
Release and Transfer Schemes

In addition to the statutory deportation processes, there are several schemes which Foreign National Prisoners may be considered for. These include the Early Removal Scheme, the Facilitated Returns Scheme, TERS the Tariff Expiry Returns Scheme and Prisoner Transfer Agreements. Some of these schemes are compulsory others require the agreement of the FNP

Early Removal Scheme

The Early Removal Scheme (ERS) was initially envisaged as the FNP version of Home Detention Curfew (release on tag). Note that ERS is not itself a mechanism of removal but allows for the release of an FNP for the purposes of deportation under normal immigration law provisions. Guidance on the operation of ERS is set out in PSI 04/2013.

Essentially the scheme allows that the Secretary of State may release FNPs serving fixed term sentences, who are liable to removal from the UK, up to 270 days early for the purpose of deportation or removal from the UK. This means that an eligible FNP may be released up to 270 days before the halfway point of their sentence, with the proviso that the prisoner must serve at least a quarter of the sentence (Criminal Justice Act 2003 s260(2)).

When ERS was first introduced there were a number of exclusions similar to those that apply in HDC cases, but these were removed in 2008 and Prison Service Instruction 04/2013 states that:

ERS is mandatory; all determinate sentenced FNPs who are liable to removal must be considered under the scheme, subject to eligibility checks outlined in section 2.

Note that ERS does not apply to those prisoners serving an indeterminate sentence for public protection or a life sentence, but see notes on the TERS scheme below.

Prisoners can only be removed under the ERS if Immigration Enforcement is able to give effect to their removal during the ERS eligibility period (which ends at the half way point of the sentence). The HOIE CC should confirm to the prison whether an FNP can be removed during the ERS period.

Release under ERS will be refused where a prisoner is facing outstanding criminal charges or has a further term of imprisonment to serve, for example in respect of a confiscation order (PSI 04/2013 paras 2.5 - 2.7).

Previously there was a bar to the ERS for those FNPs who were required to undergo an enhanced risk assessment. However, since February 2011 the need for an enhanced risk assessment for prisoners convicted of sexual or violent offences has been removed.

Port Fast Track Scheme

Any FNP in custody who is either within, or fast approaching their ERS date, and wishes to leave the UK, may be eligible for the Port Fast Track scheme. Under the scheme, deportations are processed more quickly, subject to being able to obtain appropriate travel documentation for return to their country of origin. In order to take part in the Port Fast Track scheme, it is necessary for the FNP to inform an immigration officer of their desire to have their case considered for the scheme. If eligible, the Fast Track process will then begin.

The Prison Service can in exceptional circumstances refuse release under ERS. Examples of exceptional circumstances may include:

- Clear evidence that the prisoner is planning further crime including plans to evade immigration control and return to the UK unlawfully;
- Evidence of violence or threats of violence, in prison, on a number of occasions;
- Dealing in class A drugs in custody;
- Serving a sentence for terrorism or a terrorism related offence;
- Other matters of similar gravity relating to public safety.

If a prison is considering releasing a prisoner convicted of terrorism related offences then the NOMS Extremism Unit should be consulted before any decisions are made (PSI 04/2013 para 2.12).

Also, where the governor considers that an FNP's early removal 'may seriously undermine public confidence in the scheme' the case must be referred to the Chief Executive of NOMS who will make the final decision. For example, this will include FNPs who have been involved in a notorious crime.

Prisoners may complain about decisions to refuse them release under ERS via the Prison Service's complaints procedure.

Any prisoner released and removed under the ERS who returns to the UK during the currency of their sentence is liable to be arrested and required to serve a period equivalent to the period between the date they were removed from the UK and the normal release date, or until the sentence expiry date, whichever is shorter.

Those removed under the ERS are subject to a bar on re-entering the UK, usually for a minimum period of at least 5 years. Even after the expiry of the bar, applications for entry to the UK are highly likely to be refused due to criminal record and bad character.

Tariff Expired Removal Scheme (TERS)

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) introduced a new scheme for FNPs serving indeterminate or life sentences (IFNPs).

As with the ERS, TERS is mandatory so all IFNPs who are liable for removal must be considered under the scheme.

The scheme’s aim is to enable the removal of eligible IFNPs on the expiry of their tariff or as soon as possible afterwards. The operation of the scheme is covered by PSI 18/2012

The Public Protection Casework Section (PPCS) at NOMS are responsible for ensuring that the TERS process is followed for all IFNPs who are liable to removal.

Some IFNPs may be considered unsuitable for removal for reasons similar to those found in the ERS process. They include:

- When a prisoner is facing further criminal charges or is subject to a confiscation order or confiscation order proceedings. Exceptions may be considered for example, if a prisoner has served a long tariff and the amount of money owed is relatively small.
- There is clear evidence that the prisoner is planning further criminal offences, including plans to evade immigration control and return to the UK unlawfully
- The prisoner is serving sentence for terrorism or terrorism related offences.
- Where the removal of the prisoner would “undermine the confidence of the public in the criminal justice system”, e.g. where the prisoner has been convicted of a particularly high profile or heinous crime.

Please note that while all indeterminate sentence prisoners are eligible to be considered for release by the Parole Board following expiry of their tariff, IFNPs can be removed under TERS without having their case considered by the Board.

It should be noted that IFNPs are NOT eligible for the Facilitated Return Scheme.

Facilitated Return Scheme (FRS)

The FRS is a scheme which offers an amount of money to Foreign National Offenders who accept removal to their country of origin. The scheme is only available to non-EEA prisoners and is voluntary. FNPs with an indeterminate or life sentence are

excluded. Since 28 July 2014 the eligibility criteria for FRS has been reduced. The following FNOs are **NOT** eligible:

- FNOs with a sentence of four years or more
- Any FNO who has previously signed up for the scheme on two occasions and then withdrawn their application
- Any FNO who has sought to appeal a deportation decision beyond the First Tier Tribunal of the Immigration and Asylum Chamber (IAC) including lodging pre-action protocols/judicial reviews
- Any FNO who has not resided at least 12 months in the UK prior to conviction

In addition, where there is no evidence that the FNO has a valid travel document, acceptance onto the FRS will be provisional on a document being obtained.

The scheme is administered by the FRS team in the Home Office Immigration Enforcement Criminal Casework (HOIE CC).

The scheme runs alongside the ERS, so in addition to financial assistance for resettlement, FNOs on the scheme can be removed up to 9 months before the halfway point of their sentence.

What you get under FRS	If you are serving a prison sentence	If you have served your sentence
When you leave the UK	£500	£500
When you have returned to your home country	£1,000	£250

* The sums above may vary and up to date details should be obtained via the HO IE CC.

Single parents may receive an additional £100 for each child who returns with them. The caseworker in the FRS team can make arrangements for flights for returning children along with the arrangements for the flights for the FNP.

The money will be put on a cash card which can be used at an ATM. £500 will be available at the airport with the rest being loaded onto the card upon their return to their country.

The money which is given upon return is loaded onto the card after the FNP has attended the nearest International Organisation for Migration (IOM) office where their identity will be verified biometrically (fingerprints). If there is no IOM office in the country to which the FNP is returning then the returnee will be instructed to contact the IOM office in London where a caseworker will guide them through completion of the necessary forms which can be submitted either via fax or e-mail.

If there are no ATMs in the country to which the person is returning then the Home Office should make arrangements for the grant to be paid in cash in full prior to departure.

The authorities in the country to which the person is being returned will NOT be informed that they have been paid any money under the scheme.

Removal under the FRS is classed as deportation. Any person deported under the FRS is subject to a bar upon re-entry to the UK for a minimum of 5 years. It is important to note that even after the expiry of the bar any application for permission to enter the UK is highly likely to be refused due to criminal record and bad character.

The FRS is a voluntary scheme and someone who has signed up to the scheme can withdraw at any point. However, it is important to note that if a person makes a claim for asylum after having applied for and then withdrawn from the FRS, the fact that they have considered returning to their country voluntarily will be taken into account when considering the credibility of their asylum claim.

Applications for the FRS scheme can be made to the relevant prison staff member (e.g. Foreign National Coordinator, Diversity Officer, Welfare Officer), to any Criminal Casework staff working in the prison or by telephoning the Criminal Casework team on 020 8760 8513, Monday to Friday between 9am and 5pm.

Any staff member who is unsure about the process for the FRS scheme should consult PSI 4/13.

Repatriation/Prisoner Transfer Agreements

This section refers to mechanisms whereby a prisoner may be returned to their country of origin in order to serve the remainder of their sentence. It is not about release.

All cases considered for repatriation are dealt with by the Cross Border Transfer Section in NOMS. Guidance on the processes are contained in PSI 52/2011.

Previously, FNPs could only be repatriated to countries with whom the UK had a relevant international agreement in place and required the consent of the sending country, the receiving country and of the FNP.

However, the statutory instrument which governs the repatriation of prisoners, the Repatriation of Prisoners Act 1984 (RPA) has been considerably amended in recent times and in some cases, where the international agreement does not require consent, the consent of the FNP is no longer necessary.

In addition to the changes made to the RPA, the government has been working to increase the number of agreements in place to transfer prisoners without consent.

Every international agreement on prisoner transfer will contain its own requirements. However, the most usual requirements are:

- The prisoner is a national of the receiving state. In some rare cases persons with established roots in another state may be considered for transfer even if they are not nationals of that country;
- The sentence is final and so is not subject to appeal;
- The offence giving rise to the sentence is an offence in the receiving country;
- There are at least six months of the sentence outstanding, or the sentence is indeterminate; and
- Both the sentencing and receiving state consent to the transfer.

Because of the complexity of repatriation proceedings in practice it would be unusual to pursue repatriation unless the prisoner had a sentence of at least 4 years duration.

The UK is party to a number of bi-lateral agreements for prisoner repatriation which are listed in Annex 5 of Prison Service Instruction 52/2011.

The UK is also party to three multilateral agreements in this area:

The Commonwealth Scheme for the Transfer of Convicted Offenders

This agreement lays out the conditions for transfer of prisoners between Commonwealth countries. The agreement requires that any prisoner consent to repatriation. Although the parties to the agreement include a number of countries with a large number of their nationals in UK prisons, for example Jamaica, Nigeria, Bangladesh and India, due to the consent element and other obstacles it has in practice only ever been used to transfer prisoners to Grenada.

The Council of Europe Convention on the Transfer of Sentenced Persons

Despite its name, the signatories to this convention are wider than the members of the Council of Europe. At present, most prison transfers have been carried out under this legislation

EU Framework Decision 2008/909 JHA

Since 5th December 2011, the above instrument has replaced the Council of Europe Convention on the Transfer of Sentenced Persons for EU states. The instrument requires signatories to accept transfers in most cases. Poland has entered a reservation to this instrument at the present time.

Prisoners can challenge decisions to repatriate. The grounds are likely to be very similar to the grounds used to contest deportation