

# The Tariff-Expired Removal Scheme (TERS)

**Version 5.0**

This guidance explains the Tariff-Expired Removal Scheme for foreign national offenders.

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# About this guidance

This guidance tells staff about the Tariff-Expired Removal Scheme (TERS) for foreign national offenders (FNOs), which is a policy owned by the Ministry of Justice and operated jointly between that department and the Home Office.

## 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 Migrant Criminality Policy team.

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.

## Clearance and publication

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

- version 5.0
- published for Home Office staff on **18 August 2017**

## Changes from last version of this guidance

- general review and transfer from web based to Word based guidance format

### Related content

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# Introduction to the Tariff-Expired Removal Scheme

The Tariff-Expired Removal Scheme (TERS) is owned by the Ministry of Justice and is jointly-administered by the following operational areas:

- Home Office Immigration Enforcement (primarily by Criminal Casework)
- HM Prison and Probation Service (HMPPS) prison staff
- HMPPS Public Protection Casework Section (PPCS)

## The Early Removal Scheme

[Section 260 of the Criminal Justice Act 2003](#) introduced an **Early Removal Scheme** (ERS) for foreign national offenders (FNOs) serving a **determinate sentence** (a sentence to confinement for a fixed or minimum period that is specified by statute) in England and Wales. This includes European Economic Area (EEA) and non-EEA nationals.

In England and Wales the scheme is mandatory for all FNOs who are liable to have their departure from the UK enforced. This means that eligible FNOs can be removed (from prison) up to 270 days before the halfway point of their sentence for the purpose of deportation or removal from the UK.

## The Tariff-Expired Removal Scheme

On 2 May 2012 a further removal scheme - (the **Tariff-Expired Removal Scheme** (TERS)) was introduced when sections 32A and 32B of the Crime (Sentences) Act 1997 were added by [section 119 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#).

TERS is a mandatory scheme and all FNOs in England and Wales are considered for it (it is not available in Scotland or Northern Ireland).

The scheme applies to FNOs serving an **indeterminate sentence** (a sentence to confinement that doesn't have a fixed length of time, but which has a minimum 'tariff' which must be served before release may be considered). It gives the Secretary of State the power to order removal from prison once a prisoner's minimum tariff date has expired without the need for authorisation from the Parole Board.

It does not affect the normal consideration or processes for deportation or removal.

TERS operates very similarly to ERS, the main difference is that TERS decisions are authorised by PPCS in HMPPS, whereas ERS decisions are authorised by individual prison governors.

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# Eligibility under the Tariff-Expired Removal Scheme

This section tells you about the Tariff-Expired Removal Scheme (TERS) for foreign national offenders (FNOs).

FNOs with an indeterminate sentence have a tariff set by the court which is the minimum length of time they must serve in prison before they can be considered for release on licence by the Parole Board. Section 32A of the Crime (Sentences) Act 1997 applies to FNOs meeting all the criteria below, those who:

- are serving an indeterminate sentence, which means sentenced to life or imprisonment for public protection
- have reached their 'Tariff Expiry Date'
- are confirmed by Home Office Immigration Enforcement as being liable to removal or deportation from the UK

Liability to removal or deportation in this context is defined by [section 259 of the Criminal Justice Act 2003](#), and includes:

- a person who is liable to deportation under [section 3\(5\) of the Immigration Act 1971](#) and who has been notified of a decision to make a deportation order
- a person who is liable to deportation under section 3(6) of that act

TERS does not affect an FNO's appeal rights against deportation. Removal from prison under TERS for deportation can only take place once there is a deportation order signed against the FNO and there are no outstanding appeals or other barriers to enforcing removal.

Authorisation for removal from prison must be given by the Public Protection Casework Section (PPCS) of the HM Prison and Probation Service (HMPPS). There are certain categories of FNO that are likely to be considered unsuitable for the scheme by PPCS and for whom removal from prison will not usually be authorised. These are FNOs who meet one or more of the following criteria:

- the individual has a confiscation order made against them or is subject to confiscation proceedings
- the individual has outstanding criminal charges against them
- there is clear evidence suggesting that the individual is actively planning to commit further criminal offences, including plans to evade immigration control and return to the UK unlawfully
- the individual is serving a sentence for a terrorism or terrorism-related offence
- to allow removal of the individual from prison would undermine public confidence in the criminal justice system

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# Process for the Tariff-Expired Removal Scheme

This section sets out, primarily for Criminal Casework (CC) how to deal with foreign national offenders (FNOs) subject to the Tariff-Expired Removal Scheme (TERS) process.

## Process

The process in place between HM Prison and Probation Service (HMPPS) and Immigration Enforcement's CC for dealing with FNOs identified under the TERS closely mirrors that of the Early Removal Scheme (ERS) process.

The presumption is that prisoners who are eligible will be removed from prison under TERS unless there are reasons that prevent deportation from going ahead, such as an outstanding confiscation order or further criminal charges which need to be dealt with first.

Case owners must take particular actions when certain triggers and responses are received from the HMPPS and the prison regarding FNO cases eligible under TERS, the details of which are explained in the [referral of a TERS case to CC by the prison section](#).

All forms used in the TERS process between HMPPS and CC are available at annex C of the Prison Service's instruction on TERS: [Prison Service Instructions 18/ 2012](#).

## Referral of a TERS case to CC by the prison

The CC referral form used in ERS determinate sentence FNO referrals is also used for referrals by the prison, to notify CC Initial Considerations and Documentation team of indeterminate sentence FNOs who may be eligible under TERS. This referral is usually made within 10 days of the prisoner's sentencing by the court.

The prison also notifies the Public Protection Casework Section (PPCS) that they have an indeterminate sentence prisoner in custody using a 'LISP1' form. The LISP1 form also indicates whether the prisoner is a FNO. If the prisoner is an FNO then PPCS contact CC.

PPCS will calculate the tariff expiry date (TED) and inform the following:

- the prisoner (such as the FNO)
- the holding prison
- the prisoner's HMPPS Offender Manager (OM)
- CC

## Initial CC process

When a TERS case is referred to the Home Office, CC will decide whether the FNO is liable to deportation and whether deportation will be pursued. Cases that satisfy the relevant criteria for deportation will be taken forward within CC accordingly.

Where the FNO's case is already allocated to a CC caseworking team and deportation is being pursued on the basis of prior offences, you must forward the relevant documentation directly to the caseworker. A criminal case type will already have been entered on CID.

Where the FNO's case is not already receiving CC consideration, you must:

- obtain the Home Office file (or raise one where none already exist)
- obtain the relevant documentation
- enter the criminal case type accordingly on CID
- review the case to ascertain appropriate next steps in regards to deportation or removal

## Assessment of removability and referral back to the prison

PPCS will send a request for information about the prisoner to CC on a **TERS information form** (see TERS proforma). This should be completed by the owner of the case and returned to PPCS as soon as possible. The form is necessary for both TERS and any future parole hearings.

The viability of deportation will depend on whether there are any outstanding barriers to removal, such as:

- outstanding applications
- outstanding representations
- pending appeals
- unresolved documentation issues
- other barriers affecting the FNO's departure (not just Immigration Enforcement operational matters, but also any civil forfeiture or confiscation orders in respect of the FNO which will be likely barriers to removal from prison under TERS)

This information is vital as it triggers PPCS's consideration of the case under TERS (in the same way that the return of the CC referral form triggers a prison governor's consideration under ERS). Without a complete **TERS information form** from CC, TERS cannot be considered by PPCS.

## PPCS authorisation or refusal of TERS and referral back to CC

In TERS cases the decision to authorise or refuse removal from prison under the scheme must be taken by PPCS, on behalf of the Secretary of State (rather than by prison governors who deal only with ERS cases).

PPCS will only commence the TERS consideration process once CC complete and return a TERS proforma confirming that there are no barriers to removal. This will mean that the following will need to have been resolved:

- a deportation decision will have been served and deportation order will have been signed
- there will be no outstanding appeals (asylum or [section 82 of the Nationality, Immigration and Asylum Act 2002](#))
- a travel document will have been obtained or in the case of removals on an EU letter, the relevant information will have been collated

It should be noted that in cases where a travel document has a short period of validity, PPCS can be flexible and commence the TERS consideration process before the travel document has been obtained however, you will need to make this clear in the TERS proforma.

## Where removal from prison is authorised

Where TERS is authorised the **TERS authorisation form** is issued to:

- CC
- the prisoner (such as the FNO)
- the prison governor
- the OM who will in turn notify the Victim Liaison Officer (VLO)
- the prisoner's legal representatives

Following the issue of the **TERS authorisation form**, CC deportation action can continue in the usual way.

Where CC advise on the **TERS information form** that there are currently barriers to enforcing removal, PPCS will not commence the TERS consideration process until CC confirm that either:

- a deportation order has been obtained and that there are no barriers to removal
- deportation action is no longer being pursued

The case owner must clear any barriers at the earliest opportunity. Where removal directions need to be deferred they must make sure that the prison is informed accordingly.

## Where removal from prison is refused

Where PPCS consider a prisoner's case for TERS and determines that one or more of the refusal criteria are met, PPCS will issue a **TERS refusal form**. PPCS will notify:

- CC

- the prisoner (such as the FNO)
- the prison governor
- the OM who will in turn notify the VLO
- the prisoner's legal representatives

The **TERS refusal form** explains the reasons for refusal and how the decision can be challenged. The Parole Board will still retain authority to review the prisoner's indeterminate sentence, in parallel with the Secretary of State's consideration of removal under TERS. The parole process will therefore continue as normal.

## Where deportation is not possible

Where CC advise on the **TERS information form** that it will not be possible to deport the FNO, then PPCS will notify all parties that the offender is no longer subject to deportation and therefore no longer eligible for TERS consideration. A prisoner's eligibility for TERS can be reviewed if it later becomes possible to deport the FNO before the Parole Board direct release. In either case PPCS will notify:

- CC
- the prisoner (such as the FNO)
- the prison governor
- the OM who will in turn notify the VLO
- the prisoner's legal representatives
- the Parole Board

## Informing the Offender Manager

CC caseworkers must keep in mind the usual requirement of making sure the OMs are always kept informed of all significant developments in the progress of an FNO case towards enforcing their departure. These include but are not limited to the following:

- issuing a decision to deport
- issuing a decision to detain
- receipt of further representations
- the need to obtain a document
- the lodging of an appeal, or other such barrier to enforcing departure
- the setting of removal directions
- the failure or success of removal directions

## Cases previously referred to CC under the Early Removal Scheme

Rarely, an FNO who has already been referred to CC by a prison under the Early Removal Scheme (ERS) procedure may be later convicted of a further offence and handed an indeterminate sentence. If this happens then the FNO may be eligible under TERS following completion of a minimum tariff. In such cases, the holding

prison will make a new referral to CC and confirm that the FNO is now eligible for consideration under TERS. Such cases will thereafter be dealt with under the TERS scheme rather than the ERS scheme.

## **Casework and operational action post-authorisation of removal from prison under TERS**

Following authorisation of an FNO's removal from prison by PPCS under TERS, you must make sure that:

- the decision of PPCS is properly recorded on file and CID
- all case working barriers are properly resolved ideally before the TED or as soon as possible thereafter
- the necessary operational arrangements are put in place for removal to go ahead on or as soon after the TED, involving CC Prisons Operations and Prosecutions team and Detention and Escorting Population Management unit (DEPMU) where required
  - DEPMU issue a Movement Order to the prison no less than 72 hours before removal directions are scheduled
  - arrangements are made for overnight accommodation in an Immigration Removal Centre (IRC) if necessary (the existing prison sentence provides a power to detain – see [32A\(3\)\(b\) of the Crime \(Sentences\) Act 1997](#) (C(S)A 1997) as added by section 119 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012)
- where the deportation proceeds successfully, all necessary post-deportation action is completed
- where the deportation does not go ahead, operational staff make arrangements to return the FNO to prison as soon as practicable, not more than 48 hours (see [32A of the](#) (C(S)A 1997) from the date the attempted deportation failed (subject to resolution of any new barriers that might have arisen, fresh removal directions can be set at the earliest opportunity)

## **Casework and operational action post-refusal removal from prison under TERS**

Following refusal of an FNO's removal from prison by PPCS under TERS, you must make sure that:

- the decision of PPCS is properly recorded on file and CID
- the FNO's new earliest date of removal is recorded as and when it becomes known (should the Parole Board determine that the prisoner should be released)
- where deportation may still be pursued, that appropriate action is taken on this to effect it as soon as possible should the prisoner be released on parole – for more information, see [Deporting foreign nationals](#)

Where an FNO is not authorised for deportation under TERS, they will remain subject to consideration for release by the Parole Board. In such cases PPCS may

contact CC for further or more current information about deportation intentions relating to an individual FNO ahead of a Parole Board hearing. This is done using a similar information form to the one used by PPCS to request removability status of a TERS-eligible FNO at TED stage (see link to FNP Proforma).

The Home Office has an agreement with HMPPS about sharing appropriate information in these cases. The Parole Board information form guidance explains how to do this. In TERS cases however, PPCS will not ask for regular updates and after the initial indication is provided by CC, they are likely to only expect further notification just before enforcement of the FNO's departure. Where tariff expiry may still be years away, CC can only give the Parole Board a general expectation as to whether deportation will be pursued.

**Related content**

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[Deporting foreign nationals](#)

# TERS and applications under the Facilitated Return Scheme

This page sets out the eligibility of Tariff-Expired Removal Scheme (TERS) foreign national offenders (FNOs) to financial assistance offered by the Facilitated Return Scheme (FRS).

An FNO whose removal from prison has been authorised under the TERS scheme may make an application to the Home Office for a financial assistance package under the Facilitated Return Scheme (FRS). However, it is current Home Office policy that such FNOs will normally be ineligible for financial assistance under the scheme. This is because an individual serving an indeterminate sentence will usually have committed a serious offence.

If it is indicated a TERS-eligible FNO wishes to apply for FRS assistance, the prison must refer their case to CC's Expedited Removal Unit (ERU). ERU will process the rejection of the application. On completion of their action, the case if not already allocated to a caseworker to consider deportation must be escalated to a caseworking team for onward deportation action without delay.

## Related content

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# Ministry of Justice contacts for the Tariff-Expired Removal Scheme

This page tells you who to contact specifically in the Ministry of Justice (MOJ), including the policy teams who own the Tariff-Expired Removal Scheme (TERS) policy for England and Wales. They can provide additional clarification or assist with a specific case involving TERS. It also supplies contact detail for the section within MOJ who will assist with TERS cases.

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