



Home Office

Criminal casework

The early removal scheme (ERS)

The early removal scheme (ERS)

Criminal casework early removal scheme: about this guidance

<p>About this guidance Eligibility for ERS Specific case types Responsibilities under ERS Process for ERS in England and Wales Previous process for ERS in England and Wales Ministry of Justice – contacts</p>	<p>This guidance tells criminal casework (CC) caseworkers about the early removal scheme (ERS) for foreign national offenders (FNOs).</p> <p>It tells you about eligibility for the scheme, owned by the Ministry of Justice (MOJ) and the National Offender Management Service (NOMS), and how it is administered by:</p> <ul style="list-style-type: none">• Home Office immigration enforcement• Her Majesty’s Prison Service (HMPS)• NOMS Public Protection Casework Section (PPCS) <p>Section 260 of the Criminal Justice Act 2003 introduced an ERS for determinate sentenced FNOs in England and Wales, which includes non-European and European Economic Area (EEA) nationals, and is mandatory for all who are liable for deportation or removal from the UK. For more information on section 260, see related link.</p> <p>The provisions came into force on 14 June 2004. This means eligible FNOs can be released up to 270 days before the halfway point of their sentence for the purpose of deportation or removal from the UK.</p> <p>For example, on or after their ERS eligibility date but before their conditional release date, automatic release date or parole eligibility date.</p> <p>From 7 April 2008 the maximum ERS period was doubled from 135 to 270 days, although the actual ERS period in each case varies according to the length of the sentence the FNO receives. This is because legislation says at least one quarter of a sentence must be served before removal can take place. Therefore, the maximum of 270 days applies only to sentences of at least three years, but will be proportionately shorter for shorter sentences.</p> <p>The prison is responsible for calculating the ERS eligibility date in each case, and notifying immigration enforcement of this date on the referral form sent to CC.</p>	<p>Related links See also</p> <p>Links to staff intranet removed</p> <p>External links Section 260 Criminal Justice Act 2003 Section 33 Criminal Justice Act 2008 Section 34 Criminal Justice Act 2008</p>
---	---	---

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 2008 came into force on 3 November 2008. For more information, see related links.

Details of the relevant parts of legislation governing the early removal scheme are available at annex H of the Prison Service Instruction (PSI) 4/2013 (see related link). 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 as a useful aid to these instructions. An overview of the process is at related link: Early removal scheme - flowchart.

ERS was introduced in Scotland from 4 November 2011. However, Scotland continues to operate the scheme similarly to the process in place in England and Wales before that date. The relevant guidance applying to Scottish ERS cases can be found at related link: Early removal scheme: (Scotland). ERS does not currently operate in Northern Ireland.

ERS is a mandatory scheme under which all eligible FNOs must be considered. The scheme simply provides a power for the Secretary of State to release FNOs from prison for the sole purpose of removal or deportation from the UK at a different point in their sentence than would otherwise be possible. The scheme does not affect the Home Office's normal consideration or processes for deportation or removal, except that the process should begin 18 months before the ERS eligibility date.

You must note that where 'deportation' is referred to in this guidance, it presumes that the FNO meets the relevant criteria for this, and that CC will be considering the case. Removals and compliance casework (RCC) or immigration compliance and engagement (ICE) teams may consider other categories of 'removal' (administrative, as an illegal entrant) where deportation is not appropriate for any reason.

For information on the tariff expired scheme for FNOs with an indeterminate sentence see related link: The tariff-expired removal scheme (TERS).

Changes to this guidance – tells you what has changed since previous versions of this guidance.

	<p>Contacts – this page explains who to contact for more help with a specific question on public funds</p> <p>Information owners – tells you who the information owners are for public funds and tells how the guidance can be updated.</p> <p>Safeguard and promote child welfare – explains your duty to safeguard and promote the welfare of children and tells you where to find out more.</p>	
--	--	--

The early removal scheme (ERS)

Criminal casework early removal scheme: changes to this guidance

[About this guidance](#)
[Eligibility for ERS](#)
[Specific case types](#)
[Responsibilities under ERS](#)
[Process for ERS in England and Wales](#)
[Previous process for ERS in England and Wales](#)
[Ministry of Justice – contacts](#)

This page lists the changes to the ‘Early removal scheme’ guidance, with the most recent at the top.

Date of the change	Details of the change
01 July 2016	Change request <ul style="list-style-type: none"> Changes to contact details for the Public Protection Casework Section in the ‘Unlawfully at large’ section and the ‘Ministry of Justice: contacts’ section
22 October 2015	Change request <ul style="list-style-type: none"> to clarify that FNO cases will be referred to CCD within ten working days of sentence/transfer rather than five
14 October 2015	Change request <ul style="list-style-type: none"> delete information regarding EEA foreign national offenders and the (ERS) early removal scheme
20 June 2013	Change request <ul style="list-style-type: none"> Ministry of justice contacts: <ul style="list-style-type: none"> Change to restricted box.
11 March 2014	Six month review by the modernised guidance team: <ul style="list-style-type: none"> European Economic Area (EEA) nationals:

Related links
[Allocation to CC caseworking team \(deportation criteria met\)](#)

See also
[Contact](#)

[Information owner](#)

[Removal - Archive](#)

		<ul style="list-style-type: none"> ○ first paragraph re-written. ● Allocation to CC caseworking team (deportation criteria met): <ul style="list-style-type: none"> ○ bullet points put into a table. ● Minor housekeeping and plain English changes throughout. 		
	24 September 2013	<p>Six month review by the modernised guidance team:</p> <ul style="list-style-type: none"> ● About this guidance <ul style="list-style-type: none"> ○ Third paragraph, new related link added ○ Eight paragraph, new related link added ● Eligibility for ERS <ul style="list-style-type: none"> ○ New sub bullet point added ● Default or civil terms of imprisonment <ul style="list-style-type: none"> ○ Third paragraph, bullets points added ● Former enhanced risk assessment (ERA) cases <ul style="list-style-type: none"> ○ Second paragraph, bullet points added ● European economic Area (EEA) nationals <ul style="list-style-type: none"> ○ Third paragraph, bullet points added ○ Fourth paragraph, new second sentence ○ Fifth paragraph, first sentence deleted ● Allocation to CC caseworking team (deportation criteria met) <ul style="list-style-type: none"> ○ Subheading 'case not allocated' change to first sentence and new related link added ○ New second paragraph and bullet points ○ Subheading 'No file exists' bullet points 		

		<p>added</p> <ul style="list-style-type: none"> • Allocation to removals and compliance casework (deportation criteria not met) <ul style="list-style-type: none"> ○ Second paragraph removed ○ New second and third paragraph ○ Fourth and fifth paragraphs deleted ○ Last sentence removed ○ New final paragraph • Assessment of removability by CC and referral back to prison <ul style="list-style-type: none"> ○ Changes to second paragraph ○ Penultimate paragraph, reference to a link added. • Authorisation or refusal of ERS and referral back to CC <ul style="list-style-type: none"> ○ Fourth paragraph, reference to related link added. • Action post-refusal of ERS <ul style="list-style-type: none"> ○ Fifth paragraph changed • Previous process for ERS in England and Wales <ul style="list-style-type: none"> ○ Changes to fourth paragraph. 		
	27 March 2013	Revised and modernised by criminal casework directorate process team and the modernised guidance team.		

The early removal scheme (ERS)

Eligibility for ERS

<p>About this guidance Eligibility for ERS Specific case types Responsibilities under ERS Process for ERS in England and Wales Previous process for ERS in England and Wales Ministry of Justice – contacts</p>	<p>This section tells criminal casework (CC) caseworkers which foreign national offenders (FNOs) are eligible under the early removal scheme (ERS) and which are not.</p> <p>The ERS is a mandatory scheme for all FNOs who are liable to deportation or removal from the UK. This means that those eligible cannot opt out however, a number of FNOs remain ineligible for the ERS. These are those:</p> <ul style="list-style-type: none">• with an indeterminate sentence:<ul style="list-style-type: none">○ these people will be considered under the tariff-expired removal scheme, for more information see related link• on remand• detained under immigration powers• subject to further custodial requirements, outstanding criminal charges or an outstanding confiscation order <p>The prison governor, who is ultimately responsible for authorising release of a FNO from prison for the purposes of early removal, may still refuse to allow a FNO to be released under the ERS if there are other reasons to do so. Examples of possible reasons to refuse include:</p> <ul style="list-style-type: none">• 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• serving a sentence for a terrorism-related offence <p>other matters of similar seriousness relating to public safety.</p>	<p>Related links See also</p> <p>Links to staff intranet removed</p> <p>In this section Required periods of custody</p>
---	--	--

The early removal scheme (ERS)

Required periods of custody

[About this guidance](#)
[Eligibility for ERS](#)
[Specific case types](#)
[Responsibilities under ERS](#)
[Process for ERS in England and Wales](#)
[Previous process for ERS in England and Wales](#)
[Ministry of Justice – contacts](#)

This page tells criminal casework (CC) caseworkers the required periods of custody a foreign national offender (FNO) must serve before they can be removed under the early removal scheme (ERS).

The table below sets out the various periods a FNO must serve in custody before they can be removed. This is determined by the length of their sentence. These periods apply to all eligible determinate sentence FNOs liable to deportation or removal.

Sentence length	Requisite period to be served before early removal can take place	Approximate length of early removal period
Less than three years	One quarter of the sentence	One quarter of the sentence (up to 270 days depending on length of sentence)
Three years or more	270 days less than half the sentence (Conditional release date or parole eligibility date)	270 days

The prison service is responsible for the calculation of ERS eligibility dates (ERSEDs) for FNOs and it is mandatory for them to make sure this calculation is made accurately and the Home Office is notified of the correct ERSED.

This must be recorded on the CC referral form submitted by the prison to criminal casework (CC) within ten days of sentencing and/or following the transfer of the prisoner to a different holding establishment.

The early removal scheme (ERS)

Specific case types

<p>About this guidance Eligibility for ERS Specific case types Responsibilities under ERS Process for ERS in England and Wales Previous process for ERS in England and Wales Ministry of Justice – contacts</p>	<p>This section tells criminal casework (CC) caseworkers whether certain specific types of foreign national offender (FNO) are eligible for the early removal scheme (ERS).</p> <p>The majority of FNOs who are liable to any action to enforce their departure from the UK and have yet to reach the halfway point of their custodial sentence will be eligible for ERS.</p> <p>The main categories not eligible are set out at this link: Eligibility for the scheme.</p> <p>However, there are some specific types of FNO cases where eligibility for ERS may be unclear. For more information on these see related links.</p>	<p>Related links</p> <p>Default or civil terms of imprisonment</p> <p>Young offenders</p> <p>People previously deported or removed under ERS or FRS</p> <p>Unlawfully at large (UAL)</p> <p>Sentences passed by a court martial</p> <p>Former enhanced risk assessment (ERA) cases</p> <p>European Economic Area (EEA) nationals</p> <p>Tariff-expired indeterminate-sentence FNOs</p> <p>See also</p> <p>Links to staff intranet removed</p>
---	---	---

		Links to staff intranet removed
--	--	---------------------------------

The early removal scheme (ERS)

Default or civil terms of imprisonment

<p>About this guidance Eligibility for ERS Specific case types Responsibilities under ERS Process for ERS in England and Wales Previous process for ERS in England and Wales Ministry of Justice – contacts</p>	<p>This page tells criminal casework (CC) caseworkers about default or civil terms of imprisonment.</p> <p>The early removal scheme (ERS) only applies to foreign national offenders (FNOs), in custody, who are serving a ‘sentence of imprisonment’.</p> <p>The Criminal Justice Acts (CJA) 1991 and 2003 say a term of imprisonment imposed following:</p> <ul style="list-style-type: none">• non-payment of fines• confiscation orders• civil forfeitures <p>is not a ‘sentence of imprisonment’ and so there is no legal provision to remove prisoners early under ERS if they are serving such terms. If you are processing ERS cases you must not confuse such terms of imprisonment with those imposed directly by sentence.</p> <p>If a confiscation order is outstanding, ERS cannot be authorised, even if the order is made while the FNO is still serving their sentence for the original offence. Prison governors will usually refuse to release any such prisoner early on the basis that prisoners who owe (often large) sums of money should not be permitted to avoid their liability to pay by leaving the UK early.</p> <p>However, there may be circumstances where 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 nine months early for the sake of serving a very short default term. The prison governor must take the decision in consultation with relevant bodies. Once a prisoner starts serving a default term for non-payment, however, there is no power to allow ERS.</p>	<p>Related links</p> <p>Young offenders</p> <p>People previously deported or removed under ERS or FRS</p> <p>Unlawfully at large (UAL)</p> <p>Sentences passed by a court martial</p> <p>Former enhanced risk assessment (ERA) cases</p> <p>European Economic Area (EEA) nationals</p> <p>Tariff-expired indeterminate-sentence FNOs</p>
---	---	---

The early removal scheme (ERS)

Young offenders

<p>About this guidance Eligibility for ERS Specific case types Responsibilities under ERS Process for ERS in England and Wales Previous process for ERS in England and Wales Ministry of Justice – contacts</p>	<p>This page tells criminal casework (CC) caseworkers about young offenders.</p> <p>Those foreign national offenders (FNOs) 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 the early removal scheme (ERS) in line with adult offenders.</p> <p>However, if the young offender is in custody under a Detention and Training Order (DTO), they cannot be removed under ERS, so custody is considered to be a ‘term’ rather than a ‘sentence’ of imprisonment, and therefore the ERS provisions do not apply.</p> <p>For more information on DTOs, see related link: Managing FNOs under 18.</p>	<p>Related links</p> <p>Default or civil terms of imprisonment</p> <p>People previously deported or removed under ERS or FRS</p> <p>Unlawfully at large (UAL)</p> <p>Sentences passed by a court martial</p> <p>Former enhanced risk assessment (ERA) cases</p> <p>European Economic Area (EEA) nationals</p> <p>Tariff-expired indeterminate-sentence FNOs</p> <p>See also Links to staff intranet removed</p>
---	---	---

The early removal scheme (ERS)

People previously deported or removed under ERS or FRS

<p>About this guidance Eligibility for ERS Specific case types Responsibilities under ERS Process for ERS in England and Wales Previous process for ERS in England and Wales Ministry of Justice – contacts</p>	<p>This page tells criminal casework (CC) caseworkers about people previously deported or removed under the early removal scheme (ERS) or the facilitated return scheme (FRS).</p> <p>Foreign national offenders (FNOs) who have been deported or removed from the UK previously, whether early under ERS or not, are not excluded from ERS again on a subsequent sentence. They must be considered in accordance with the usual eligibility criteria.</p> <p>You should note that anyone who previously benefited from financial assistance under FRS can also still be removed early under ERS on a subsequent sentence, but are unlikely to be awarded any further financial assistance (see related link: The facilitated return scheme).</p>	<p>Related links</p> <p>Default or civil terms of imprisonment</p> <p>Young offenders Unlawfully at large (UAL)</p> <p>Sentences passed by a court martial</p> <p>Former enhanced risk assessment (ERA) cases</p> <p>European Economic Area (EEA) nationals</p> <p>Tariff-expired indeterminate-sentence FNOs</p> <p>See also</p> <p>Links to staff intranet removed</p>
---	---	--

The early removal scheme (ERS)

Unlawfully at large (UAL)

<p>About this guidance Eligibility for ERS Specific case types Responsibilities under ERS Process for ERS in England and Wales Previous process for ERS in England and Wales Ministry of Justice – contacts</p>	<p>This page tells criminal casework (CC) caseworkers about foreign national offenders (FNOs) who are unlawfully at large (UAL).</p> <p>Any FNO released early for removal under the early removal scheme (ERS) and is removed, but later returns to the UK before the end of their original sentence expiry date (SED), is considered to be UAL and liable to be detained in pursuance of their sentence in accordance with section 261(2) of the Criminal Justice Acts (CJA) 2003, see related link.</p> <p>They should be returned to custody to serve an outstanding custodial period equivalent to the period of time they would have served if they had not been released early.</p> <p>To make sure this happens, if you become aware that a FNO deported under ERS has returned to the UK, you must contact the Public Protection Casework Section (PPCS) of the National Offender Management Service (NOMS) using the following contacts:</p> <div style="border: 2px solid red; padding: 10px; text-align: center;"><p>Official sensitive do not disclose – start of section</p><p>The information in this page has been removed as it is for internal Home Office use only.</p><p>Official sensitive do not disclose – end of section</p></div> <p>The PPCS will make sure the relevant police force is contacted to arrange the UAL FNO to be arrested and returned to prison. The FNO will not be eligible for further consideration under ERS whilst they are serving the outstanding custodial period.</p> <p>If a FNO is apprehended after expiry of their SED and there is no evidence they re-entered the UK on a lawful basis, the relevant immigration compliance and engagement team (ICET) must be contacted with a view to them taking appropriate enforcement action.</p>	<p>Related links</p> <p>Default or civil terms of imprisonment</p> <p>Young offenders People previously deported or removed under ERS or FRS</p> <p>Sentences passed by a court martial</p> <p>Former enhanced risk assessment (ERA) cases</p> <p>European Economic Area (EEA) nationals</p> <p>Tariff-expired indeterminate-sentence FNOs</p> <p>External links</p> <p>Section 261 Criminal Justice Act 2003</p>
---	---	---

	If a FNO who was UAL is subsequently sentenced to a further term of imprisonment, they will be eligible again for ERS.	
--	--	--

The early removal scheme (ERS)

Sentences passed by a court martial

<p>About this guidance Eligibility for ERS Specific case types Responsibilities under ERS Process for ERS in England and Wales Previous process for ERS in England and Wales Ministry of Justice – contacts</p>	<p>This page tells criminal casework (CC) caseworkers about foreign national offenders (FNOs) sentenced by a court martial.</p> <p>FNOs serving sentences of imprisonment imposed by court martial and subject to the same sentencing framework under part 2 of the Criminal Justice Acts (CJA) 1991 or chapter 6 of the CJA 2003 as offenders who have been sentenced by non-military courts must be assessed for the early removal scheme (ERS) on the same basis as other offenders.</p>	<p>Related links</p> <p>Default or civil terms of imprisonment</p> <p>Young offenders People previously deported or removed under ERS or FRS</p> <p>Unlawfully at large (UAL)</p> <p>Former enhanced risk assessment (ERA) cases</p> <p>European Economic Area (EEA) nationals</p> <p>Tariff-expired indeterminate-sentence FNOs</p>
---	---	---

The early removal scheme (ERS)

Former enhanced risk assessment (ERA) cases

<p>About this guidance Eligibility for ERS Specific case types Responsibilities under ERS Process for ERS in England and Wales Previous process for ERS in England and Wales Ministry of Justice – contacts</p>	<p>This page tells criminal casework (CC) caseworkers about former enhanced risk assessment (ERA) cases.</p> <p>Until February 2011, foreign national offenders (FNOs) who were:</p> <ul style="list-style-type: none">• serving sentences of four years or more, and• subject to the release provisions of the Criminal Justice Acts (CJA) 1991 (so for offences committed prior to 4 April 2005) for certain sexual or violent offences listed in schedule 15 of the CJA 2003 <p>were subject to an ERA, and needed permission from the Parole Board before any early release for the early removal scheme (ERS) purposes could go ahead.</p> <p>In February 2011 that requirement was removed which meant FNOs who fall into this category can be processed under ERS in line with other eligible determinate-sentenced FNOs, and prison governors can now authorise ERS up to 270 days before the parole eligibility date (PED – the halfway point of sentence) without reference to the Parole Board.</p> <p>Following the commencement on 3 December 2012 of provisions in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, prison governors can now authorise release of parole-eligible FNOs for ERS purposes between their PED and non-parole date (NPD), in accordance with guidance contained in Prison Service Instruction (PSI) PSI 4/2013 – see related link).</p> <p>You must note, the above provisions do not affect the need for such prisoners to go through the parole process for a decision from the Parole Board on whether they may be released on or after their PED (if removal under ERS has not taken place before that point). It is therefore feasible that the Parole Board may decide to allow release of a FNO before any release under ERS.</p>	<p>Related links</p> <p>Default or civil terms of imprisonment</p> <p>Young offenders People previously deported or removed under ERS or FRS</p> <p>Unlawfully at large (UAL)</p> <p>Sentences passed by a court martial</p> <p>European Economic Area (EEA) nationals</p> <p>Tariff-expired indeterminate-sentence FNOs</p> <p>See also</p> <p>Links to staff intranet removed</p>
---	---	---

The early removal scheme (ERS)

Tariff-expired indeterminate-sentence FNOs

<p>About this guidance Eligibility for ERS Specific case types Responsibilities under ERS Process for ERS in England and Wales Previous process for ERS in England and Wales Ministry of Justice – contacts</p>	<p>This page tells criminal casework (CC) caseworkers about tariff-expired indeterminate-sentence foreign national offenders (FNOs).</p> <p>Previously this type of prisoner could only be considered for deportation once their release had been agreed by the Parole Board.</p> <p>From 2 May 2012 however, a new removal scheme was introduced for indeterminate-sentenced prisoners by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, known as the tariff-expired removal scheme (TERS).</p> <p>This provides the Secretary of State with a power to allow release for removal or deportation purposes following the completion of the minimum tariff period set by the sentencing court, and without the need for a Parole Board release decision. For more information on TERS, see related link: Tariff-expired removal scheme.</p>	<p>Related links</p> <p>Default or civil terms of imprisonment</p> <p>Young offenders People previously deported or removed under ERS or FRS</p> <p>Unlawfully at large (UAL)</p> <p>Sentences passed by a court martial</p> <p>Former enhanced risk assessment (ERA) cases</p> <p>European Economic Area (EEA) nationals</p> <p>See also</p> <p>Links to staff intranet removed</p>
---	---	--

The early removal scheme (ERS)

Responsibilities under ERS

<p>About this guidance Eligibility for ERS Specific case types Responsibilities under ERS Process for ERS in England and Wales Previous process for ERS in England and Wales Ministry of Justice – contacts</p>	<p>This page tells criminal casework (CC) caseworkers which authorities have the power to make a decision about the early removal scheme (ERS) and what each authority's responsibilities in administering the scheme are.</p> <p>It is for the Home Office to decide if a foreign national offender (FNO) can be removed or deported from the UK, but the decision on whether the enforced departure can take place early under ERS is for the relevant prison's governor. The responsibilities of those involved in the process are as follows:</p> <p>The foreign national clerk (or other prison administration staff) Responsible for determining the date of eligibility for the ERS , for example, the earliest date a FNO can be released for the purpose of removal (according to the guide in the table at link: Required periods of custody), and referring FNO cases to immigration enforcement.</p> <p>Criminal casework (CC) Responsible for informing the prison if it will be possible to deport the FNO and the likelihood of being able to enforce deportation within the ERS period, and pursuing that action in due course.</p> <p>The prison governor Responsible for approving the FNO for release for the purposes of removal under ERS, unless there are other reasons for refusing (see link: Eligibility for ERS). This may include, for example, FNOs convicted of terrorism legislation offences.</p> <p>Prison governors must refer an ERS case to the chief executive of the National Offender Management Service (NOMS) for a decision if it is considered to be a 'notorious' case or a crime of particular concern to the public.</p>	
---	---	--

The early removal scheme (ERS)

Process for ERS in England and Wales

<p>About this guidance Eligibility for ERS Specific case types Responsibilities under ERS Process for ERS in England and Wales Previous process for ERS in England and Wales Ministry of Justice – contacts</p>	<p>This section tells criminal casework (CC) caseworkers about the processes followed by both CC and Her Majesty’s Prison Service (HMPS) when they manage foreign national offenders (FNOs) eligible for the early removal scheme (ERS).</p> <p>You must take particular actions when you receive certain triggers and responses from elsewhere (mostly the National Offender Management Service (NOMS) and HMPS).</p> <p>You must review ERS cases regularly, and if there are delays in consideration or significant changes in circumstances, you must inform the prison which holds the FNO in question immediately.</p> <p>In order for the full benefit of the scheme to be realised, all eligible cases must be removed on, or as soon after, the ERS eligibility date as possible.</p> <p>This section documents the actions CC must take, but does not cover in depth the actions taken by NOMS. Their processes under ERS can be found in Prison Service Instruction (PSI) 4/2013) – see related link.</p> <p>A chart which provides an overview of the current ERS process operating in England and Wales is available at annex A of the PSI, and also as a related link: ERS flowchart.</p>	<p>Related links</p> <p>Referral of an ERS case to CC by the prison</p> <p>CCWorkflow process</p> <p>Allocation to a CC caseworking team (deportation criteria met)</p> <p>Allocation removals and compliance casework (deportation criteria not met)</p> <p>Assessment of removability by CC and referral back to the prison</p> <p>Authorisation or refusal of ERS and referral back to CC</p> <p>Action post-authorisation of ERS Action post-refusal of ERS</p> <p>See also</p>
---	---	---

		Links to staff intranet removed
--	--	---------------------------------

The early removal scheme (ERS)

Referral of an ERS case to CC by the prison

<p>About this guidance Eligibility for ERS Specific case types Responsibilities under ERS Process for ERS in England and Wales Previous process for ERS in England and Wales Ministry of Justice – contacts</p>	<p>This page tells criminal casework (CC) caseworkers about the functions of the CC referral form and how the prison refers to it.</p> <p>Since 4 November 2011 in England and Wales the prisons have used a single form (the ‘CC referral form’) to notify CC when they receive a foreign national offender (FNO), and what their early removal scheme (ERS) eligibility date (ERSED) is.</p> <p>The prison sends the form CC’s workflow team who prepare the necessary paperwork and allocate the case to a CC caseworker to process the case towards deportation if appropriate, ideally in time for the FNO’s ERSED.</p> <p>The same form is used by CC to return confirmation of the FNO’s immigration status and likely removability (so whether the Home Office intend, and are able, to deport or otherwise remove the prisoner during their ERS period) to the prison The form is also used by CC to inform the prison of the caseworker’s contact details.</p> <p>Once the prison governor makes the decision, the prison will issue either an ‘ERS authorisation form’ or an ‘ERS refusal form’ to the prisoner, and copy it to CC. If CC confirm they will pursue deportation, and ERS is authorised by the prison governor, CC can then proceed towards deportation, and ideally set removal directions for the ERSED or as soon as possible thereafter.</p> <p>Although Scotland began using ERS in November 2011, they still use the previous process in operation before that date, for details of this see related link: Early removal scheme (Scotland). Northern Ireland has yet to adopt ERS.</p> <p>The CC referral form is completed by prison staff not only at the point of initial referral to CC for confirmation of removability (now usually ten days following initial sentencing) but also when the FNO is transferred to a different prison mid-sentence, this process means cases not previously referred to CC within ten days of their sentence can be picked up usually in time for consideration to be given before their ERSED).</p>	<p>Related links</p> <p>CC Workflow process</p> <p>Allocation to a CC caseworking team (deportation criteria met)</p> <p>Allocation to removals and compliance casework (deportation criteria not met)</p> <p>Assessment of removability by CC and referral back to the prison</p> <p>Authorisation or refusal of ERS and referral back to CC</p> <p>Action post-authorisation of ERS Action post-refusal of ERS</p> <p>See also</p> <p>Links to staff intranet removed</p>
---	---	---

		Links to staff intranet removed
--	--	---------------------------------

The early removal scheme (ERS)

CC Workflow process

<p>About this guidance Eligibility for ERS Specific case types Responsibilities under ERS Process for ERS in England and Wales Previous process for ERS in England and Wales Ministry of Justice – contacts</p>	<p>This page tells criminal casework (CC) caseworkers about the workflow process which follows an early removal scheme (ERS) referral.</p> <p>Following sentencing or transfer of a foreign national prisoner (FNO) held in an English or Welsh establishment, staff at the prison must send a CC referral form to CC's workflow team in Croydon to start the ERS process (FNOs held in Scottish establishments will be referred directly to CC in Glasgow using the process applicable there – see related link: Early removal scheme (Scotland)).</p> <p>The prison must complete section 1A of the form, which notes the FNO's early removal scheme eligibility date (ERSED) and various other key pieces of information relevant to CC's consideration, including:</p> <ul style="list-style-type: none">• the FNO's conditional release date (CRD), automatic release date (ARD) or parole eligibility date (PED)• the FNO's home detention curfew (HDC) date if applicable (for more information on HDC, see related link: Home detention curfew scheme)• the FNO's identity document(s)• if the FNO was court-recommended for deportation• if the FNO is subject to extradition proceedings• if the FNO is subject to any confiscation order• if the FNO is subject to any further criminal charges• if the FNO is subject to multi-agency public protection arrangements (MAPPA) – for more information on this see related link: MAPPA• if the FNO has expressed a wish to return to their country of origin• if the FNO is believed to be at risk of self-harm or suicide <p>If the FNO is being transferred to a different prison, details of this are given at section 1B.</p> <p>A range of supporting documents should also be supplied with the form where available.</p>	<p>Related links</p> <p>Referral of an ERS case to CC by the prison</p> <p>Allocation to a CC caseworking team (deportation criteria met)</p> <p>Allocation to removals and compliance casework (deportation criteria not met)</p> <p>Assessment of removability by CC and referral back to the prison</p> <p>Authorisation or refusal of ERS and referral back to CC</p> <p>Action post-authorisation of ERS</p> <p>Action post-refusal of ERS</p> <p>See also Links to staff intranet removed</p>
---	---	---

	<p>The relevant boxes should be ticked by prison staff at section 1C of the form to indicate which documents are accompanying it.</p> <p>If it shows the FNO wishes to depart with the assistance of the facilitated return scheme (FRS), workflow will refer the case to CC's FRS casework team for continued action. For further information on FRS, see related link: Facilitated return scheme.</p>	
--	---	--

The early removal scheme (ERS)

Allocation to a CC caseworking team (deportation criteria met)

[About this guidance](#)
[Eligibility for ERS](#)
[Specific case types](#)
[Responsibilities under ERS](#)
[Process for ERS in England and Wales](#)
[Previous process for ERS in England and Wales](#)
[Ministry of Justice – contacts](#)

This page tells criminal casework (CC) caseworkers the process of allocation by the CC workflow team of a referral of a foreign national offender (FNO) eligible for the early removal scheme (ERS) and who meets the criteria for deportation.

ERS cases referred to workflow within the ten days after sentencing are allocated for consideration to a CC caseworker at different times, depending on the FNO's ERSED, or if that has elapsed, their conditional, automatic or parole eligibility date, which must be recorded on the file and CID. Allocation by workflow will be done as follows. If the ERSED is:

ERSED is:	Workflow allocate the case:
Less than four months away.	Immediately to a caseworker.
Four months or more, but less than 18 months, away.	To a caseworker once additional documents are received. Workflow retain the case for collation until they have the necessary documents.
18 months or more away.	To a caseworker when the date 18 months before the ERSED is reached. Workflow retain the case in the meantime.

Once allocated, you must make an assessment of the FNO's removability within the ERS period. For more details on this process see related link: [Assessment of removability by CC and referral back to the prison.](#)

If you come across any FNO case which appears to be potentially removable under ERS, and a referral has not been made, you must contact the relevant prison urgently to advise them that the FNO is liable to enforcement action and believed to be removable within their ERS period.

Case already allocated

If the FNO's case is already allocated to a CC caseworking team who currently hold the

Related links

[Referral of an ERS case to CC by the prison](#)
[CC Workflow process](#)

[Allocation to removals and compliance casework \(deportation criteria not met\)](#)

[Assessment of removability by CC and referral back to the prison](#)

[Authorisation or refusal of ERS and referral back to CC](#)

[Action post-authorisation of ERS](#)
[Action post-refusal of ERS](#)

See also

Links to staff intranet removed

Home Office file, the relevant documentation is sent to the case owner. A criminal case type will already have been entered on CID.

Case not allocated

If a Home Office file already exists for the FNO but their case has not been allocated, workflow must request the police national computer (PNC) record to establish if the FNO satisfies deportation criteria (for details see related link: Criteria assessment). If the PNC record has not been attached to the CC referral form, its reference can be found in section 1A.

If a Home Office file exists and deportation criteria are met, workflow must:

- get the file
- collate and attach the relevant documentation, for details see related link: Data preparation
- enter the criminal case type on CID
- assign the case to an appropriate caseworking team
 - the file must be flagged as 'urgent – ERS'

No file exists

If the FNO is previously unknown to the Home Office and no file exists, and deportation criteria are met, workflow must:

- request the PNC record
- collate the documents
- allocate the case as above

If deportation criteria are not met, workflow must refer the case to removals and compliance casework (RCC) to consider alternative enforcement action. For more information on this process see related link: Allocation to removals and compliance casework (deportation criteria not met).

The early removal scheme (ERS)

Allocation to removals and compliance casework (deportation criteria not met)

<p>About this guidance Eligibility for ERS Specific case types Responsibilities under ERS Process for ERS in England and Wales Previous process for ERS in England and Wales Ministry of Justice – contacts</p>	<p>This page tells criminal casework (CC) caseworkers the process of allocation by the CC workflow team of a referral of a foreign national offender (FNO) eligible for the early removal scheme (ERS) and who does not meet the criteria for deportation.</p> <p>From 1 May 2013, the way the Home Office is notified of FNO who are given a custodial sentence changed. CC workflow in Croydon now receive all referrals for sentenced FNOs from prisons in England and Wales, irrespective of whether the case appears to meet relevant criteria for deportation consideration by CC or otherwise. This allows Immigration Enforcement to record and monitor all FNO referrals more consistently.</p> <p>CC workflow will record all FNO referrals on file and CID, and assess whether or not they meet the appropriate criteria for CC to consider them for deportation. If the FNO does not meet these criteria, workflow must pass the Home Office file with relevant documentation attached to removals and compliance casework (RCC), who will consider if deportation is suitable, or if alternative enforcement action is appropriate. For example administrative removal or removal as an illegal entrant.</p> <p>Once a referral has been taken by RCC, they must continue with the ERS process, this includes completing the referral and authorisation forms as appropriate.</p> <p>If RCC decide that it is not appropriate to take further enforcement action against a FNO, they must issue a warning letter (ICD.260 or 260EEA) to advise the FNO that you will consider deportation if the FNO commits any further offences.</p>	<p>Related links</p> <p>Referral of an ERS case to CC by the prison</p> <p>CC Workflow process</p> <p>Allocation to a CC caseworking team (deportation criteria met)</p> <p>Assessment of removability by CC and referral back to the prison</p> <p>Authorisation or refusal of ERS and referral back to CC</p> <p>Action post-authorisation of ERS</p> <p>Action post-refusal of ERS</p>
---	---	--

The early removal scheme (ERS)

Assessment of removability by CC and referral back to the prison

<p>About this guidance Eligibility for ERS Specific case types Responsibilities under ERS Process for ERS in England and Wales Previous process for ERS in England and Wales Ministry of Justice – contacts</p>	<p>This page tells criminal casework (CC) caseworkers how to complete the CC referral form to indicate removability of the foreign national offender (FNO), and how it is referred back to the prison to seek the governor’s authorisation for their early release for the purpose of deportation.</p> <p>Following allocation of an early removal scheme (ERS) case that meets the relevant criteria, you must assess the FNO’s immigration status and removability.</p> <p>You must enter the assessment onto the CC referral form and return it to the prison which holds the FNO. If you consider the FNO will be removable within their ERS period, this will be with a view to seeking formal authorisation for early release for the purpose of their deportation, which can only be given by the prison governor.</p> <p>If you consider enforcement of departure will not be possible in the relevant period, this will be for notification purposes only. However, you must provide reasons why it will not be possible because this needs to be recorded on the ERS refusal form issued by the prison, which explains to the FNO why release for ERS purposes cannot be authorised at that time.</p> <p>You must pay close attention to the other release dates provided on the referral form, which will indicate the halfway point of the FNO’s sentence. If there are no known barriers to effecting deportation between the ERS eligibility date and the halfway point of sentence, this must be indicated at section 2 of the CC referral form.</p> <p>This will be passed to the prison governor who will consider authorising release where applicable. Only on receipt of the completed CC referral form can the governor consider the release of that FNO under ERS.</p> <p>If deportation cannot be effected between the ERS eligibility date and before the halfway point of sentence, you must enter this at section 2 of the CC referral form and the full reasons given (for example outstanding representations, inability to obtain a travel document). This will be passed to the prison to note and governor authority for release will</p>	<p>Related links</p> <p>Referral of an ERS case to CC by the prison</p> <p>CC Workflow process</p> <p>Allocation to a CC caseworking team (deportation criteria met)</p> <p>Allocation to removals and compliance casework (deportation criteria not met)</p> <p>Authorisation or refusal of ERS and referral back to CC</p> <p>Action post-authorisation of ERS</p> <p>Action post-refusal of ERS</p> <p>See also</p> <p>Links to staff intranet removed</p>
---	--	---

	<p>not need to be sought.</p> <p>If at any point in the process you change your initial assessment of removability of an ERS-eligible FNO, you must make sure you notify the relevant prison urgently, using a fresh CC referral form.</p> <p>You must note all assessments of removability and returns of the referral form to the prison on the Home Office file and CID records.</p>	
--	---	--

The early removal scheme (ERS)

Authorisation or refusal of ERS and referral back to CC

<p>About this guidance Eligibility for ERS Specific case types Responsibilities under ERS Process for ERS in England and Wales Previous process for ERS in England and Wales Ministry of Justice – contacts</p>	<p>This page tells criminal casework (CC) caseworkers the function of early removal scheme (ERS) authorisation and refusal forms which are used by the prison to confirm whether a foreign national offender (FNO) can be released early for deportation purposes.</p> <p>Prison governors have the sole authority to sanction a FNO's early release for deportation purposes.</p> <p>If a governor agrees to early release of a FNO prisoner under ERS, they complete an ERS authorisation form and serve it to the FNO and return a copy to you to go ahead with the necessary deportation arrangements (see related link: Action post-authorisation of ERS).</p> <p>A blank copy of this form is available at annex B of Prison Service Instruction 4/2013, see related link.</p> <p>If a governor does not agree to early release of a FNO under ERS, they complete an ERS refusal form with reasons, serve it to the FNO and return a copy to you to note deportation under ERS cannot now proceed (see related link: Action post-refusal of ERS), although you may go ahead with deportation if appropriate despite this.</p> <p>A blank copy of this form is available at annex D of Prison Service Instruction 4/2013, see related link.</p> <p>Early release for deportation or removal will usually only be refused by a governor if:</p> <ul style="list-style-type: none">• the prisoner has further outstanding charges• they are subject to an outstanding confiscation order or are serving a default term for non-payment of money owed• there are serious concerns for public safety if the prisoner is released early (such as evidence of planned further crime, evasion of immigration control, violence or threats while in prison, dealing in class 'A' drugs in prison, serving a sentence for terrorism-related offences)	<p>Related links</p> <p>Referral of an ERS case to CC by the prison</p> <p>CC Workflow process</p> <p>Allocation to a CC caseworking team (deportation criteria met)</p> <p>Allocation to removals and compliance casework (deportation criteria not met)</p> <p>Assessment of removability by CC and referral back to the prison</p> <p>Action post-authorisation of ERS</p> <p>Action post-refusal of ERS</p> <p>See also</p> <p>Links to staff intranet removed</p>
---	---	--

- other matters of similar gravity relating to public safety

If a governor is minded to agree the release for ERS purposes of a FNO who has been convicted of terrorism or terrorism-related offences, they must refer the case to the National Offender Management Service's (NOMS) Extremism Unit for review before the final decision is made.

The early removal scheme (ERS)

Action post-authorisation of ERS

<p>About this guidance Eligibility for ERS Specific case types Responsibilities under ERS Process for ERS in England and Wales Previous process for ERS in England and Wales Ministry of Justice – contacts</p>	<p>This page tells criminal casework (CC) caseworkers the action taken following receipt of authorisation of early release of a foreign national offender (FNO) for deportation by a prison governor.</p> <p>You must make sure any caseworking barriers that may arise are properly-resolved, if possible before the expiry of the early removal scheme (ERS) period (halfway point of sentence) and as close to the ERS eligibility date (ERSED) as possible.</p> <p>You must also make sure the usual arrangements are in place operationally for deportation to go ahead on or as soon after the ERSED and before halfway into sentence.</p> <p>You must liaise with CC prison operations and removal team (PORT) and the detention estate population management unit (DEPMU) if needed.</p> <p>DEPMU staff must make sure they issue a movement order to the prison no less than 72 hours before removal directions are scheduled.</p> <p>If necessary, a FNO being removed under ERS may be accommodated overnight in an immigration removal centre (IRC), under immigration detention powers. This is only allowed if the FNO's ERSED has passed, because they cannot be released from custody before that date.</p> <p>If the removal directions under ERS proceed as planned and the FNO is successfully-deported, you must make sure you have completed all the necessary post-removal actions before closing the case. You must:</p> <ul style="list-style-type: none">• update the Home Office file and CID accurately and completely• notify the Police National Computer (PNC) <p>Official sensitive do not disclose – start of section</p> <p>The information in this page has been removed as it is restricted for internal Home</p>	<p>Related links</p> <p>Referral of an ERS case to CC by the prison</p> <p>CC Workflow process</p> <p>Allocation to a CC caseworking team (deportation criteria met)</p> <p>Allocation to removals and compliance casework (deportation criteria not met)</p> <p>Assessment of removability by CC and referral back to the prison</p> <p>Authorisation or refusal of ERS and referral back to CC</p> <p>Action post-refusal of ERS</p> <p>See also</p> <p>Links to staff intranet removed</p>
---	---	---

Office use only,

Official sensitive do not disclose – end of section

- notify the offender manager

For more details of these, see related link: [Post-deportation and removal action](#).

If the removal directions do not go ahead as planned, operational staff must make arrangements to return the FNO to prison as soon as practicable, and not more than 48 hours from the date the attempted deportation failed.

Subject to resolution of any new barriers that might have arisen, fresh removal directions can be set.

The early removal scheme (ERS)

Action post-refusal of ERS

<p>About this guidance Eligibility for ERS Specific case types Responsibilities under ERS Process for ERS in England and Wales Previous process for ERS in England and Wales Ministry of Justice – contacts</p>	<p>This page tells criminal casework (CC) caseworkers the action taken following receipt of refusal of early release of a foreign national offender (FNO) for deportation by a prison governor.</p> <p>You must make sure the decision of the prison governor is properly recorded on file and CID, and record the conditional release date (CRD) or automatic release date (ARD) as the new earliest date of removal.</p> <p>Refusal of authorisation for removal under the early removal scheme (ERS) does not prevent ongoing consideration of deportation (or removal if deportation criteria are not met and the case is being considered outside CC).</p> <p>In cases where the deportation criteria are met, you must make sure the case is managed towards that end where that remains appropriate.</p> <p>In cases which do not meet the deportation criteria, removals and compliance casework must proceed with appropriate removal action.</p> <p>Where possible, deportation or removal should take place on or as soon after the CRD, ARD or parole eligibility date (PED) where applicable.</p> <p>With regard to prisoners with a PED, following the commencement of provisions in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 on 3 December 2012, their release under ERS between their PED and non-parole date (NPD) can be authorised by the prison governor, in accordance with Prison Service Instruction 4/2013, see related link.</p> <p>From 3 December 2012, it is not necessary for a Parole Board release decision before the FNO can be released under ERS. However, the Parole Board process does continue as normal, and should enforcement of departure not be effected, the FNO will be entitled to consideration by the Board for release in the usual way.</p>	<p>Related links</p> <p>Referral of an ERS case to CC by the prison CC Workflow process</p> <p>Allocation to a CC caseworking team (deportation criteria met)</p> <p>Allocation to removals and compliance casework (deportation criteria not met)</p> <p>Assessment of removability by CC and referral back to the prison</p> <p>Authorisation or refusal of ERS and referral back to CCAction post-authorisation of ERS</p> <p>See also</p> <p>Links to staff intranet removed</p>
---	---	--

The early removal scheme (ERS)

Previous process for ERS in England and Wales

<p>About this guidance Eligibility for ERS Specific case types Responsibilities under ERS Process for ERS in England and Wales Previous process for ERS in England and Wales Ministry of Justice – contacts</p>	<p>This page tells criminal casework (CC) caseworkers the key changes made to the early release scheme (ERS) process in England and Wales from November 2011.</p> <p>Although the process previously applied in English and Welsh ERS cases stopped being used in those jurisdictions from November 2011 and was replaced by the streamlined procedures described in this instruction.</p> <p>You must be aware the previous process is still used for Scottish cases (see related link: Early removal scheme (Scotland)).</p> <p>You will still come across documentation and references to the previous process in older cases, and so need to be familiar with the old process. In particular, you must note the functions of the old forms and which of the new ones replaced them.</p> <ul style="list-style-type: none">• the new CC referral form replaced the old ‘CCD2’ and ‘ERS3’ forms as the Ministry of Justice have integrated the ERS process with the foreign national offender (FNO) referral process - it must be sent by the prison to CC to begin the ERS process• the new ERS authorisation form replaced the old ‘ERS2’ form - this must be completed by the prison and sent to CC in all cases where the governor authorises ERS (if you do not receive this form you cannot set removal directions for the FNO_ and it must also be issued to the FNO as it provides formal notification that they are being removed early and explains what will happen if they return to the UK before the sentence expiry date (SED)• the new ERS refusal form replaced the old ‘ERS2A/2C/2D’ forms - prison staff must make sure the FNO is provided with the correct details regarding the reason for refusal under ERS and the form must also be sent to CC to notify them the prisoner cannot be removed from prison early <p>the old ‘ERS1’ form has not been replaced and is redundant - as the enhanced risk assessment (ERA) process was removed in February 2011, the ‘ERS5’ form and all paperwork relating to ERA cases is also redundant</p>	<p>Related links See also</p> <p>Links to staff intranet removed</p>
---	---	--

The early removal scheme (ERS)

Ministry of Justice: contacts

<p>About this guidance Eligibility for ERS Specific case types Responsibilities under ERS Process for ERS in England and Wales Previous process for ERS in England and Wales Ministry of Justice – contacts</p>	<p>This page tells criminal casework (CC) caseworkers who to contact specifically in the Ministry of Justice (MOJ), who own the policy behind this guidance, for more help with a specific case involving the early removal scheme.</p> <p style="text-align: center;">Official sensitive do not disclose – start of section</p> <p>The information in this page has been removed as it is restricted for internal Home Office use only.</p> <p style="text-align: center;">Official sensitive do not disclose – end of section</p>	<p>External links</p> <p>Links to staff intranet removed</p>
---	---	---

The early removal scheme (ERS)

Contacts

<p>About this guidance Eligibility for ERS Specific case types Responsibilities under ERS Process for ERS in England and Wales Previous process for ERS in England and Wales Ministry of Justice - contacts</p>	<p>This page explains who to contact within the Home Office for more help with a specific case involving the 'Early removal scheme'.</p> <p>If you have read this guidance and still need more help with this category, you must first ask your senior caseworker or line manager.</p> <p>If they cannot answer your question, they or you may email Criminality Policy (see related link: Email CPG queries inbox).</p> <p>Changes to this guidance can only be made by the Guidance, Rules and Forms team (GRaFT). If you think the policy content needs amending you must contact Criminality Policy, who will ask GRaFT to update the guidance if appropriate.</p> <p>The GRaFT will accept direct feedback on broken links, missing information or the format, style and navigability of this guidance. You can send these using the link: Email: Guidance - making changes.</p>	<p>Related links See also Changes to this guidance</p> <p>Information owner</p> <p>External links</p> <p>Links to staff intranet removed</p>
---	---	---

The early removal scheme (ERS)

Information owner

[About this guidance](#)
[Eligibility for ERS](#)
[Specific case types](#)
[Responsibilities under ERS](#)
[Process for ERS in England and Wales](#)
[Previous process for ERS in England and Wales](#)
[Ministry of Justice - contacts](#)

This page tells you about this version of the 'Early removal scheme' guidance and who owns it.

Version	7.0
Valid from date	01 July 2016
Guidance owner	Criminality policy team, Free movement and criminality policy unit
Cleared by director	Removed - restricted
Director's role	Director, operations and rules unit
Clearance date	27 March 2013
This version approved for publication	Removed - restricted
Approver's role	Criminality Policy Guidance Team
Approval date	20 October 2015

Changes to this guidance can only be made by the Guidance, Rules and Forms team (GRaFT). If you think the policy content needs amending you must contact Criminality Policy, see related link: Email: CPG queries inbox, who will ask GRaFT to update the guidance if appropriate.

The GRaFT will accept direct feedback on broken links, missing information or the format, style and navigability of this guidance. You can send these using the link: Email: Guidance – making changes.

Related links
See also
[Changes to this guidance](#)

[Contacts](#)

External links

Links to staff intranet removed