



Home Office

The Early Removal Scheme

Version 9.0

This guidance explains the Early Removal Scheme (ERS) for foreign national offenders in England and Wales.

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About this guidance

This guidance tells you about the Early Removal Scheme (ERS) for foreign national offenders in England and Wales.

The purpose of the scheme is to enable the removal or deportation from the UK of foreign national offenders at an earlier point in their sentence than would otherwise be possible.

Where 'deportation' is referred to in this guidance, it presumes that the foreign national meets the relevant criteria for this and that the Foreign National Offender Returns Command (FNO RC) will be considering the case. Removals Casework (RC) or Immigration Compliance and Engagement (ICE) teams may consider other categories of 'removal' including administrative removal as an illegal entrant, where deportation is not appropriate for any reason.

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors, then email the FNO RC Process and Guidance inbox.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

Publication

Below is information on when this version of the guidance was published:

- version **9.0**
- published for Home Office staff on **9 December 2022**

Changes from last version of this guidance

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Related content

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Introduction

This section tells you about the Early Removal Scheme (ERS) available to foreign national offenders liable to removal from the UK who are serving a fixed-term prison sentence.

ERS enables the removal of foreign nationals from prison at an earlier point in their sentence than would otherwise be possible for the sole purpose of removal or deportation from the UK. All eligible foreign nationals in prison in England and Wales must be considered for removal under the scheme.

The Ministry of Justice (MOJ) is responsible for the scheme and it is jointly administered by the following operational areas:

- Home Office Immigration Enforcement (primarily Foreign National Offender Returns Command – FNO RC)
- HM Prison and Probation Service (HMPPS) prisons
- HMPPS Public Protection Casework Section (PPCS)

[Section 260 of the Criminal Justice Act 2003](#) (CJA 2003) introduced ERS for determinate-sentenced offenders in England and Wales (that is those serving a custodial sentence for a fixed or minimum period). The scheme applies to all foreign nationals who are liable for deportation or removal from the UK including European Economic Area (EEA) and non-EEA nationals.

The provisions came into force on 14 June 2004 and allow the Secretary of State to remove a foreign national from prison for the purposes of removal from the UK at an earlier point in the sentence than the earliest release date. This means a foreign national could be removed from prison on or after their ERS eligibility date, but before any of the following:

- Conditional Release Date (CRD) – automatic release point when release is subject to a licence / supervision
- Automatic Release Date (ARD) – automatic release point when release is unconditional
- Non-Parole Date (NPD) – same definition as CRD (historic sentences)
- Parole Eligibility Date (PED) – date the prisoner becomes eligible for the Parole Board to consider release from the sentence

Section 260 of the CJA 2003 initially provided that the maximum ERS period (the number of days a foreign national could be released before the earliest release point of their sentence) was 135 days. In April 2008 [the Early Removal of Fixed-Term Prisoners \(Amendment of Eligibility Period\) Order 2008](#) increased the maximum ERS period to 270 days. The maximum of 270 days applied only to sentences of at least 3 years; for those serving shorter sentences the early removal period was proportionately shorter.

Certain categories of prisoner were initially excluded from ERS by law (such as those serving extended sentences) but these exclusions were removed when provisions in sections 33 and 34 of the Criminal Justice Act 2003 came into force on 3 November 2008.

[Section 47 of the Nationality and Borders Act 2022](#) (NABA 2022) amended section 260 of the CJA 2003 to extend the maximum period a foreign national may be removed from custody to 12 months before the earliest point they may otherwise be released. Section 47 came into force on 28 April 2022 and implemented on 28 June 2022.

The actual ERS period in each case varies according to the length and type of sentence the foreign national receives. This is because legislation says one half of the 'requisite custodial period' of the sentence must be served before removal can take place. Therefore, the maximum of one year window applies only to sentences of at least 4 years (approx.) where the earliest release point of the sentence is at the halfway point and 3 years where the earliest release point is at the two thirds point of the sentence / custodial term. The ERS window will be proportionately shorter for sentences below these terms.

The prison is responsible for calculating the ERS Eligibility Date for each eligible foreign national and notifying Immigration Enforcement of this date on the referral form sent to FNO RC.

Section 47 of the NABA 2022 also introduced other amendments to the CJA 2003 which allow eligible foreign nationals to be removed under the ERS whenever they are in custody in respect of the sentence, on or after their ERS eligibility date. This brings into scope those recalled foreign nationals who were released from prison into the UK community, breached their licence conditions and are back in custody as a result of the licence being revoked by the Secretary of State.

Stop the clock provision

A foreign national removed under ERS on or after 28 June 2022 is subject to section 261 of the CJA 2003, as introduced by section 47 of the NABA 2022. The effect of this provision is to pause the foreign national's sentence at the point they were removed from prison under the ERS (this is known as the stop the clock provision). This means that should they return to the UK at any time in the future, they are required to be returned to custody to continue serving the remainder of the custodial part of their sentence from the point at which it was paused. Prior to the commencement of section 47 of the NABA 2022 foreign nationals removed under ERS who returned to the UK were only returned to prison if they were apprehended before their sentence expiry date.

Details of the relevant parts of the legislation governing ERS are available at annex H of the [Prison Service instruction \(PSI\) 4/2013](#). This instruction also provides full details of how the process currently works in England and Wales from the Prison Service perspective and should be referred to alongside these instructions. An overview of the joint process is included in annex A of the PSI.

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Eligibility

This section tells you which foreign nationals are eligible for removal under the Early Removal Scheme (ERS) and which are not.

Overview

All eligible foreign nationals in prison in England and Wales who are liable to have their removal from the UK enforced, must be considered for the ERS and they cannot opt out.

ERS only applies to foreign nationals in custody who are serving a 'sentence of imprisonment'. The Criminal Justice Act 2003 (CJA 2003) states that the periods of imprisonment imposed for the following reasons set out below are classed as 'terms of imprisonment' and not 'sentences of imprisonment':

- non-payment of fines
- confiscation orders
- civil forfeitures

ERS does not apply to the following categories of foreign nationals who are:

- serving an indeterminate sentence (who are considered under the Tariff-Expired Removal Scheme)
- on remand
- detained under immigration powers
- subject to a term of imprisonment for example non-payment of fines, confiscation order or civil forfeiture
- subject to Service Detention in the Military Corrective Training Centre
- subject to a Detention and Training Order
- serving sentences for terrorism offences and subject to the release provisions of Section [247A](#) of the CJA 2003

The prison governor is ultimately responsible for the decision to authorise early removal of a foreign national from prison, for the purpose of their removal from the UK. A governor may refuse to authorise early removal under ERS if there are reasons to do so. Examples of possible reasons to refuse include:

- evidence 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
- the foreign national has outstanding criminal charges or an outstanding confiscation order
- there are serious concerns for public safety if the person is released early

Foreign nationals not eligible for ERS

Life and indeterminate sentences

As ERS only applies to foreign nationals serving a determinate sentence, those serving indeterminate sentences such as life sentences or [Imprisonment for Public Protection](#) (IPP) sentences are ineligible.

Those foreign nationals sentenced to 'discretionary' or 'mandatory' life imprisonment (these terms distinguish between a maximum sentence for a crime from those where the sentence is fixed by law for example murder) or an indeterminate sentence have no automatic right to be released. Unlike determinate sentence offenders, who must be released at a specified point of their sentence, a foreign national sentenced to life imprisonment or an indeterminate sentence must serve the minimum period of imprisonment (also known as the 'tariff'), imposed by the relevant sentencing court, before release can be considered; however, this is not automatic.

The parole authority will only release a foreign national if they are satisfied the foreign national no longer poses a risk and it is not necessary for public protection for the person to remain in prison. If the foreign national is considered to pose a risk at the point they reach their 'tariff', release will not be authorised and they will continue to serve their sentence until the parole authorities deemed the risk is manageable.

All foreign nationals serving indeterminate sentences in England and Wales who are liable to removal from the UK must be considered under the Tariff-Expired Removal Scheme.

Confiscation orders

If a confiscation order is outstanding, ERS will not usually be authorised, even if the order is made while the foreign national is still serving their 'sentence of imprisonment' for the original offence. Prison governors will usually refuse to allow early removal of any such prisoner because prisoners who owe (often large) sums of money should not be permitted to avoid their liability to pay by leaving the UK early.

However, there may be circumstances where an exception may be considered, for example, if the prisoner is serving a long sentence and the amount of money owed is small (and therefore carries a very short default term say only a matter of days). It may be appropriate to permit the prisoner to be removed early given the very short default term. The prison governor must take the decision in consultation with relevant bodies. If a prisoner starts serving a default term for non-payment then they are no longer eligible for early removal under ERS.

Service detention in the Military Corrective Training Centre

Any sentence given by the Services Courts (Court Martial or Service Civilian Court) that is over 2 years in duration must be a 'sentence of imprisonment' and served in a prison. However, those military offenders who are eligible and who receive a

sentenced between 14 days to 2 years can under Military law on conviction, be given 'Service Detention' in the Military Corrective Training Centre (MCTC) if the court so adjudicates.

As the Armed Forces Act 2006 (AFA 2006) classifies custody in MCTC as 'Service Detention', a form of compulsory retraining and even though it differs from 'detention and training orders' handed down in civilian criminal courts both types of imprisonment do not fall under the eligibility requirements set down in law for ERS and the ERS provisions do not apply.

Further guidance on persons who can be given sentences under the AFA 2006 is at: [Sentences passed by the Service Justice System \(Court Martial and Service Civilian Court\)](#)

Detention and Training Orders

ERS does not apply to custody under a Detention and Training Order as this is considered to be a term of imprisonment rather than a sentence of imprisonment. A foreign national in custody under a Detention and Training Order (DTO) is not therefore eligible for early removal under ERS.

Certain sentence types

Extended Determinate Sentences cases (England & Wales only)

Extended Determinate Sentence (EDS) which replaced the IPP sentence and became available for courts to impose in respect of offenders convicted on or after 3 December 2012 in respect of specified sexual and violent offences. They were originally imposed under section 226A (offenders aged 18 or over) or section 226B (offenders aged under 18) of the CJA 2003. Following implementation of the Sentencing Act 2020 they are now imposed under section [254](#) (offenders under 18 years of age), section [266](#) (offenders aged 18 to 20) and section [279](#) (offenders aged 21 and over). The earliest date of release from an EDS is the two-thirds point of the custodial term and ERS will apply to such sentences – with the ERSED being a maximum of one year before the two-thirds point providing at least one third of the custodial term has been served in custody. For most EDS prisoners, release between the two-thirds and end point of the custodial term will be at the discretion of the Parole Board. The Governor may authorise the removal from prison of EDS prisoners for the purposes of removal from the UK without the need for a Parole Board release decision.

Where an EDS was imposed before 13 April 2015, had a custodial term of less than 10 years and the offence was not one included on [Schedule 15B](#) to the CJA 2003, the two-thirds point was an automatic conditional release date. They were not subject to the parole process.

Special custodial sentence for certain offenders of particular concern

The purpose of a Special custodial sentence for certain offenders of particular concern (SOPC) is to provide for a foreign national to be subject to a longer licence period after release, even though they had not been found under law to be 'dangerous' by the sentencing judge. This sentencing power came into force on 13 April 2015 as part of the Criminal Justice and Courts Act 2015 Schedule 1, Part 1, Paragraph 2 which inserted Section 236A of the CJA 2003 (and applied to anyone sentenced on or after that date). This legislation was superseded by section [265](#) and [278](#) of the Sentencing Act 2020. The requisite custodial period that must be served before the earliest date of release from anyone subject to a SOPC imposed before the 28 June 2022 is half of the custodial term. The ERS Eligibility Date (ERSED) is 1 year before that point provided one half of the requisite custodial period has been served

[The Police, Crime, Sentencing and Courts Act 2022](#) changed these release provisions. Eligibility for consideration for release on parole for a SOPCs imposed on or after 28 June 2022 will be at the two thirds point of the custodial term. This means that the ERSED for SOPCs will be up to 1 year before the two thirds point of the custodial term providing one third of the term has been served

Sentences passed by the Service Justice System (Court Martial and Service Civilian Court)

The Services Courts (Court Martial or Service Civilian Court) may pass sentence on the following people who have committed criminal offences which fall under [section 42](#) of the AFA 2006:

- foreign or Commonwealth members of HM Forces
- ex foreign or Commonwealth members of HM Forces where the offence(s) were committed while serving
- members of HM Reserve Forces when the offence(s) were committed while enlisted and at a time they were considered exempt from immigration control
- civilian staff of HM Forces and Ministry of Defence (MOD) defence contractors
- those residing or staying with HM Forces service personnel, civilian staff of HM Forces and MOD defence contractors within designated areas (Royal Air force flights, Royal Navy or Fleet Auxiliary ships or a British military bases overseas (See Part 1 of Schedule 15 of AFA 2006).For further information on and the jurisdiction of the courts see section [50](#), [51](#), [154](#), [277](#), [279](#), [280](#), [370](#) of the AFA 2006)

Court proceedings are held under English and Welsh criminal law. The effect of this is that a foreign national convicted and handed a 'sentence of imprisonment' by a Service Court, is subject to the same sentencing framework under [chapter 6 of part 2 of the](#) CJA 2003 as a foreign national who has been sentenced by non-military courts. Therefore, all foreign nationals sentenced to determinate sentences of imprisonment by a Service Court (which will be served in an English or Welsh prison)

are eligible for early removal under ERS on the same basis as any other eligible foreign national.

Young offenders

A foreign national sentenced to detention in a young offender institution or sentenced under [section 91 of the Powers of Criminal Courts \(Sentencing\) Act 2000](#) must be considered for early removal under ERS in line with adult offenders.

Required periods of custody for those eligible for ERS

The tables below set out the various periods a foreign national must serve in custody before early removal from prison under ERS can take place. This is determined by reference to the 'requisite custodial period' applicable to the sentence that the foreign national has received (see section [268](#) of the CJA 2003). These periods apply to all eligible determinate-sentenced offenders liable to deportation or removal.

ERS period for those serving sentences attracting release / parole at the halfway point of the sentence / custodial term:

Sentence length	Requisite period to be served before early removal can take place	Approximate length of early removal period
Less than 1463 days	One quarter of the sentence	One quarter of the sentence (up to one year depending on length of sentence)
1463 days or more	One year less than half the sentence (Conditional release date or parole eligibility date)	One year

ERS period for those serving sentences attracting release / parole at the two-thirds point of the sentence / custodial term:

Sentence length	Requisite period to be served before early removal can take place	Approximate length of early removal period
Where the custodial period is less than 1097 days (approximately 3 years)	One third of the custodial term	One third of the custodial term (up to one year depending on the length of the custodial term)
Where the custodial period is 1097 days (approximately 3 years)	One year less than the two-thirds point of the custodial term Parole Eligibility Date (PED) or Conditional Release Date (CRD)	One year

The prison service is responsible for calculating the ERS Eligibility Date (ERSEDs) and will notify the Home Office of the date.

The ERSED must be recorded on the FNO RC referral form submitted by the prison to FNO RC when referring a newly sentenced foreign national offender.

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Responsibilities

This section tells you who is involved in administering the ERS and their individual responsibilities.

Prison administrative staff

Prison administrative staff are responsible for calculating a foreign national's ERS Eligibility Date (ERS ED) and including the date on the FNO RC referral form. They must also inform the Home Office of any subsequent changes to key dates or the foreign national's circumstances (for example if a further period of imprisonment has been imposed).

Foreign National Offender Returns Command (FNO RC)

It is for the Home Office to decide if a foreign national can be deported or removed from the UK. FNO RC is responsible for informing the prison when we are able to remove the foreign national within the ERS period and for pursuing that action in due course.

The prison governor

Prison governors are responsible for authorising the early removal of foreign nationals from prison under ERS (where a person is eligible for removal under ERS).

Prison governors must refer any ERS case to the Chief Executive of the HM Prison & Probation Service (HMPPS) via the Release Policy team in the Ministry of Justice for a decision if it is considered to be a 'notorious' case or a crime of particular concern to the public.

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Consideration of removal under ERS

This section tells you about action to take when a foreign national in scope of the Early Removal Scheme (ERS) is referred to FNO RC.

Where a foreign national eligible for ERS is referred to FNO RC, appropriate action must be taken to ensure the person is removed on, or as soon as possible after, the ERS Eligibility Date (ERSED). ERS cases must be reviewed regularly and if there are delays in consideration or significant changes in circumstances, the relevant prison must be informed immediately.

Referral of foreign nationals to FNO RC

Prisons refer all custodial sentenced foreign national offenders to FNO RC using an electronic referral form. The ERSED is calculated at the same time as other key dates such as the conditional release date and is included on the referral form. The form is multipurpose and is used to notify FNO RC not only of newly sentenced foreign national offenders but also transfers and changes to key dates.

The prison sends the form to FNO RC's Intake and Triage team who prepare the necessary paperwork and allocate the case to a FNO RC caseworker to process the case towards deportation or removal if appropriate, ideally in time for the foreign national's ERSED.

The same form is used by FNO RC to confirm to the prison the foreign national's immigration status and likely removability (whether the Home Office intends and is able to deport or otherwise remove the prisoner during their ERS period). The form is also used by FNO RC to inform the prison of the caseworker's contact details.

Once the prison governor has made a decision as to early removal under ERS, the prison will issue either an 'ERS authorisation form' or an 'ERS refusal form' to the prisoner and copy it to FNO RC. If FNO RC confirm they will pursue deportation and ERS is authorised by the prison governor, FNO RC can then proceed towards deportation and ideally set removal directions for the ERSED or as soon as possible thereafter.

Initial FNO RC Intake and Triage process

On receipt of a referral, FNO RC Intake and Triage will decide whether deportation or removal is appropriate. Where it is considered that the relevant criteria for deportation are satisfied, action will be taken forward on the case.

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Assessment of removability and referral back to the prison

The FNO RC caseworker must assess the foreign national's immigration status and removability. Where it is decided that deportation will be pursued, the caseworker must enter details of the assessment onto the FNO RC referral form and return it to the relevant prison.

If the caseworker considers it is likely that the foreign national can be removed within their ERS period, they must seek formal authorisation for early removal for the purpose of their deportation or removal. Only the prison governor can give this authorisation.

Section 2 of the electronic referral form should clearly indicate whether removal can take place within the ERS period, along with full reasons to explain this consideration. The form will be passed to the prison governor who will consider authorising removal where applicable. Only on receipt of the completed FNO RC referral form can the governor consider the removal from prison of that foreign national under ERS.

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Consideration of early removal under ERS where deportation is not pursued

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Governor authorisation or refusal of ERS and referral back to FNO RC

Only prison governors can authorise a foreign national's early removal from prison for deportation or removal purposes.

If a governor authorises early removal from prison under ERS, they must complete an ERS authorisation form and serve it on the foreign national and return a copy to FNO RC. Deportation or removal arrangements can be made once the form has been returned to FNO RC.

If a governor refuses to authorise early removal of a foreign national under ERS, they must complete an ERS refusal form including recording the reasons for refusal, serve it on the foreign national and return a copy to FNO RC to note deportation under ERS cannot now proceed.

If a governor refuses to authorise a foreign national's early removal under ERS, but the criteria for deportation is met, the caseworker must take the appropriate action to progress deportation. However, deportation will not be able to take place until the foreign national is released from prison at their relevant automatic, conditional release or approved parole release date.

Casework action where early removal under ERS has been refused

If the prison governor refuses to authorise a foreign national's early removal under ERS, you must ensure that:

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Action post-authorisation of removal under ERS

This section tells you about action to take when a governor has authorised the removal of a foreign national under the Early Removal Scheme (ERS).

Following authorisation of a foreign national's early removal from prison by the prison governor under ERS, you must ensure that:

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Casework process

All cases

Casework action

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This pack must include the:

- IS.91
- IS.91R ERS TERS (do not use IS.91R as the foreign national has no right to bail as they remain subject to their prison sentence)
- IS.91RA

There is no legal provision for Immigration Removal Centres (IRCs) to hold foreign nationals who are not detained under Immigration Act powers so an IS.91 is needed, even though the existing prison sentence provides a power to detain under section [260\(4\)\(b\) of the Criminal Justice Act 2003](#).

Removals Desk action

Removals Desk will set removal directions (RDs) for a foreign national so that, where possible, they go directly from prison to the airport and onto a flight and are not detained in an IRC.

RDs must not be set prior to the ERSED because the foreign national cannot be removed from custody before that date.

A foreign national being removed from prison under ERS must not be accommodated overnight or over the weekend in an IRC unless it is **absolutely necessary**.

A foreign national **should not normally be detained for more than 48 hours** in immigration detention prior to removal (unless that is the only available flight to that destination – or there are absolutely no escorts available at another time to cover the removal). After that time a foreign national is required to be returned to prison as they will be deemed to be unlawfully at large (UAL) by HM Prison and Probation Service (HMPPS).

Removals Desk will serve removal directions on legal representatives at the same time it is sent to the foreign national.

Removals Desk will inform the caseworker once they have set a removal date for the foreign national.

Deportation cases

The caseworker will confirm with the Removals Desk that the RDs for the foreign national do not require them to be detained in an IRC prior to removal; if it does it must be the only option especially if it is for more than 48 hours.

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Before removal directions are scheduled, all necessary arrangements must be in place operationally for removal to go ahead on or as soon after the ERSED as possible, involving FNO RC Removals Desk and Detention and Escorting Population Management unit (DEPMU) where required):

Where the **bilateral consular convention on detention** applies (see 55.18 Notification of detention to High Commissions and Consulates in Chapter 55 for further information) due to the foreign national’s nationality, an **IS.94 must be sent** if the foreign national is to be detained for more than 24 hours in an IRC before deportation, **unless there is or has been an asylum claim** or a **suggestion of a claim could be forthcoming**:

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Administrative removal

In all cases, casework barriers should be properly resolved prior to ERS eligibility date (ERSED) or as soon as possible thereafter.

The foreign national **must also be served with** the following on or before ERS date: the RED.0001, or IS.151A(EEA), IS.151B(EEA) and appeal papers (where removal is under the EEA Regulations).

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Where the **bilateral consular convention on detention** applies (see 55.18 Notification of detention to High Commissions and Consulates in Chapter 55 for further information) due to the foreign national’s nationality, an **IS.94 must be sent** if the foreign national is to be detained for more than 24 hours in an IRC before deportation, **unless there is or has been an asylum claim or a suggestion of a claim could be forthcoming:**

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Removal or deportation does not proceed

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If, after a failed removal a foreign national is likely to be **held for more than 24 hours** the decision maker **must make arrangements** as soon as possible, for their return to prison to continue serving their sentence. This **should be no more than 48 hours** from the date the foreign national was released from prison, as they will be deemed unlawfully at large (UAL) by HM Prison and Probation Service (HMPPS):

Where the **bilateral consular convention on detention** applies, a IS.94 **must be sent** if the foreign national is to be detained for more than 24 hours before being returned to prison, unless one had already been sent due to the foreign national being detained in an IRC prior to removal.

Where appropriate, action should be taken to resolve any existing or new barriers that have arisen before removal directions are set by FNO RC Removals Desk.

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Post-deportation action

This section tells you about action to take once a foreign national has been removed from the UK under the Early Removal Scheme (ERS).

Following a successful deportation or removal under ERS, you must make sure all of the following post deportation actions are completed.

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Post-deportation returns to the UK

This section tells you how to deal with a foreign national who returns to the UK following removal under the Early Removal Scheme (ERS).

Return in breach of a deportation order

A foreign national subject to a deportation order who knowingly enters the UK in breach of a deportation order commits an offence under section 24(A1) of the Immigration Act 1971, as amended by [section 40](#) of the Nationality and Borders Act 2022 (NABA 2022). The maximum sentence for entering in breach of a deportation order is 5 years.

Foreign national encountered at the border

If a foreign national subject to a deportation order is encountered at the border they will be refused permission to enter in accordance with the Immigration Rules and removed under paragraph 8(1) or 10(1) of Schedule 2 of the Immigration Act 1971.

Where a person is covered by either:

- [the Citizens' Rights \(Application Deadline and Temporary Protection\) \(EU Exit\) Regulations 2020 \(Grace Period Regulations 2020\)](#)
- [the Citizens' Rights \(Frontier Workers\) \(EU Exit\) Regulations 2020 \(Frontier Workers Regulations 2020\)](#)

and is subject to a deportation order, admission must be refused under [regulation 23\(2\)](#) of the Immigration (European Economic Area) Regulations 2016 (EEA Regulations 2016), as saved, and regulation [12\(2\) of the Frontier Workers Regulations 2020](#) unless they are seeking to be admitted temporarily for an appeal hearing and have permission to do so.

Where a foreign national was removed under ERS:

- before 28 June 2022 and have yet to reach their sentence expiry date (SED)
- **on or after** 28 June 2022 and therefore subject to the '[stop the clock](#)' provision within the NABA 2022

and removal is **scheduled to take place within 48 hours** of the foreign national's arrival, the Border Force Officer **does not need to inform** HM Prison and Probation Service (HMPPS).

The foreign national **must not be detained beyond 48 hours** at the border (even where a removal is scheduled). Where the foreign national **cannot be removed within 48 hours of arrival** or where a **refusal of detention is received from the Detention Gate Keeper**, the person is considered unlawfully at large (UAL) and action must be taken to return the foreign national to prison. Further guidance is at: [returning a foreign national to prison](#).

Foreign national returning to the UK for appeal hearing

[Regulation 41](#) of the EEA Regulations 2016 provides for the temporary admission of a person removed under [regulation 33](#) to submit their case in person at their appeal. A person may apply for permission to be temporarily admitted (within the meaning of paragraphs [21 to 24 of Schedule 2](#) to the 1971 Act) to the UK in order to make submissions in person at their appeal where:

- they are subject to a decision to remove (deport) made under regulation [23\(6\)\(b\)](#)
- they have appealed against that decision
- a date for the appeal hearing has been set by the First-tier Tribunal or Upper Tribunal
- they want to make submissions before the First-tier Tribunal or Upper Tribunal in person, and they are outside the UK

Where a foreign national has applied for, and been granted, temporary admission under regulation 41, arrangements must be made for their return to prison:

- where removal under ERS was before 28 June 2022 and the date of return is before the sentence expiry date
- to continue serving the balance of their sentence where removal under ERS was on or after 28 June 2022

In such cases the foreign national will be detained for the duration of their immigration appeal and their subsequent removal from the UK will be under the original ERS decision. There is no requirement for a new ERS decision to be made but this does not prevent a prison governor from deciding that removal under ERS is no longer appropriate if the circumstances change.

Where a foreign national is given temporary permission to return to the UK for their appeal the caseworker must liaise with HMPPS, Detention and Escorting Population Management unit (DEPMU) and all other applicable agencies, to ensure the foreign national is picked up at the airport on arrival and taken to the relevant prison serving the IAC court at which the appeal is to be heard. The prison will then be responsible for organising all the escorts to and from prison to the IAC hearing(s). The caseworker is responsible for the foreign national's subsequent removal under the original ERS decision including ensuring escorts are in place to collect them and return them to the airport for the flight home after their appeal to the IAC has been heard.

Where the foreign national was removed under ERS before 28 June 2022 and the date of return will be after the sentence expiry date, the caseworker must liaise with Detention Gate Keeper, DEPMU and all other applicable agencies, to ensure the foreign national is picked up at the airport on arrival and either detained and taken to the relevant IRC serving the venue at which the appeal is to be heard or bailed with appropriate conditions. If the foreign national is to be detained, then arrangements must be put in place for escorts to collect the foreign national immediately after the

hearing to return them to the airport for the flight home. The IRC will be responsible for organising all the escorts to and from the IRC to the appeal hearing.

Foreign national encountered in the UK

Where a foreign national is encountered in the UK, other than at the border, they will be liable to be detained in accordance with section [260](#) or [261](#) of the Criminal Justice Act 2003 (CJA 2003) and returned to prison if they were removed under ERS:

- before 28 June 2022 and have yet to reach their sentence expiry date (SED)
- on or after 28 June 2022 and therefore subject to the '[stop the clock](#)' provision within the NABA 2022

The person is deemed to be unlawfully at large in accordance with section 49 of the Prison Act 1952 and the Public Protection Casework Section (PPCS) must be contacted and will arrange for the foreign national's arrest and return to prison. Further guidance is at: [returning a foreign national to prison](#).

Where the foreign national was removed under ERS before 28 June 2022 and the sentence expiry date has passed, consideration should be given to removal will be under [Schedule 2](#) or [Schedule 3](#) of the Immigration Act 1971 where a decision has been made not to prosecute the person under section 24(A1) of the Immigration Act 1971.

Return following revocation of a deportation order

Where a foreign national returns to the UK after they have been removed under ERS and where:

- their deportation order is revoked following an allowed appeal or a successful application
- they have been granted permission to enter the UK

they will be liable to be detained in accordance with section 260 or 261 of the CJA 2003 if they were removed under ERS:

- before 28 June 2022 and have yet to reach their sentence expiry date (SED)
- on or after 28 June 2022 and therefore subject to the '[stop the clock](#)' provision within the NABA 2022

Regardless of the foreign national's immigration status they are still deemed by HMPPS to be both **Unlawfully At Large** and subject to **Return to Prison**. The Border Force Office is required to detain the person and contact the Public Protection Casework Section (PPCS) to arrange for the foreign national's arrest and **return to prison**.

At the time a deportation order is revoked, the foreign national will be made aware of the consequences (arrest and return to prison) if they obtain an entry clearance and decide to return to the UK.

Returning a foreign national to prison

Where a foreign national is encountered in the UK and is deemed to be unlawfully at large under [section 49 of the Prison Act 1952](#) they must be detained and returned to custody to continue serving the remainder of their sentence.

Where a foreign national is to be returned to custody, you must contact the Public Protection Casework Section (PPCS) in HMPPS. PPCS will contact the relevant police force to arrange for the foreign national to be arrested and returned to prison.

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Related content

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EEA decisions on grounds of public policy and public security
Regulations 33 and 41 of the Immigration (European Economic Area) Regulations
2016

ERS removals following return to the UK

This section tells you about the removal of a foreign national under the Early Removal Scheme (ERS) where they have returned to the UK and are in prison.

A foreign national who has previously been deported or removed from the UK under ERS can be considered for removal under ERS again if they:

- have entered the UK and received a custodial sentence for a new offence
- have been returned to prison to continue serving a previous custodial sentence

ERS decision where person previously deported or removed

If a foreign national is returned to prison to continue serving their custodial sentence, there is no statutory barrier to setting removal directions. A new ERS decision is not needed and an offender may be re-removed under the original early removal authorisation, whilst serving the outstanding custodial periods. That is providing there are no reasons to refuse early removal or the offender has had their sentence re-calculated under the provisions of section [247A of the Criminal Justice Act 2003](#) (CJA 2003).

Those knowingly returning in breach of a deportation order will have committed an offence under section 24(A1) of the Immigration Act 1971. Before consideration is given to removing a foreign national who has entered in breach of a deportation order under ERS, you must check there are no ongoing criminal proceedings originating from illegal entry. The outcome of the prosecution for knowingly entering in breach of a deportation order could be an additional sentence of imprisonment of up to five years or a fine (or both).

Casework action

Once a foreign national is returned to prison it will be for the prison to recalculate the sentence dates to determine a new release date (this will depend on the type and length of the sentence).

Once in receipt of the release date, the FNO RC caseworker must decide whether to it is possible to re-remove whilst the offender is still serving the outstanding custodial periods. It may not be appropriate / possible:

- where there are only a few days left of the foreign national's ERS period
- it is known further charges are being brought against the foreign national
- where there are barriers to their removal such as securing documentation or concluding further representations

The decision to allow re-removal under ERS remains with the prison governor. Previous authorisation of ERS does not mean a prisoner will automatically be allowed to be removed again under the original ERS decision. Should this happen and re-removal is refused by the governor you must ensure that:

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Re-removal under ERS of who left before 28 June 2022

Foreign nationals removed under ERS before 28 June 2022 and their subsequent apprehension prior to their SED, has results in their return to prison. Should the decision be made not to prosecute, under section 24(A1) of the Immigration Act 1971 and they are subsequently re-removed post 28 June 2022 under ERS; while still having time to serve on their custodial sentence. Then in these circumstances, they will automatically become subject to the ‘stop the clock provisions’ of the NABA 2022.

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Related content

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Ministry of Justice contacts

This page tells you who to contact in the Ministry of Justice (MOJ) about the Early Removal Scheme (ERS).

MoJ can provide policy guidance on the ERS, assist with a specific case involving ERS and unlawful returns to the UK following removal under ERS.

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[HM Prison and Probation Service Prison list](#)

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