London 2012, pp. 9-14.

¹⁰⁹ HM Chief Inspector of Prisons, *Annual Report 2010-2011*, HMCIP, London 2011, p. 25.

¹¹⁰ *Ibidem*, p. 29.

¹¹¹ *Ibidem*, p. 35.

¹¹² *Ibidem*, p. 36.

¹¹³ *Ibidem*, p. 37.

¹¹⁴ HM Chief Inspector of Prisons, *Annual Report 2008-2009*, HMCIP, London 2009, p. 41.

foreign national prisoners after sentence or early release to reduce the numbers in prisons, and for failing to provide other “support, services or regimes that foreign nationals might expect”.¹¹⁵ The report noted that while the practical arrangements for the re-location of foreign national prisoners across England and Wales to the ‘hubs and spokes prisons’, often without regard to the individual circumstances of prisoners and their families, have been progressed at a rapid speed, there was still no national strategy for the management of this group of prisoners or addressing their clearly distinct needs.¹¹⁶ Where local policies were available, these were largely not implemented; there was little training or support available to staff and where good practice existed, this often depended on individual officers. The picture of the situation of foreign national prisoners – men and women – from inspections undertaken that year was unsettling: prisoners reported feeling unsafe and unsupported; basic services such as translation were significantly underused in many prisons (including those in the system of ‘hubs and spokes’), translated material was in short supply and difficulties continued with access to immigration advice and solicitors.¹¹⁷

Scotland

There is little research available on the situation of foreign national prisoners serving their sentences in Scotland. While the weekly population data published on the Scottish Prison Service website¹¹⁸ states that on the 6 September 2013, three prisoners were awaiting deportation, it does not include a separate category for the number of foreign national prisoners who are currently serving a sentence or are held on remand. The *Annual Reports* of HM Inspectorate of Prisons for Scotland published in the last decade make no mention of either any specific policies or specific needs of this group of prisoners.¹¹⁹ In 2011, the Scottish Prison Survey was translated into seven key foreign languages; however, it did not provide any comparative information or analysis of the responses of the foreign national population.¹²⁰

Some detail can be glanced from inspection reports for individual prisons, published by HM Inspectorate of Prisons for Scotland, although these include far

¹¹⁵ *Ibidem*.

¹¹⁶ *Ibidem*.

¹¹⁷ *Ibidem*, pp. 42-43.

¹¹⁸ Available at: <http://www.sps.gov.uk/Publications/ScottishPrisonPopulation.aspx> (Accessed on 15th September 2013).

¹¹⁹ Based on the review of reports available here: <http://www.scotland.gov.uk/Topics/Justice/public-safety/offender-management/offender/custody/Prisons/hmip/reports/annual-reports> (copies of reports for 2003-04 and 2004-05 are not currently available on-line).

¹²⁰ J. Carney and R. Broderick, *Prisoner Survey 2011*, The Scottish Prison Service, Edinburgh 2011.

less information than any reports in England and Wales.¹²¹ The 2011 inspection of Killmarnock Prison¹²² reported that staff had relevant knowledge on how to identify prisoners with no English and notices in languages other than English were used at reception, together with good access to phone interpretation.¹²³ At the time of the inspection, the prison held 8 foreign national prisoners, who had access to trained Equality and Diversity Officers and support from the Links Centre (an organisation which supports prisoners' contact with relevant services and assists in preparation for release).¹²⁴ However, the report also observed that foreign national prisoners were not aware that they can request contact with their consulates and stated that, apart from the initial interviews on reception, limited use was made of interpretation services.¹²⁵ Prisoners had no access to translated materials explaining the services available in prison.¹²⁶

In Barlinnie Prison, the Inspectorate noted some positive practice in relation to the provision of induction materials (including translated DVDs) to prisoners in the First Night in Custody unit.¹²⁷ Prisoners were identified at reception and interpretation was used to assess their needs, however there were no translated information materials or posters.¹²⁸ Foreign national prisoners were encouraged to contribute to meal plans in the canteen and the library stocked reading materials in languages other than English.¹²⁹ In 2009, the full inspection of Corton Vale, the only women's prison in Scotland, noted that there were no regular reviews with foreign national prisoners after the induction process and recommended that this be addressed and that women who had families abroad were able to avail of a limited number of calls at the prison's expense.¹³⁰

¹²¹ For the purposes of this article, I reviewed all reports of most recent full inspections for each of the Scottish prisons but the text refers only to those in which more than one practice (or issue) has been mentioned. Most reports are silent on the situation of or practices with foreign national prisoners. The two most recent full inspection reports, on YOI Polmont (HMIPS, 2013a) and HMP Shotts (HMIPS, 2013b) only mention that foreign national prisoners should be provided with access to consular assistance and make no reference to any particular needs or strategies to address the needs of this group of prisoners.

¹²² Run by the private security company SERCO.

¹²³ HM Inspectorate of Prisons for Scotland, *Report on HMP Kilmarnock. Full Inspection 26 September 2011-3 October 2011*, HMIPS, Edinburgh 2011, pp. 4-5.

¹²⁴ *Ibidem*, p. 5.

¹²⁵ *Ibidem*, pp. 35-36.

¹²⁶ *Ibidem*, p. 36.

¹²⁷ HM Inspectorate of Prisons for Scotland, *Report on HMP Barlinnie. Full Inspection 23-31 May 2011*, HMIPS, Edinburgh 2011, p. 37.

¹²⁸ *Ibidem*, p. 25.

¹²⁹ *Ibidem*, p. 35.

¹³⁰ HM Inspectorate of Prisons for Scotland, *Report on HMP & YOI Corton Vale. Full Inspection 21-29 September 2009*, HMIPS, Edinburgh 2009, p. 34.

Northern Ireland

In recent years, Northern Ireland has witnessed an unprecedented level of inward migration, facilitated in the main by the expansion of the European Union in 2004 and again in 2007.¹³¹ The 2011 Census shows that around 4.5% of the Northern Ireland population was born outside of the UK and Ireland, an increase of 2.5% on the 2001 Census figures.¹³² Changes in the make up of the general population in Northern Ireland are linked to an increased number of foreign national prisoners detained here. The most recent population statistics published by the Northern Ireland Prison Service (NIPS) show that on average, there are 120 foreign national prisoners held across the three prisons in the jurisdiction,¹³³ constituting around 7% of the prison population.¹³⁴

In October 2011, the Prison Review Team published its final report of the review of the Northern Ireland Prison Service, undertaken as part of a programme of reform of the prison system after years of armed conflict.¹³⁵ The Team observed that foreign national prisoners have largely been unsupported in prison and that, in particular, interpretation was rarely used outside of specialised areas, mainly in relation to offender management and immigration issues.¹³⁶ It further noted that the treatment of foreign national prisoners exhibited “a considerable degree of cultural and racial blindness” with prisoners reporting varying degrees of discriminatory attitudes and treatment by prison staff.¹³⁷ The report noted that prisoners, particularly those in Maghaberry Prison, had limited or no contact with specialised prison officers (such as foreign national liaison officers) and had no assistance with immigration issues. Prisoners reported feeling depressed and isolated, a feeling compounded by difficulties in access to visits or telephone calls to their relatives or friends.¹³⁸

¹³¹ See for example, A. Martynowicz and N. Jarman, *New Migration, Equality and Integration: Issues and Challenges for Northern Ireland*, Equality Commission for Northern Ireland, Belfast 2009.

¹³² Northern Ireland Neighbourhood Information Service, *Census 2011: Countries of Birth*, Northern Ireland Statistics and Research Agency, Belfast 2012; Northern Ireland Neighbourhood Information Service, *Census 2001: Countries of Birth*, Northern Ireland Statistics and Research Agency, Belfast 2002.

¹³³ There are three prisons in Northern Ireland: HMP Hydebank Wood Young Offenders Centre and Women's Prison (medium security); HMP Magilligan (medium security) and HMP Maghaberry (high security).

¹³⁴ Northern Ireland Prison Service, *Analysis of NIPS Prison Population from 01/01/2012 to 31/03/2013*, Department of Justice, Belfast 2013, p. 8.

¹³⁵ Prison Review Team, *Review of the Northern Ireland Prison Service. Conditions, Management and Oversight of All Prisons*, Prison Review Team, Belfast 2011.

¹³⁶ *Ibidem*, p. 34 and p. 39.

¹³⁷ *Ibidem*, p. 39.

¹³⁸ *Ibidem*.

The feelings of isolation and uncertainty, creating serious anxiety, were brought into sharp focus in 2009 when a Chinese prisoner who was awaiting trial in Northern Ireland took his own life in Maghaberry Prison. The investigation into the circumstances of his death by the Prisoner Ombudsman revealed that the prisoner suffered from mental health difficulties (depression), connected to issues such as worrying about his family and lack of sufficient progress with his court case.¹³⁹ The prisoner was said to be particularly distressed about the delay in setting his trial date; the lack of certainty about the possible length of time he would need to spend in prison;¹⁴⁰ he was also worried about paying off the debt he and his family incurred for him travelling to the UK.¹⁴¹ Another prisoner stated that while he knew Prisoner B to be highly distressed, he felt unable to let the prison authorities know because of the language barrier.¹⁴² The report found that the Prison Service has “made efforts to be responsive to the particular needs of the Chinese and other foreign national prisoners”,¹⁴³ where possible ensuring that “small groups of same national prisoners are located on a landing together, to reduce their feeling of socio-cultural isolation”.¹⁴⁴ The report also stated that the prison facilitated one overseas phone call a week, lasting 10 minutes, for those prisoners who do not have sufficient funds and do not receive family visits. However, it also noted that some of the Chinese prisoners did not use the scheme as they were concerned about giving details of their families in case these were passed on to other authorities.¹⁴⁵ While noting concerns about the use of interpretation, including using other prisoners of the same nationality to provide assistance, the Ombudsman reported that prison staff were aware of the dangers of using other prisoners, especially the potential for bullying.¹⁴⁶

The Prisoner Ombudsman’s report into the death of Prisoner B gives an insight into some of the difficulties faced by foreign national prisoners in relation to understanding the legal process and being able to monitor progress of their cases. The Ombudsman reported that a “lack of information or/and incorrect information from legal representatives, the police and UK Border Agency has been a big concern for staff and foreign national prisoners”.¹⁴⁷ The report noted that concerns

¹³⁹ Prisoner Ombudsman, *Report by the Prisoner Ombudsman into the Circumstances Surrounding the Death of Prisoner B, Aged 36, in Maghaberry Prison on 8 March 2009*, Prisoner Ombudsman for Northern Ireland, Belfast 2010, p. 12.

¹⁴⁰ *Ibidem*, pp. 13-14.

¹⁴¹ *Ibidem*, p. 17.

¹⁴² *Ibidem*, p. 15.

¹⁴³ *Ibidem*, p. 6.

¹⁴⁴ *Ibidem*, p. 28.

¹⁴⁵ *Ibidem*, p. 30.

¹⁴⁶ *Ibidem*, p. 33.

¹⁴⁷ *Ibidem*, p. 35.

related to information about the possible length of sentences, the progress being made in criminal cases and confusion regarding the use of immigration warrants as the basis for prisoners being held in custody, as well as the lack of interpretation during legal consultations and the lack of documents translated from English to support understanding of the case.¹⁴⁸

Inspection reports of individual prisons in Northern Ireland show a mixed picture of the treatment of foreign national prisoners. In the 2007 inspection report on Ash House, the women's unit within Hydebank Wood Prison and Young Offenders Centre, the Criminal Justice Inspection noted that foreign national prisoners received reasonably good individual support, including in maintaining family contact through provision of free phone calls and letters.¹⁴⁹ Prisoners spoke positively about their treatment by staff and other prisoners. All prisoners were interviewed on committal and a dedicated foreign national liaison officer was tasked with ensuring that their basic needs are met.¹⁵⁰ The report noted the significant amount of assistance provided by chaplains in the prison, including in maintaining family contact and preparation for release.¹⁵¹ While a draft interim guidance to staff on the treatment of foreign national prisoners was in place at the time, not all of it was being implemented and during a 2011 visit, inspectors noted that there was "insufficient routine analysis and monitoring of data to help ensure equality of treatment by race, religion or other diversity areas".¹⁵² Further inadequacies had been noted in relation to provision of interpretation, including in legal matters, and inspectors recorded one particularly inappropriate request made to a Chinese woman prisoner, who was vulnerable, to interpret for a male Chinese prisoner.¹⁵³ On the positive side, the inspectors noted that foreign national women prisoners did receive good support on individual level, including from the equality and diversity officer.¹⁵⁴ Prisoners who had families abroad were assisted in maintaining contact with them.¹⁵⁵ An inspection of the Young Offenders Centre (YOC) on the same site in 2008 noted that foreign national prisoners (young men) received some good individual support, especially in relation to maintaining family contact, and diversity

¹⁴⁸ *Ibidem*.

¹⁴⁹ Criminal Justice Inspection Northern Ireland, *Report on an Unannounced Inspection of Ash House, Hydebank*, by HM Inspector of Prisons and the Chief Inspector of Criminal Justice in Northern Ireland, 29 October-2 November 2007, CJI NI, Belfast 2008, p. 14.

¹⁵⁰ *Ibidem*, p. 37.

¹⁵¹ *Ibidem*.

¹⁵² Criminal Justice Inspection Northern Ireland, *Report of an Unannounced Short Follow-up Inspection of Hydebank Wood Women's Prison, 21-25 March 2011*, CJI NI, Belfast, p. 5.

¹⁵³ *Ibidem*, p. 21.

¹⁵⁴ *Ibidem*, p. 22.

¹⁵⁵ *Ibidem*.

officers aimed at ensuring that their needs are met.¹⁵⁶ At the time of the inspection, the YOC held 10 young foreign national men and those interviewed “were positive about their treatment by staff and other prisoners”.¹⁵⁷ Prisoners received free phone calls (10 minutes a week) and free letters to maintain contact with their families. The YOC had a dedicated foreign national co-ordinator who interviewed all prisoners on committal to ensure that their basic needs are met.¹⁵⁸ As with other prisons, the report identified significant difficulties in maintaining contact with the UK Border Agency (then Border and Immigration Agency), impacting negatively on the ability of the prison to prepare prisoners for their release.¹⁵⁹

In relation to Magilligan Prison (male), the Criminal Justice Inspection stated in 2010 that more support has been provided to those who are imprisoned there and such assistance had been assessed as “satisfactory”.¹⁶⁰ At the time of the inspection, the prison held 21 foreign national prisoners from 10 countries and was assessed as providing sufficient information in a range of languages, including through the prison intranet.¹⁶¹ However, prisoners raised concerns about access to immigration information and advice¹⁶² and inspectors noted lack of local policy and needs analysis¹⁶³ and poor information about the existence of and/or the role of foreign national prisoner liaison staff, as well as the lack of established support or consultation groups specifically for those prisoners.¹⁶⁴ While highlighting some good initiatives (such as provision of English classes and free phone calls), the inspectors also stated that prisoners felt unsupported and frustrated at lack of immigration information in particular; there were no UKBA surgeries and no independent immigration advice was provided on site.¹⁶⁵

The greatest gaps in the treatment of foreign national prisoners have been identified in the 2009 inspection of Maghaberry Prison, which at the time held 102 foreign national prisoners from 22 countries.¹⁶⁶ There, three quarters of foreign

¹⁵⁶ Criminal Justice Inspection Northern Ireland, *Report on an Unannounced Inspection of Hydebank Wood Young Offenders Centre*, by HM Inspector of Prisons and the Chief Inspector of Criminal Justice in Northern Ireland, 5-9 November 2007, CJI NI, Belfast 2008, p. 14

¹⁵⁷ *Ibidem*, p. 38.

¹⁵⁸ *Ibidem*.

¹⁵⁹ *Ibidem*, p. 39.

¹⁶⁰ Criminal Justice Inspection Northern Ireland, *Report of an Announced Inspection of Magilligan Prison, 29 March-2 April 2010*, CJI NI, Belfast 2010, p. x.

¹⁶¹ *Ibidem*, p. 27.

¹⁶² *Ibidem*, p. xii.

¹⁶³ *Ibidem*, p. 26.

¹⁶⁴ *Ibidem*, p. 27.

¹⁶⁵ *Ibidem*.

¹⁶⁶ Criminal Justice Inspection Northern Ireland, *Report of an Unannounced Full Follow-up inspection of Maghaberry Prison, 19-23 January 2009*, CJI NI, Belfast 2009.

national prisoners reported feeling unsafe and many reported victimisation by other prisoners and feeling disrespected by some staff.¹⁶⁷ The inspectors stated that some good work has started in the prison, particularly in relation to the provision of information, English classes and reading materials in a variety of languages. However, they also noted that officers seemed unaware of prisoners' family lives or their wider needs.¹⁶⁸ The report recorded that staff were not provided with training on cultural, racial and diversity issues and noted instances of the use of inappropriate language by staff.¹⁶⁹ At the time of the 2009 inspection, there was no foreign national liaison staff, and prisoners were not given the opportunity to meet in a group. The inspection also criticised the lack of local foreign national strategy or policy, although it noted that some efforts were made to cater for the needs of the increasing number of prisoners belonging to this group.¹⁷⁰ The most recent inspection noted that while some progress has been made since 2009, many areas of differential outcomes for foreign national prisoners have still not been addressed.¹⁷¹ Prisoners reported, amongst other things, insufficient engagement with UK Border Agency, differential outcomes in relation to the application of the Progressive Regimes and Earned Privileges Scheme (PREPS) and inconsistent access to things like free phone calls to family. While it was acknowledged that there was strong leadership in the prison in relation to driving the equality and diversity agenda, the report also noted that a significant majority of staff did not receive any equality and diversity training.¹⁷² The identification of foreign national prisoners on entry to prison appeared to be working well; however, contacts with liaison staff have been inconsistent.¹⁷³ On the positive side, the report recorded a good range of publications in different languages being held in the library and a good provision of English language classes which were highly valued by prisoners.¹⁷⁴ The report also noted the development of the foreign national prisoner forum in the prison and the development of monitoring of prisoner complaints for race discrimination.¹⁷⁵

¹⁶⁷ *Ibidem*, p. 39.

¹⁶⁸ *Ibidem*, p. 40.

¹⁶⁹ *Ibidem*, p. 37.

¹⁷⁰ *Ibidem*.

¹⁷¹ Criminal Justice Inspection Northern Ireland, *Report of an Announced Inspection of Maghaberry Prison 19-23 March 2012*, CJI NI, Belfast 2012.

¹⁷² *Ibidem*, p. 22.

¹⁷³ *Ibidem*.

¹⁷⁴ *Ibidem*, p. 23 and p. 37.

¹⁷⁵ *Ibidem*, p. 22.

Discussion and conclusions

Foreign national prisoners are a vulnerable group and are faced with a wide range of challenges while in custody. As the review of available evidence above shows, they struggle with language barriers, have difficulties in maintaining family contact and are often excluded from prison regimes, unable to engage meaningfully with available services. Nearly 10,000 individuals every year face deportation at the end of their sentence or removal during sentence, often to countries with which they have little or no connection, and without prior preparation for release.

Many of those challenges pre-date the 2006 foreign national prisoners' 'scandal' or 'crisis'. However, the reaction to the 'crisis' and the consistently risk-averse policy and practice introduced since 2006 unquestionably exacerbated the difficulties faced by this group. Bhui argues that their "dangerousness as a group has been overstated and [the] move towards risk aversion in both the political and operational arenas has effectively resulted in group sanctions against all foreign national prisoners".¹⁷⁶ Those "sanctions" included prisoners being recalled from open prisons to higher security establishments without being provided with any reasons and subject to no individual risk assessment. Recall to higher security conditions in some cases hampered the prisoners' progression and their preparation for release.¹⁷⁷ Large numbers of time-served prisoners were transferred to Immigration Removal Centres (IRCs),¹⁷⁸ where they were highly likely to be detained for long periods after sentence as a result of fear amongst the caseworkers and risk-averse practices of the UK Border Agency.¹⁷⁹ "Fear", argues Phillips is now used to justify the "casting the carceral net around [...] those excluded because of their ethnicity or nationality".¹⁸⁰

The treatment of foreign national prisoners within penal policy and practice in recent years is an extension of a wider policy of criminalisation of non-nationals in the UK and the "hardening of treatment against suspected others" in order to "protect the British national identity".¹⁸¹ Within the wider practice of criminalising non-citizens, citizenship, argues Zedner, is "asserted not only as a means of controlling immigrants and asylum seekers but also as central to policing of those irregular citizens who, though already resident, are deemed to stand outside civil

¹⁷⁶ H.S. Bhui, *Alien Experience...*, p. 369.

¹⁷⁷ *Ibidem*, p. 375.

¹⁷⁸ *Ibidem*, pp. 369-370.

¹⁷⁹ Independent Chief Inspector of the UK Border Agency, *A Thematic Inspection of How the UK Border Agency Manages Foreign National Prisoners*, ICI/UKBA, London 2011.

¹⁸⁰ C. Phillips, *The Multicultural Prison. Ethnicity, Masculinity and Social Relations among Prisoners*, Oxford University Press, Oxford 2012, p. 4.

society”.¹⁸² This often includes their standing outside of much of the ‘prisoner society’. Commenting on the fact that prisoners whose nationality is not British are subject to additional procedures such as fingerprinting and photographing by officers of the UK Border Agency, Kaufman notes that:

These practices emphasise prisoners’ nationalities and, when combined with a threat of deportation, construct ‘the foreigner’ as a distinct category of existence within the prison.¹⁸³

This construction of a ‘foreigner’ has serious consequences for the prisoners’ experiences of detention. The vulnerabilities linked to the language barrier, lack of access to monitoring bodies, lack of access to complaints procedures or day-to-day support in prisons mean that foreign national prisoners can be more vulnerable to violent (or at least indifferent) treatment where national or racial identity becomes the target for discrimination by prison staff or other prisoners. Foreign national prisoners are rarely able to claim their rights and as Bosworth observes, “In liberal democracies, foreign nationals, no matter how long they have been resident, simply can no longer lay claim to the same kinds of legal protections as citizens”.¹⁸⁴ In fact, “Such is the hysteria engendered over foreign offenders and human rights that it has become increasingly difficult to argue for their right to stay”.¹⁸⁵

Despite the former Chief Inspector of Prisons’ plea for the development of policy and practice that does not “begin and end with the question of [...] deportation”,¹⁸⁶ the UK Government is yet to develop and support comprehensive, national policies on the treatment of and services for foreign national prisoners. Instead, it has established a complex system of law, policies and practices centred on the physical removal of prisoners beyond the national borders. That removal can be seen “as a ritualized method of reasserting state authority, reinforcing a collective resentment against the groups assumed to disrupt the national order, and obscuring state responsibility for immigrant integration”.¹⁸⁷ Deportation is now constructed

¹⁸¹ M. Bosworth and M. Guild, *Governing Through Immigration Control: Security and Citizenship in Britain*, “The British Journal of Criminology” 2008, Vol. 48, Issue 6, p. 709.

¹⁸² L. Zedner, *Security, the State and the Citizen: The Changing Architecture of Crime Control*, “New Criminal Law Review” 2010, Vol. 13, No. 2, pp. 381-382.

¹⁸³ E. Kaufman, *Finding Foreigners: Race and the Politics of Memory in British Prisons*, “Population, Space and Place” 2012, Vol. 18, p. 708.

¹⁸⁴ M. Bosworth, *Subjectivity and Identity in Detention: Punishment and Society in a Global Age*, “Theoretical Criminology” 2012, Vol. 16, No. 2, p. 125.

¹⁸⁵ F. Webber, *Borderline Justice: The Fight for Refugee and Migrant Rights*, Pluto, London 2012, p. 170.

¹⁸⁶ HM Chief Inspector of Prisons, *Foreign National Prisoners: A Thematic Review...*, p. 1.

¹⁸⁷ C. Phillips, *The Multicultural Prison...*, p. 16.

as a “reasonable and proportionate way to guarantee public security against a foreign enemy”¹⁸⁸ and has been “normalised in the UK and other liberal, democratic states”¹⁸⁹.

The establishment of a separate system to house and ‘process’ foreign national prisoners with greater ‘effectiveness’ (measured by the number of deportations or removals) represents “a new role for the prison, binding it to border control and in the process, altering its purpose and effect”.¹⁹⁰ Notwithstanding the small number of positive initiatives on an individual prison level, the prisoners’ “welfare and rehabilitation needs are becoming invisible” as they are “doubly disadvantaged through being at the mercy of the immigration and prison systems”.¹⁹¹ In that sense, their expulsion begins long before the deportation order is issued and their experiences in prisons are often nothing less than ‘doing time’ in a system of warehouses for the deportable.

¹⁸⁸ L. Fekete and F. Webber, *Foreign Nationals, Enemy Penology and the Criminal Justice System*, “Race and Class” 2010, Vol. 51, No. 4, p. 2.

¹⁸⁹ M. Bosworth, *Deportation, Detention and Foreign National Prisoners...*, p. 591.

¹⁹⁰ M. Bosworth, *Subjectivity and Identity in Detention...*, p. 126.

¹⁹¹ F. Cooney, *Double Punishment: The Treatment of Foreign National Prisoners...*, p. 51.