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

This factsheet briefly explains the Early Removal Scheme (ERS) and Tariff Expired Removal Scheme (TERS) schemes and outlines why Irish prisoners in the UK are not generally deemed eligible for ERS or TERS.

- Since 2007, Irish prisoners have - save in exceptional circumstances - been exempted from compulsory deportation from the UK upon completion of their sentence. This arrangement exists because of the close historical, social and political ties between the UK and Ireland and in recognition of the fact that most Irish prisoners serving sentences in the UK have lived there for most of their lives, and have families, social supports and jobs in the UK. For further information on deportation please see the ICPO Factsheet: *Deportation – Irish Prisoners in the UK*.

- As a result of being generally ineligible for deportation, Irish prisoners are not considered eligible for ERS or TERS – schemes which necessarily involve deportation. It is acknowledged that while the present arrangement suits most Irish prisoners in the UK, it does create difficulties and hardship for those prisoners whose primary ties are in Ireland and would like to avail of the relevant scheme. Those who have strong familial or residential ties to Ireland and who wish to return following their custodial sentence may be eligible to resettle in Ireland while on licence. For more information on this please see the ICPO Factsheet: *Returning to Ireland while on Licence FAQ*

- A number of cases have come before the UK Courts in recent years challenging the Home Office's position on the deportation of Irish prisoners. These include *Doherty's (Edmund) Application [2016] NI QB 62* in 2016*, Connell, R (on the application of) v Secretary of State for the Home Department* in 2018 and *Foley, R (On the Application Of) v Secretary of State for the Home Department* in 2019 in which Mr Foley challenged his inability to access TERS as a result of not being eligible for deportation. The Courts dismissed each of these cases and the current policy of deporting Irish nationals only in exceptional circumstances remains in place.

- ERS is dealt with by Prison Service Instruction PSI 04/2013 (Early Removal Scheme and Release of Foreign National Prisoners) and TERS is dealt with by the Generic Parole Process Policy Framework which replaces PSI 18/2012. Relevant sections of each are set out below.

- If you have any questions or concerns about the ERS/TERS, you should contact your legal advisor or your ICPO caseworker.

The following are extracts from the Prison Service Instructions PSI 04/2013 that deal with ERS:

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

Issue Date: Revised 27 February 2024
Effective Date: 11 Feb 2013
Expiry Date: N/a

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

Section 1.1

The Criminal Justice Act 2003 introduced the Early Removal Scheme (ERS) for foreign national prisoners. The scheme allows fixed-term foreign national prisoners (FNPs), who are confirmed by the Home Office Immigration Enforcement (HOIE) to be liable to removal from the UK, to be removed from prison and the country before the earliest point in the sentence when release could otherwise take place.

Section 1.2

All determinate sentenced FNPs who are liable to removal must be considered under the scheme, subject to eligibility checks outlined in section 2. The provisions apply to determinate sentenced prisoners only; those prisoners serving an indeterminate sentence for public protection or a life sentence cannot be removed under the scheme and will instead be considered for removal on or after tariff expiry under the Tariff Expired Removal Scheme (TERS) in line with the Generic Parole Process Policy Framework. By definition, prisoners can only be removed early under the Early Removal Scheme if HOIE is able to effect their removal during the ERS period. The ERS period is any period of custody between the ERS eligibility date (ERSED) and the end of the sentence.

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

Q. Can Irish National prisoners be removed under ERS?
A. In February 2007 the then Home Secretary announced that Irish Nationals would only be considered for deportation in exceptional circumstances. The ERS confers a power on the Secretary of State to remove prisoners before they reach their normal release date for the purpose of allowing them to be deported or removed from the UK sooner than would otherwise have been possible. The legislation specifies that this power applies only where a prisoner is "liable to removal from the United Kingdom".

In effect, this means that only those prisoners who HOIE have confirmed will be removed or deported from the UK under the above definition will fall to be considered for ERS. In other words, it is not about refusing ERS in circumstances where a prisoner is otherwise eligible but because there is simply no power in law for the Prison Service to allow the early removal of a prisoner who HOIE have confirmed is not going to be deported or removed from the UK. As ERS depends on removal under immigration powers, it will only be in exceptional circumstances that an Irish citizen could be considered under the scheme. They are, of course, eligible to apply for early release under the Home Detention Curfew (HDC) scheme, subject to the legislation and policy on this that applies to all other prisoners, such as

being able to provide a suitable address in England, Wales or Scotland to be curfewed to for the purposes of HDC.

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

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

Generic Parole Process Policy Framework

Implementation Date: 27 January 2020

Re-issue Date: 03 February 2025

Replaces the following documents (e.g. PSIs, PSOs, Custodial Service Specs) which are hereby cancelled:

PSI 22/2015 - PI 2015-14 – AI 11/2015 - Generic Parole Process for Indeterminate and determinate sentenced prisoners (GPP)

PSI 18/2012 – PI 11/2012 - AI 05/2012 - Tariff Expired Removal Scheme (TERS)

PSI 12/2016 – Writing Healthcare Reports for the Parole and Recall Process

PSI 36/2013 – Transcripts of Sentencing Remarks (Court Transcripts).

3.3 Indeterminate Sentenced Foreign National Prisoners (IFNPs)

All IFNPs must be considered for removal from custody for the purposes of deportation at their tariff expiry, this is known as the Tariff Expired Removal Scheme (TERS).

The Generic Parole Process Policy Framework does not specifically mention Irish prisoners.

ICPO February.

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