

Research Briefing
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Number

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In brief: Deportation and early removal of foreign national offenders

Summary

The Home Secretary [has a duty](#) to make a deportation order in respect of non-British or Irish citizens who have been convicted of an offence in the UK and sentenced to at least 12 months' imprisonment, unless [certain exceptions apply](#). He also has [discretionary powers](#) to deport non-British citizens if he considers it to be “conducive to the public good”.

Deportation of foreign national offenders is a longstanding government priority. The Home Office considers for deportation all foreign nationals convicted of a crime in the UK and given a prison sentence.

Foreign national offenders can be removed from the country before the end of their prison sentence by way of a prisoner transfer agreement, or through the Early Removal Scheme or Tariff-Expired Removal Scheme. They can receive money to help them to resettle in their home country through the Facilitated Return Scheme.

As of the end of June 2023, there were [at least 10,321 foreign nationals](#) in prison in England and Wales, out of a total prison population of 85,851. Over half of foreign prisoners were European and, overall, the most common nationalities were Albanian, Polish, Romanian, Irish, and Jamaican. There were [11,769 foreign national offenders](#) subject to deportation action living in the community, as of 30 September 2022.

A [report of an inspection](#) by the Chief Inspector of Borders and Immigration published in June 2023 was critical of the Home Office's handling of foreign national offender cases. It found that the Early Removal Scheme and the Facilitated Return Scheme were not being administered effectively.

The Government [says it has made good progress](#) removing foreign national offenders from prisons and the community, pointing to a 19% increase in overall foreign national offender returns in the 12-month period to September 2023 (3,577 people). Up until that point, the number of foreign national offenders returned on an annual basis had been falling since 2016, when 6,437 individuals were returned.

1 Foreign national prisoners and removals: recent figures

1.1 Foreign national offenders in the UK

The Ministry of Justice publishes annual snapshots of the prison population in England and Wales, which include a breakdown by nationality. As of the end of June 2023, there were at least 10,321 foreign nationals in prison, out of a total prison population of 85,851.¹ In a small number of cases, nationality was not recorded. Over half of foreign prisoners were European and, overall, the most common nationalities were Albanian, Polish, Romanian, Irish, and Jamaican.

Three prisons are exclusively used for foreign national offenders: HMP Huntercombe, HMP Maidstone, and HMP Morton Hall.² They hold foreign national offenders of interest to the Home Office who have between three and 36 months left to serve. The remainder of foreign national offenders are spread across the prison estate.

Time-served foreign national offenders might be transferred into immigration detention upon completion of their custodial sentence if they are still being considered for deportation. They might alternatively be released from prison or immigration detention but put on immigration bail conditions such as electronic monitoring, regular reporting restrictions, and a requirement to reside at a specified address. Home Office statistics indicate that, as of 30

¹ Ministry of Justice, [Offender Management statistics quarterly: January to March 2023](#), 'Annual prison population: 2023', table A1.12i.

² PQ 202820 [[Prison Accommodation](#)], answered on 24 October 2023

September 2022, there were 11,769 foreign national offenders subject to deportation action living in the community.³

1.2

Returns of foreign national offenders

The Home Office publishes data on returns of foreign national offenders on a quarterly basis in its [Immigration system statistics](#). 'Returned' foreign national offenders includes both those who are deported and those who agree to return voluntarily, although the Home Office has suggested "that the vast majority will be enforced returns" of which 'deportations' are a legally defined subset.

In the year ending September 2023, 3,577 foreign national offenders were returned.⁴ The most common destination countries of returnees were Albania, Romania, Poland, Lithuania, and Bulgaria.⁵

The Government says it has made good progress removing foreign national offenders from prisons and the community, pointing to a 19% increase in overall foreign national offender returns in the 12-month period to September 2023.⁶

Up until that point, the number of foreign national offenders returned on an annual basis had been falling since 2016, when 6,437 individuals were returned. This fits into a broader trend of enforced returns having declined overall over the past ten years.

Between the start of 2010 and September 2023, 66,384 foreign national offenders were returned.⁷ The most common nationalities of foreign national offenders returned during that period as a whole were Romanian, Polish, Albanian, Lithuanian, and Vietnamese.

³ Home Office, [Immigration enforcement: Q3 2023](#), part of the Migration Transparency statistics collection.

⁴ Home Office, [Immigration system statistics: September 2023](#), table Ret_D03

⁵ As above, table Ret_D04

⁶ PQ 7963 [[Prisoners](#)], answered on 15 January 2024

⁷ Home Office, [Immigration system statistics: September 2023](#), table Ret_D03

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Powers to deport foreign national offenders

Under [powers in the Immigration Act 1971](#), non-British citizens are liable to deportation if the Home Secretary considers it “conducive to the public good”.⁸

Provisions in the UK Borders Act 2007 [impose a duty](#) on the Home Secretary to make a deportation order in respect of a foreign criminal, unless [certain exceptions apply](#) (broadly, where deportation would contravene the UK’s obligations under the Refugee and Human Rights Conventions).⁹ A foreign criminal is defined in the 2007 Act as a non-British or Irish citizen who has been convicted of an offence in the UK and sentenced to at least 12 months’ imprisonment.¹⁰

Criminal courts also have a power to recommend the deportation of people convicted of offences punishable by imprisonment.¹¹ But in practice the operation of the 2007 Act has superseded courts’ exercise of this power.¹²

2.1

The process for considering deportation

Prisons refer all cases involving foreign nationals to the Home Office’s Foreign National Offender Return Command to consider whether deportation based on criminality is appropriate.¹³

Prisons which are exclusively used for foreign national offenders or are ‘hub’ prisons have embedded Home Office caseworkers to help progress immigration casework.¹⁴

A person who doesn’t meet the criteria for “automatic” deportation under the 2007 Act is considered for deportation on “conducive to the public good” grounds. Published Home Office policy is to pursue deportation on criminality grounds where a person:¹⁵

⁸ [Immigration Act 1971, section 3\(5\)\(a\)](#), subject to exemptions in [section 7](#) and [section 8](#)

⁹ [UK Borders Act 2007, sections 32-33](#)

¹⁰ [UK Borders Act 2007, section 32\(1-3\)](#)

¹¹ [Immigration Act 1971, section 3\(6\)](#); [R v Kluxen \[2010\] EWCA Crim 1801](#)

¹² [R v Kluxen \[2010\] EWCA Crim 1801](#)

¹³ Cases that don’t meet the relevant deportation threshold are considered under administrative removal powers.

¹⁴ Independent Chief Inspector of Borders and Immigration, [An inspection of the Home Office’s operations to effect the removal of Foreign National Offenders October 2022-February 2023](#), 29 June 2023, paras 7.23-7.28

¹⁵ Home Office, [Conducive deportation v2.0 \(PDF\)](#), 8 June 2023, p.11

- has received a custodial sentence of 12 months or more for a single conviction for a single offence in the UK or overseas (this can be made up of aggregate or consecutive sentences)
- has received combined sentences totalling 12 months or more in the UK or overseas
- has been convicted in the UK or overseas of an offence which has caused serious harm
- is a persistent offender

unless the person is exempt from deportation under the 1971 Act.

If any of the exceptions set out in section 33 of the 2007 Act apply, the Secretary of State will consider whether deportation remains appropriate.

The policy guidance further states deportation may also be pursued for reasons including but not limited to:

- national security
- where a court has recommended deportation
- involvement in gun crime or serious drug offending regardless of the length of sentence received
- where there is compelling circumstantial evidence that the person's conduct or presence in the UK has or will cause serious harm, but the person has not yet been convicted of a criminal offence

[Part 5A](#) of the Nationality, Immigration and Asylum Act 2002 (as amended) and [part 13 of the immigration rules](#) specify various considerations which decision-makers must have regard to when considering whether deportation would breach a foreign criminal's qualified right to family and private life under Article 8 of the European Convention on Human Rights. A "foreign criminal" is defined for this purpose as a non-British citizen who has been sentenced to imprisonment of at least 12 months; convicted of an offence that caused serious harm; or is a persistent offender.¹⁶

Very briefly, these provisions state that the public interest requires deportation of people sentenced to less than four years, unless the person has been lawfully resident in the UK for most of their life, is socially and culturally integrated in the UK, and there would be very significant obstacles to their integration in the country of return; or they have a genuine and subsisting relationship with a qualifying partner or child and the effect of their deportation on that person would be unduly harsh. For foreign national offenders sentenced to four or more years' imprisonment, the public interest

¹⁶ [Nationality, Immigration and Asylum Act 2002, section 117D\(2\); Immigration rules part 13 para 13.2.1](#)

requires deportation unless there are very compelling circumstances over and above the considerations for people sentenced to less than four years.

EEA/Swiss nationals are assessed against the same criminality thresholds that apply to other nationalities, if their criminal conduct/convictions occurred after the end of the Brexit transition period (31 December 2020) or they are not covered by the EU Withdrawal Agreement Act 2020 (for example, because they began to live in the UK after that date).¹⁷

EEA/Swiss nationals who are protected by the EU Withdrawal Agreement Act (typically, people who were resident in the UK before the end of the Brexit transition period) are considered for deportation on public policy and public security grounds which derive from EU free movement law, if the conduct and any related criminal convictions occurred on or before the end of the Brexit transition period.¹⁸ There are no sentence-based thresholds for decisions to deport on public policy or public security grounds. Rather, decisions to deport must reflect the principle of proportionality and be based exclusively on the individual's personal conduct. Higher thresholds ("serious" or "imperative" policy grounds) apply for people with five- or ten-years' continuous residence in the UK.

Irish citizens are treated differently, due to longstanding UK policy that they should only be deported from the UK in exceptional circumstances.¹⁹

3 Measures to support early removals of foreign national offenders

Foreign national offenders can be removed from the country before the end of their prison sentence by way of a prisoner transfer agreement, or through the Early Removal or Tariff-Expired Removal Schemes.

Furthermore, foreign national offenders who are serving or have completed a custodial sentence and wish to leave the UK can have their flights organised and paid for by the Home Office and receive money to help them (and their immediate family) to resettle in their home country, through the Facilitated Return Scheme.

¹⁷ The EEA (European Economic Area) comprises of the EU Member States plus Iceland, Liechtenstein and Norway

¹⁸ For a more detailed overview, see Home Office, [EEA decisions on grounds of public policy and public security](#), v7.0, 30 September 2020

¹⁹ [HC Deb 19 February 2007 c4WS](#)

Prisoner transfer agreements

Foreign national offenders serving custodial sentences may be transferred to serve their sentence in their home country if it has a reciprocal prisoner transfer agreement with the UK.

The UK has 110 prisoner transfer agreements with other countries. Some are compulsory and some require the prisoner's consent.²⁰

Before it left the European Union, the UK was covered by an EU prisoner transfer agreement.²¹ This allowed for the compulsory transfer of EU prisoners. The UK now uses the 1983 Council of Europe Convention on the Transfer of Sentenced Persons to transfer sentenced persons to EU countries.²² The Convention requires the prisoner's consent. The Government had said, prior to leaving the EU, that the Council of Europe Convention would be a "less effective" mechanism, noting that it gave EU Member States extensive grounds to refuse to take prisoners.²³ An additional protocol to the Convention (ratified by the UK in November 2009) and a subsequent protocol amending the additional protocol (which the UK signed in October 2021) allow for States to agree to compulsory transfers (without the prisoner's consent) and to transfers of a sentence including if the person has already returned to their home country.²⁴

The Government wants to negotiate new prisoner transfer agreements with key EU Member States and other countries.²⁵ It says it is prioritising countries with the highest volume of foreign national offenders.²⁶ It signed a new prisoner transfer agreement with the Philippines in October 2023.²⁷

Edward Argar, Minister of Prisons, Parole and Probation, highlighted a practical constraint on pursuing prisoner transfer agreements in a May 2023 Westminster Hall debate:

Ideally, we would look to negotiate PTAs with all countries to allow all FNOs to serve their sentences in their home country. However, both the negotiation of new agreements and individual transfers require the agreement of the receiving country, and, as such, an appropriate and functioning Government with which to engage. That means it is not possible in all circumstances.²⁸

²⁰ PQ 11410 [[Prisoners' Transfers](#)], answered on 1 February 2024

²¹ Council framework decision [2008/909/JHA](#)

²² [Convention on the Transfer of Sentenced Persons ETS No. 112](#)

²³ HM Government, [EU Exit: Assessment of the security partnership \(PDF\)](#), CM 9743, November 2018, para 42; PQ 220146 [[Prisoners: Repatriation](#)], answered on 18 February 2019

²⁴ [Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons](#), MS No.10/2022 and Explanatory Memorandum

²⁵ PQ 11410 [[Prisoners' Transfers](#)], answered on 1 February 2024

²⁶ [HC Deb 9 May 2023 c156WH](#)

²⁷ PQ 2908 [[Prisoners' Transfers](#)], answered on 27 November 2023

²⁸ [HC Deb 9 May 2023 c156WH](#)

The Government says it is “working hard to ensure that existing [prisoner transfer agreements] work as effectively as possible.”²⁹ In May 2023 it agreed an implementation package with Albania in support of an earlier prisoner transfer agreement.³⁰

How widely are prisoner transfer agreements used?

A PQ answered in December 2023 confirmed there were 935 removals under Prisoner Transfer Agreements between 2010 and 2023 and lists the countries people were removed to.³¹

Early Removal Scheme and Tariff-Expired Removal Scheme

These Ministry of Justice-led initiatives enable foreign national offenders to be returned to their home countries before the end of their sentence, subject to a minimum time served. Returnees are at liberty upon arrival in their home country but barred from returning to the UK. If they do return they are liable to being detained and serving the remainder of their sentence.³²

The [Early Removal Scheme](#) is available to foreign national offenders serving a fixed-term prison sentence who are liable to removal from the UK. The Home Office must consider all eligible foreign national offenders under the Early Removal Scheme if it is seeking to deport them from the UK.³³ Prison governors have the final authorisation over early release and have some grounds to refuse.³⁴

The maximum sentence discount under the Early Removal Scheme has increased over the past couple of years, most recently with effect from 16 January.³⁵ Subject to having served half their requisite custodial period, a foreign national offender can now be released up to 18 months before their earliest release point (up from 12 months previously). This change was part of a [package of measures to reduce pressure on prison capacity](#).

See section 4 below for an overview of recent scrutiny of the scheme.

²⁹ [HC Deb 27 June 2023 c130](#)

³⁰ GOV.UK, ‘[UK and Albania agree groundbreaking new arrangement on prisoner transfers](#)’, 24 May 2023

³¹ PQ 7024 [[Prisoners: Repatriation](#)], answered on 19 December 2023

³² Criminal Justice Act 2003 (as amended by [Nationality and Borders Act 2022, section 47](#))

³³ Independent Chief Inspector of Borders and Immigration, [An inspection of the Home Office’s operations to effect the removal of Foreign National Offenders October 2022-February 2023](#), 29 June 2023, para 9.5

³⁴ As above, para 9.9

³⁵ The Criminal Justice Act 2003 (Removal of Prisoners for Deportation) Order 2023, [SI 2023/1368](#)

Recent removal figures under the Early Removal Scheme

The Government says the Early Removal Scheme is its best performing removal scheme. 5,262 foreign national offenders were removed under the scheme between January 2019 and June 2022.³⁶

Fewer people have been removed through the [Tariff Expired Removal Scheme](#), which applies to people serving indeterminate sentences.³⁷

Facilitated Return Scheme

The [Facilitated Return Scheme](#) is a voluntary Home Office scheme which offers money to help foreign national offenders resettle in their home country if they agree to withdraw any outstanding appeal or application to stay in the UK. Eligible applicants can receive £1,500 if they are still serving a custodial sentence in the UK or £750 if they have completed their sentence. They also have their flight organised and paid for by the Home Office. Their immediate family members (partner or spouse and dependent children under 18) can also receive funding to depart under the scheme. An additional £500 is available for pregnant women, elderly people or those who are vulnerable due to a disability or life limiting condition.

Number of facilitated returns

Information on the number of foreign national offenders returned under the Facilitated Returns Scheme (currently up to June 2022) is published as part of [Immigration Enforcement's migration transparency data](#) (table FNO_09).

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Recent scrutiny of Home Office performance

The Chief Inspector of Borders and Immigration inspected the Home Office's Foreign National Offenders Returns Command, including the effectiveness of the Early Removal and Facilitated Returns schemes, between October 2022 and February 2023.

[The report of the inspection](#) was published in June 2023.³⁸ The Chief Inspector's findings included that "the Home Office does not have a firm grip on its caseworking operations in [FNO Returns Command]".³⁹ It identified

³⁶ PQ 7021 [[Prisoners: Repatriation](#)], answered on 19 December 2023

³⁷ PQ HL6427 [[Prisoners' Release: Foreign Nationals](#)], answered on 27 March 2023

³⁸ Independent Chief Inspector of Borders and Immigration, [An inspection of the Home Office's operations to effect the removal of Foreign National Offenders October 2022-February 2023](#), 29 June 2023

³⁹ Independent Chief Inspector of Borders and Immigration, News, [Inspection report published](#), 29 June 2023

shortcomings with data and management information, a lack of clear priorities and “a disproportionate focus on managing cases, rather than making decisions and progressing the removal of FNOs.”

The report found that the Early Removal Scheme and the Facilitated Return Scheme were not being administered effectively.⁴⁰ Cases were not being progressed to enable removal as early as possible due to “constantly shifting priorities”. The inspection team attributed the significant increase in removals under the Facilitated Return Scheme in 2022 to the effects of a change in policy (to allow applications from EEA nationals) and high uptake amongst Albanian nationals (who the Home Office had prioritised for removal) rather than improvements to the effectiveness and efficiency of the scheme.⁴¹

The Chief inspector’s four recommendations concerned the Home Office’s approach to data, performance reporting, caseworking, and case ownership and management.⁴² They included calls for the department to “conduct a thorough end-to-end review of the FNORC case working functions to eradicate duplication, align team structures and drive efficiencies ... to enable more timely decisions within the Early Removal Scheme window”. It also recommended the department “develop a process which enables foreign national offender cases to be tracked and owned from referral to decision outcome, with clear ownership, timelines for key activities and checks in place to ensure that cases are not overlooked.”

The [Government’s response to the report](#) accepted or partially accepted all the recommendations. But it also contended that the inspection report had “underplay[ed] the complexity associated with the FNO process”, adding:

the FNO process is not simple and linear; it is complicated and has many interdependencies. These include delays caused by multiple and successive claims, non-compliance by FNOs in their re-documentation and removal, and the Covid-19 pandemic. The impact of Covid has continued, with delays in the courts at both criminal trials and immigration appeals, impacting on our ability to deliver a prison to plane removal plan for FNOs.⁴³

Separately, ministers have said the Home Office is increasing the number of caseworkers to take advantage of recent changes to the Early Removal Scheme.⁴⁴

⁴⁰ Independent Chief Inspector of Borders and Immigration, [An inspection of the Home Office’s operations to effect the removal of Foreign National Offenders October 2022-February 2023](#), 29 June 2023, paras 1.15 – 1.22 and chapter 9

⁴¹ As above, paras 9.47-9.50

⁴² As above, chapter 2

⁴³ Home Office, [Response to an inspection of operations to effect the removal of foreign national offenders](#), 29 June 2023

⁴⁴ [HC Deb 24 October 2023 c768](#)

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