



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

**Foreign National Prisoners: Early Removal
Scheme Proposals**

29 March 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sydney Anderson
Mr Seán Lynch
Ms Jennifer McCann
Mr Basil McCrea
Mr Alban Maginness
Mr Jim Wells

Witnesses:

Mr Max Murray	Northern Ireland Prison Service
Mr Alan Smyth	Northern Ireland Prison Service

The Chairperson: I welcome Alan Smyth, head of licensing and legislation, and Max Murray. The session will be reported by Hansard and a transcript published on the Committee web page. I invite the officials to outline the briefing paper briefly, and members will, I am sure, have some questions.

Mr Max Murray (Northern Ireland Prison Service): Thank you, Mr Chairman. This briefing introduction will be brief because the information is largely in the original documentation provided.

When the principle to introduce an early removal scheme for foreign national prisoners was discussed at a meeting of the Committee on 24 November last year, members indicated that they wanted the Prison Service to work up the terms of the scheme, including how it would operate and what categories of prisoners would qualify. Following consultation with the Ministry of Justice, the National Offender Management Service, the Scottish Prison Service and the UK Border Agency, the Northern Ireland Prison Service (NIPS) has settled on a firm set of key elements of a scheme to effect the early removal of certain categories of foreign nationals. The details of the scheme are set out in the paper that was previously provided to the Committee. Rather than take members through the paper line by line, I feel that it is more important for me to draw the Committee's attention to the key points of the scheme and then to give members the opportunity to seek clarification on any points of detail.

Schemes that allow for the early removal of foreign national prisoners have been established in Scotland since last March and in England and Wales since 2004. They reflect national government policy to remove a financial burden on the taxpayer by returning foreign criminals to their home country

earlier than would otherwise be the case. That generates savings in respect of custody costs, and, in practical operational terms, it also frees up valuable cell and bed space.

I must emphasise that the NIPS early removal scheme will not introduce deportation or removal. It will simply allow that process to be accelerated by removing foreign national prisoners who the sentencing court has already determined should be removed on completion of their sentence or who the UK Border Agency (UKBA) has decided have breached the conditions of their leave to remain in the UK at an earlier date.

NIPS and the UK Border Agency recognise that a delay in introducing the removal scheme in Northern Ireland has had certain advantages, in that it has allowed us to base our scheme on a hybrid of the two schemes already in place. We have shared our scheme with UKBA staff, and they are fully supportive of the terms we plan to put in place. Their support is obviously important, given the key role they play in its operation.

As the paper before you states, the scheme has four important elements: the categories of prisoner that would qualify for early removal; the minimum period of sentence a prisoner has to serve before qualifying; the period during which early removal can take place; and whether the scheme is mandatory or voluntary.

On the first of the qualifying categories, we believe that we should follow the model now adopted in England and Wales, which sees all prisoners liable for early removal, except those convicted of murder and those serving public protection extended custodial sentences (ECS) or indeterminate custodial sentences (ICS). It would, therefore, include those given lengthy sentences but whose crimes are not deemed to have put the public at risk. As you know, the situation in Scotland is different. There, a prisoner must be serving a sentence of less than four years to be considered for early removal. We believe that the England and Wales arrangements would maximise the number of prisoners subject to the early removal scheme (ERS) while continuing to provide an assurance to the public that dangerous offenders will be exempt and will still need to serve the whole of the time the court has deemed they should serve before removal takes place.

We also looked at the minimum period of sentence that prisoners should have to serve before qualifying for early removal. In England and Wales and in Scotland, a foreign national must have served a minimum of one quarter of the custodial part of their sentence before early removal can take place. However, in Scotland, there is the added caveat that a prisoner must be serving a sentence of at least three months before early removal can be considered. England and Wales have no such qualifier. We favour the Scottish arrangement for two reasons: first, it provides the public with an assurance that even low-level offenders are spending a reasonable amount of time in custody before removal; and secondly, the removal process can take some time to arrange. The inclusion of a three-month qualifier will mean that we will not have to process those serving very short sentences who may, in all likelihood, be time-served before arrangements for early removal have been put in place.

The third element we looked at was the period during which early removal can take place. The scheme in England and Wales permits early removal up to 270 days prior to one half of the full sentence being served, provided, of course, that the prisoner has already served at least one quarter of the custodial part of their sentence. I hope that that is clear, because it is quite complex. When introduced in 2004, the long limit was 135 days. In 2009, that was increased, quite importantly, to 270 days to achieve more removals. So, in England and Wales, the limit started off at 135 days, and it is currently 270 days before the expiration of the sentence. In Scotland, the ERS period is the halfway stage of the sentence minus 180 days, with the same qualifier that a quarter of the sentence must be served. As a starting point, NIPS is proposing that the early release scheme period in Northern Ireland should be aligned with the original England and Wales limit of 135 days. That will allow a gradual roll-out of the scheme, which can be kept under review and changed by future regulation, if needs be.

Given the large number of foreign nationals in prison in England and Wales, when a decision to remove has been taken, that removal must take place during the succeeding 90 days. If removal has not taken place during that period, the process must wait until the prisoner is time-served. In Scotland, no such cut-off point is in place, and the early release scheme may be applied up until the day before a prisoner is time-served. We are proposing that the Scottish model with no cut-off point is adopted,

given the flexibility it provides and the fact that it avoids potentially nugatory work if an arbitrary deadline is not met.

In England and Wales, once the UKBA takes a decision to remove a prisoner early, that prisoner has no right of appeal against a decision to include them in the scheme. Due to the way in which the legislation was drafted in Scotland, a prisoner there has to agree to be subjected to the terms of the scheme. The UKBA favours a mandatory scheme for Northern Ireland, given that the scheme is simply accelerating a lawful decision that has already been taken by the court. NIPS supports that view.

In summary, we are proposing to include all prisoners, apart from lifers and those subject to extended or indeterminate sentences, which mirrors the position in England and Wales; to require all qualifying prisoners to serve at least three months before being considered for removal, which follows the Scottish arrangements; to set the maximum number of days a prisoner can be removed before the end of the custodial period of their sentence at 135 days — the equivalent of four and a half months — which was the number of days set originally in England and Wales; to provide for removal to take place any time after the qualifying period and the end of the custodial part of the sentence, as happens in Scotland; and to make the terms of the scheme mandatory, once a decision to remove a prisoner early has been taken by UKBA, as in England and Wales.

A draft consultation document has been provided as an annex for approval, if members are content with the terms of the scheme. Given that the Northern Ireland scheme will be based exclusively on schemes already established in England and Wales and in Scotland and that it has the unequivocal support of the UKBA, members are asked to consider a shortened consultation period of six weeks.

In conclusion, therefore, we are seeking members' views on the proposed terms of the scheme as outlined, and, if the Committee is content, we are seeking its agreement to run a public consultation over six weeks. We are happy to take questions.

The Chairperson: Thank you, Mr Murray. I have a quick question on the format of the draft consultation document. There are usually prompts throughout such documents, such as questions asking the respondent whether they agree. That does not seem to be the case in this document. It just invites people to give a response at the end, if they have one. It is more of a discussion-type paper. Is there a reason for that type of format? Is that something that could be looked at?

Mr Alan Smyth (Northern Ireland Prison Service): We just discussed that —

Mr Murray: We had that discussion just before we came in. You could do it either way, but the mechanics of the scheme are as outlined in the consultation. It is very hard to differentiate. You could build in certain questions, such as this: do you agree that the scheme excludes lifers and public protection sentences?

The Chairperson: I suggest that because, if there is going to be only six weeks, it may be useful for people simply to be able to say whether they agree or disagree.

Mr Smyth: We can do that.

Mr Murray: The point is well taken.

The Chairperson: I am going to nip out for five minutes, so Mr McCartney will take over.

(The Deputy Chairperson [Mr McCartney] in the Chair)

Ms J McCann: Thank you for your presentation. I have a couple of quick questions.

I have a difficulty with the mandatory versus the voluntary aspect of the scheme. We have had events recently about human trafficking. I am aware that some of the people who have been trafficked came here illegally in those circumstances. If they go to prison for a short time, they could be grouped in with the people who are removed, or whatever you like to call it. I am concerned that there are some

people who may be vulnerable if they went back to their own country due to threats to their life or whatever. I understand that you are going to be doing it only from the Border Agency's decision and so on, but, given that there are grey areas, have you asked the Northern Ireland Council for Ethnic Minorities (NICEM) or the Human Rights Commission about the draft consultation? Have you had their advice on this or heard what they feel about it?

Mr Smyth: They will be included in the consultation exercise, but we have not asked them for their advice in advance of that.

Ms J McCann: You have not asked for their advice in advance? I am sure that they will have a position on this.

Mr Murray: That is why we emphasised in the briefing that the early removal scheme will not be introducing deportation or removal. All our scheme does is to provide a window of opportunity, up to 135 days before the expiration of sentence, to make a decision that someone who is already subject to a decision to deport can move in that period. In fact, on many occasions, it will be a balance between the needs of the individual and the needs of the UKBA in managing that deportation.

Ms J McCann: I suggest, Deputy Chair, that we get a bit of guidance on that from NICEM and the Human Rights Commission.

The Deputy Chairperson: OK. What is the rationale for shortening the consultation from the normal statutory provision to six weeks?

Mr Smyth: It was really just to save some time. When Scotland consulted on this last March, there were no responses whatsoever. England and Wales tell us that they had very few responses in 2004. We thought that, rather than have it out for the full 12 weeks, we would save everybody some time by reducing it to six weeks. However, if the Committee wants to do something different, we are quite happy to accept a longer period of time if you think that that is appropriate.

The Deputy Chairperson: There could be a challenge to that. If the consultation concluded in six weeks, somebody could then say that you did not give them enough time.

Mr Smyth: If somebody came back with a reasoned argument after six weeks, I do not think that we would not take their views on board because they had missed the deadline. We would be flexible about that.

Mr Lynch: I have just a quick question. How many people are we talking about within this category?

Mr Murray: At any point in time, usually 10% to 12% of our prison population are foreign nationals, which is around 130 to 140 people.

Mr Smyth: But not all of them would be subject to deportation on completion of their sentence.

Mr Murray: Some of them will be lifers and some will be serving ECSs or ICSs. I think that the original calculation was somewhere around 60.

Mr Smyth: It is around the 50 to 60 mark. As of today, the UKBA would say that there are around 50 to 60 people, who are currently serving a sentence and will be liable to removal on completion of that sentence, who could be going early.

The Deputy Chairperson: Thank you both for coming this afternoon.