



Early Removal Scheme (ERS) and Tariff Expired Removal Scheme (TERS) Irish Prisoners in the UK

ICPO receives frequent queries from Irish prisoners serving sentences in the UK asking about their eligibility for the Early Removal Scheme (ERS) and Tariff Expired Removal Scheme (TERS). This factsheet briefly explains the schemes and outlines why Irish prisoners in the UK are not deemed eligible for ERS or TERS.

- Since 2007, Irish prisoners have - save in exceptional circumstances - been exempted from compulsory deportation from the UK upon completion of their sentence. This arrangement exists because of the close historical, social and political ties between the UK and Ireland and in recognition of the fact that most Irish prisoners serving sentences in the UK have lived there for most of their lives, and have families, social supports and jobs in the UK. For further information on deportation please see the ICPO Factsheet: *Deportation – Irish Prisoners in the UK*.
- As a result of being ineligible for deportation, Irish prisoners are not considered eligible for ERS or TERS – schemes which necessarily involve 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 relevant scheme. Those who have strong familial or residential ties to Ireland and who wish to return following their custodial sentence may be eligible to resettle in Ireland while on licence. For more information on this please see the ICPO Factsheet: *Resettlement outside England and Wales while on Licence*.
- A number of cases have come before the UK Courts in the past three years challenging the Home Office's position on the deportation of Irish prisoners. These include *Doherty's (Edmund) Application [2016] NI QB 62* in 2016, *Connell, R (on the application of) v Secretary of State for the Home Department* in 2018 and *Foley, R (On the Application Of) v Secretary of State for the Home Department* in 2019 in which Mr Foley challenged his inability to access TERS as a result of not being eligible for deportation. The Courts dismissed each of these cases and the current policy of deporting Irish nationals only in exceptional circumstances remains in place.
- ERS is dealt with by Prison Service Instruction PSI 04/2013 and TERS is dealt with by PSI 18/2012. Relevant sections of each are set out below.
- If you have any questions or concerns about the ERS/TERS, you should contact your legal advisor, ICPO or the Irish Embassy.

The following are extracts from the Prison Service Instructions (PSI 04/2013 and PSI 18/2012) that deal with ERS and TERS:

PSI 04/2013 - The Early Removal Scheme and Release of Foreign National Prisoners

Issue Date: 15 October 2015 (Revision)

Effective Date: 11 Feb 2013

Expiry Date: 10 February 2017¹

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

Replaces the following documents which are hereby cancelled: Chapter 9 PSO 6000; PSI 19/2008; PSI 45/2008; PSI 14/2009; PSI 59/2011. Updates paragraphs 2.26 & 4.18 and contact details in PSI 38/2012 which is also cancelled.

Section 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 Home Office Immigration Enforcement (HOIE) 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 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 HOIE is able to effect their removal during the ERS period (the period between the ERS eligibility date (ERSED) and the half-way point of the sentence).'

PSI 04/2013 - Annex J Common ERS Questions and Answers

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 ... 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 HOIE have confirmed will be removed or deported from the UK 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 HOIE have confirmed is not going to be deported or removed from the UK.'

Annex H of PSI 52/2011 Immigration, Repatriation and Removal Services states that cases where Irish nationals are considered for deportation will be rare but that the following may be appropriate for deportation:

'Where an offence involves national security matters² or crimes that pose a serious risk to the safety of the public or a section of the public. This might be where a person has been convicted of a terrorism offence, murder or a serious sexual or violent offence and is serving a sentence of 10 years or more (a custodial period of 5 years or more). This would include life sentences and those serving other indeterminate sentences for public protection with a tariff of 5 years or more'

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

Issue Date: 10 October 2013 (Revision)

Effective Date: 02 May 2012

Expiry Date: 01 May 2016³

Associated documents: PSI 52/2011 Immigration, Repatriation and Removal Services; PSI 65/2011 Foreign National Prisoners Liable for Deportation; PSI 04/2013 The Early Removal Scheme and Release of Foreign national Prisoners; PSI 36/2012 Generic Parole Process (GPP) amended to incorporate Electronic Working

Replaces the following documents which are hereby cancelled: None

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 UKBA⁴ 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 UKBA⁵ is able to effect their removal.'

¹ Although PSI 04/2013 expired on 10 February 2017, it remains in force until replaced.

² Offences committed under the Terrorism Act 2000, Crime and Security Act 2001, the prevention of Terrorism Act 2005 and the Terrorism Act 2006.

³ Although PSI 18/2012 expired on 01 May 2016, it remains in force until replaced

⁴ PSI 18/2012 was issued prior to the changes to UKBA which took place in 2013. Home Office Immigration Enforcement is now responsible for matters relating to removal and deportation.

⁵ See note 4 above

ICPO August 2019

This factsheet is for information purposes only and does not and is not intended to constitute legal advice. While every effort has been made to ensure that the content is accurate and up to date, the ICPO accepts no responsibility for errors and omissions.