



Northern Ireland  
Assembly

## Research and Library Service Briefing Paper

Paper 24/11

31 January 2011

NIAR 62 -11

# Foreign National Prisoners

## 1 Foreign National Prisoners in Northern Ireland

In January 2011 there were 131 foreign national prisoners in custody in Northern Ireland's prisons<sup>1</sup>. In a prison population of 1477<sup>2</sup>, this comprises 8.9% of all prisoners. Foreign nationals are in prison for a range of offences, as with the host population, but the most common offences indicated for foreign nationals are drugs-related (26), as would be expected for offences that have an international dimension and are often detected at ports of entry. There are 28 nationalities represented, the most numerous being Lithuanian (37), Chinese (19) and Polish (17) nationals.

The prison population changes daily and numbers of foreign nationals in prison have fluctuated over the past year from 131 on average in November 2010 to 98 in February 2010. Monthly averages from January to December 2010, which average out to 111 foreign nationals in prison in Northern Ireland at any one time, are given in the table below<sup>3</sup>.

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<sup>1</sup> Northern Ireland Prison Service, 17 January 2011.

<sup>2</sup> Northern Ireland Prison Service Population Report 17 January 2011:

<http://www.niprisonservice.gov.uk/module.cfm/opt/8/area/Population/page/population/year/2011/month/1/startRow/2>.

<sup>3</sup> Northern Ireland Prison Service, 17 January 2010.



Very little literature is available on foreign national prisoners in Northern Ireland. The extensive investigation by the Northern Ireland Human Rights Commission into powers of detention of the UK Borders Agency did not cover the prison population, as the detention of immigration cases in prisons ceased in 2002<sup>4</sup>. The Commission's consultation response to the Northern Ireland Prison Service's draft Foreign National Prisoner Strategy in 2008<sup>5</sup>, however, raised concerns around access to rights, representation, access to information and advice, language barriers and the specific needs of women, and also added<sup>6</sup>:

*Drawing comparisons between the representation of nationals within the prison population could exacerbate racial tension, heighten levels of xenophobia and feed racial stereotypes*

Indeed, the higher representation of foreign nationals in prisons in the UK<sup>7</sup> and elsewhere in Europe<sup>8</sup> has been sensationalised in the media. But there has been less examination in Northern Ireland of the experiences of foreign nationals in prison or how there came to be so many.

<sup>4</sup> Nazia Latif and Agnieszka Martynowicz, *Our Hidden Borders: The UK Border Agency's Powers of Detention*, April 2009.

<sup>5</sup> This policy was being reviewed in December 2010 and is to be published in Spring 2011.

<sup>6</sup> Northern Ireland Human Rights Commission, *Response to the Northern Ireland Prison Service Draft Foreign national Prisoner Strategy 2008-2010*, July 2008.

<sup>7</sup> For example, 'Foreign prisoners clogging up jails cost UK £400 million a year', *The Daily Telegraph* 3 May 2007.

<sup>8</sup> For example, in Switzerland, 'Latest figures: Tamils are more criminal than people from the former Yugoslavia' [Neue Statistik: TAMILIEN SIND KRIMINELLER ALS EX-JUGOSLAWEN], *Berner Zeitung* 12 September 2010.

## 2 Profile of Foreign National Prisoners Elsewhere

In England and Wales, the number of foreign national prisoners has been increasing, a trend which has led to a rise in the proportion of foreign national prisoners over the past 15 years from 8% in 1995 to 13% in 2010<sup>9,10</sup>.

Counting foreign nationals in a host population is notoriously difficult and can only be rough estimates. The Office for National Statistics suggests that the foreign born populations of the regions of UK are 13.6% for England and Wales, 0.7% for Scotland and 0.6% for Northern Ireland<sup>11</sup>, which means the proportion of the prison population that is non-UK born is roughly consistent with the resident population in England and Wales, but in Scotland and Northern Ireland, with foreign national prisoner populations of 3.4% and 7.7% respectively, the numbers are excessive.

The phenomenon of high percentages of foreign national prisoners is a common feature in European states. A study for the French National Assembly noted 19.2% in 1980, rising to 22.2% by 2004, peaking at 30.8% in 1993<sup>12</sup>. In recent years concerns have been raised in the media in Belgium, where the foreign national prison population stands at 40%<sup>13</sup>, and in Switzerland, where it is 70%<sup>14</sup>. The table at Appendix 1 shows the percentages of foreign national prisoners across Europe, which indicates figures for Northern Ireland to be comparatively low.

A study in 2004 showed that by far the most common offences for which foreign nationals were convicted in England and Wales were drugs related, particularly trafficking, comprising four out of ten male and eight out of ten female convictions, indeed, one in five of all female prisoners in England and Wales were foreign nationals<sup>15</sup>. Figures from 2008 showed that foreign national prisoners increased from 12% in 2004 to 14% overall, representing 166 countries, but still a fifth of all women prisoners were foreign nationals<sup>16</sup>. However, this is in the context of falling crime rates in the UK generally and a decline in numbers of people seeking asylum<sup>17</sup>.

<sup>9</sup> House of Commons Library, *Prison Statistics*, SN/SG/4334, 8 September 2010, p.9.. This increase is also traced by successive reports: Prison Reform Trust, *Forgotten Prisoners*, May 2004, p.1; HM Inspectorate of Prisons, *Foreign National Prisoners: A Thematic Review*, July 2006, p.3; Prison Reform Trust, *Bromley Briefings: Prison Factfile*, June 2008, p.3; Mary Bosworth, 'Foreign Nationals in Prison and Detention', *Prison Service Journal* 180 November 2008, p.20.

<sup>10</sup> Figures in England and Wales include people from the Republic of Ireland whereas those in Northern Ireland do not. In Ireland, the Aliens (Exemption) Order 1999 (SI No.97 1999) exempts UK nationals from the provisions of the Aliens Act 1935, which places certain restrictions on foreign nationals. Irish citizens of five years' residence in the UK are exempt from deportation under the Immigration Act 1971 (Section 7(1)) and the Home Secretary ruled in 2006 that Irish citizens would not be deported at all, except under special circumstances (HC Deb 9 October 2006 Vol.464 32WH).

<sup>11</sup> Office for National Statistics, *Population by Country of Birth and Nationality*, April 2009-March 2010: <http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=15147>.

<sup>12</sup> Commission Nationale Consultative des Droits de l'Homme, *Etude sur les Etrangers Détenus*, 18 November 2004, p.3.

<sup>13</sup> 'Quatre détenus sur dix sont étrangers', *La Libre Belgique* 21 May 2010.

<sup>14</sup> 'L'editorial par Michel Danthe, Redacteur en Chef', *Le Matin* 25 April 2009.

<sup>15</sup> Prison Reform Trust, *Forgotten Prisoners*, May 2004, p.3.

<sup>16</sup> Prison Reform Trust, *Bromley Briefings: Prison Factfile*, June 2008, p.3.

<sup>17</sup> Mary Bosworth, 'Foreign Nationals in Prison and Detention', *Prison Service Journal*, 180 November 2008, p.20.

Foreign national prisoners have also been on the increase in the Republic of Ireland<sup>18</sup>, where the share of the prison population has risen from 8.15% in 2006<sup>19</sup> to 10.8% in 2009<sup>20</sup>. More than half of these are from the European Union and around a quarter from the UK, but the Transfer of Sentenced Prisoners Act 1995 has meant that 116 prisoners have been returned to their country of origin to date and 141 Irish nationals imprisoned abroad brought home<sup>21</sup>.

In comparison, there are around 2000 UK nationals in prison overseas. According to the charity Prisoners Abroad, which supports around half of these people, around a quarter are in prison in the USA (254), followed by Spain (116), France (78), Thailand (61) and Australia (54)<sup>22</sup>. In contrast, of the around 800 Irish prisoners abroad, the vast majority are in prison in the UK (c.700)<sup>23</sup>.

### 3 The Experience of Foreign Nationals in Prison

Studies in England and Wales have highlighted the impact of imprisonment on foreign nationals. Problems which emerge include language barriers, isolation, mental health problems, immigration issues and cultural difficulties, leading to the experience of a lack of access to information and legal support, lack of respect and racism and a lack of preparation for release<sup>24</sup>.

Mental health is a particular problem for prisoners of other nationalities, with the following reported as having impacts on the well-being and psychological health of foreign national prisoners<sup>25</sup>:

- Mental health and welfare issues brought about by separation, trauma or loss, for example, if coming from an area in conflict
- Lack of access to information
- Lack of legal and immigration advice
- Language barriers
- Being in a bureaucratic limbo, for example, having served a sentence, but awaiting deportation
- Limited preparation for release
- Fear of return to the home country

<sup>18</sup> See, for example, Fitzpatrick Associates, *Research and Training Project for Intercultural Awareness*, February 2003, p.5.

<sup>19</sup> Irish Prison Service, *Annual Report 2006* (2007).

<sup>20</sup> Irish Prison Service, *Annual Report 2009* (2010).

<sup>21</sup> Irish Prison Service, *Annual Report 2009* (2010), pp.15, 24.

<sup>22</sup> <http://www.prisonersabroad.org.uk/Client%20Statistics%2020100901%20Countries%20PDF.pdf>, 1 September 2010.

<sup>23</sup> Chris Flood, *Report on Irish Prisoners Abroad*, May 2007, p.22.

<sup>24</sup> Prison Reform Trust, *Forgotten Prisoners*, May 2004, pp.4-5.

<sup>25</sup> National Association for the Care and Rehabilitation of Offenders (NACRO), *Foreign National Offenders, Mental Health and the Criminal Justice System* (2010) p.1.

In extreme circumstances, this can lead to suicide, where there are additional factors affecting foreign national compared with UK national deaths, including anxiety, trauma from a conflict area from which they came, language issues, deportation fears and cultural concepts of shame<sup>26</sup>.

In Northern Ireland, the susceptibility of foreign nationals to suicide was evidenced by the death of a Chinese national in Maghaberry prison on 8 March 2009, which was subsequently investigated by the Prisoner Ombudsman for Northern Ireland. Factors affecting this prisoner's mental health included anxiety and insecurity over the uncertainty of the date of a trial and possible sentencing, exacerbated by communication barriers<sup>27</sup>.

### 3 Reasons

A range of causes has been suggested for the increase in foreign national prisoners. The situation can be explained in terms of the higher incidence of international crime or a preference for custodial sentences due to an assumption that a foreign national is more likely to abscond<sup>28</sup>. However, there are more complex explanations that have been suggested. One of these reasons is the increase in relative poverty in other countries<sup>29</sup>:

*The increase in foreign prisoners in European prisons in the 1980's and 1990's is due mainly to the fall in living standards in the southern hemisphere*

People become more vulnerable to being lured into crime, including crime associated with crossing borders, such as drugs importation and trafficking.

In particular, this may explain the increase of women prisoners from abroad in England and Wales, particularly women from Jamaica, mostly in their 30's, with families of three to four children, who have made up a significant proportion of female prisoners in recent years. These vulnerable women may have been lured or coerced into becoming drugs couriers, often with a background environment of violent, abusive or exploitative relationships<sup>30</sup>.

Allied to this increase in the supply of vulnerable women couriers has been the increased sentence length for drugs importation, which therefore increases the prison

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<sup>26</sup> Donna Taylor, 'Suicide by foreign national prisoners in England and Wales 2007: Mental health and cultural issues', *Journal of Forensic Psychiatry and Psychology* December 2009 20:6 886-905.

<sup>27</sup> Prisoner Ombudsman for Northern Ireland, *Report by the Prisoner Ombudsman into the Circumstances Surrounding the Death of Prisoner B Aged 36 in Maghaberry Prison on 8 March 2009*, 27 October 2010.

<sup>28</sup> According to one Belgian commentator: 'Pourquoi les détenus étrangers sont-ils si nombreux?' *La Libre Belgique*, 22 August 2006.

<sup>29</sup> Usiwoma Evawoma-Enuku, 'Needs Assessment in the Educational Provision for Foreign Prisoners', *Journal of Correctional Education* December 1998 49:4 p.197.

<sup>30</sup> Rob Allen, *A Bitter Pill to Swallow – The sentencing of foreign national drug couriers*, Rethinking Crime and Punishment project, Esmée Fairburn Foundation, November 2003, p.2.

population<sup>31</sup>. There has been an increase generally in legislation which could lead to imprisonment, for example, the Immigration and Asylum Act 2004 made it a criminal offence to enter the UK without documentation, but also being a foreign national would lead to a higher chance of incarceration, drawing together people who are not full UK citizens but have lived in the UK for a number of years and those who are passing through or arriving, including asylum seekers, refugees and trafficked people<sup>32</sup>.

Other authors have suggested that the negative representation of foreign nationals has exaggerated the threat they pose to society, leading to unequal treatment in the criminal justice system<sup>33</sup>. It has been suggested that this 'new moral panic' over outsiders, combined with increased anti-terrorism and immigration powers, leads to greater rates of detention of foreign nationals<sup>34</sup>:

*It is not just the suspected terrorist who must subject him or herself to greater scrutiny, for example, but each and every traveller. Similarly, it is not merely the newly arrived foreigner who may face suspicion, but communities who have been established for many years as well.*

Some observers have suggested that this constitutes the designating of categories of persons who are considered a threat for less favourable treatment in the criminal justice system<sup>35</sup>. Foreign nationals, according to this view, are more numerous in prisons not only because of larger numbers of vulnerable people being drawn into international crime due to relative poverty, but also because the criminal justice system treats foreign nationals differently.

There are also simple demographics. Offenders tend to be young and male, statistics from Northern Ireland, Scotland, England and Wales and the Republic of Ireland showing more than half of the prison population in each jurisdiction to be under 30<sup>36</sup>. People who migrate for work tend to be younger also<sup>37</sup> and therefore are in the age bracket of a greater incidence of offending.

## 4 Reducing the Number of Foreign Nationals in Prisons

The main strategy for reducing the numbers of foreign nationals in prison in the UK has been to return people to their country of origin. The Prison Service website lists as part

<sup>31</sup> HM Inspectorate of Prisons, *Foreign National Prisoners: A Thematic Review*, July 2006, p.3.

<sup>32</sup> National Association for the Care and Rehabilitation of Offenders (NACRO), *Foreign National Offenders, Mental Health and the Criminal Justice System* (2010), pp. 3, 5.

<sup>33</sup> Hindpal Singh Bui, 'Alien experience: Foreign national prisoners after the deportation crisis', *Probation Journal* December 2007, 54:4 368-382.

<sup>34</sup> Mary Bosworth, 'Foreign Nationals in Prison and Detention', *Prison Service Journal*, 180 November 2008, pp.18-19.

<sup>35</sup> Liz Fekete and Frances Webber, 'Foreign nationals, enemy penology and the criminal justice system', *European Race Bulletin* 69, Institute of Race relations, Autumn 2009, pp.4, 11.

<sup>36</sup> Department of Justice, *Northern Ireland Prison Population in 2009*, p.1; Police and Community Safety Directorate, *Prison Statistics Scotland 2008-9*, 27 November 2009; Ministry of Justice, *Population in Custody in England and Wales August 2010*, 30 September 2010; Irish Prison Service, *Annual Report 2009* (2010), p.15.

<sup>37</sup> See for example research conducted by the South Tyrone Empowerment Programme: Michael Potter et al, *Survey of Qualifications and Employment in Northern Ireland of Polish Migrant Workers* (2009).

of its strategy to reduce numbers to work to transfer more prisoners to immigration removal centres, an early return scheme, by which prisoners can return to their country of origin in exchange for a reduction in sentence, and the Facilitated Returns Scheme, which provides incentives, such as business start-up assistance, if they return home<sup>38</sup>.

Indeed, the legislative approach has been towards the removal of foreign national prisoners. Section 72 of the Nationality, Immigration and Asylum Act 2002 provides for refugees losing their status as such if they commit a serious crime. In 2006, the Repatriation of Prisoners Act 1984 was amended to permit the deportation of criminals against their will, the original 1984 Act requiring return to be consensual. The UK Borders Act 2007 made a mandatory provision for anyone serving a sentence of 12 months or more to be deported, Immigration Rule HC321 barring return within ten years. In 2008, the Criminal Justice and Immigration Act 2008 provided for a 'special immigration status' for anyone believed to be involved in 'serious crime'. The Foreign National Prisoners (Repatriation) Bill, which requires deportation for any custodial offence, had its first reading in the House of Commons on 13 July 2010<sup>39</sup>.

The EU Freedom of Movement Directive contains provisions that<sup>40</sup>:

*Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health*

This has been translated into UK legislation<sup>41</sup> to permit the expulsion of EU citizens and the UK ratification of the 1997 additional protocol of the Council of Europe Convention on the Transfer of Sentenced Persons<sup>42</sup> came into force in December 2010<sup>43</sup>, facilitating this measure.

However, this approach has been criticised as being a 'double punishment', that people serve their prison sentences and are subsequently punished again by being sent to their country of origin<sup>44</sup>. It has also been asserted that these provisions are applied unfairly<sup>45</sup>:

*Those 'foreign criminals' targeted for deportation are less likely to be serious crooks and dangerous sexual predators of modern folklore and more likely to be poor migrants and asylum seekers arrested for immigration crimes such as*

<sup>38</sup> [http://www.hmprisonservice.gov.uk/adviceandsupport/prison\\_life/foreignnationalprisoners](http://www.hmprisonservice.gov.uk/adviceandsupport/prison_life/foreignnationalprisoners) accessed 17 September 2010.

<sup>39</sup> The Second Reading is timetabled for 24 February 2012: <http://services.parliament.uk/bills/2010-11/foreignprisonersrepatriation.html>.

<sup>40</sup> Directive 2004/38, Article 27.

<sup>41</sup> Immigration (European Economic Area) Regulations 2006 (SI 2006/1003) Part 4.

<sup>42</sup> Additional Protocol to the Transfer of Sentenced Persons, 18 December 1997, Article 3.

<sup>43</sup> HC Deb, 22 June 2010, Vol. 512 58WH.

<sup>44</sup> National Coalition of Anti-Deportation Campaigns (NCADC), 'Stop Double Punishment of Foreign Nationals', *Newszine* 104 5 December 2009.

<sup>45</sup> Liz Fekete and Frances Webber, 'Foreign nationals, enemy penology and the criminal justice system', *European Race Bulletin* 69, Institute of Race relations, Autumn 2009, p.2.

*travelling on false documents, working illegally or other administrative offences relating to immigration laws.*

A policy of removal is also dependent on the willingness of countries of origin to take prisoners back, guarantees of the safety of individuals - particularly those claiming asylum or refugee status - and even identifying countries of origin<sup>46</sup>.

## 5 Alternatives

Meeting the criticisms of the higher proportion of foreign national prisoners would require reviewing whether foreign nationals are treated differently, for example, whether they are more likely to receive custodial sentences for the same offences than UK or Irish nationals.

There have also been suggestions of alternatives to prison in the UK for foreign nationals that avoid the 'double punishment', such as deportation on conviction and refusal of re-entry, carrying out sentences in home countries or non-custodial sentences through arrangements with home countries. In the case of Jamaican women caught carrying drugs, for example, such alternatives are being explored by the UK government<sup>47</sup>.

Whilst immigration and bilateral national agreements on sentencing are not devolved matters a draft Foreign National Prisoner Strategy, which was published by the Northern Ireland Office in 2008, recognised that foreign national prisoners have specific needs and listed the following issues<sup>48</sup>:

- Lack of information, particularly of the criminal justice system
- Detention and other immigration-related problems, particularly remaining in custody after the end of a sentence awaiting deportation
- Language barriers, which exacerbate all other problems
- Isolation, for example from families or own culture
- Lack of preparation for release, due to language difficulties, which also impede access to other programmes, or being overlooked due to presumed deportation
- Lack of respect and racism from prison staff
- Other issues specific to foreign nationals, such as dietary needs and access to appropriate toiletries

<sup>46</sup> For example, a report of 2007 indicated that, of 12,122 foreign national prisoners, the nationalities of 879 were 'unrecorded': 'Foreign national prisoners clogging jails cost UK £400 million a year', *The Daily Telegraph* 3 May 2007.

<sup>47</sup> Rob Allen, *A Bitter Pill to Swallow – The sentencing of foreign national drug couriers*, Rethinking Crime and Punishment project, Esmée Fairburn Foundation, November 2003, p.4. At the time of writing, transfer agreements with Jamaica await ratification (HC Deb, 22 June 2010, Vol. 512 54WH).

<sup>48</sup> Northern Ireland Prison Service, *Foreign National Prisoner Strategy – Draft 2008-2010*, pp.19-20. See also Note 5 above.



The draft action plan described proposals for the following areas<sup>49</sup>:

- Language – interpreting and translation services, language training for prison staff, translation of materials, English classes, buddying with other foreign national prisoners, links to external organisations
- Community – links with minority ethnic support groups, links with potential employers, emotional support for families, information about Northern Ireland
- Culture – diversity/anti-racism material and training for staff, greater sensitivity to dietary and religious needs
- Status – connections with legal advisors, consuls/embassies, information about immigration status, time to prepare for deportation
- Organisational – commitment to develop the strategy, addressing of information access problems, appointment of Foreign National Prisoner Co-ordinator (FNPC) and Foreign National Prisoner Liaison Officers (FNPLO)
- Family – address information needs, resource for visitors from overseas, identification of needs and support for families, links to family support, encouragement of family contact, reduction of international calls costs
- Prison life – information materials, networks, befriending, secondment of prison officers from other countries, guidance for adjudication, complaints procedures, access to emotional support, own language materials, resources and entertainment, access to programmes, grouping of people of the same nationality, dietary needs, surveys, improved communication

To date, there has been no report of progress on implementing the strategy or action plan.

While not excessive in comparison with other European countries, addressing the over-representation of foreign nationals in prison in Northern Ireland requires a more substantial review of how the criminal justice system deals with people from other countries, but in the meantime, targeted, specific actions and fairness of treatment can have an impact on the experiences of prisoners once convicted.

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<sup>49</sup> These points are also reflected in the recommendations of the inspection report by Criminal Justice Inspection Northern Ireland following a visit to Maghaberry prison in January 2009, where a Chinese national was to die in the period between the inspection and the report (see above): Criminal Justice Inspection Northern Ireland, *Report on an unannounced full follow-up inspection of Maghaberry Prison 19-23 January 2009*, July 2009, pp.105-6.

## Appendix 1: Comparative Table of Foreign Prisoners in European States<sup>50</sup>

<b>Country</b>	<b>Percentage Foreign Prisoners</b>
1. Switzerland	70.2 (2009)
2. Luxembourg	69.5 (2010)
3. Austria	45.8 (2010)
4. Greece	43.9 (2007)
5. Belgium	41.1 (2008)
6. Malta	40.1 (2009)
7. Italy	36.2 (2010)
8. Spain	35.7 (2010)
9. Norway	32.8 (2010)
10. Sweden	28.7 (2008)
11. Netherlands	27.7 (2010)
12. Germany	26.3 (2008)
13. Denmark	21.9 (2010)
14. Portugal	20.6 (2010)
15. France	19.2 (2007)
16. England and Wales	31.1 (2010)
17. Republic of Ireland	13 (2008)
18. Slovenia	10.8 (2009)
19. Finland	10.3% (2009)
<b>20. Northern Ireland</b>	<b>8 (2010)</b>
21. Czech Republic	7.2 (2010)

<sup>50</sup> Figures taken from the World Prison Brief, International Centre for Prison Studies, Kings College London: <http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief> accessed 14 September 2010.

22. Estonia	6.9 (2009)
23. Hungary	3.8 (2009)
24. Scotland	3.4 (2008)
25. Bulgaria	1.9 (2008)
26. Slovakia	1.8 (2009)
27. Lithuania	1.2 (2008)
28. Latvia	1 (2008)
29. Poland	0.7 (2010)
30. Romania	0.7 (2010)