EXPLANATORY MEMORANDUM TO

THE CRIMINAL JUSTICE ACT 2003 (REMOVAL OF PRISONERS FOR DEPORTATION) ORDER 2025

2025 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Lord Timpson, Minister of State at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

2.2 Matthew Gould, Deputy Director for Prison Demand and Release, at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Lyndsey Lancaster at the Ministry of Justice email: Lyndsey.Lancaster@justice.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Early Removal Scheme, under provisions in sections 260 and 261 of the Criminal Justice Act 2003, gives a power for the Secretary of State to remove from prison foreign national prisoners serving a determinate prison sentence who are liable to removal from the UK for the purpose of their immediate deportation. This does not apply to those serving a terrorism / terrorism-connected offence, who are subject to the release provisions of section 247A of the Criminal Justice Act 2003. Currently, foreign national prisoners who are eligible for the scheme can be removed up to 18 months before the earliest release point of their sentence (subject to having served half the requisite custodial period of their sentence). Once removed they cannot legally return to the UK. If they do, they will be liable to serve the rest of their sentence from the point they were deported.

4.2 This instrument amends the Criminal Justice Act 2003 to allow Foreign National Offenders to be removed up to 4 years before the earliest release point of their sentence, subject to having served 30% of the requisite custodial period of their sentence.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

5.1 With some exceptional periods, we have routinely been operating above 99% since January 2023. To put prison capacity on a sustainable footing, the Lord Chancellor launched the Independent Sentencing Review in October 2024, tasked with re-evaluating the sentencing framework, to ensure we never again have more prisoners than places in our prisons.

5.2 Given the huge capacity pressures we face, the removal of Foreign National Offenders is a cross-government priority. We have over 10,000 Foreign Nationals in Prison, c. 4000 on remand and detaining them costs the taxpayer almost £500m a year. We removed more FNOs from prison during 2024 than at any time in recent years, between 5 July 2024 and 18 May 2025, there had been 2,274 ERS returns, which is a 11% increase compared to the 2,050 in the same period 12 months prior. We need to go much further to increase removals. The Independent Sentencing Review recommended we reduce the minimum period FNOs have to spend in custody and consider increasing the window in which they can be removed.

5.3 The Early Removal Scheme allows determinate sentenced prisoners liable for removal from the UK (except those serving a terrorism / terrorism-connected offence, who are subject to the release provisions of section 247A of the Criminal Justice Act 2003), to be removed from prison early for immediate deportation. A determinate sentence is one of a length fixed by the courts which includes a 'requisite custodial period' which the person must serve in custody before they are released, either automatically or at the discretion of the Parole Board. Currently they can be removed up to 18 months before the earliest release point of their sentence (subject to having served half their requisite custodial element). Once removed they cannot legally return to the UK. If they do, they will be liable to serve the rest of their sentence from the point they were deported.

5.4 The objective of this change is to reduce the minimum pre-removal custodial period to 30% of the requisite custodial period and increase the maximum window during which an eligible Foreign National Offender can be removed from prison and deported from the UK to 4 years before the earliest release point.

5.5 This change follows the previous statutory instrument – The Criminal Justice Act 2003 (Removal of Prisoners for Deportation) Order 2023 where the maximum window was changed from 12 to 18 months – this change was instrumental in enabling an increase in FNO removals. Extending this further to 4 years means Foreign National Offenders can be removed from prison for the purposes of immediate deportation earlier, where it is possible for the Home Office to do so.

5.6 The fundamental principles of the Early Removal Scheme remain unchanged. It is right that we ensure our finite number of prison places are best used for the most serious and/or dangerous offenders that must remain in the UK. Deportation of Foreign National Offenders at the earliest opportunity will ensure that we are fulfilling this requirement.

Commencement of the Instrument

5.7 This instrument will come into force on 23 September 2025. All affected prisoners will require new Early Removal Scheme eligibility dates, and by 23 September 2025, some will have passed the date on which they would have been eligible for removal if the new Early Removal Scheme window had been in force. Such prisoners will

become immediately eligible for removal on 23 September 2025 whilst others will become eligible shortly after commencement. In order to facilitate a smooth transition to the new maximum period, prison and probation practitioners will be instructed to calculate new eligibility dates and direct the cases to the Home Office for consideration.

What was the previous policy, how is this different?

5.8 The previous policy is that the minimum pre-removal custodial period was 50% of the requisite custodial period, with this SI it will change to a minimum of 30%.

5.9 The previous policy had a maximum window during which an eligible Foreign National Offender could be removed from prison and deported from the UK was 18 months. With this SI, that will change to 4 years.

6. Legislative and Legal Context

How has the law changed?

6.1 This Order amends section 260 of the Criminal Justice Act 2003 (c. 44) ("the 2003 Act").

6.2 Sections 260 and 261 of the 2003 Act allow for the removal of determinate sentence foreign national prisoners from prison for the purposes of deportation from the UK. As currently drafted, section 260(2) provides that the Secretary of State may remove from prison an eligible fixed-term prisoner up to 18 months before their earliest release point once they have served at least half of the requisite custodial part of their sentence (the minimum pre-removal custodial period).

6.3 This Order increases the maximum removal period in section 260(2) by reducing the minimum pre-removal custodial period to 30% and extends the maximum removal period in section 260(2)(b) by substituting a reference to 4 years, in place of the previous reference to 545 days. This means that the pre-removal custodial period is now the later date of a) 30% of the requisite custodial period or b) 4 years before the end of the requisite custodial period.

Why was this approach taken to change the law?

6.4 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 No consultation exercise was conducted. This instrument does not change who is eligible for the Early Removal Scheme, it only changes when they will become eligible.

8. Applicable Guidance

8.1 Guidance on the application and process for the Early Removal Scheme will be updated and circulated appropriately. It will be published on the GOV.UK website on the date this Order comes into effect.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 Reduction in demand for prison places is dependent upon the number of removals made per year. If, for example, there were 2,000 removals we would expect prison place demand to reduce by 350 to 500 places under this measure. These savings are subject to Home Office Immigration Enforcement decisions, and where annual removal numbers differ, this will impact on the scale of the reduction.

9.2 The reduction in demand for prison places delivered by this measure will be offset by the forecasted growth in prison population meaning there is no change in the total number of people in prison as a result, and therefore no monetised benefits for prisons.

9.3 A full Impact Assessment has not been prepared for this instrument. It is not a regulatory provision and is outside the scope of the Government's Better Regulation Framework.

9.4 We have also considered the impact on the matters covered by the Public Sector Equality Duty (PSED) and have concluded that it is unlikely to discriminate within the meaning of s149 Equality Act 2010. The measure will apply to all Foreign National Offenders liable to removal from the UK, except those statutorily excluded because they have been convicted of in the case of terrorist or terrorist connected offence. UK nationals who are not liable for deportation cannot be removed under this provision. The different treatment is based on liability to removal from the UK and not nationality or immigration status. We do not envisage the policy will adversely impact equality of opportunity or fostering good relations.

Impact on businesses, charities and voluntary bodies

9.5 There is no, or no significant, impact on business, charities or voluntary bodies.

9.6 The legislation does not impact small or micro businesses.

9.7 The impact on the public sector is a modest increase in the number of Foreign National Offender cases the Home Office will be processing.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is to work with the Home Office who monitor removals to assess the impact.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Minister of State, Lord Timpson has made the following statement regarding Human Rights:

"In my view the provisions of Criminal Justice Act 2003 (Removal of Prisoners for Deportation) Order 2025 are compatible with the Convention rights.".

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").