

EXPLANATORY MEMORANDUM TO
THE EARLY REMOVAL OF SHORT-TERM AND LONG-TERM
PRISONERS (AMENDMENT OF REQUISITE PERIOD) ORDER 2008

2008 No. DRAFT

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by command of Her Majesty.

2. Description

2.1 Under section 46A of the Criminal Justice Act 1991 the Secretary of State is empowered to remove foreign national prisoners from prison early for the purpose of removing them from the United Kingdom. This is known as the Early Removal Scheme (ERS). In order to qualify for ERS a prisoner must be liable to deportation or administrative removal, in accordance with immigration legislation.

2.2 This draft statutory instrument amends the Criminal Justice Act 1991 to expand the ERS so as to enable foreign national prisoners to be removed from prison, and hence the UK, at an earlier point in their sentence. The instrument doubles the maximum number of days from which a prisoner may be removed from prison under the ERS, from 135 days before the halfway point of the sentence to 270 days before the halfway point of the sentence. The draft Order also amends the ERS tapering mechanism.

3. Matters of special interest to the joint committee on statutory instruments

None.

4. Legislative background

This draft statutory instrument amends the ERS under Section 46A of the Criminal Justice Act 1991. Section 46A enables the Secretary of State to remove from prison early short term and long term foreign national prisoners who are subject to the release provisions of the 1991 Act. Section 46A(6) provides the Secretary of State with the power to amend the length of time before the half way point of sentence at which the prisoner may be removed for deportation or administrative removal from the UK. This is the first time this specific order-making power has been used. The current Order is intended to double the maximum number of days prisoners may be so removed from 135 to 270. A similar Order is simultaneously being laid before Parliament in respect of fixed term foreign national prisoners whose release is subject to the release provisions of the Criminal Justice Act 2003.

5. Extent

This draft statutory instrument applies to England and Wales.

6. European convention on Human Rights

The Minister of State has made the following statement regarding Human Rights:

“In my view the provisions of the Early Removal of Short-Term and Long-Term Prisoners (Amendment of Requisite Period) Order 2008 are compatible with the Convention rights.”

7. Policy background

- 7.1 The ERS enables the Secretary of State to remove foreign national prisoners from prison early, for the purpose of removing them from the UK. In order to qualify for the ERS a prisoner must be liable to deportation or administrative removal under immigration legislation.
- 7.2 Since its introduction in June 2004, over 3,000 prisoners have been removed under the scheme. This has made a significant contribution to removing foreign national prisoners from England and Wales and to reducing the number of foreign national prisoners within the prison system. Given this success, the Government now believes the scheme can contribute more.
- 7.3 As of December 2007 there were 11,310 foreign national prisoners within the prison system, representing 14% of the total prison population. Foreign national prisoners represent a significant proportion of the prison population, although at 14% it is low in comparison to most other European countries.
- 7.4 The ERS applies only to those foreign national prisoners who are able to be removed to their country of origin. Such prisoners only benefit from the scheme if their removal from the UK can be given immediate effect. We have been working to ensure that arrangements are in place so as to enable us to remove prisoners to their country of origin.
- 7.5 Prisoners serving a life or indeterminate sentence are not eligible to be considered for removal under the scheme. Determinate sentence prisoners serving a sentence of 4 years and over under the provisions of the Criminal Justice Act 1991 for a sexual or violent offence are removed under the scheme only if the Parole Board considers that they would present an acceptable risk to the community.
- 7.6 Details of prisoners removed under the scheme are placed on the Home Office's Warnings Index. Should they seek to return to the United Kingdom during their sentence they can be detected by the Border Control Officer on

arrival at the UK border and returned to prison custody until the point at which they would have been released had they not otherwise have been removed.

- 7.7 Based on the successful experience of the last three and a half years, and in particular success in securing travel documents from overseas countries and making other arrangements with them that facilitate the removal of prisoners, the Government believes the ERS can make a larger contribution to removing foreign national prisoners. Therefore the purpose of this draft Order is to expand the ERS to enable short term and long term foreign national prisoners who are liable to be released under the provisions of the Criminal Justice Act 1991 to be removed from prison at an earlier point in their sentence. The instrument doubles the maximum number of days from which prisoners may be removed under the Early Removal Scheme from 135 days before the halfway point of sentence to 270 days before the halfway point of sentence. This measure was announced by the Ministry of State, David Hanson, by a written ministerial statement on 21 February 2008
- 7.8 The draft Order provides that a prisoner liable to removal and serving less than three years must serve one-quarter of the term before they can be removed from prison. The effect of this is that prisoners serving less than 3 months will now be eligible for ERS, whereas under the current provisions, they are not so eligible. Those prisoners serving more than three months but less than four months will be required to serve a quarter of the term. Currently they must serve 30 days. This means that they will be eligible for removal earlier than they are currently. Finally, prisoners serving 18 months or more but less than 3 years will be required to serve one-quarter of the term. Currently they can be removed up to 135 days before the half way point of their sentence. This means that they will be eligible for removal earlier than they are currently. Prisoners serving four months or more but less than 18 months will not be affected by this draft Order.
- 7.9 Clause 33 of the current Criminal Justice and Immigration Bill also amends Sections 260 of the Criminal Justice Act 2003. Broadly, the amendments contained within clause 33 are intended to remove the statutory exemptions to the ERS and to extend the scheme to prisoners who are not liable to deportation or administrative removal but who have demonstrated an intention to reside permanently outside the UK.
- 7.10 The Secretary of State is therefore amending primary legislation by an affirmative instrument whilst at the same time taking a Bill through Parliament which amends the same provisions, albeit in different ways. The rationale for using the order-making power to affect the changes to the ERS set out above is because the statutory instruments can be made and come into force well before the Criminal Justice and Immigration Bill receives Royal Assent.

8. Impact

A regulatory impact assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

Russell A'Court, Sentencing Policy and Penalties Unit, National Offender Management Service, Ministry of Justice, 4th Floor Fry Building, 2 Marsham Street, London SW1P 4DF, email: Russell.a'court2@homeoffice.gsi.gov.uk, telephone number 020 7035 3022 can answer any queries regarding this instrument.