



National Offender
Management Service

The Early Removal Scheme and Release of Foreign National Prisoners

This instruction applies to		Reference
Prisons		PSI 04/2013
Issue Date	Effective Date	Expiry Date
11 February 2013	11 February 2013	10 February 2017
Issued on the authority of	NOMS Agency Board	
For action by	All staff responsible for the development and publication of policy and instructions <input type="checkbox"/> NOMS HQ <input checked="" type="checkbox"/> All prisons <input type="checkbox"/> High Security Prisons only <input checked="" type="checkbox"/> Contracted Prisons* <input checked="" type="checkbox"/> Governors <input type="checkbox"/> Heads of Groups <i>* If this box is marked, then in this document the term Governor also applies to Directors of Contracted Prisons</i>	
Instruction type	service specification support/service improvement/legal compliance	
For information	All staff responsible for the management of Foreign National Prisoners, Governors/Directors of Contracted Prisons.	
Provide a summary of the policy aim and the reason for its development/ revision	This PSI provides guidance in relation to the mandatory Early Removal Scheme for foreign national prisoners. The guidance has been updated to reflect changes following implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.	
Contact	Victoria Amat - Sentencing Policy and Penalties Unit, Ministry of Justice - Email: victoria.amat@justice.gsi.gov.uk or SPPU.Early.Release@justice.gsi.gov.uk	
Associated documents	<i>This guidance must be read in conjunction with PSI 52/2011 - Immigration, Repatriation and Removal Services</i> PSI 18/2012 - Tariff Expired Removal Scheme	
Replaces the following documents which are hereby cancelled: Chapter 9 PSO 6000; PSI 19/2008; PSI 45/2008; PSI 14/2009; PSI 59/2011. Updates paragraphs 2.26 & 4.18 and contact details in PSI 38/2012 which is also cancelled.		
Audit/monitoring: Deputy Directors of Custody and Controllers will monitor compliance with the mandatory actions set out in this Instruction. <i>Prisons must demonstrate compliance with these actions when required to do so.</i>		
<i>Governors must ensure that staff are made aware and comply with the mandatory instructions (shown in italics) shown in this PSI.</i>		

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1. Executive Summary

Background

- 1.1 The Criminal Justice Act 2003 introduced the Early Removal Scheme (ERS) for foreign national prisoners. The scheme allows fixed-term foreign national prisoners (FNPs), who are confirmed by the United Kingdom Border Agency (UKBA) to be liable to removal from the UK, to be removed from prison and the country up to a maximum of 270 days before the half-way point of sentence.
- 1.2 *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.* The provisions apply to determinate sentence prisoners only; those prisoners serving an indeterminate sentence for public protection or a life sentence cannot be removed under the scheme and will instead be considered for removal on or after tariff expiry under the Tariff Expired Removal Scheme (TERS) in line with PSI 18/2012. By definition, prisoners can only be removed early under the Early Removal Scheme if UKBA is able to effect their removal during the ERS period (the period between the ERS eligibility date (ERSED) and the half-way point of sentence).
- 1.3 This guidance replaces that contained in Chapter 9 of PSO 6000 and PSIs 19/2008, 45/2008, 14/2009 and 59/2011. The ERS process and paperwork has been revised and updated to take into account changes to the legislation since the original guidance was issued in 2005. The new process has been integrated with PSI 52/2011 - Immigration, Repatriation and Removal Services and the CCD Referral Form (previously the CCD 2 form) includes all the relevant information to enable the Criminal Casework Directorate (CCD) of UKBA or the relevant Local Immigration Team (LIT) to start working towards the ERS eligibility date as early as possible.

Summary of changes made since the initial introduction of the Scheme

Doubling of the maximum ERS period

- 1.4 Initially, the maximum period before the half-way point of sentence that prisoners could be removed under ERS was 135 days. In April 2008 this was increased to a maximum of 270 days (9 months) by Statutory Instrument. The requirement for prisoners to serve a minimum of a quarter of their sentence before they may be removed remained unchanged, which means the maximum 270 days can apply to sentences of 3 years or longer. The ERS period for sentences shorter than 3 years is proportionately less and is explained below in the section on calculating the ERSED (see section 3).

Exclusions

- 1.5 When ERS was first introduced there were a number of categories of prisoner who were statutorily ineligible for the scheme, including, for example, those subject to the notification requirement of the Sexual Offences Act 2003 and those serving an extended sentence. *These exclusions were removed on 3 November 2008 following commencement of provisions in the Criminal Justice and Immigration Act 2008 (CJ&IA 2008) and so all determinate sentence foreign national prisoners who are liable to removal from the UK must be considered for ERS.*

- 1.6 In addition, prior to 3 November 2008, prisoners who had less than 14 days between their ERS eligibility date (ERSED) and the half-way point of sentence could not be removed under ERS. The CJ&IA 2008 also removed this exclusion so prisoners can be removed at any point between the ERSED and the half-way point of sentence.

Process and forms

- 1.7 The ERS process has been integrated with the Immigration, Repatriation and Removal Services PSI 52/2011 (Annex A contains the ERS process chart that should be followed) and all FNPs will initially be referred to CCD or the relevant LIT within 5 days of sentence using the CCD Referral Form (found in PSI 52/2011 and attached at Annex B to this PSI). The details on the CCD Referral Form will alert UKBA to the earliest point at which the prisoner can be removed. This will enable UKBA to determine whether the prisoner is liable to removal in advance of the ERSED.
- 1.8 The Governor retains responsibility for authorising early removal, but no longer needs to consider reasons to refuse ERS nor make the decision on whether or not a prisoner can be removed under ERS before the CCD Referral Form is submitted. Checks for barriers to removal and the decision to authorise early removal are to be completed once UKBA have confirmed that they intend to remove the prisoner from the UK. Once UKBA have confirmed their intention to remove, the Governor will then check for any barriers and (if there are none) authorise removal under ERS. CCD/LIT are unable to set removal directions until they receive confirmation from the Governor that the prisoner can be removed using the ERS Authorisation Form (Annex C). See Section 2 Eligibility and Reasons for Refusal, for guidance regarding reasons to refuse ERS.
- 1.9 For prisoners subject to the parole process there is no longer a requirement for the Parole Board to complete an enhanced risk assessment (ERA) before ERS may be granted. An ERA was carried out to determine suitability for removal under ERS and early release on parole for those FNPs serving a determinate sentence of 4 years or more for a serious sexual or violent offence (as specified in Schedule 15 of the Criminal Justice Act 2003) and subject to the Criminal Justice Act 1991 release provisions. The ERA process has now been removed. Authorisation for early removal under ERS for long term 1991 Act prisoners can now be granted by the Governor, in line with guidance in this instruction.
- 1.10 In addition to long-term 1991 Act prisoners no longer requiring an ERA before they may be removed during the ERS period, following the commencement of provisions in the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 on 3 December 2012, their release for removal by UKBA between PED and NPD can be authorised by the Governor, on behalf of the Secretary of State, in line with guidance contained within this PSI. From 3 December 2012, therefore, it is no longer necessary for there to be a Parole Board release decision before such prisoners may be released for deportation. *The parole process must continue as normal, however, in case UKBA are unable to effect the removal for whatever reason and the prisoner is entitled to be considered by the Board for release in the UK in the normal way.* The LASPO Act 2012 also introduces a new type of Extended Determinate Sentence (EDS) which replaces the IPP sentence and is available for courts to impose in respect of offenders convicted on or after 3 December 2012. The earliest date of release from an EDS is the two-thirds point in the custodial term and ERS will apply to such sentences – with the earliest date of removal being 270 days before the two-thirds point. For some EDS prisoners (generally those with custodial terms of 10 years or more), release between the two-thirds and end point will be at the discretion of the Parole Board. During that period, as with long-term 1991 Act prisoners, EDS prisoners may also be released for

the purpose of removal by the Governor without the need for a Parole Board release decision. This PSI contains instructions on how ERS applies in EDS cases and how the ERS eligibility date is to be calculated.

Desired outcomes

- 1.11 *Early identification of those FNPs who must be considered for ERS and their early referral to UKBA Criminal Casework Directorate (CCD) or the relevant Local Immigration Team (LIT).*
- 1.12 *Transparent process for prisoners and staff in HMPS and UKBA, with effective ongoing communication between prisons and UKBA regarding ERS cases.*
- 1.13 *Increased number of removals within the ERS period.*

Application

- 1.14 *All staff working with foreign national prisoners must be aware of and understand this mandatory scheme and its requirements and benefits.*

Mandatory actions

- 1.15 *Governors must ensure that all staff responsible for the management of foreign national prisoners, including Custody / Offender Management Unit staff, are familiar with this instruction and the mandatory actions contained within.*
- 1.16 *Governors must ensure that the ERS process (detailed in the attached operational instructions) is followed for all determinate sentenced foreign national prisoners liable to removal.*
- 1.17 *Staff must correctly calculate the ERS eligibility date (ERSED) and ensure UKBA Criminal Casework Directorate or the relevant Local Immigration Team (LIT) are informed of any subsequent changes to key dates or circumstances (e.g. where a further term of imprisonment has been imposed).*
- 1.18 *Governors must ensure that determinate sentenced prisoners subject to the parole process are considered for ERS in accordance with this instruction but should UKBA confirm that the prisoner is not liable to removal, or should removal fail, establishments must ensure that the prisoner is reviewed for parole in line with the parole process timetable.*
- 1.19 *Prisoners must not be removed under ERS before they have served the required period (i.e. not before the ERSED).*
- 1.20 *Governors can consider the release, for the purposes of removal, of determinate sentenced parole eligible prisoners on or after PED and before NPD without a Parole Board recommendation (this applies in the case of long-term 1991 Act prisoners and some EDS prisoners whose release would otherwise be at the discretion of the Parole Board). Such prisoners must be considered in line with eligibility guidance contained within this instruction and, should removal be approved, must be issued with the Authorisation Form for Removal during the Parole Period (Annex D).*

Resource Impact

- 1.21 There are no additional resource implications. The changes introduced by this PSI are intended to update and streamline existing procedures; the new simplified, integrated process and the resulting reduction in paperwork should require less staff time and resource.

(Signed)

Digby Griffith
Director of National Operational Services, NOMS.

2. Operational instructions

Eligibility and reasons for refusal

- 2.1 *ERS is mandatory therefore any determinate sentenced foreign national prisoner liable to removal from the UK must be considered under the scheme.*
- 2.2 Eligible prisoners can be removed under the scheme at any point between the ERSED and the half-way point of sentence (CRD/ARD/PED). Prisoners serving an Extended Determinate Sentence (EDS) can be removed at any point between the ERSED and the two-thirds point in their custodial term. (See section 3 for guidance on how to calculate the ERSED).
- 2.3 The Governor can also authorise the release, for the purposes of removal, of parole eligible foreign national prisoners on or after PED and before NPD without a positive parole recommendation from the Parole Board. *Such authorisation must be in line with the process and criteria for other removals under ERS.*
- 2.4 *Prisoners serving a life sentence or an indeterminate sentence for public protection are not eligible for ERS but must be considered for the Tariff Expired Removal Scheme (TERS) in line with PSI 18/2012.*

Default terms / Confiscation Orders and Further Custodial Requirements

- 2.5 There is a distinction between those in custody who are serving a '**sentence of imprisonment**' and those who are serving a '**term of imprisonment**' (which includes a fine/confiscation order or civil term). The ERS provisions apply only to prisoners serving a '**sentence of imprisonment**'. The Criminal Justice Act 1991 (CJA 1991) and Criminal Justice Act 2003 (CJA 2003) provide that a term in default/civil term is not a '**sentence of imprisonment**' and as such, there is no provision in statute to remove prisoners early under ERS if they are serving such terms.
- 2.6 Prisoners with confiscation orders should not be removed early under ERS. *Where a prisoner has a confiscation order made against him or her while they are still serving the custodial sentence for the original offence, then ERS must be refused by the Governor on the grounds that the prisoner still owes money and should not be permitted to avoid their liability to pay by leaving the UK early.* Once the prisoner starts serving a default term for non-payment then there is no power to allow ERS because that term is not a sentence of imprisonment and therefore the ERS provisions do not apply.
- 2.7 However, there may be circumstances in which an exception to this rule may be considered. For example, if the prisoner is serving a long sentence and the amount of money owed is relatively small (and therefore carries a very short default term), it may not make sense to prevent the prisoner being removed 9 months early for the sake of serving a very short default term of say only a matter of days. In such circumstances, advice should be sought from the Sentencing Policy and Penalties Unit (contact details can be found at Annex F) and a view obtained from the agency responsible for enforcing the confiscation order.
- 2.8 *Governors must also refuse ERS where there are outstanding criminal charges as prisoners should not be removed from the country early and thereby avoid their liability for other criminal offences.*

Other Reasons to Refuse ERS

2.9 *Where UKBA confirm that a FNP can be removed, and the prisoner is not subject to further custodial requirements, Governors must normally approve removal under the ERS. However, there may be some exceptional cases in which ERS should be refused, particularly where there are serious concerns about public safety. These are:*

- 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 a terrorism or terrorism-related offence (see further advice below);
- other matters of similar gravity relating to public safety.

2.10 *Prisoners refused removal under ERS must be notified using the ERS Refusal Form (Annex E). The relevant section must be completed, with the other sections deleted as appropriate. The form must be copied to CCD Workflow to inform them that the prisoner cannot be removed early and that removal directions cannot be set for a date before the prisoner's normal date of release (the ERS process is outlined in full in section 4).*

2.11 *If the refusal is for one of the reasons listed above, the decision and the reasons must be clearly set out on the ERS Refusal Form (Annex E). The NOMS Extremism Unit can offer advice on the reasons for refusal when relating to an individual on the NOMS extremist prisoner list.*

Prisoners Convicted of Terrorist Offences

2.12 *Governors are required to consider whether ERS should be refused to prisoners serving a sentence for a terrorism or terrorism-related offence due to the very serious nature of such offences and the significant threat that such prisoners might present both in the UK and abroad.*

2.13 *If, having considered all the particular circumstances, Governors are minded to grant ERS for a prisoner convicted of terrorism or terrorism related offences, the case must be referred to the NOMS Extremism Unit before a final decision is made. In such cases, Governors are requested to provide the Extremism Unit with reasons why approval for ERS should be considered and on what basis the prisoner should be removed. Establishments must e-mail <mailto:securitygroup.extremism@hmps.gsi.gov.uk>.*

2.14 *The 'NOMS extremist prisoner list' contains the names of prisoners who have been remanded or convicted for terrorism or terrorism-related offences. A redacted version is circulated to establishments on a monthly basis by the NOMS Extremism Unit and this should be used by Governors, if ERS is being considered, to identify prisoners convicted of terrorism or terrorism-related offences. If establishments are unsure if a prisoner is on the NOMS extremist prisoner list, they should consult their Security Department or Counter-Terrorism Coordinator.*

Consideration of Notorious Cases

- 2.15 *Where the Governor considers that the early removal (prior to PED/CRD) or removal on or after PED and before NPD of an FNP who is otherwise eligible for ERS may seriously undermine public confidence in the scheme, the Governor must refer the case to the Release Policy Team (see Annex F for contact details) to determine whether it should be referred to the Chief Executive of the National Offender Management Service (NOMS) for consideration. The Chief Executive will make the final decision on whether or not, taking all matters into consideration and the individual circumstances of the case, early removal is appropriate.*
- 2.16 It is expected that such cases will be exceptional and the number of cases referred to the Chief Executive will be small; they will include FNPs who have been involved in a notorious crime or a crime of particular concern to the public, where release could bring the scheme into disrepute. It is likely that this will apply to cases of national profile. Where a case has been contentious at a local level and there is doubt about the suitability of the prisoner for removal under ERS, Governors should consult the Release Policy Team (RPT) for advice.
- 2.17 *Cases sent to RPT for referral to the Chief Executive must include a copy of the CCD Referral Form and a covering note outlining any relevant information that may indicate that release could undermine public confidence.*

Young Adults

- 2.18 *Those foreign national young adults (typically 18-20 years old) sentenced to detention in a young offender institution (DYOI) or sentenced under section 226a (Criminal Justice Act 2003) must be considered for early removal under ERS.*

Young People

- 2.19 *Those foreign national young people (typically 15-17 years old) sentenced under section 91 (Powers of Criminal Courts (Sentencing) Act 2000) or section 226b (Criminal Justice Act 2003) must be considered for early removal under ERS. However, a Detention and Training Order (DTO) is a term of imprisonment and not a sentence of imprisonment and therefore the ERS provisions do not apply. FNPs serving DTOs cannot be removed under ERS.*
- 2.20 The Youth Justice Board (YJB) will calculate the ERSED and notify UKBA of young people eligible for ERS who are serving their sentences in Secure Children's Homes or Secure Training Centres.

FNPs who have previously been removed from the UK

- 2.21 FNPs who have been deported from the UK previously, whether early under ERS or not, are not excluded from ERS again on a subsequent sentence. They can be considered in the normal way, subject to the eligibility criteria outlined above.
- 2.22 Those who have previously benefitted from financial assistance under the Facilitated Returns Scheme (FRS), see Annex J, can still be removed early under ERS, but are unlikely to be awarded any further financial assistance.

FNPs UAL

- 2.23 FNPs who have been unlawfully at large are eligible for consideration for ERS.

Offenders subject to Extradition Proceedings

2.24 It is not normally possible for an offender to be deported whilst there is an outstanding order for extradition. The ERS provisions cannot, therefore, apply while the order is extant as UKBA cannot proceed with removal action until the extradition proceedings have been concluded (which is not generally until after the prisoner's normal release date). However, there are cases in which it may be possible for a prisoner who is subject to an extradition request to be removed early under ERS if their extradition and removal is to the same country. Such cases should be notified to RPT who will liaise with the Extradition Section in the Home Office and with UKBA to determine whether removal under ERS can go ahead.

FNPs serving sentences passed by a court martial

2.25 FNPs serving sentences of imprisonment imposed by courts martial and subject to the same release framework under Chapter 6 of the CJA 2003 as offenders who have been sentenced by non-military courts should be assessed for ERS on the same basis as other offenders.

Governor's Authorisation

2.26 The Governing Governor and, for contracted out prisons, the Director are authorised to take the ERS decision on behalf of the Secretary of State and has the authority to delegate this task to another competent manager within their establishment.

3. CALCULATING THE ERS PERIOD

Calculation of the ERS Eligibility Date (ERSED) (see paragraph 3.16 onwards for how to calculate the ERSED for the Extended Determinate Sentence, introduced by the LASPO Act 2012).

3.1 The ERS period is the period between the ERSED and the half-way point of sentence (CRD/ARD/PED).

3.2 The maximum ERS period is 270 days before the half-way point of sentence. *The legislation requires that prisoners must serve a minimum requisite period of a quarter of their sentence before being eligible for early removal.* This means that the shorter the sentence the shorter the ERS period will become.

3.3 This is illustrated in the table below:

Sentence length	Requisite period to be served before ERSED	Length of ERS period
Less than 3 years	One quarter of the sentence	One quarter of the sentence (up to 270 days depending on length of sentence)
3 years or more	270 days less than half the sentence (CRD or PED)	270 days

3.4 For example, with a 2 year sentence, the prisoner would have to serve 6 months (a quarter) and would then have a 6 month ERS period before the half-way point.

- 3.5 *The ERSED must be recorded on the CCD Referral Form and must be calculated as follows:*
- 3.6 *When calculating the minimum requisite period to be served by a prisoner with a sentence of less than 3 years you must take a quarter of the sentence (round up), add to the date of sentence (not the day before), remembering to deduct any remand time and add on any ADAs/UAL etc.*
- 3.7 For example, a prisoner is sentenced on 31/08/2010 to 1 year (365 days). The requisite period to be served before the prisoner can be removed under ERS is a quarter (92 days, round up). Add 92 days to the date of sentence (not the day before). The ERSED is 01/12/2010.
- 3.8 When calculating ERS eligibility dates for those entitled to the full 270 days (i.e. those serving 3 years or more), if you use a date calculator in practice you enter the CRD and take off 269 days (you do not need to worry about remand time/UAL or ADAs here because they have already been taken into account when calculating the CRD).
- 3.9 For example, a prisoner is sentenced on 31/08/2010 to 3 years 6 months. The CRD would be 30/05/2012 and the ERSED would be 04/09/2011.
- 3.10 *CCD/LIT must be notified of the ERSED using the CCD Referral Form within 5 days of sentence and if there are any changes to that date calculated subsequently (e.g. following transfer between establishments).*

Multiple Sentences and the ERSED

- 3.11 Concurrent sentences subject to the former CJA1991 release provisions (now Schedule 20B CJA 2003)

Concurrent sentences where release is governed by Schedule 20B of the CJA 2003 as inserted by Schedule 17 of the LASPO Act (formerly governed by the CJA 1991 release provisions) will form a single term with each other and the ERSED will be calculated according to the length of the single term.

- 3.12 Concurrent sentences subject to the CJA 2003 release provisions (excluding those subject to Schedule 20B) OR concurrent mixed release provisions (including those subject to Schedule 20B)

Where there are mixed provisions (i.e. former 'mixed Act' sentences now governed by a mixture of Schedule 20B and 2003 Act release arrangements) the former sentences subject to CJA1991 release provisions will be single termed with each other. Sentences subject to the CJA 2003 release provisions will run parallel to each other and parallel to a former CJA1991 single term. Each sentence/single term will be calculated separately and each will have its own ERSED. The latest ERSED produced will be the effective ERSED.

- 3.13 Consecutive sentences subject to the former CJA1991 release provisions (Schedule 20B of the CJA 2003)

Sentences subject to the former CJA1991 release provisions that are consecutive to one another will form a single term and the ERSED will be calculated according to the length of the single term.

3.14 Consecutive sentences subject to the CJA2003 release provisions (excluding those subject to Schedule 20B)

CJA2003 sentences that are consecutive to one another will form an aggregate and the ERSED will be calculated according to the length of the aggregate.

3.15 Consecutive mixtures of provisions

Sentences/single terms subject to former CJA1991 release provisions (Schedule 20B) and sentences subject to the CJA 2003 release provisions (excluding those subject to Schedule 20B) are consecutive to one another will form an aggregate and the ERSED will be calculated according to the length of the aggregate.

Where one of the sentences is an extended sentence, it is the length of the custodial period of the extended sentence on which the ERSED is based.

Calculating the ERSED for prisoners serving an Extended Determinate Sentence (EDS)

3.16 The Extended Determinate Sentence (EDS) replaced the IPP sentence for offenders convicted on or after 3 December 2012 for serious violent or sexual offences and deemed by the courts to be 'dangerous'. The ERS period for EDS prisoners is the period between the ERSED and the two thirds point of the custodial term part of the sentence.

3.17 The maximum ERS period is 270 days before the two thirds point of the custodial term. *The legislation requires that prisoners must serve a minimum requisite period of one third of their sentence before being eligible for early removal.* This means that the shorter the sentence the shorter the ERS period will become, although the majority of prisoners given an EDS will have custodial terms in excess of 4 years which means their ERS period will always be the maximum 270 days before the two-thirds point.

3.18 This is illustrated in the table below:

FOR EXTENDED DETERMINATE SENTENCES ONLY		
Sentence length	Requisite period to be served before ERSED	Length of ERS period
Less than 810 days (approximately 2 years and 3 months) in custodial part of sentence	One third of the custodial term	One third of the custodial term (up to 270 days depending on length of sentence)
810 days (approximately 2 years and 3 months) or more in custodial part of sentence	270 days less than two-thirds the custodial term (CRD or PED)	270 days

3.19 *The ERSED must be recorded on the CCD Referral Form and must be calculated as follows:*

3.20 *When calculating the minimum requisite period to be served by a prisoner with a custodial term of less than 810 days you must take a third of the term (round up), add to the date of sentence (not the day before), remembering to deduct any remand time and add on any ADAs/UAL etc.*

- 3.21 Prisoners serving an EDS imposed after 03/12/12 are eligible for consideration for ERS after serving one third of the custodial term part of the sentence up to a maximum of 270 days before the two-thirds point. The following examples show how to calculate the ERSED for different length EDS.
- 3.22 For example a prisoner convicted on 29/3/13 and sentenced on 10/04/13 for a Schedule 15B offence; the EDS imposed is for 6 years with a custodial period of 2 years (730 days). The ERS date would be one third of the 2 year period, meaning the prisoner serves 244 days (730 divided by 3, rounded up) from the date of sentence. The ERSED is 10/12/13
- 3.23 For example a prisoner convicted on 04/12/12 and sentenced on 10/01/13 for a non Schedule 15B offence; the EDS imposed is for 11 years with a custodial period of 6 years. The CRD would be 09/01/17 which is the two thirds point of the sentence. Using the calculator you would minus 269 days from the CRD giving an ERSED of 15/04/16
- 3.24 For example a prisoner convicted on 06/12/12 and sentenced on 20/12/12; the EDS imposed is for 15 years with a custodial period of 10 years. The CED would be 29/11/22 with a PED of 31/07/19. Using the calculator you would minus 269 days from the PED giving an ERSED 04/11/18.
- 3.25 Concurrent sentences imposed on or after 3/12/12
- Concurrent determinate sentences (including sentences under 12 months) will run in parallel to each other. Each sentence will be calculated separately and each will have its own ERSED. The latest ERSED produced will be the effective ERSED.
- 3.26 Consecutive sentences imposed on or after 3/12/12
- Consecutive determinate sentences will be aggregated and the ERSED will be calculated according to the length of the aggregate sentence.
- 3.27 *CCD/LIT must be notified of the ERSED using the CCD Referral Form within 5 days of sentence and if there are any changes to that date calculated subsequently (e.g. following transfer between establishments).*

NOMIS

- 3.28 *Once available (anticipated mid-2013) staff must ensure that the ERSED field on NOMIS contains the correct ERSED for all determinate sentenced foreign national offenders.*

4. PROCESS AND PAPERWORK

Cases that fall below the deportation threshold (administrative removals)

- 4.1 The normal threshold for deportation consideration by CCD is a sentence of 12 months or more. However, there are three exceptions; where the court has recommended deportation, where a non-EEA national has received a sentence of any length for drug offences and where a non-EEA national has had two or more previous sentences in the last 5 years which can be aggregated to total 12 months or more (see Annex G of PSI 52/2011 for a list of EEA countries).

- 4.2 In most other cases where a FNP has received a sentence of less than 12 months CCD will not be involved as these cases do not meet the normal threshold for deportation. However, such prisoners can be administratively removed if they are found to be in breach of immigration legislation. These cases are dealt with by the Local Immigration Team (LIT) and not CCD Workflow. Guidance on referring cases to LITs, and a full list of LIT offices, can be found in PSI 52/2011 - Immigration, Repatriation and Removal Services. The ERS process for such prisoners otherwise remains the same.
- 4.3 As with cases considered by CCD, if the LIT do not make a decision to deport or administratively remove, the prisoner may be considered for Home Detention Curfew (see paragraph 6.9) or parole (see section 5).

The ERS Process

- 4.4 The first step is to identify a prisoner who appears to be a foreign national and may meet deportation / removal criteria. *As per PSI 52/2011, on initial reception into prison the CCD Referral Form must be completed and sent to UKBA. The form must be sent to CCD's Workflow team either by fax to 0870 336 9223 or by e-mail to fnpfax@homeoffice.gsi.gov.uk or the relevant Local Immigration Team (LIT) (in line with guidance regarding deportation criteria in PSI 52/2011). The ERSED must be included on the CCD Referral Form.*
- 4.5 *Establishments accepting prisoners from other establishments must check the prisoner's record to ensure that the CCD Referral Form has been completed and sent to CCD Workflow or the relevant LIT, as appropriate. The receiving establishment must update CCD/LIT with details of the new holding establishment by:*
- *completing the CCD Referral Form section 1B and*
 - *inserting the contact details of the new foreign national clerk and name of the new holding establishment and*
 - *ensuring any changes to ERSED and other key information since the first form was issued are updated.*
- 4.6 When Workflow receives the CCD Referral Form they record the ERSED on their database of removal cases ('CID') and on the prisoner's paper file. The case is then allocated as follows:
- If the ERSED is within 4 months the case is immediately referred to a case owner.
 - If the ERSED is more than 4 months away, but less than 18 months, then the case is retained for collation of additional documents. The case file is issued to a case owner once these are received.
 - If the ERSED is more than 18 months away then the case will be retained by Workflow and referred to a case owner once the 18 months before ERSED date is reached.
- 4.7 On receipt of the case file from Workflow, the case owner returns the CCD Referral Form to the prison, confirming their contact details. The above timetable indicates the point at which a case owner will be allocated and therefore when the prison should expect the CCD Referral Form to be returned completed with the case owner's contact details. For longer sentences, where the ERSED is more than 18 months away the prison should not expect to have the referral form returned until a case owner has been allocated. Until that time, the

case will be retained by Workflow who should be the contact point for any changes/queries regarding the prisoner's removal.

- 4.8 When Workflow receives an updated CCD Referral Form they add to the case file and ensure the ERSED is recorded correctly on CID.
- 4.9 *CCD or the LIT must indicate whether the prisoner can or cannot be removed by completing section 2 of the CCD Referral Form. They must sign the form and provide contact details before returning the form to the prison. The prison must e-mail the case owner to confirm receipt.*
- 4.10 *If CCD or the LIT confirm that the prisoner **can** be removed within the ERS period (or on or after PED and before NPD), the prison must then consider whether or not the case is suitable for ERS:*
- ⇒ *If there are no reasons to refuse (further charges, outstanding confiscation order, other reasons to refuse) the Governor must authorise release and the ERS Authorisation Form (Annex C) or the Authorisation Form for Removal during the Parole Period (Annex D) must be completed and issued to the prisoner (as appropriate).*
 - *Annex C / Annex D must go with the prisoner when s/he is removed.*
 - *A copy of Annex C / Annex D must be sent to CCD/LIT to enable them to set removal directions within the ERS period. CCD/LIT are unable to set removal directions unless they receive Annex C.*
 - *If ERS is approved and Annex C / Annex D completed a long time in advance of the ERSED or removal date, then a "final check" for any barriers to removal must be carried out before the prisoner is removed.*
 - ⇒ *If there are barriers to removal and the prisoner cannot be removed under ERS (or between PED and NPD) the prison must complete the ERS Refusal Form (Annex E) and issue to the prisoner, explaining the reason for refusal as appropriate. A copy of Annex E must be sent to CCD to inform them of the reasons why the prisoner cannot be removed early.*
- 4.11 If CCD or LIT confirms that the prisoner **cannot** be removed early, the prison complete the ERS Refusal Form and issue to the prisoner, highlighting the reason for refusal as appropriate. *Checks must be carried out to determine whether the prisoner should be considered for HDC or parole (see paragraph 6.9 and section 5).*
- 4.12 *If CCD or LIT indicate the prisoner **is not** liable for removal, the prisoner must be treated as a domestic prisoner and must be considered for HDC or parole where appropriate (see paragraph 6.9 and section 5).*
- 4.13 *When removal directions are received establishments must follow guidance contained in the PSI 25/2011 - Discharge and the PSI 05/2013 – Sentence Calculations. This is particularly important where the ERS Authorisation Form has been completed a long time in advance of removal directions being set, as there is an increased possibility that the prisoner's circumstances will have changed. If changes have occurred that prevent the prisoner being removed under ERS (i.e. new further charges or a confiscation order etc) then CCD or the LIT must be informed as soon as possible.*

Completing the CCD Referral Form

- 4.14 *All prisoners must be notified to CCD or the relevant LIT within 5 working days of sentence. The CCD Referral Form must be completed within 5 days of sentence, in line with guidance in Annex A of PSI 52/2011 - Immigration, Repatriation and Removal Services. The form can be either faxed to CCD Workflow on 0870 336 9223 or sent by e-mail to fnpfax@homeoffice.gsi.gov.uk. If the case does not meet deportation criteria, the form should be referred to the relevant LIT (outlined in PSI 52/2011). The form must include the date of completion and the contact details of the prison case administrator / foreign national clerk.*
- 4.15 *Section 1B of the form must be completed when the prisoner transfers between establishments. It is important that prison staff keep CCD/LIT informed of any changes to the prisoner's case (e.g. changes to the ERSED or if s/he pays an outstanding confiscation order etc).*
- 4.16 *CCD/LIT will complete section 2 of the CCD Referral Form and return the form to the prison to confirm whether the prisoner can or cannot be removed early. This section will only be completed and returned by CCD/LIT in ERS cases. In order for prisons to be confident of receiving confirmation of liability for removal from CCD/LIT, staff must ensure that they include current contact details when they submit the CCD Referral Form to CCD/LIT and keep these updated.*

Completing the ERS Authorisation Form

- 4.17 *Where UKBA have confirmed that the prisoner is liable to removal and can be removed from the UK within the ERS period, the prison must check the case and ensure that there are no reasons to refuse, i.e. an outstanding confiscation order, further charges or other reasons for refusal. Once the Governor is satisfied that the prisoner can be removed under ERS, the ERS Authorisation Form (Annex C) must be completed.*
- 4.18 *All details should be completed and the form must be signed by the Governor or Director (or nominated representative). The form must be issued to the prisoner to inform him/her that they will be removed early. A copy must also be sent to CCD Workflow as confirmation that the Governor/Director has authorised ERS. This will then allow CCD/LIT to set removal directions.*
- 4.19 *A copy of the ERS Authorisation Form must accompany the prisoner on his/her removal from prison as it acts as a licence and provides clear guidance on the action that will be taken should the prisoner return to the UK prior to SED. See section 6 for more information regarding licences for FNPs.*

Completing the ERS Refusal Form

- 4.20 *The ERS Refusal Form is a multi-purpose form which covers all reasons for refusal and must be issued in all cases where ERS has not been authorised (see section 2).*
- 4.21 *In each case, the relevant reason for refusal must be highlighted and the non-applicable sections deleted. A copy of the completed form must be issued to the prisoner. It is important that a copy is also sent to UKBA to make them aware when they are setting removal directions that the prisoner cannot be removed under ERS.*

4.22 There is no formal right of appeal where ERS has been refused because of further charges, an outstanding confiscation order or because UKBA cannot effect removal within the ERS period. *However, if a prisoner wishes to challenge a decision to refuse ERS for 'other reasons' (outlined in paragraph 2.8), they must do so through the Requests and Complaints procedure (see PSI 02/2012 – Prisoner Complaints). Where possible, the appeal should be dealt with by a Governor of a higher grade than the Governor involved in the original decision and the FNP must be given reasons, in writing, where the outcome is to uphold the original decision.*

5. PAROLE PROCESS

5.1 The majority of determinate sentenced prisoners are now subject to the automatic release provisions of the CJA 2003 and their release is not considered by the Parole Board. Section 5 of this PSI, therefore, applies only to those determinate sentenced prisoners who remain subject to the parole process. These are:

- prisoners subject to former CJA 1991 release provisions serving a sentence of 4 years or more for a 'Schedule 15' sexual or violent offence or where the PED falls before 09/06/08 (i.e. those prisoners subject to the former 1991 Act release provisions whose sentences were not 'converted' following the commencement of Section 26 of the Criminal Justice and Immigration Act 2008); and
- prisoners serving an extended sentence imposed before 14 July 2008 in accordance with Sections 227 and 228 of the CJA 2003; and
- prisoners serving a parole-eligible Extended Determinate Sentence (who can be considered for removal under ERS up to 270 days prior to the two-thirds point of the custodial term (their PED) – or released for the purpose of removal at any point up to the automatic release date (NPD) at the end of the custodial term).

5.2 Prior to commencement of the LASPO Act 2012 on 3 December 2012 these prisoners could only be released on or after PED and before NPD at the discretion of the Parole Board. The LASPO Act provides a power for the Governor to authorise the removal of such prisoners at any time after the PED, whether or not the Parole Board has directed the prisoner's release.

5.3 This applies only to those prisoners who have not previously been released on licence, therefore, those offenders who are released on licence in the UK, recalled to prison and later found to be of interest to UKBA cannot be released under this power and remain subject to Parole Board review.

Completing the Authorisation Form for Removal during the Parole Period

5.4 The Authorisation Form for Removal during the Parole Period (Annex D) should be used in those cases where the Governor approves the removal of parole eligible prisoners who have passed PED but who have not yet reached NPD (i.e. those whose release prior to implementation of LASPO could only occur during this period at the discretion of the Parole Board).

5.5 The form should be completed and issued as outlined in paragraphs 4.18 and 4.19 above.

5.6 *If parole eligible prisoners cannot be removed, or the Governor refuses release for removal, they must undergo the normal parole process, in line with The Parole Process for*

Determinate Sentences PSI (expected in February 2013 – until this time prisons should refer to PSO 6000).

- 5.7 Foreign national prisoners cannot opt out of the parole process. *Governors must ensure that parole eligible prisoners who are not removed are referred to the Parole Board for consideration for release on parole in the same way as other parole eligible determinate sentence prisoners (in line with The Parole Process for Determinate Sentences PSI). The parole dossier must contain any relevant UKBA paperwork relating to the prisoner's immigration status and progress towards their removal or deportation. In cases where the prisoner has no home address or previous place of residence in the UK - and therefore does not have an Offender Manager from the 'home' area – the report that is normally provided by the Offender Manager is not required. If the prisoner's immigration status changes during the course of the parole process, the prison must notify the Parole Board.*
- 5.8 *Establishments need to liaise closely with CCD/LIT in order to judge the likelihood of removal before the point in the sentence that the parole process must start (26 weeks prior to PED). If, by the time this point is reached, CCD/LIT are unable to confirm when removal will be possible, then the prison must begin the parole process as normal. The prisoner may still be removed at the discretion of the Governor before NPD, but the normal parole timetable should still be followed in order to avoid the possibility of the prisoner reaching the NPD without having been removed and without having had the parole reviews to which he is statutorily entitled. If a dossier is submitted to the Parole Board and CCD/LIT subsequently remove the prisoner, establishments must contact the Parole Board to cancel the review as soon as possible after removal.*

6. REMOVAL

Licences

- 6.1 *Prisoners who are removed prior to the half-way point of sentence (or two thirds point for EDS cases) do not need to be issued with a licence, but must be issued with the ERS Authorisation Form (Annex C). Prisoners being removed outside the ERS period at the Governor's discretion on or after PED and before NPD must be issued with the Authorisation Form for Removal during the Parole Period (Annex D). Prisoners being removed following a positive recommendation from the Parole Board (where the Governor has refused removal either under ERS or between PED and NPD) or on or after the normal automatic release date (CRD/NPD) must be issued with the appropriate release licence (see PSI 40/2012: Licences and Licence Conditions).*
- 6.2 *Where the prisoner is being removed on or shortly after ERSED there should be no prospect of him or her reaching the point in the sentence when release on licence in the UK may be a possibility, so it is not necessary to prepare a normal release licence. However, there may be cases where the prisoner cannot be removed until much nearer the half-way point of sentence, in which case establishments should consider preparing a release licence in case the prisoner reaches the normal release date. Prisoners may continue to be held beyond their normal date of release under immigration powers of detention, pending their removal, but, in such cases, a release licence should be prepared and kept on file in case the prisoner is granted immigration bail and must, therefore, be released into the UK. If the prisoner is transferred to an Immigration Removal Centre (IRC) to be held under immigration powers beyond their release date, a licence must be prepared to go with them in case they are not removed and subsequently released in the UK.*

- 6.3 *Where a prisoner's ERSED falls on a Saturday, Sunday or Public Holiday, they must not be removed under ERS until the following working day. The ERS date **cannot** be brought forward.*
- 6.4 Prisoners being removed under ERS do not receive a discharge grant. If the prisoner has been accepted on to the Facilitated Returns Scheme the discharge grant is incorporated in to the total financial incentive received.

When prisoners can be handed over to UKBA

- 6.5 Where possible, UKBA will take the prisoner directly to the port of departure from the prison, but in some circumstances this is not possible, for example where the prisoner is booked onto a morning flight and may need to be held overnight in an Immigration Removal Centre (IRC).
- 6.6 The Governor has the lawful authority to hand a prisoner over to UKBA for the purpose of removal from the UK **provided this is within the ERS period** (i.e. on or after the ERS eligibility date and before the half-way point of sentence or two-thirds point of sentence for EDS cases). A prisoner who has been approved for ERS can be transferred into a detention centre provided that the offender is held under UKBA's powers at the point of transfer and that the point of transfer is within the ERS period and is within a reasonable timescale of when the deportation is to take place.
- 6.7 Where a deportation fails and UKBA considers that the individual is still liable for deportation and there is a realistic prospect of re-arranging removal quickly, the prisoner may continue to be held in an IRC under UKBA's powers. *If, however, removal cannot be achieved within a reasonable timescale, or there is no longer considered to be a realistic prospect of removal, the prisoner must be returned to the custody of a prison establishment as soon as possible.* This should take place as soon as is operationally practicable and normally within **48 hours**.
- 6.8 *In all cases, establishments must contact the CCD/LIT case owner 48 hours after the prisoner was due to be removed from the country, to confirm either that removal has taken place successfully or that the prisoner has been returned to a prison establishment.*

Home Detention Curfew

- 6.9 If UKBA confirm that an offender is not considered liable to removal from the UK then the current release arrangements for domestic prisoners will apply. Prisoners who are due to be released into the community in the UK may, if eligible, be considered for release under the Home Detention Curfew (HDC) scheme. This allows for certain prisoners to be released up to 135 days early subject to an electronically monitored curfew to their home address. If a prisoner is eligible for HDC, release is at the discretion of the Governor and subject to a careful risk assessment. See PSO 6700 – Home Detention Curfew for further guidance on HDC generally and PSI 52/2011 for specific guidance on HDC for FNPs.

7. ERS BREACH PROCESS AND NOTIFICATION

- 7.1 Section 261(2) of the CJA 2003 applies to those offenders who re-enter the UK following early removal from prison and states:

“if a person to whom this section applies enters the United Kingdom at any time before his sentence expiry date, that person is liable to be detained in pursuance of his sentence from the time of his entry into the UK until whichever is the earlier of the following –

- (a) the end of a period (“the further custodial period”) beginning with that time and equal in length to the outstanding custodial period, and
- (b) the sentence expiry date”

7.2 Therefore, an FNP removed under ERS who re-enters the UK during the currency of the sentence is liable to be returned immediately to custody to serve a custodial period equivalent to the period of time they would have served had they not been removed from the UK early at the discretion of the Secretary of State, i.e. the period between removal under ERS and CRD/ARD/PED. *This period must not extend beyond the SED. Any time spent in custody in the UK must count towards this period.*

7.3 The prisoner can be re-removed following the expiry of the outstanding period to be served. *If UKBA no longer have any interest in removing the offender and the outstanding period to serve expires before SED, s/he must be released on the appropriate release licence (see PSI 40/2012: Licences and Licence Conditions).*

Calculation of outstanding custodial period to be served

7.4 Example 1: a prisoner was sentenced to 3 years on 22/04/08 and was removed from the UK early under ERS from this sentence on 13/03/09, approximately 7 months prior to his CRD of 21/10/09. The SED of this sentence was 21/04/11. He was arrested on his return to the UK on 25/09/09.

As he returned before the SED of his sentence he must serve a custodial period equal to the number of days between the date he was removed under ERS (13/03/09) and his CRD (21/10/09). This equals 222 days. 222 days served from the date of his arrest following return to the UK (25/09/09) would give a new release date of 04/05/10. The SED remains the same, 21/04/11.

7.5 Example 2: a prisoner was sentenced to 9 years on 27/01/06 and was removed from the UK early under ERS on 30/11/09, approximately 8 months prior to his CRD of 28/07/10. The SED of this sentence was 26/01/15.

He was arrested in Northern Ireland on 16/02/10 and was given a custodial sentence for entering the UK in breach of his deportation order. The release date of that sentence was 01/03/10.

The outstanding period of custody from the sentence from which he was removed under ERS is equal to the number of days between the date on which he was removed under ERS (30/11/09) and his CRD (28/07/10). This equals 240 days. *Hence, he must serve a custodial period of 240 days from the date he returned to custody (16/02/10) effecting a new release date of 13/10/10. The SED remains 26/01/15.*

The new sentence he received for breach of a deportation order and the outstanding custodial period that he must serve under section 261(2) CJA 2003 must run in parallel and release cannot take place until the release arrangements of both terms have been satisfied. Therefore, he cannot be released until 13/10/10.

- 7.6 Example 3: a prisoner was sentenced to 3 years on 16/07/08 and was removed from the UK early under ERS from this sentence on 08/05/09, approximately 8 months prior to his CRD of 14/01/10. The SED of this sentence was 15/07/11. He was arrested on his return to the UK on 07/01/11.

As he returned prior to the SED of his sentence he is required to serve the custodial period outstanding at the time of removal which is 251 days (08/05/09 to 14/01/10). 251 days from date of arrest would give a release date of 14/09/11. This date falls after the SED of 15/07/11 and, as he cannot be held in pursuance of his sentence past the SED, his new release date would become 15/07/11.

- 7.7 Example 4: on 10/01/13 a prisoner was sentenced to 11 year EDS, with a custodial period of 6 years. His ERSED was 15/04/16 and his CRD 09/01/17. He was removed early under ERS on 16/05/16 but returned to the UK and was arrested on 26/02/17.

As he returned prior to his SED (08/01/24), he is liable to serve an outstanding custodial period equal to 238 days from his date of arrest (26/02/17). His new release date becomes 21/10/17. The SED remains the same.

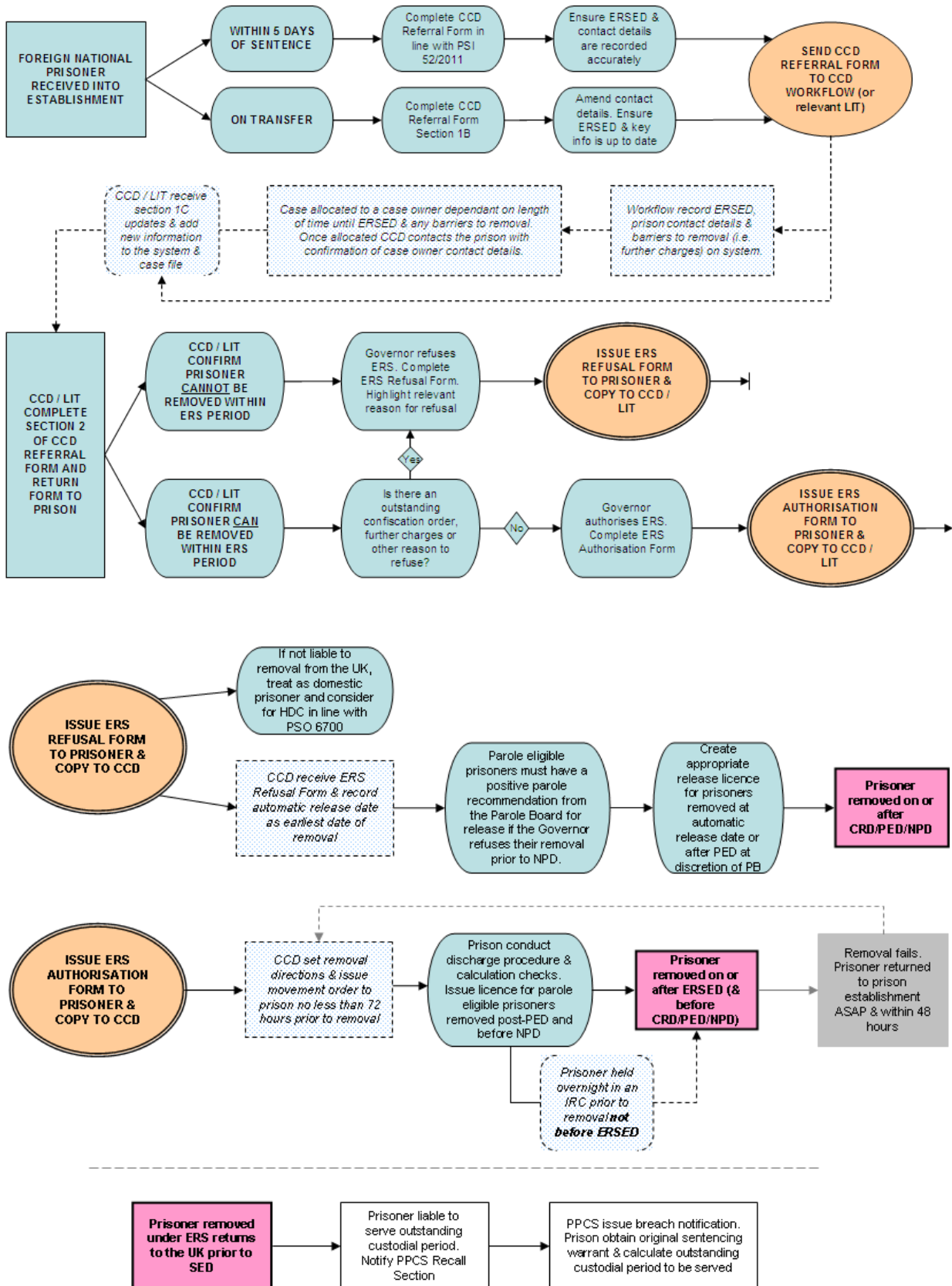
Who to inform

- 7.8 *The team dealing with licence variations (currently NOMS Public Protection Casework Section (PPCS) Recall Team) must be contacted if a person who has been removed early under ERS returns to the UK prior to their sentence expiry date (SED). Contact details for PPCS can be found in Annex F.*
- 7.9 *If the prisoner is liable to serve an outstanding period, PPCS will issue a breach notification providing authorisation for the offender to be detained. The breach notification will not include details of the period to be served; this must be calculated by the receiving establishment. The breach notification will advise which prison released the offender and the receiving establishment must obtain the offender's original sentencing warrant and prison records.*

Prisoners in Northern Ireland and other UK jurisdictions

- 7.10 *Arrangements must be made to transfer offenders held in custody in Northern Ireland and other UK jurisdictions to an establishment in England and Wales as soon as possible once they have been identified as having been previously released on ERS and are liable to serve an outstanding period of custody.*

ERS PROCESS





UK Border Agency

Criminal Casework Directorate/
Local Immigration Team

FAX COVER SHEET

Date

No. of Pages (inc. header)

To: Fax Number	CRIMINAL CASEWORK DIRECTORATE – WORKFLOW 0870 336 9223 OR RELEVANT LOCAL IMMIGRATION TEAM
-------------------	--

PRISON NAME:
Prison Number :
Surname : Other Name :
EARLY REMOVAL SCHEME eligibility date (ERSED) :
HDC eligibility date where applicable
CRD/PED/ARD
HO Reference (if Known) :
Do you hold any identity documents such as passport, ID card, Birth Certificate or Driving licence? Yes/No
If held please ensure copies are provided (see Section 1D)

Female Prisoners Only
Is the prisoner known to be pregnant? Yes/No
Does she have any children with her in prison? Yes/No (If yes to either question please provide details of children if known)

Sentenced Prisoners – Complete Section 1A, 1C and 2A (only if NIC not included)
 Transfer to new Prison – Complete Section 1B

SECTION 1A - sentenced (to be completed if subject is currently serving a custodial sentence and completed Nominal Index Card is attached, otherwise complete this section and Section 2A.
Court Recommended for Deportation? Yes/No
Subject to a Extradition Proceedings Yes/No
Subject to Confiscation Order? Yes/No
Subject to outstanding further charges? Yes/No
MAPPA nominal? (Multi-Agency Public Protection Arrangements) Yes/No
PNC Ref (if no PNC attached) :
Does the individual want to return to country of origin? Yes/No/Don't know
Is the subject at risk of self harm / suicide? Yes/No

SECTION 1B – Prison Transfer (to be completed if subject has been transferred)
Transferred from : on Date: (If different to date at top)

SECTION 1C - Attachments Included with this fax header (Tick as appropriate)
 NIC (Nominal Index Card) PNC
 Court Certificate/Warrant Order of Imprisonment
 Proof of Identity Tick as appropriate Passport ID card Birth Certificate Driving Licence

Other supporting docs(such as letters from families abroad etc),

From:	Fax:
Tel:	E-Mail:

SECTION 2 – FOR ENGLAND AND WALES ERS CASES ONLY (for completion by CCD or relevant Local Immigration Team)

- I am not currently aware of any reason why this prisoner could not be removed within the the ERS period . Please notffiy CCD of the outcome of the Governor’s decision on ERS , to allow removal directions to be set where applicable.*
- I do not currently expect the prisoner to be removed during the ERS period for the following reasons :*
.....
.....
.....

SHOULD THIS ASSESSMENT CHANGE , YOU WILL BE NOTIFIED

Caseworker Signed

Telephone number E-Mail.....

EARLY REMOVAL SCHEME AUTHORISATION FORM

Establishment Name:	Contact Name:
Prisoner Surname:	Other Names:
NOMIS No (and/or Prison Number):	HO Ref No:
ERS Eligibility Date (ERSED):	
CRD/ARD/PED (<i>delete as appropriate</i>):	Sentence End Date (SED):
Country to be removed to:	

The Governor has approved your removal under the early removal scheme, pursuant to Chapter 6 of the Criminal Justice Act 2003.

You will be removed to the country stated above. The earliest you can be removed from the UK is **DD/MM/YYYY**. Should it not be possible for you to be removed on or after this date you will remain in custody either until you can be removed or until you reach your automatic release date / conditional release date / non-parole release date, unless you are otherwise granted parole (**delete as appropriate**).

Upon your removal from the UK, should you return before your sentence end date (SED), pursuant to section 261 of the Criminal Justice Act 2003 you will be deemed unlawfully at large and liable to arrest and return to custody for a period equal in length to your outstanding custodial period or until your sentence expiry date; whichever is the earlier.

Signed (Prisoner):..... Name:.....

Date:.....

Signed (Governor):..... Name:.....

Date:.....

AUTHORISATION FORM FOR REMOVAL DURING THE PAROLE PERIOD

Establishment Name:	Contact Name:
Prisoner Surname:	Other Names:
NOMIS No (and/or Prison Number):	HO Ref No:
NPD:	Sentence End Date (SED):
Country to be removed to:	

The Governor has approved your removal under Paragraphs 36 and 37 of Schedule 20B of the Criminal Justice Act 2003 (as inserted by Schedule 17 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012).

You will be removed to the country stated above as soon as the UK Border Agency can effect your removal. You will remain in custody either until you can be removed or until you reach your non-parole release date.

Upon your removal from the UK, should you return before your sentence end date (SED), pursuant to section 261 of the Criminal Justice Act 2003 you will be deemed unlawfully at large and liable to arrest and return to custody for a period equal in length to your outstanding custodial period or until your sentence expiry date; whichever is the earlier.

Signed (Prisoner):..... Name:.....

Date:.....

Signed (Governor):..... Name:.....

Date:.....

EARLY REMOVAL SCHEME REFUSAL FORM

Establishment Name:	Contact Name:
Prisoner Surname:	Other Names:
NOMIS No (and/or Prison Number):	HO Ref No:
ERS Eligibility Date (ERSED):	
CRD/ARD/PED (delete as appropriate):	Sentence End Date (SED):

The Governor has not authorised your removal from the UK under the Early Removal Scheme.

The grounds for his/her decision are that (**delete as appropriate**):

- ⇒ You have been charged with a further offence and are awaiting trial. There is no right of appeal against this decision.
- ⇒ You are liable to serve a consecutive term following your current sentence. There is no right of appeal against this decision.
- ⇒ The United Kingdom Border Agency has confirmed that it cannot effect your removal at this stage. Should this situation change and it is possible to remove you before the halfway point of your sentence, this decision will be reviewed. There is no right of appeal against this decision.
- ⇒ Your early removal under ERS should be refused because (insert grounds for refusal – see section 2.8):.....
.....

If you wish to appeal against this decision, you should submit a request/complaint to the Governor, setting out your grounds of appeal.

You are eligible to be released on your CRD / ARD / NPD which is

Or (delete as appropriate)

The Governor has not authorised your removal before NPD, therefore you are eligible to be considered for parole and cannot be released until DD/MM/YY (NPD) unless the Parole Board directs your release earlier.

You may be removed by UKBA on your release or may be liable to be further detained under the powers of the Immigration Act 1971 pending removal.

Signed (Governor):..... Name:.....

Date:.....

CONTACTS

Release, HDC and Sentence Calculation Policy Team, Sentencing Policy and Penalties Unit,
Ministry of Justice, 8th Floor (Zone B), 102 Petty France, London, SW1H 9AJ

Team inbox: SPPU.Early.Release@justice.gsi.gov.uk

NAME	TELEPHONE & FAX	RESPONSIBILITIES AND E-MAIL ADDRESS
Steve Bailey	0203 334 5026	Head of Team stephen.bailey@justice.gsi.gov.uk
Helen Scott	0203 334 5045	Sentence calculation policy lead helen.scott@justice.gsi.gov.uk
Chris Potter	0203 334 3112	ROTL and HDC policy lead chris.potter2@justice.gsi.gov.uk
Victoria Amat	0203 334 4682 Fax 0870 739 4062	Sentence calculation and ERS policy advisor victoria.amat@justice.gsi.gov.uk
Junior Ogueri	0203 334 5043 Fax 0870 739 5889	ROTL and HDC policy helpline junior.ogueri@justice.gsi.gov.uk
Suleman Qureshi	0203 334 5044 Fax 0870 739 5893	ROTL and HDC policy helpline suleman.queshi@justice.gsi.gov.uk
Verginia Georgieva	0203 334 4689 Fax 0870 761 7645	ROTL and HDC policy helpline verginia.georgieva@justice.gsi.gov.uk

CCD Workflow

Telephone: 0208 760 8655

Fax: 0870 336 9223

E-mail: fnpfax@homeoffice.gsi.gov.uk

FRS Team

Telephone: 0208 760 2401

NOMS Extremism Unit

E-mail: securitygroup.extremism@hmpps.gsi.gov.uk

Chief Executive of NOMS

Michael Spurr

Private Secretary Telephone: 0300 047 5171

E-mail: ceonoms@noms.gsi.gov.uk

Public Protection Casework Section (PPCS) Recall Team - For ERS Breach Notification

Conroy Barnett

Telephone: 03000 474 306

E-mail: conroy.barnett@noms.gsi.gov.uk

Gareth Hunter

Telephone: 03000 474 318

E-mail: gareth.hunter@noms.gsi.gov.uk

Nuzhat Razvi

Telephone: 03000 474 331

E-mail: nuzhat.razvi@noms.gsi.gov.uk

Out of Hours (before 9am and after 5pm)

Telephone switchboard: 0207 217 3000

Annex G

GLOSSARY OF TERMS

ADA	Added Days Awarded
ARD	Automatic Release Date
CCD	Criminal Casework Directorate (United Kingdom Border Agency)
CJA 1991	Criminal Justice Act 1991
CJA 2003	Criminal Justice Act 2003
CJ&IA 2008	Criminal Justice and Immigration Act 2008
CED	Custody End Date
CRD	Conditional Release Date
DCR	Discretionary Conditional Release
DOS	Date of Sentence
DTO	Detention and Training Order
DYOI	Detention in Young Offenders Institution
EDS	Extended Determinate Sentence
ERA	Enhanced Risk Assessment
ERS	Early Removal Scheme
ERSED	Early Removal Scheme Eligibility Date
FNP	Foreign National Prisoner
FRS	Facilitated Returns Scheme
HDC	Home Detention Curfew
IRC	Immigration Removal Centre
LASPOA 2012	Legal Aid, Sentencing and Punishment of Offenders Act 2012
LIT	Local Immigration Team (United Kingdom Border Agency)
NOMS	National Offender Management Service
NPD	Non Parole Date
PED	Parole Eligibility Date
PPCS	Public Protection Casework Section
PSI	Prison Service Instruction
PSO	Prison Service Order
SDS	Standard Determinate Sentence
SED	Sentence Expiry Date
SLED	Sentence and Licence Expiry Date
SPPU	Sentencing Policy and Penalties Unit

UAL
UKBA
YJB

Unlawfully at Large
United Kingdom Border Agency
Youth Justice Board

GLOSSARY OF UKBA PAPERWORK**1971 Act – Court Recommended & Conducive to the public good**

IS.151A	Section 10 removals – either illegal entry or overstayer
ICD0350	Liability for Deportation Letter (conducive & Court Recommended)
ICD1070	Notice of Decision to make a Deportation Order
ICD1914	Reasons for Deportation Letter (Conducive & Court Recommended)
ICD1041	Notice of Appeal Form
ICD3066	Disclaimer in a deportation case
ICD0776	Instruction to prison to serve paperwork
ICD2967	Confirmation of Conveyance
ICD3237	PF1 (Appeal pro forma)
ICD3512	DO Submission (in country appeal) (Court Recommendation / Conducive)
ICD1104	Deportation Order (1971 Act)

2007 Act – Auto Deportation

ICD0350 AD	Liability for Deportation Letter (Auto Deport)
ICD3805	Instruction to prison to serve Paperwork on prisoner together with Reasons For Deportation Letter (RDFL) & Confirmation of Conveyance. No exceptions claimed
ICD3806	Instruction to prison to serve paperwork on prisoner together with Reasons For Deportation Letter (RDFL) & Confirmation of Conveyance - Asylum/Human Rights claim accepted. Exceptions apply (possible grant)
ICD3807	Instruction to prison to serve Paperwork on prisoner together with Reasons For Deportation Letter (RDFL) & Confirmation of Conveyance – unfounded Asylum claim (Out of Country Appeal)
ICD3808	Instruction to prison to serve Paperwork on prisoner together with Reasons For Deportation Letter (RDFL) & Confirmation of Conveyance - Asylum/Human Rights claim dismissed but claim arguable. (In country right of appeal)
AIT3	Appeal Form (Auto Deport) (Out of Country appeal)
ICD3811	DO Submission
ICD3813	Deportation Order – Auto Deport (Out of Country Appeal)
ICD3814	Deportation Order – Auto Deport (In Country Appeal)

Detention

IS.94	Bilateral Agreement.
ICD1913	Reason for Detention Letter
ICD3079	Minute of decision to detain
IS.91	Authority for prison to detain beyond custodial sentence
IS.91RA	Risk Assessment (for DEPMU)

Detention Review

ICD3078	Detention Review
IS 151F CCD	Monthly progress report to detainees (every 28 days)
ICD2967	Confirmation of Conveyance

Immigration Bail

ICD3221	Bail Summary – for Asylum and Immigration Tribunal (AIT) bail applications.
IS.98A	Application for Bail – in CIO/SoS applications
IS.99A	Recognizance of Surety

Documents required if bail granted

IS.106 Release Order. Faxed to prison/IRC to authorise release of detainee.
ICD0343 Restriction Order with conditions imposed. Faxed to prison/IRC for service on detainee and to reporting centre/police station
ICD0847 Release notification letter, Faxed to prison
ICD0377 Reporting notification. Faxed to reporting centre/Police station.
ISE.301 Notification to police to open book

Removals

ICD 2599 Immigration factual summary, included in removals pack

LEGISLATION GOVERNING THE EARLY REMOVAL SCHEME

Persons liable to removal from the United Kingdom

Section 259 of the Criminal Justice Act 2003: Persons liable to removal from the United Kingdom

For the purposes of this Chapter a person is liable to removal from the United Kingdom if —

- (a) he is liable to deportation under section 3(5) of the Immigration Act 1971 (c 77) and has been notified of a decision to make a deportation order against him,
- (b) he is liable to deportation under section 3(6) of that Act,
- (c) he has been notified of a decision to refuse him leave to enter the United Kingdom,
- (d) he is an illegal entrant within the meaning of section 33(1) of that Act, or
- (e) he is liable to removal under section 10 of the Immigration and Asylum Act 1999 (c 33).

Section 260 of the Criminal Justice Act 2003 (as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012): Early removal of prisoners liable to removal from United Kingdom

- (1) Subject to subsection (2), where a fixed-term prisoner is liable to removal from the United Kingdom, the Secretary of State may remove him from prison under this section at any time during the period of 270 days ending with the day on which the prisoner will have served the requisite custodial period.
- (2) Subsection (1) does not apply in relation to a prisoner unless he has served at least one-half of the requisite custodial period.
- (2A) If a fixed-term prisoner serving an extended sentence imposed under section 226A or 226B—
 - (a) is liable to removal from the United Kingdom, and
 - (b) has not been removed from prison under this section during the period mentioned in subsection (1), the Secretary of State may remove the prisoner from prison under this section at any time after the end of that period.
- (2B) Subsection (2A) applies whether or not the Parole Board has directed the prisoner's release under section 246A.
- (4) A prisoner removed from prison under this section—
 - (a) is so removed only for the purpose of enabling the Secretary of State to remove him from the United Kingdom under powers conferred by—
 - (i) Schedule 2 or 3 to the Immigration Act 1971, or
 - (ii) section 10 of the Immigration and Asylum Act 1999 (c 33),
 - (b) so long as remaining in the United Kingdom, remains liable to be detained in pursuance of his sentence until he has served the requisite custodial period.
- (5) So long as a prisoner removed from prison under this section remains in the United Kingdom but has not been returned to prison, any duty or power of the Secretary of State under section 243A, 244, 246A, 247 or 248 is exercisable in relation to him as if he were in prison.

- (6) The Secretary of State may by order—
 - (a) amend the number of days for the time being specified in subsection
 - (c) amend the fraction for the time being specified in subsection (2).
- (7) In this section “requisite custodial period”—
 - (za) in relation to a prisoner serving an extended sentence imposed under section 226A or 226B, has the meaning given by paragraph (a) or (b) of the definition in section 246A(8);
 - (a) in relation to a prisoner serving an extended sentence imposed under section 227 or 228, means one-half of the appropriate custodial term (determined by the court under that section);
 - (b) in any other case, has the meaning given by paragraph (a) or (b) of section 243A(3) or (as the case may be) paragraph (a) or (d) of section 244(3).
- (8) Paragraphs 36 and 37 of Schedule 20B (transitional cases) make further provision about early removal of certain prisoners.

Section 261 of the Criminal Justice Act 2003 (as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012): Re-entry into United Kingdom of offender removed from prison early

- (1) This section applies in relation to a person who, after being removed from prison under section 260, has been removed from the United Kingdom before he has served the requisite custodial period.
- (2) If a person to whom this section applies enters the United Kingdom at any time before his sentence expiry date, he is liable to be detained in pursuance of his sentence from the time of his entry into the United Kingdom until whichever is the earlier of the following—
 - (a) the end of a period (“the further custodial period”) beginning with that time and equal in length to the outstanding custodial period, and
 - (b) his sentence expiry date.
- (3) A person who is liable to be detained by virtue of subsection (2) is, if at large, to be taken for the purposes of section 49 of the Prison Act 1952 (c 52) (persons unlawfully at large) to be unlawfully at large.
- (4) Subsection (2) does not prevent the further removal from the United Kingdom of a person falling within that subsection.
- (5) Where, in the case of a person returned to prison by virtue of subsection (2), the further custodial period ends before the sentence expiry date,—
 - (a) if the person is serving an extended sentence imposed under section 227 or 228, section 247 has effect in relation to that person as if the reference to one-half of the appropriate custodial term were a reference to the further custodial period;
 - (b) in any other case, section 243A, 244 or 246A (as the case may be) has effect in relation to him as if the reference to the requisite custodial period were a reference to the further custodial period.
- (6) In this section—

“further custodial period” has the meaning given by subsection (2)(a);

“outstanding custodial period”, in relation to a person to whom this section applies, means the period beginning with the date of his removal from the United Kingdom and ending with the date on which he would, but for his removal, have served the requisite custodial period;

“requisite custodial period”—

- (za) in relation to prisoner serving an extended sentence imposed under section 226A or 226B, has the meaning given by paragraph (a) or (b) of the definition in section 246A(8);
- (a) in relation to a prisoner serving an extended sentence imposed under section 227 or 228, means one-half of the appropriate custodial term (determined by the court under that section);
- (b) in any other case, has the meaning given by paragraph (a) or (b) of section 243A(3) or (as the case may be) paragraph (a) or (d) of section 244(3); “sentence expiry date”, in relation to a person to whom this section applies, means the date on which, but for his release from prison and removal from the United Kingdom, he would have served the whole of the sentence.

Schedule 20B of the Criminal Justice Act 2003 (as inserted by Schedule 17 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012): Early removal of prisoners liable to removal from UK

36 (1) This paragraph applies to any person who—

- (a) has served one-half of a sentence of imprisonment, and
- (b) has not been released on licence under this Chapter.

(2) The reference in sub-paragraph (1)(a) to one-half of a sentence is—

- (a) in the case of a section 85 extended sentence, a reference to one-half of the custodial term;
- (b) in the case of an extended sentence imposed under section 227 or 228, a reference to one-half of the appropriate custodial term.

37(1) If a person to whom paragraph 36 applies—

- (a) is liable to removal from the United Kingdom, and
- (b) has not been removed from prison under section 260 during the period mentioned in subsection (1) of that section, the Secretary of State may remove the person from prison under that section at any time after the end of that period.

(2) Sub-paragraph (1) applies whether or not the Board has directed the person's release under paragraph 6, 15, 25 or 28.”

FACILITATED RETURNS SCHEME

It is important to be clear that ERS and the Facilitated Returns Scheme (FRS) are different schemes, although they can and do work in conjunction with one another.

FRS is a voluntary return scheme designed to encourage FNPs to comply with removal action and return to their home country by offering them financial assistance and support to help them reintegrate. It is operated by UKBA and is a voluntary scheme that only non-EEA nationals can apply for. If accepted, they are given financial support to help them resettle in their home country on the proviso that they co-operate with removal action and waive their right to appeal against deportation.

ERS, on the other hand, is a Ministry of Justice / NOMS scheme which allows the Secretary of State to remove prisoners early (i.e. before they reach their normal release date) and is not voluntary. Foreign national prisoners who are liable to removal can be removed early under ERS even if they do not apply or are ineligible for FRS. This means, for example, that EEA national prisoners who are liable to removal can and should be removed early under ERS, even though they are not eligible for FRS.

The schemes are separate but can be implemented along-side each other to ensure that prisoners who apply for FRS and agree to co-operate with the removal process can be removed as early as possible within the ERS period. The financial incentives are greater under FRS for prisoners who apply for it while they are still serving the custodial part of their sentence – and could, therefore, be removed early under ERS – whereas prisoners who apply for FRS having completed their custodial term ('time-served prisoners') will receive less money. So FRS does provide a greater financial incentive to co-operate with removal during the ERS period.

Removal under ERS is often easier if the prisoner co-operates with the removal process, for example by providing or helping to obtain the necessary travel documentation (such as passport). Whilst FRS can provide a financial incentive to co-operate, the prospect of getting out of prison earlier under ERS can often provide a strong incentive too. It is important, if prisoners are enquiring about ERS and/or FRS, to be clear about what each scheme does and the potential benefits of serving less time in custody if removal under ERS is able to take place at the earliest possible point.

COMMON ERS QUESTIONS AND ANSWERS

Q. Is the ERS Scheme for both EEA and non-EEA prisoners alike (any Foreign National Prisoner who is liable for deportation)?

A. Yes, any determinate sentenced FNP who is considered liable to removal from the UK is eligible for ERS. Confusion often arises as only non-EEA nationals can apply for FRS.

Q. We have an offender who under a previous sentence was removed early under ERS and he has subsequently returned to the UK in breach of his Deportation Order. As he did not return during the currency of that sentence there was no recall action but can we let him have ERS on his current sentence?

A. Yes, prisoners who have been deported previously can still be considered for ERS in the normal way, subject to all the regular requirements (that they are considered liable to removal, no outstanding criminal charges/confiscation orders etc.)

(If a prisoner who has been removed early under ERS returns to the UK prior to his SED they may be liable to be held in pursuance of their earlier sentence, see section 7)

Q. Is there a list of offences somewhere that preclude a person from the ERS Scheme?

A. No, originally when ERS was introduced, there were a number of statutory exclusions such as those offenders subject to the notification requirement of Part II of the Sexual Offences Act 2003 were excluded from ERS (amongst others, including those serving an extended sentence). However, these exclusions were removed by the Criminal Justice and Immigration Act 2008 and therefore all prisoners considered liable to removal from the UK should be considered for ERS.

However, Governors are advised to consider refusing ERS in cases where the prisoner has been convicted of terrorism legislation offences, or where there are other reasons to refuse (see paragraph 2.8).

Q. Please could you supply me with a list of countries that are not included in the ERS?

A. So long as a prisoner is considered by UKBA as being liable to removal from the UK then they can be considered for ERS. There are no restrictions based on the country of origin; both EEA and non-EEA nationals can be removed early under ERS.

The Facilitated Returns Scheme (FRS) is an incentive based scheme designed to promote and assist the early removal of prisoners under ERS (see Annex I). The schemes are often confused and are sometimes thought of as being one in the same as they sound similar and work alongside each other (prisoners can be awarded FRS and go early under ERS). However, only non-EEA nationals can be considered for FRS. Any prisoner (so long as UKBA confirm they are liable to removal) can be considered for ERS.

If you need a list of EEA countries you can find one at the back of the Immigration, Repatriation and Removal Services PSI 52/2011.

Q. We currently have a prisoner who is serving as a licence recall, therefore is he deemed ineligible for ERS?

A. ERS enables foreign national prisoners who are liable to deportation to be removed up to 270 days before the half-way point of sentence. As a licence recall prisoner he has already passed his ARD/CRD/PED and can now only be re-released following approval by the Parole Board / Secretary of State (PPCS) or at the end of his sentence. He cannot benefit from ERS.

However, if the prisoner has previously been removed under ERS and has returned to the UK prior to his SED, then he may be liable to serve an outstanding period of custody (see section 7).

Q. Can prisoners be removed under ERS in the two weeks prior to CRD/ARD?

A. FNPs liable to removal are no longer prohibited from being removed under ERS in the 14 day period before their half-way point of sentence.

This used to be one of the statutory exclusions which prevented certain categories of prisoner (e.g. those serving an extended sentence or subject to sex offender registration) from being removed early. One of those specified exclusions was the removal of prisoners within 14 days of their release date. However, the Criminal Justice and Immigration Act 2008 contained provisions which removed all of these statutory exclusions and this came into effect on 3 November 2008.

So yes, as a consequence of this change, from 3 November 2008, it is now possible for early removal to take place at any point from the ERSED (which can be up to 270 days before the half-way point) up until the date of the half-way point itself (including the 14 day period leading up to it).

Something else to bear in mind is that, if there is any possibility that early removal may not take place before the half-way point and the prisoner is then required to be released on licence at that point, then it is important for the prison to be prepared to issue the necessary licence. Even if the prisoner may continue to be detained under Immigration powers, once they reach the point in their sentence when release on licence is required, then a licence should be prepared for issue in case the prisoner is subsequently released from Immigration detention.

Q. Do I have to issue a licence to someone removed under ERS?

A. *Prisoners who are removed under ERS do not need to be issued with a licence, but must be issued with the ERS Authorisation Form. Prisoners being released at the discretion of the Governor within the parole period (i.e. on or after PED and before NPD) must be issued with the Authorisation Form for Removal within the Parole Period (Annex D). Prisoners being removed outside the ERS period (i.e. on or after the automatic release date at CRD/ARD/NPD or, on parole) must be issued with the appropriate release licence.*

Where the prisoner is being removed on or shortly after ERSED there should be no prospect of him or her reaching the point in the sentence when release on licence in the UK may be a possibility, so it is not necessary to prepare a normal release licence. However, there may be cases where the prisoner cannot be removed until much nearer the half-way point of sentence, in which case establishments should consider preparing a release

licence in case the prisoner reaches the normal release date. *Prisoners may continue to be held beyond their normal date of release under immigration powers of detention, pending their removal, but, in such cases, a release licence should be prepared and kept on file in case the prisoner is granted immigration bail and must, therefore, be released into the UK. If the prisoner is transferred to an Immigration Removal Centre (IRC) to be held under immigration powers beyond their release date, a licence must be prepared to go with them in case they are not removed and subsequently released in the UK.*

Q. Can Irish National prisoners be removed under ERS?

- A.** In February 2007 the then Home Secretary announced that Irish Nationals would only be considered for deportation in exceptional circumstances, so unless the prisoner has been recommended by the court for deportation or if there are exceptional circumstances (see PSI 52/2011 - Immigration, Repatriation and Removal Services, paragraph 1.6 and Annex K) s/he cannot be removed under ERS.

ERS is governed by the provisions introduced by the Criminal Justice Act 2003. This confers a power on the Secretary of State to remove prisoners before they reach their normal release date for the purpose of allowing them to be deported or removed from the UK sooner than would otherwise have been possible. The legislation specifies that this power applies only where a prisoner is “liable to removal from the United Kingdom”.

Section 259 of the 2003 Act states that:

For the purposes of this Chapter a person is liable to removal from the United Kingdom if:

- a) he is liable to deportation under section 3(5) of the Immigration Act 1971 and
- b) has been notified of a decision to make a deportation order against him,
- c) he is liable to deportation under section 3(6) of that Act,
- d) he has been notified of a decision to refuse him leave to enter the United Kingdom,
- e) he is an illegal entrant within the meaning of section 33(1) of that Act, or
- f) he is liable to removal under section 10 of the Immigration and Asylum Act 1999.

In effect, this means that only those prisoners who UK Border Agency have confirmed will be removed or deported from the UK under the above definition will fall to be considered for ERS. In other words, it is not about refusing ERS in circumstances where a prisoner is otherwise eligible but because there is simply no power in law for the Prison Service to allow the early removal of a prisoner who UKBA have confirmed is not going to be deported or removed from the UK.

As ERS depends on removal under immigration powers, it will only be in exceptional circumstances that an Irish citizen could be considered under the scheme. They are, of course, eligible to apply for early release under the Home Detention Curfew (HDC) scheme, subject to the legislation and policy on this that applies to all other prisoners, such as being able to provide a suitable address in England, Wales or Scotland to be curfewed to for the purposes of HDC.

EQUALITY IMPACT ASSESSMENT

PSI 38 / 2012 - The Early Removal Scheme and Release of Foreign National Prisoners

Chapter 1 Stage 1 – initial screening

The first stage of conducting an EIA is to screen the policy to determine its relevance to the various equalities issues. This will indicate whether or not a full impact assessment is required and which issues should be considered in it. The equalities issues that you should consider in completing this screening are:

- Race
- Gender
- Gender identity
- Disability
- Religion or belief
- Sexual orientation
- Age (including younger and older offenders).

Aims

What are the aims of the policy?

ERS was introduced by the Criminal Justice Act 2003 and allows for determinate sentenced foreign national prisoners, who are confirmed by UKBA as 'liable to removal' from the UK, to be removed from prison up to a maximum of 270 days before the half-way point in their sentence. The policy supports the Governments commitment to reducing the foreign national prisoner population.

The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 received Royal Assent on 1 May 2012 and the provisions it contains relating to the release and recall of prisoners are due to be brought into force on 3 December 2012. The principal objective behind the LASPO Act release provisions is to simplify, consolidate and clarify the current legislation that governs the release and recall of prisoners. It does this by bringing the current provisions together so that they are all contained within the Criminal Justice Act 2003 – subject to a few modifications.

Effects

What effects will the policy have on staff, offenders or other stakeholders?

Following the commencement of provisions in the LASPO Act 2012 on 3 December 2012, determinate sentenced foreign national prisoners whose release is at the discretion of the Parole Board can be considered for release, for the purposes removal from the UK, between their Parole Eligibility Date (PED) at the half-way point of sentence and the Non-Parole Date (NPD) at the two-thirds point by the Governor, on behalf of the Secretary of State. From 3 December 2012, therefore, it will no longer be necessary for there to be a Parole Board release decision before such prisoners may be released for deportation. The parole process will continue as normal, in case UKBA are unable to effect the removal for whatever reason, and the prisoner is entitled to be considered by the Board for release in the UK in the normal way. The PSI has been updated to reflect this legislative change.

The LASPO Act 2012 also introduces a new type of Extended Determinate Sentence (EDS) which replaces the IPP sentence and is available for courts to impose in respect of offenders

convicted on or after 3 December 2012. The earliest date of release from an EDS is the two-thirds point in the custodial term and ERS will apply to such sentences – with the earliest date of removal being 270 days before the two-thirds point. For some EDS prisoners (generally those with custodial terms of 10 years or more), release between the two-thirds and end point will be at the discretion of the Parole Board. During that period, as with long-term 1991 Act prisoners, EDS prisoners may also be released for the purpose of removal by the Governor without the need for a Parole Board release decision. This PSI has also been updated, therefore, to contain instructions on how ERS applies in EDS cases and how the ERS eligibility date is to be calculated.

Evidence

Is there any existing evidence of this policy area being relevant to any equalities issue?

Identify existing sources of information about the operation and outcomes of the policy, such as operational feedback (including local monitoring and impact assessments)/Inspectorate and other relevant reports/complaints and litigation/relevant research publications etc. Does any of this evidence point towards relevance to any of the equalities issues?

The category of prisoner affected by this PSI is foreign national prisoners who UKBA confirm are liable to removal from the UK. This guidance simply updates the ERS process to reflect the LASPO Act changes; it still applies to all foreign national prisoners liable to removal from the UK and the maximum period of early removal by which an eligible prisoner can benefit remains at 270 days.

It is acknowledged that the changes to the scheme allow removal from prison in a period during which domestic prisoners would need to obtain a Parole Board recommendation in order to be granted release. However, the courts have dealt with the question of discrimination where foreign national prisoners are subject to differential release provisions to domestic prisoners; in the case of Brooke the court ruled that there was no discrimination on grounds of nationality as the difference in treatment was based on removability from the UK – and not nationality – and foreign nationals liable to removal are not in an analogous position to domestic prisoners.

The LASPO Act itself was accompanied by a detailed impact assessment which also concluded and confirmed that equalities issues had been fully considered and that the provisions did not create any inequalities or discrimination.

Stakeholders and feedback

Describe the target group for the policy and list any other interested parties. What contact have you had with these groups? Do you have any feedback from stakeholders, particularly from groups representative of the various issues, that this policy is relevant to them?

The policy is governed by legislation and affects all foreign national prisoners liable to removal from the UK.

The statutory changes contained in the LASPO Act were the subject of a wide public consultation before the provisions were introduced to Parliament. Broad proposals for change – including the plans to simplify the current release and recall legislation – were set out in the Government's Green Paper 'Breaking the Cycle: Effective punishment, rehabilitation and sentencing of offenders'.

The proposals on the release legislation were generally welcomed by those who responded. The senior judiciary were also involved in the development of these changes – given their interest in and concerns with the current legislation – and they also supported the approach.

The provisions were taken through Parliament and approved by both Houses, without amendment.

Impact

Could the policy have a differential impact on staff, prisoners, visitors or other stakeholders on the basis of any of the equalities issues?

There should be no differential impact on any particular group as a result of this policy.

Local discretion

Does the policy allow local discretion in the way in which it is implemented? If so, what safeguards are there to prevent inconsistent outcomes and/or differential treatment of different groups of people?

ERS legislation applies equally to all determinate sentence foreign national prisoners who are liable to removal from the UK; there is very limited scope within the policy for local discretion in the way it is implemented. Governors must approve removal under ERS (or during the period between PED and NPD – the ‘parole period’) unless the offender is subject to further custodial requirements, an outstanding confiscation order or a default term. In addition, Governors are able to refuse early removal for specific reasons (including, for example, ERS can be refused for those offenders serving sentences for terrorism or terrorism related offences due to impact on public safety on a global level that these offenders can present). Reasons for which a Governor can refuse ERS (or removal in the parole period) are clearly defined in Section 2 of the PSI. If an offender wishes to challenge a decision to refuse ERS under ‘other reasons to refuse’, they are able to do so via the normal Request and Complaint procedure.

The changes introduced by the LASPO Act – and therefore the subject of the updates and amendments to this PSI – do not affect the existing consideration for ERS or the (limited) reasons for refusal, so there are no changes being made to the previous position with regard to local discretion.

Summary of relevance to equalities issues

Strand	Yes/No	Rationale
Race	N	
Race	N	
Gender (including gender identity)	N	
Disability	N	
Religion or belief	N	
Sexual orientation	N	
Age (younger offenders)	N	
Age (older offenders)	N	

If you have answered 'Yes' to any of the equalities issues, a full impact assessment must be completed. Please proceed to STAGE 2 of the document.

If you have answered 'No' to all of the equalities issues, a full impact assessment will not be required, and this assessment can be signed off at this stage. You will, however, need to put in place monitoring arrangements to ensure that any future impact on any of the equalities issues is identified.

Monitoring and review arrangements

Describe the systems that you are putting in place to manage the policy and to monitor its operation and outcomes in terms of the various equalities issues. State when a review will take place and how it will be conducted.

The instruction itself provides clear mandatory actions for Governors to ensure the policy is implemented appropriately. Contact details have been provided for anyone with queries or concerns regarding the scheme to seek advice and guidance.

	Name and signature	Date
Policy lead	Stephen Bailey	
Head of group	Helen Judge	26 October 2012