Criminal casework directorate

The early removal scheme

Scotland

Document information

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Contents

1 Introduction

1.1 The Criminal Justice and Licensing (Scotland) Act 2010 introduced an Early Removal Scheme (ERS) for Foreign National Prisoners (FNPs) in Scotland, including European Economic Area (EEA) Nationals, who are liable for deportation or removal from the United Kingdom (UK). ERS enables FNPs to be removed from the UK at the earliest opportunity, thereby minimising the period an FNP spends in detention.

1.2 Parliamentary Approval took effect from 31 March 2011 to allow for the ERS in Scotland. To be considered for early release a prisoner must be serving a sentence of more than three months and less than four years. The prisoner may be released at any time during the 180 day period ending with the day on which the prisoner will have served one-half of their sentence, provided that the prisoner has already served at least one-quarter of his or her sentence.

1.3 This instruction documents the process to be used in Criminal Casework Directorate (CCD) for all applications for ERS in Scotland.

2 Eligibility

2.1 ERS in Scotland is not a mandatory scheme for all FNPs who are liable to deportation or administrative removal.

2.2 The Scottish Ministers may by order amend the number of days for the time being specified in the act at 9B(1) namely "may remove the prisoner from prison at any time during the period 180 days ending with the day on which the prisoner will have served one-half of the prisoner's sentence."

2.3 To be eligible for ERS the prisoner must have served one quarter of their sentence.

2.4 The Scottish Prison Service considers criteria and will deselect prisoners from the ERS including those prisoners who are:

- Required to register as sex offenders

- Subject to an extended sentence

- Subject to a supervised release order

- Subject to a hospital direction

- Subject to a confiscation order (under the Proceeds of Crime Act 2002)

- Does not consent to consideration for early release

2.5 If eligible a prisoner may be removed during the period of 180 days prior to the date on which the prisoner will have served one-half of their sentence.

2.6   The table below sets out the requisite period in custody that must be served before a prisoner can be removed. These apply to **all** eligible[1] determinate sentence FNPs liable to deportation or administrative removal.

2.7

Sentence Length	Requisite Period to Be served before Early Removal Can Take Place	Early Removal Period
3 months	¼ of the sentence	Between 21 – 45 days after sentence
6 Months	¼ of the sentence	Between 45 – 90 days after sentence
1 Year	¼ of the sentence	Between 3 – 6 months after sentence
2 Years	¼ of the sentence	Between 6 – 12 months after sentence
3 Years	¼ of the sentence	Between 12 – 18 months after sentence

3   Responsibilities

3.1   The decision on whether a FNP is eligible for removal under the ERS is not made by Criminal Casework Directorate (CCD) of the United Kingdom Border Agency

3.2   The **Scottish Prison Service (SPS)** is responsible for determining the date of eligibility for ERS (i.e. the earliest date that a prisoner can be removed, according to the guide in the table above).

3.3   **CCD** is however responsible for informing the prison of any barriers to release under the ERS or if the FNP can be removed on or shortly after the ERS eligibility date

3.4   The prison **Governor** approves the FNP for removal under the ERS unless there are exceptional or compelling reasons to refuse. This may include, for example, FNPs convicted of terrorism legislation offences or those mentioned in 2.4 of this policy document.

4 Process

This section documents the CCD's actions against triggers and responses from elsewhere. It is important that these cases are regularly reviewed by case owners and if there are delays in consideration or significant changes in circumstances, the holding prison should be informed immediately. In order to achieve the full benefits of ERS, all cases need to be removed on or as soon after the ERS eligibility date as possible.

Processing the ERS3 Form

4.1 The process commences when SPS send an ERS3 form to CCD to assess removability. The form notes the ERS eligibility date and, where appropriate, if the FNP wishes to take advantage of the Facilitated Return Scheme (FRS). ERS3 forms for the latter cases are faxed CCD who forward them to Facilitated Returns Scheme (FRS) Team.

4.2 CCD checks the FNP's personal details recorded in the ERS3 on receipt. If the case is already allocated to a case owner the ERS3 is sent to them. Where an unallocated file exists, CCD will assign the case to a case owner straight away.

4.3 Should a case owner come across any FNP potentially removable under ERS, and where the Prison has not sent an ERS3, they should contact the Prison and request they consider if the FNP is eligible for ERS. Except for this situation, it is important that any correspondence with prisons relating to ERS should **only** be made on the ERS3 form. No other form of correspondence should be used.

4.4 The Prison will note on the ERS3 form the Earliest Date of Liberation (EDL), which cannot be before the half-way point of the sentence. If removal **cannot** be completed between the ERS eligibility date and before the EDL, the ERS3 should note this. The caseworker will return the ERS3 to the Prison, giving the reason for the barrier to release. For example, this may happen where a travel document cannot be obtained in the timescale or there is an outstanding application for asylum which will not be resolved in time. A copy of the form ERS3 is attached at Annex A with a full Process Map in Annex B.

Summary of Referral Process

4.5 A short summary of the CCD process is below

Case details	Action
FRS ticked on ERS3	Send ERS3 to CCD who will forward to the correct team
EEA national sentenced to less than 24 months	Send to CCD follow the current national EEA policy.

Criminal case type exists on CID – case with Case Owner	A minute should be entered on CID by the caseworker stating the date of receipt of the ERS3.
Criminal case type exists on CID but the documents have not been collated	Collate documents as a priority and allocate file to a Case Owner. The case owner enters a case note on CID stating the date of receipt of the ERS3.
Criminal case type exists on CID but the file is still in Workflow	The file should be allocated to a Case Owner as a priority. A minute should be entered on CID by the case owner stating the date of receipt of the ERS3.
Criminal case does not exist on CID	A **Criminal Case** should be created on CID and a PNC check conducted to establish if the case meets CCD criteria. A case note should be entered stating the date of receipt of the ERS3. If the PNC record shows the prisoner to meet the CCD referral criteria, a referral form CCD 2 should be requested from the prison and the documents for the file collated. The case should then be allocated to a case owner as a priority. If the PNC check shows the case does not meet CCD criteria and the subject is a non EEA national who does not have Indefinite Leave to Remain, the file and the ERS3 should be sent to the local workflow/LIT teams.

5   EEA Nationals

5.1   EEA National Prisoners who are subject to a Deportation Order can be considered for ERS in the same way as other FNPs. However those who are not liable for deportation, but nevertheless wish to return home under ERS can be liable to Administrative Removal under the EEA Regulations.

5.2   **Non-deportation Cases**

Prisons will e-mail an ERS3 form to the CCD. CCD will follow the appropriate national internal EEA process guide.

6   Removal and post-removal action

6.1   In actioning the removal instructions, the FNP will be taken directly from the prison to the aircraft for removal, but may be held overnight in immigration detention.

6.2   Once removal has taken place the guidance set out in the CCD instruction on post removal action must be followed in all cases.

7 FNPs who return to the UK following Removal

7.1 Following their removal if an FNP including an EEA National returns to the UK before their sentence expiry date, they are deemed to be **Unlawfully at Large (UAL)** and liable to arrest and return to custody where their release dates will be adjusted to reflect their period of UAL.

7.2 If the FNP returns to the UK, before their expiry date, the UKBA should notify the Governor of the prison the FNP was released from in order for SPS to decide whether the FNP should be returned to custody or removed from the UK. If the FNP is not deemed to have entered the UK and their removal from the UK is to take place within 48 hours of their arrival there is no need to notify the Governor of the prison.

ERS 3   **Date referred:**

EARLY REMOVAL SCHEME

REMINDER OF A PRISONER WHO MIGHT BE ELIGIBLE FOR REMOVAL UNDER THE EARLY REMOVAL SCHEME

HMP/YOI _____

<u>CONTACT POINT</u>

NAME: Tel:

Email: Fax:

Prisoner's full name:			
Date of birth:		Nationality:	
Prison No:		UKBA Ref (if known):	
Offence:		Sentence length:	
ERS eligibility date:		**EDL:**	
Subject is willing to be deported under ERS:		☐ Yes	☐ No
Subject wishes to apply for the Facilitated Return Scheme		☐ Yes	☐ No
Subject is Court Recommended for Deportation:		☐ Yes	☐ No
Details of subject's travel documents:			

The above-named was previously notified to CCD on --------/--------/-------- using form CCD2.

For completion by CCD:

☐ Yes, the prisoner can be removed on the ERS eligibility date or shortly afterwards. Unless this is deselected, removal directions will now be set. Please notify CCD immediately if the prisoner is no longer to be included in the ERS.

☐ No, the prisoner cannot be removed under the ERS for the following reason(s):

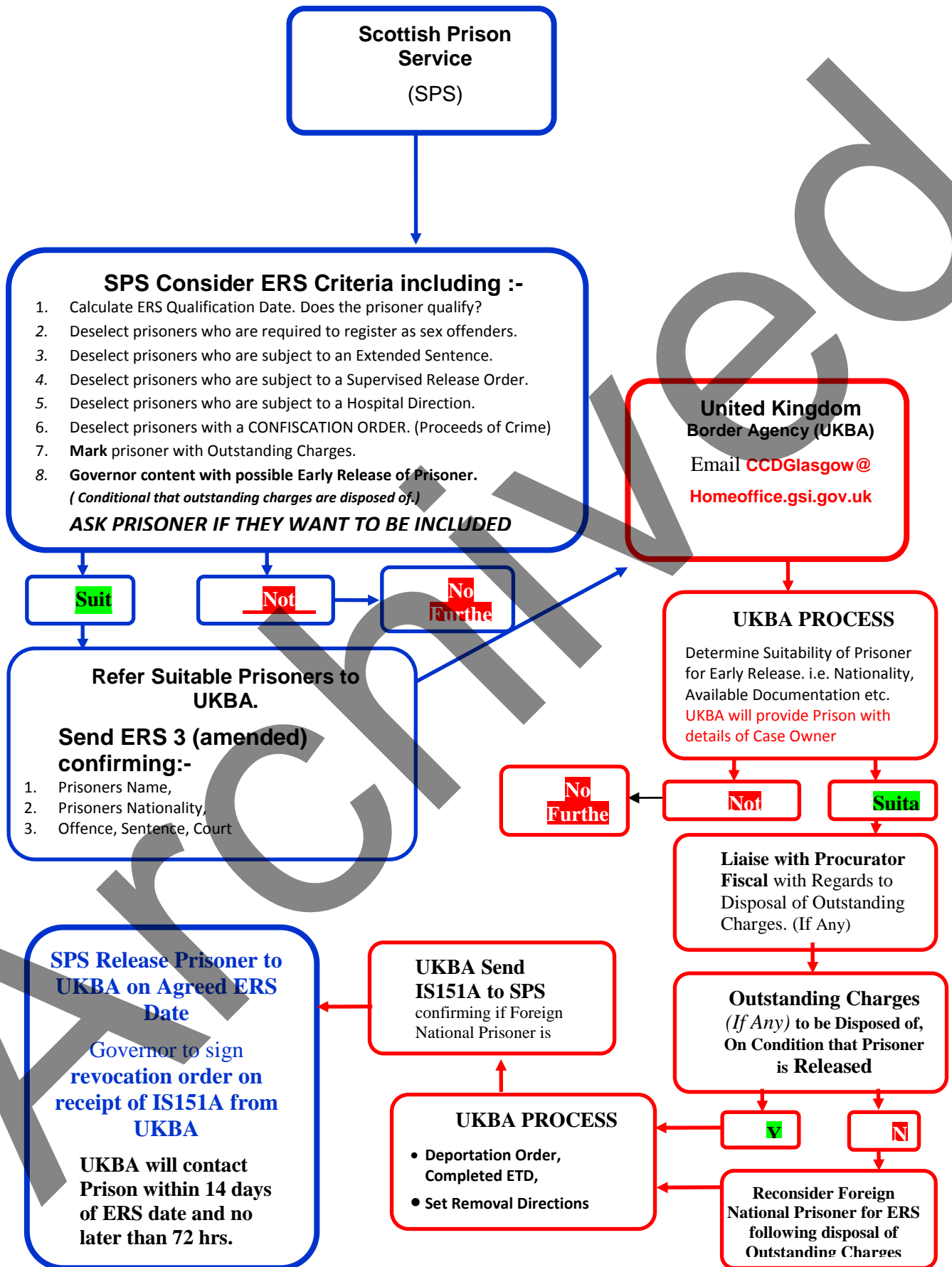| |
|---|
| Reasons for Yes/No decision – |

Should this situation change, you will be notified.

Name of caseworker:

Contact Telephone Number: Date:

Early Release Scheme for Foreign National Prisoners (FNP)

Scottish Prison Service

(SPS)

SPS Consider ERS Criteria including :-

1. Calculate ERS Qualification Date. Does the prisoner qualify?
2. *Deselect prisoners who are required to register as sex offenders.*
3. *Deselect prisoners who are subject to an Extended Sentence.*
4. *Deselect prisoners who are subject to a Supervised Release Order.*
5. *Deselect prisoners who are subject to a Hospital Direction.*
6. Deselect prisoners with a CONFISCATION ORDER. (Proceeds of Crime)
7. **Mark** prisoner with Outstanding Charges.
8. **Governor content with possible Early Release of Prisoner.**
   (Conditional that outstanding charges are disposed of.)

ASK PRISONER IF THEY WANT TO BE INCLUDED

Suit   **Not**   **No Furthe**

Refer Suitable Prisoners to UKBA.

Send ERS 3 (amended) confirming:-

1. Prisoners Name,
2. Prisoners Nationality,
3. Offence, Sentence, Court

United Kingdom Border Agency (UKBA)

Email **CCDGlasgow@ Homeoffice.gsi.gov.uk**

UKBA PROCESS

Determine Suitability of Prisoner for Early Release. i.e. Nationality, Available Documentation etc.
UKBA will provide Prison with details of Case Owner

No Furthe   **Not**   **Suita**

Liaise with Procurator Fiscal with Regards to Disposal of Outstanding Charges. (If Any)

Outstanding Charges *(If Any)* **to be Disposed of, On Condition that Prisoner is Released**

Y   **N**

SPS Release Prisoner to UKBA on Agreed ERS Date

Governor to sign **revocation order on receipt of IS151A from UKBA**

UKBA will contact Prison within 14 days of ERS date and no later than 72 hrs.

UKBA Send IS151A to SPS confirming if Foreign National Prisoner is

UKBA PROCESS

- **Deportation Order, Completed ETD,**
- **Set Removal Directions**

Reconsider Foreign National Prisoner for ERS following disposal of Outstanding Charges

NOTIFICATION OF DECISION WHETHER TO REMOVE YOU UNDER THE EARLY REMOVAL SCHEME

Surname:	**Forename(s):**
Date of Birth:	**Prison Number:**
Earliest Date of Liberation (EDL):	
ERS Release Date:	

Scottish Ministers have considered your request for removal from the UK under the Early Release Scheme. They have decided that:

(i)   You should be removed. You will be advised of the removal directions in due course. Your early release eligibility date is :

(ii)   You should not be removed. The reasons for this decision are:

You will be removed to *(insert country)*. Should it not be possible for you to be removed on this date, you will remain in custody until your EDL.

Upon your removal from the UK, should you return before your sentence expires, pursuant to Section 9c Prisoners and Criminal Proceedings (Scotland) Act 1993 you will be deemed unlawfully at large and liable to arrest and return to custody for a period equal in length to your outstanding custodial period or until your sentence expiry date, whichever is the earlier.

If you do not agree with the decision to refuse your early removal, you may make a Complaint. A member of staff will provide you with a form. You should state clearly your reasons for disagreeing with the decision.

Signed: …………………………………………………..

Name: …………………………………………………

Date: ………………………………………………..…

Annex D - examples of calculations

A prisoner that has been released under the ERS and who re-enters the UK during the currency of their sentence is unlawfully at large and liable to be returned to custody immediately. They will be required to serve the period of imprisonment equivalent to the outstanding custodial period which will start from the date on which they return to the UK, or until their Sentence Expiry Date (SED), whatever is sooner. The "outstanding custodial period" means a period of time equal to the period beginning with the date of removal from the United Kingdom and ending with the date on which the person would, but for the removal, have served one half of his sentence.

Sentence Calculations

Please note the 3 scenario's below – all of which are calculated using the sentence calculation example of 2 years from 18 July 2010.

2 years from 18 July 2010

EDL = 17 July 2011

SED = 17 July 2012

ERS eligibility date – 6 months (at most 180 days) from 18 July 2010 = 17 January 2011

Example 1 – prisoner returns to the UK prior to EDL

Release on ERS – 17 January 2011

Returns to the UK – 12 April 2011

As the prisoner was released after serving one quarter of this sentence there is still 6 months to serve, this will be 6 months from 12 April 2011 = 11 October 2011 (the release date is now later that the original EDL but no later than the SED).

Example 2 – Prisoner returns to the UK after their EDL but days UAL does not go past their SED

Release on ERS – 17 January 2011

Returns to the UK – 25 August 2011

The remaining 6 months is from the date the prisoner returned to the UK, which was 25 August 2011 = 24 February 2012 (this is the date the prisoner is now due for release).

Example 3 – Prisoner returns to the UK after their EDL and the days UAL are later than the SED

Release on ERS – 17 January 2011

Returns to the UK – 14 February 2012

If the remaining 6 months was added onto the date the prisoner returned to custody the date would be = 13 August 2012. As the prisoner cannot be held past his original SED he would be due for release on 17 July 2012.

PR2 and Administration Process

PR2 has been set up with a new movement type for the release of prisoners under the scheme – the movement type will be under 'liberation' and then select 'lib to ERS'. Once this movement has been departed the warrants will move to previous convictions and he/she will show as 'out of custody'.

If a prisoner returns to custody then the original warrant should be sought (if it is being stored at a previous establishment). When the prisoner is returned to custody the original warrant will still be valid and therefore enough to detain the prisoner.

The warrant details will need to be entered onto PR2 again as we are unable to reinstate the original one, criminal desk administrators will also need to complete a manual dates form as PR2 will be unable to calculate these warrant types.

ORDER FOR THE REMOVAL OF A PRISONER UNDER SECTION 9B(1) OF THE PRISONERS AND CRIMINAL PROCEEDINGS (SCOTLAND) ACT 1993

WHEREAS [*name of prisoner*] [*details of conviction*] [*where currently held*];

AND WHEREAS the said [*name of prisoner*] is a short term prisoner within the meaning of section 27(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 ("the 1993 Act");

AND WHEREAS Scottish Ministers are satisfied that the said [*name of prisoner*] is liable to removal from the United Kingdom within the meaning of section 9(3) of the 1993 Act;

NOW, THEREFORE, in exercise of the powers conferred on them by section 9B(1) of the 1993 Act, the Scottish Ministers hereby order that the said [*name of prisoner*] be removed from [*name of prison*] for the purpose of enabling the Secretary of State to remove the said [*name of prisoner*] from the United Kingdom under powers conferred by-

    (i) Schedule 2 or 3 to the Immigration Act 1971 (c.77), or

    (ii) section 10 of the Immigration and Asylum Act 1999 (c.33)

This order is subscribed as follows:

It is signed by [*insert name*] [*insert job title*]   …………………………………..

at [*insert name of establishment*],

before this witness

Signature of witness: ……………………………….

Full name of witness: ……………………………….

Address of witness: ……………………………….

Date   ………………………………...