



Early Removal Scheme – Irish Prisoners in the UK

- ❖ ICPO has received many queries from Irish prisoners serving sentences in the UK asking about their eligibility for the Early Removal Scheme. This factsheet briefly explains the Scheme and outlines why Irish prisoners in the UK are not deemed eligible for ERS.
- ❖ Since 2007, Irish prisoners have - save in exceptional circumstances - been exempted from compulsory deportation from the UK upon completion of their sentence. This arrangement was reached after much advocacy work by the Irish Government and the ICPO, which sought to highlight how most Irish prisoners serving sentences in the UK have lived there for most of their lives, with their families, social circle and jobs in the UK. As a result of being ineligible for deportation, Irish prisoners are not considered eligible for ERS – a scheme which necessarily involves deportation. It is acknowledged that while the present arrangement suits most Irish prisoners in the UK, it does create difficulties and hardship for those prisoners whose primary ties are in Ireland and would like to avail of the Scheme.
- ❖ ERS is dealt with by Prison Service Instruction (PSI) 59/2011 (extracts of which are set out below).
- ❖ If you have any questions or concerns about the ERS, you should contact ICPO, your legal advisor or the Irish Embassy.

PSI 59/2011 - The Early Removal Scheme and Release of Foreign National Prisoners

Issue Date: 4 November 2011
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Associated documents: This guidance must be read in conjunction with the Immigration, Repatriation and Removal Services PSI 52/2011

PSI 59/2011 Replaces the following documents which are hereby cancelled: Chapter 9 PSO 6000; PSI 19/2008; PSI 45/2008; PSI 14/2009.

PSI 59/2011 - The Early Removal Scheme and Release of Foreign National Prisoners

Section 1.1 'The Criminal Justice Act 2003 introduced the 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.'

Section 1.2 ‘ERS is mandatory; all determinate sentenced FNPs who are liable to removal must be considered under the scheme, subject to certain eligibility checks. 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. 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.’

PSI 59/2011 - Annex J

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 paragraph 2.5 and Annex H of the Immigration, Repatriation and Removal Services PSI 52/2011) 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”.

... In effect, this means that only those prisoners who UK Border Agency have confirmed will be removed or deported from the UK will fall to be considered for ERS. ... 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.’

PSI 18/2012 - Tariff Expired Removal Scheme (TERS)

Summary: TERS provides for the removal of foreign national prisoners serving indeterminate sentences, upon, or at any date after, the expiry of their tariff. As Irish national prisoners are not ‘usually’ considered eligible for deportation by the UK Border Agency (UKBA), they will, in general, be excluded from this scheme (similar to the ERS above).

Section 1.1 ‘The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 introduces a new Tariff Expired Removal Scheme (TERS) for indeterminate (lifers and IPPS) foreign national prisoners (IFNPs). The scheme allows IFNPs, who are confirmed by the UKBA to be liable to removal from the UK, to be removed from prison and the country, upon or any date after the expiry of their tariff without reference to the Parole Board.’

Section 1.2 ‘TERS is mandatory; all IFNPs who are eligible to removal must be considered by the Public Protection Casework Section (PPCS) for removal under the scheme. The scheme only applies to those prisoners serving an indeterminate sentence for public protection or a life sentence; determinate sentenced foreign national prisoners continue to be eligible for removal under the existing Early Removal Scheme (ERS). By definition, IFNPs can only be removed under TERS if UKBA is able to effect their removal.’