

# The Cost of Strangers

Removal of Foreign National  
Offenders and Prison Capacity



Ellie Craven

## About Onward

Onward's mission is to develop bold and practical ideas to boost economic opportunity, build national resilience, and strengthen communities across all parts of the United Kingdom. We are not affiliated to any party but believe in mainstream conservatism. Our vision is to address the needs of the whole country: young and old, urban and rural, for all communities across the UK – particularly places that have too often felt neglected or ignored by Westminster.

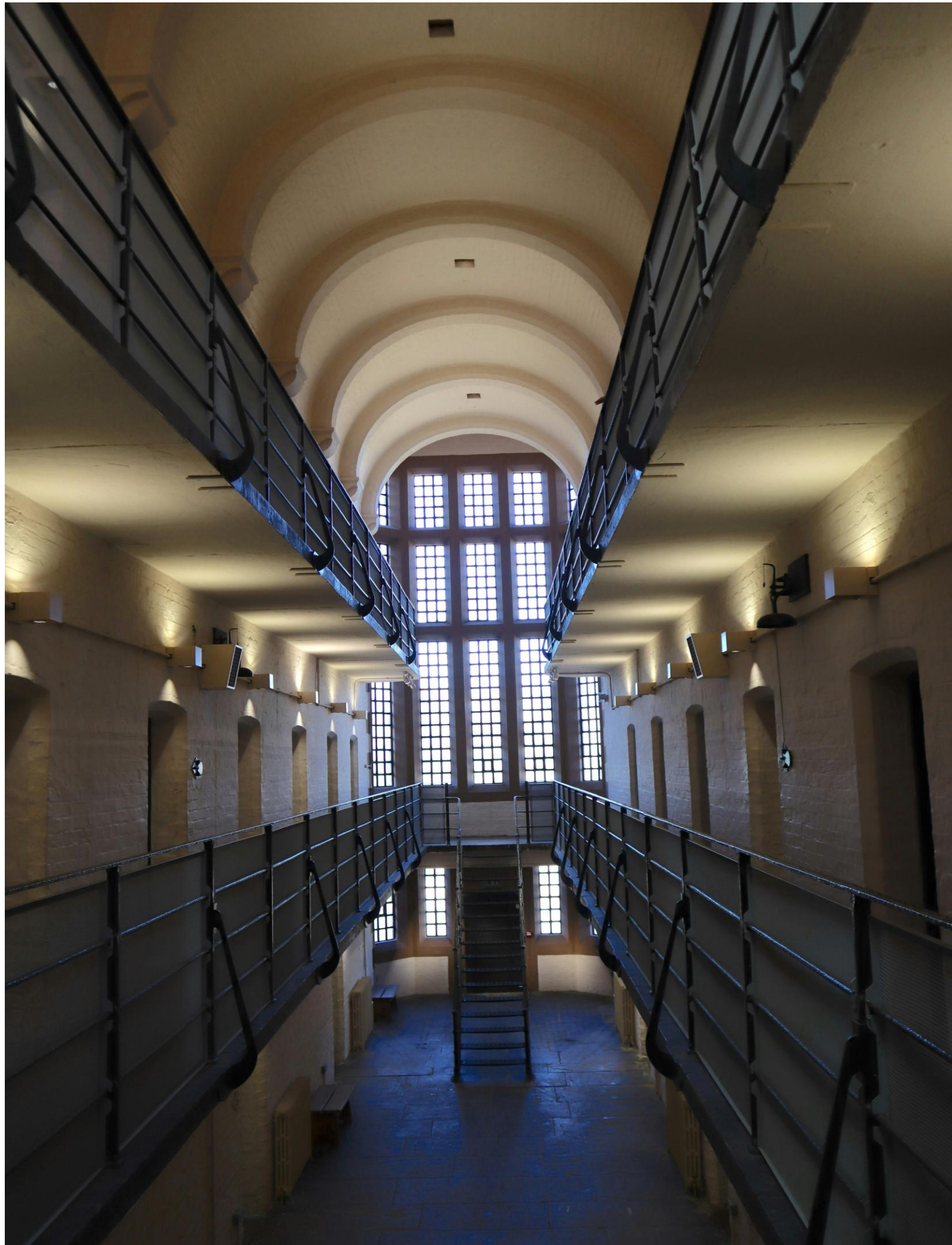
We believe in an optimistic conservatism that is truly national – one that recognises the value of markets, supported by a streamlined state that is active not absent. We are unapologetic about standing up to vested interests, putting power closer to people, and supporting the hardworking and aspirational.

## Thanks

Onward is a small non-profit that relies on the generosity of our donors and patrons to do our work. We are indebted to our Founding Patrons: Martyn Rose, Michael Spencer, David Meller, Bjorn Saven, Richard Oldfield, Robert Walters, Tim Sanderson, James Alexandroff, Jason Dalby, Graham Edwards, John Nash and Theodore Agnew. Without this philanthropic support, our work would not be possible.

## About the authors

Ellie is a Senior Researcher at Onward. She was previously an adviser in the House of Commons specialising in the Department for Energy Security & Net Zero. She holds a BA in History from the University of Bristol and an MA in Politics and Contemporary History from King's College London.



## Introduction

England and Wales are facing a prison capacity crisis. This issue gained public attention recently when the Government implemented a swathe of early releases to ease pressure last summer.<sup>1</sup> But our male prisons have been operating with only a 5% vacancy margin for several years and are no better now. As of October this year, prisons in England and Wales were operating at 98% capacity.<sup>2</sup>

One in every eight inmates housed on the prison estate in England and Wales is a foreign national offender (FNO), which equates to around 10,800 offenders.<sup>3</sup> With the FNO population in English and Welsh prisons taking up 12% of capacity, their removal presents an opportunity to alleviate prison capacity problems significantly. Currently, these offenders can be removed from this country through various means, including the early removal scheme, the facilitated return scheme and prisoner transfer agreements.

But there are complexities that surround these processes that mean progress in deporting FNOs is slower than it could be. The interpretation of articles in the European Convention on Human Rights (ECHR) through domestic human rights law has been a significant barrier to removal: between April 2008 and June 2021 6,042 FNOs had their removal appeal allowed at the First Tier Tribunal with nearly 40% of these doing so on human rights grounds.<sup>4</sup>

Increasing the deportation of FNOs represents a significant opportunity not only to relieve prison capacity problems, but to deliver a significant saving to the taxpayer. Onward analysis reveals that the average annual cost of FNOs in our prison population is much higher than previous estimates: on average £537 million a year since 2019.<sup>5</sup> The process of removing FNOs needs urgent acceleration, and this paper sets out practical measures to achieve this.

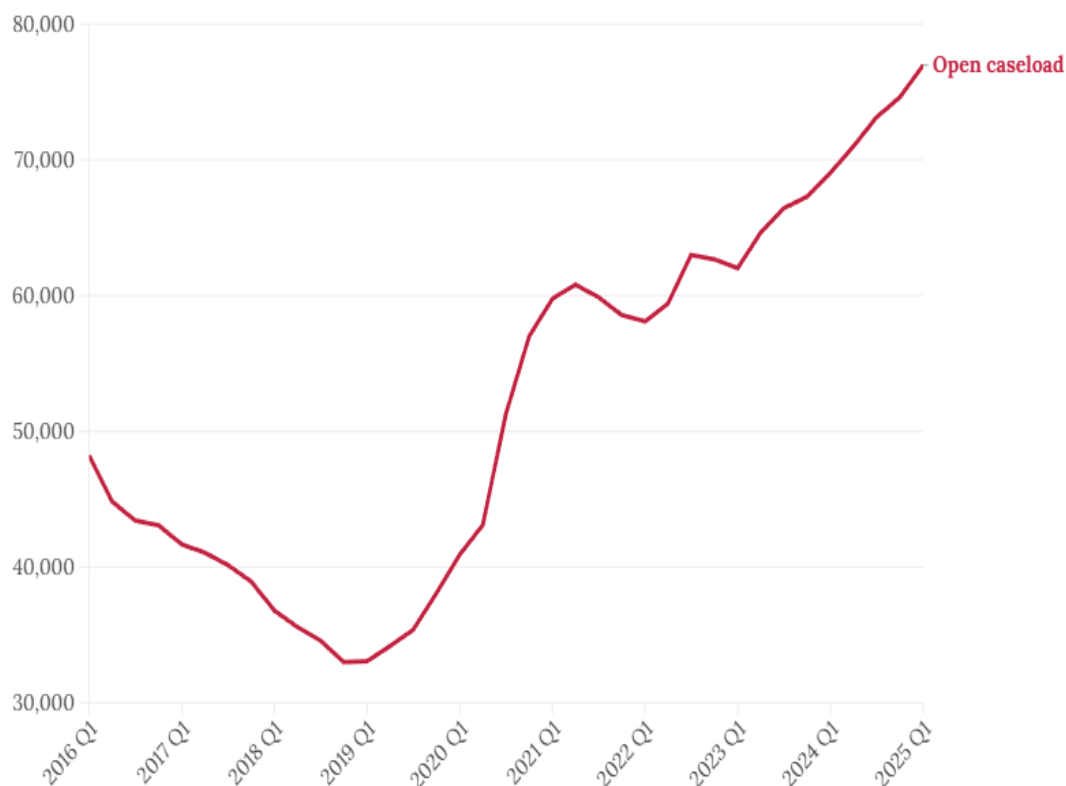
## Prison capacity in England and Wales

The English and Welsh prison system is at a dangerous tipping point. Prisons housing adult males, the vast majority of the prison population, have been operating at close to 95% capacity for several years. And in June 2024 the prison population rose to almost 88,000, putting adult male prison capacity under severe pressure as it reached 97-99%.<sup>6</sup> As of October this year, prisons in England and Wales were again operating at 98% capacity.<sup>7</sup>

### How did our prisons get to this point?

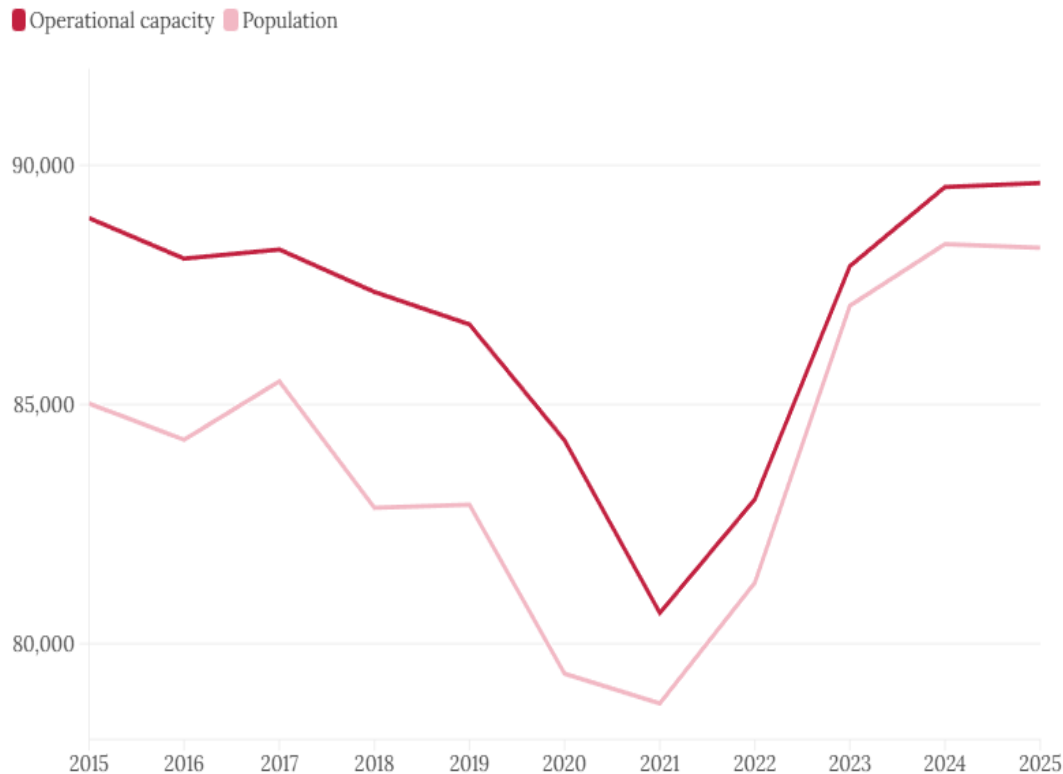
There has been significant pressure on the courts with a backlog in cases increasing before 2020, but the COVID-19 pandemic intensified this. In particular, the most serious cases being heard in the Crown Court had already increased by 23% from 33,290 cases in March 2019 to 41,045 in March 2020 as the pandemic began.<sup>8</sup>

**Figure 1: Number of open cases in the Crown Court 2016-2025<sup>9</sup>**



As shown in Figure 1, the impact of pandemic restrictions can be seen with the backlog of cases increasing a further 46% to 59,928 in September 2021. And this has only worsened since. When restrictions were lifted, there was a sharp increase in the prison population as shown in Figure 2.

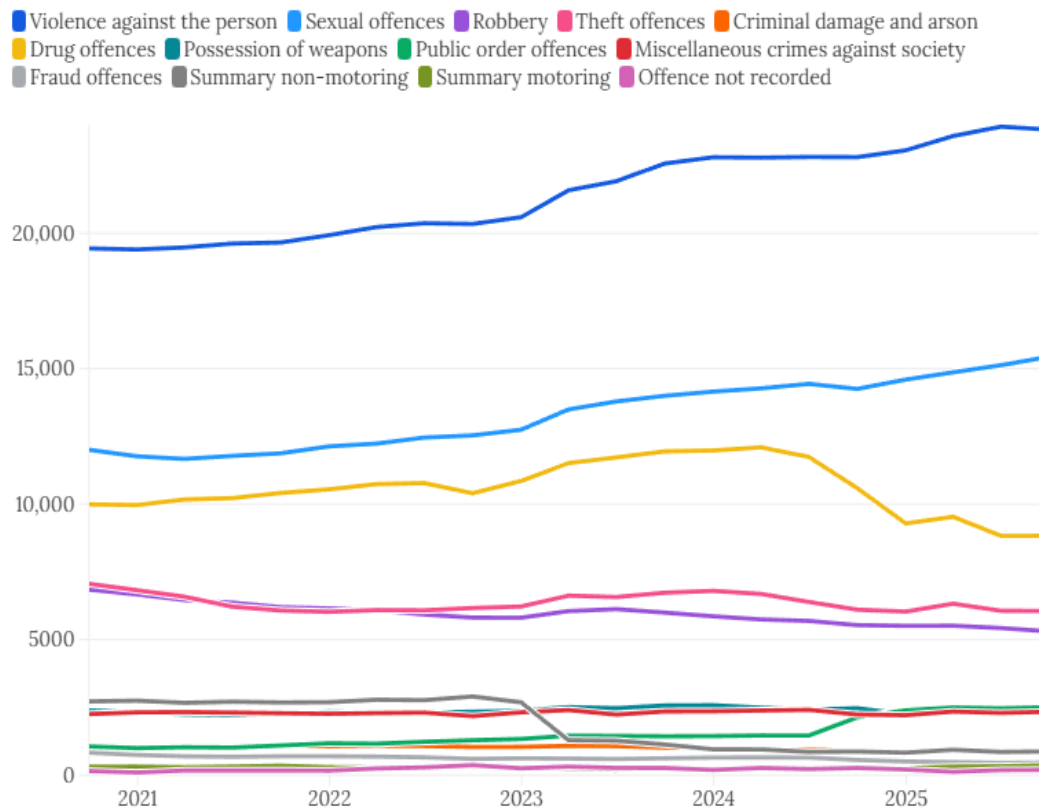
**Figure 2: Prison population and capacity in England and Wales 2015-2025<sup>10</sup>**



The most recent figures show that by the end of March 2025, the Crown Court backlog reached 76,957 - an 11% increase on March 2024. The Magistrates' court backlog also increased by 13% relative to the previous year, reaching 310,304 in March 2025. This means that there is now a larger population being held in custody on remand awaiting trial.<sup>11</sup>

Tougher and therefore longer sentences have also been rising since 2023. In 2012, the average prison sentence was a year and six weeks, which increased to a year and nine months by 2023.<sup>12</sup> And prison capacity has not increased over the same period. In 2024, excluding offenders recalled to jail after early release, prisoners with sentences of four or more years made up 72% of the prison population. This is compared to just 54% in 2009.<sup>13</sup>

**Figure 3: Types of crimes 2020-2024<sup>14</sup>**



There has been a sharp increase in offenders serving sentences for violent crimes which attract longer sentences since 2022, as shown in Figure 3 - the number of violent offences has increased by nearly a third since 2019. This has resulted in one in three prisoners being guilty of a violent offence. What's more, the number of sexual offenders has increased by over 3,000 since March 2021.<sup>15</sup> Taken together, violent and sexual offenders make up more than half of all prisoners. Looking at the share of cautions and convictions among FNOs, the most represented crimes are drug offences, sexual offences, criminal damage and arson, and then fraud.<sup>16</sup>

In the last decade there has been a significant increase in the number of people recalled to prison after breaking the terms of their parole. Ministry of Justice data shows that between January and March 2025, there were 13,296 prisoner releases and 10,101 recalls - this means that for every four people released in the first quarter of 2025, a staggering three were recalled.<sup>17</sup>

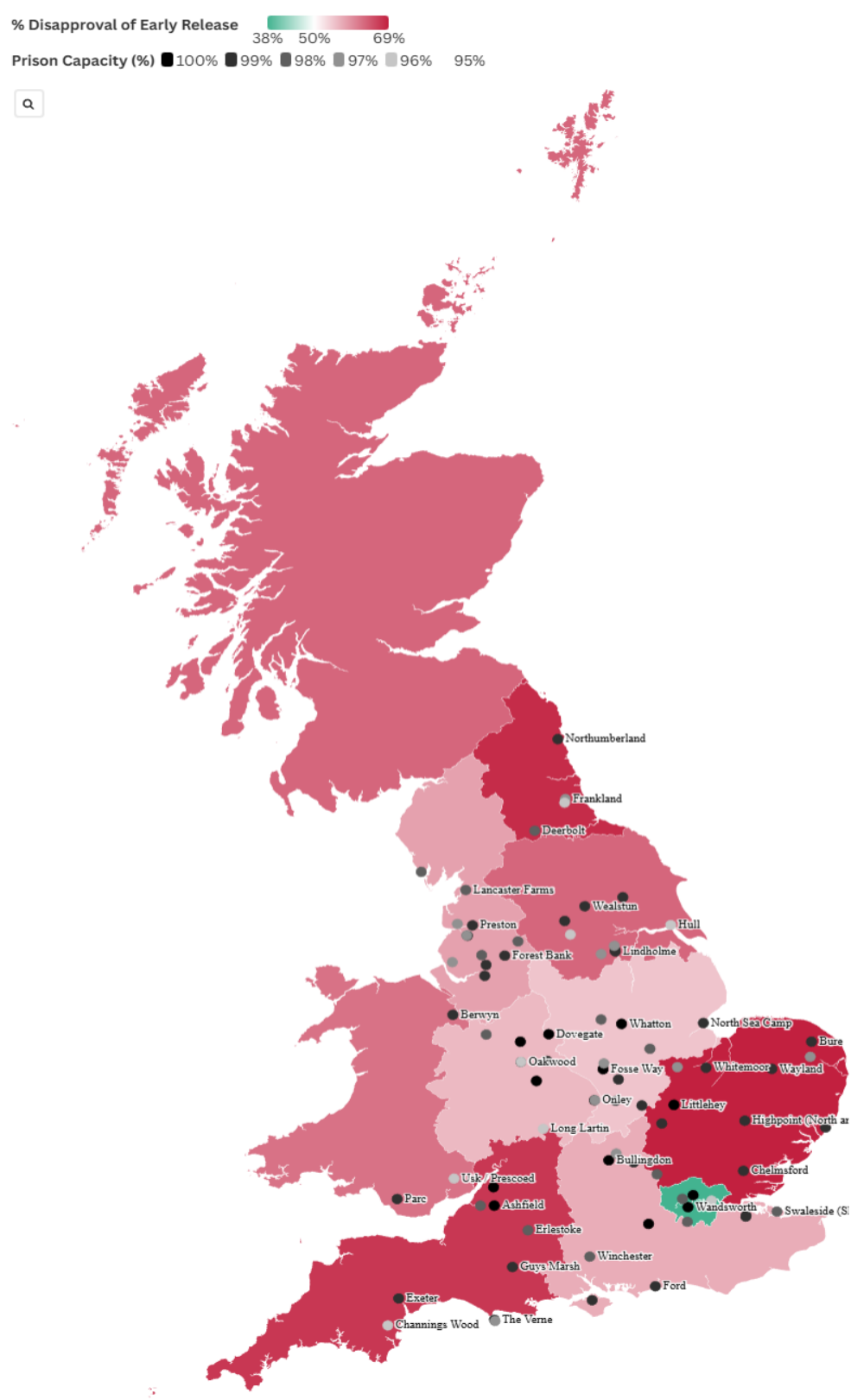
## Prison building and early release

The previous Government committed to delivering 20,000 new prison places by the mid-2020s. As of September 2024, only 6,518 new prison places have been added.<sup>18</sup>

The National Audit Office (NAO) identified several reasons for this delay: an over-ambitious timeline, weakness of governance and risk management, a lack of prioritisation from the Treasury, and a challenging economic and delivery environment. In particular, the NAO highlighted that given the time it takes to obtain planning permission to build new prisons, 20,000 new prison places in around five years was highly unrealistic. Rising costs and inflation also had a significant impact. Between January 2020 and February 2024, there was a 40% overall price rise which led to a near doubling of the cost per prison place for HMPP. This pushed total spending to £2.2 billion by March 2024.<sup>19</sup>

During the summer of 2024, the prison system came close to overflowing, prompting the current Labour Government to implement emergency early releases, reducing some offenders' sentences to 40% of their original term.<sup>20</sup> Between September 2024 and June 2025, over 38,000 prisoners were freed early by the Government.<sup>21</sup>

Figure 4: Opinion on early release and prisons capacity<sup>22</sup>

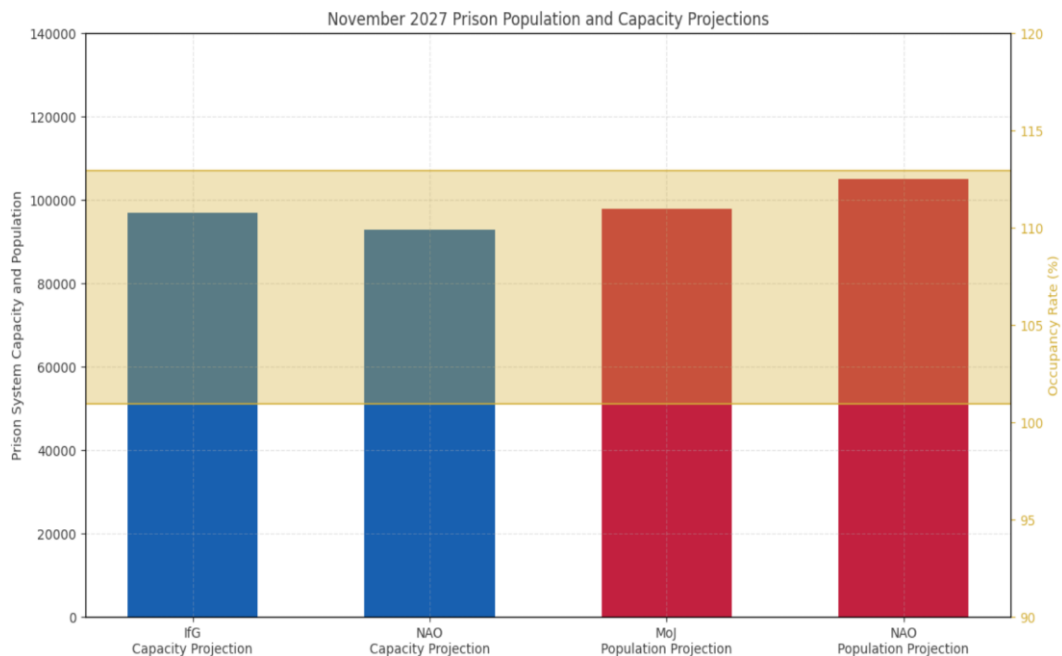


Source: ONS Open Geography Portal, MoJ, More in Common

Early release of prisoners is not a sustainable long-term solution to prison capacity issues – and it is highly unpopular with the public. Figure 4 shows a map of More in Common polling of public opinion of early release alongside prisons across the country and how close to capacity they are. This demonstrates a worrying picture.

Removing London, over 50% of the country disapproves of early releases. Some areas like the South West, North East and East Anglia register nearly 70% disapproval. And with prisons across the country between 95% and 100% capacity, early releases will become more and more frequent. Future scenes similar to August 2024 of released prisoners celebrating in the local area near the prison could create significant tension in communities.

**Figure 5: Prison population and capacity projection in England and Wales by 2027<sup>23</sup>**

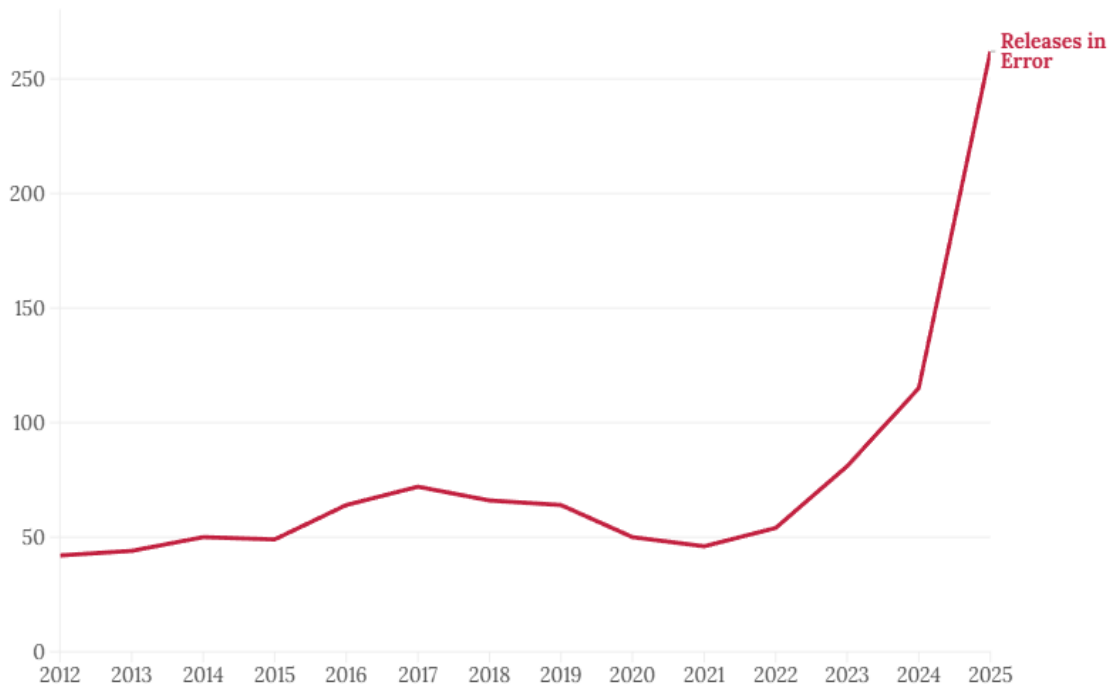


Numerous projections, illustrated in Figure 5, indicate that by November 2027 at the latest, the prison population will exceed capacity, with estimated occupancy rates ranging from 101% to 113%. This underscores the pressing need for decisive action to prevent further early releases or the system reaching breaking point again.<sup>24</sup>

The number of erroneous early releases has increased at a staggering rate since 2024, as shown in Figure 6. While mistaken prison releases have been a long-standing issue as evidenced above, the spike since the current Government came to power is stark. The danger of this increased volume of mistaken early releases

should not be underestimated and has been underscored in the last month with the release of two high-profile foreign national sex offenders. The former Chief Inspector of Prisons has said that the Government's early release programme could be linked to a recent spike in cases.<sup>25</sup>

**Figure 6 - Number of releases in error<sup>26</sup>**

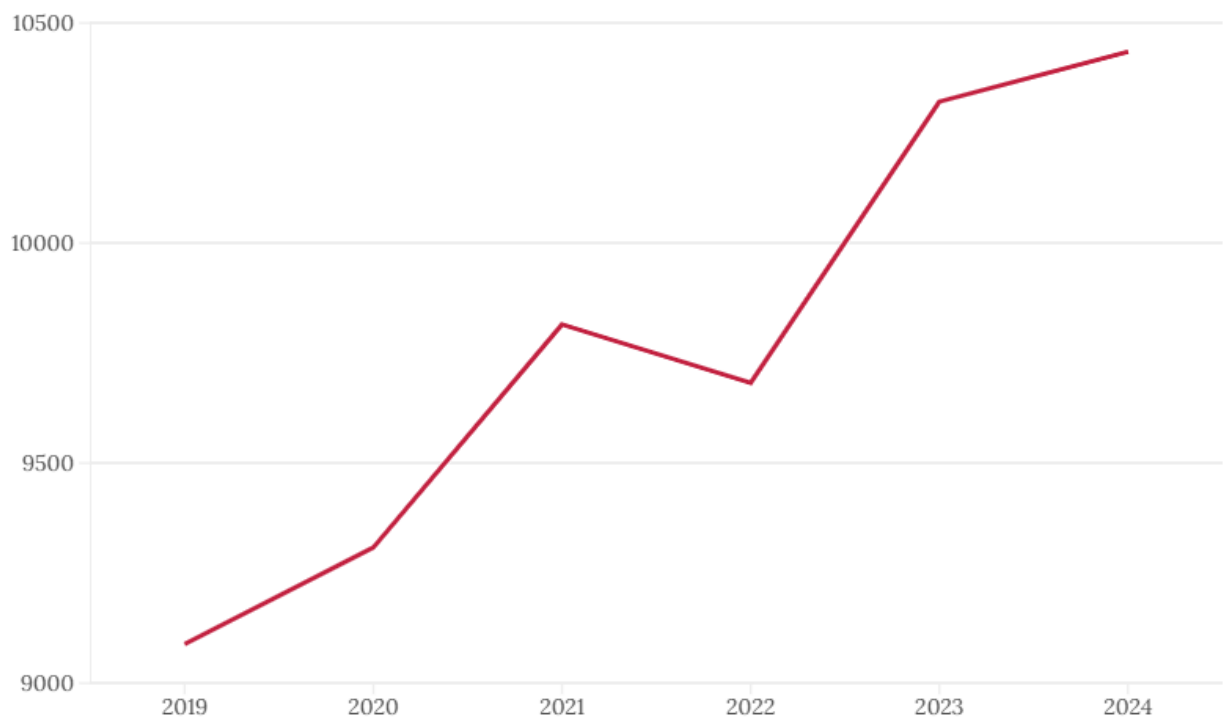


## Foreign National Offenders

There is another route that the Government could take to free up space in prisons - improving the removal of FNOs. FNOs are individuals that are not British citizens and have been convicted of a criminal offence in the UK.

There are currently around 10,800 FNOs in prisons in England and Wales, which represents around 12% of the prison population.<sup>27</sup> As shown in Figure 7, the number of FNOs in our prisons is sharply increasing. There has been a 17% increase in the number of FNOs since 2019 and an almost 10% increase since the current Government came to power.<sup>28</sup>

**Figure 7: Number of Foreign National Offenders in prison 2019-2024<sup>29</sup>**



While many FNOs are housed across the general prison estate, there are also specific prisons that are exclusively used for FNOs. They are dedicated to offenders that are of interest to the Home Office who have between three and 36 months left to serve. Taken together, HMP Huntercombe, HMP Maidstone and HMP Morton Hall house nearly 1,400 FNOs - nearly a tenth of the total FNO population.<sup>30</sup>

If the current population of FNOs were to be removed from the prisons

altogether, prisons in England and Wales would be operating at 86% capacity, compared to the 98% capacity they currently are.<sup>31</sup> While it is not feasible for the whole FNO population to be removed, this demonstrates the significance of the FNO population and the pressure it is putting on our prison capacity.

Figure 8 below shows the makeup of FNOs. The plurality of FNOs are Albanian citizens and this has been the case for several years. Polish, Romanian and Irish offenders follow closely.

**Figure 8: Breakdown of Foreign National Offenders in prison 2019-2023<sup>32</sup>**

Nationality	Number of FNOs				
	2019	2020	2021	2022	2023
<b>Albanian</b>	876	1,144	1,528	1,336	1,475
<b>Polish</b>	754	903	868	830	856
<b>Romanian</b>	734	731	732	752	758
<b>Irish</b>	707	670	617	632	624
<b>Lithuanian</b>	415	467	401	414	402
<b>Jamaican</b>	460	411	403	395	403
<b>Pakistani</b>	295	260	271	277	306
<b>Somalian</b>	295	280	268	257	281
<b>Portuguese</b>	223	239	255	248	300
<b>Nigerian</b>	238	203	203	198	199
<b>Other</b>	4,092	4,000	4,269	4,343	4,717
<b>Total</b>	9,089	9,308	9,815	9,682	10,321

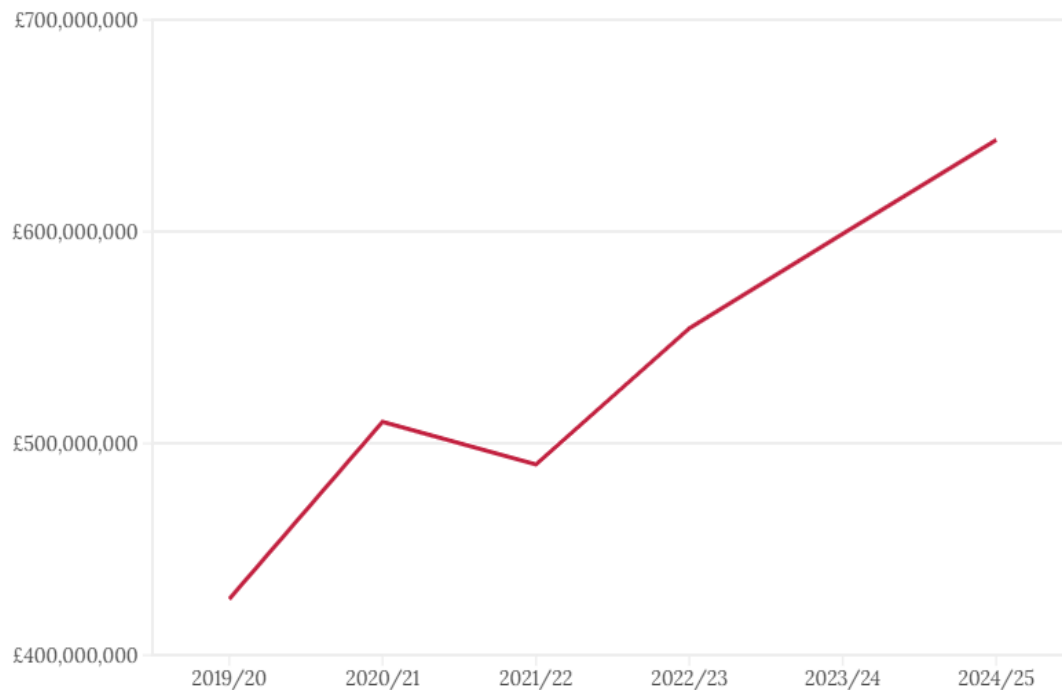
With the FNO population in prisons in England and Wales taking up a significant

proportion of capacity, their removal presents an opportunity to alleviate prison capacity significantly, preventing prisons being dangerously full.

It could also allow for significant savings on the amount the Government spends on foreign offenders, far beyond just the period the offender is in prison. Previous estimates have only looked at the cost of housing a prisoner for a year. For example, the TaxPayer's Alliance calculated FNOs have cost around £600 million in the last year. It is worth noting that this figure is unusually high because the number of FNOs is beyond that of the Government's official figures because offenders whose nationality was not recorded were assumed to be foreign born.<sup>33</sup> Other calculations that use the official FNO population statistics have estimated the cost to be around £530 million.<sup>34</sup>

Taking into consideration the cost of the prosecution process, prison time, court time and process, we have estimated the total cost of FNOs to the taxpayer at £3.2 billion since 2019/2020. And the cost has increased over the years, in particular since 2021/2022 as shown in Figure 9 below. Under the current Government, the cost of FNOs to the taxpayer is at an all-time high at almost £650 million per year - this is a 50% increase, over £200 million more, compared to 2019.<sup>35</sup>

**Figure 9: Cost of Foreign National Offenders 2019-2025<sup>36</sup>**



The Government finds itself in a precarious fiscal position with a £40 billion black hole and borrowing costs at a 27-year high.<sup>37</sup> There is little room for spending increases without tax rises. Onward analysis estimates that the cost of FNOs under this Government is equivalent to paying the salaries of over 20,000 new nurses or over 20,000 new teachers.<sup>38</sup> Likewise, it equates to the salaries of over 15,000 new police officers.<sup>39</sup> On the average starting salary, it is the same as the salaries of over 19,000 new prison officers.<sup>40</sup>

### **How can FNOs be removed?**

#### **Legal background**

The legal backdrop to the removal of FNOs comes from two major pieces of legislation: the Immigration Act 1971 and the UK Borders Act 2007. The former originally intended for deportation to be discretionary in so far as, “a person would be liable to deportation if the Home Office decided it was conducive to the public good or a judge recommended it at the point of sentencing”. The latter places a statutory duty on the Home Secretary to make a deportation order on an FNO which has largely overtaken discretionary deportation decisions of the Immigration Act.<sup>41</sup>

Under the Borders Act, an FNO is defined as a “*person who was not a British citizen or an Irish citizen who had been convicted of an offence in the UK and sentenced to a period of imprisonment of at least 12 months*”. This means that the discretionary power of deportation as outlined in the Immigration Act was converted into a duty in relevant cases.<sup>42</sup> Irish citizens are excluded in the legislative definition of an FNO owing to the longstanding Common Travel Area arrangements that mean the UK does not routinely deport Irish citizens. They are nevertheless counted as foreign nationals in statistics on the nationality of prisoners in English and Welsh prisons.

Deportation of FNOs is not automatic. Exemptions, outlined in section 33 of the Act, include whether the offender was under 18 at the time of the crime or if it would breach the European Convention on Human Rights (ECHR), the UN Refugee Convention or the Council of Europe Convention Against Trafficking in Human Beings.

There are two articles of the ECHR in particular that are frequently cited: Article 3 and Article 8. The former prohibits deportation if “*there is a real risk that the person would be tortured or subjected to inhuman or degrading treatment*”.<sup>43</sup> Article 8 protects the right to “*respect for private and family life*”. The articles are written into UK law under the Human Rights Act 1998. It has since been established that Article 8 can be used to challenge immigration decisions.<sup>44</sup>

These articles have different legislative footings. Article 3 is an absolute right, meaning it cannot be interfered with under any circumstances. Article 8 is a qualified right which means its application can be restricted if it is necessary for a legitimate aim, such as protecting public safety or other people’s rights. Maintaining effective immigration controls has been classified as a legitimate reason for interfering in Article 8. But it is the decision of a judge to decide whether deportation is a proportionate interference with the rights awarded under Article 8. The judge must weigh up the rights of the individual against the interests of the respective country.

The precedent for how Article 8 is applied in the case of an FNO in the UK comes from two landmark cases: the 2004 R (Razgar) v Secretary of State for the Home Department and the 2007 case Huang v Secretary of State for the Home Department.<sup>45</sup> These cases saw the shift from deferring to the judgement of the Home Office on whether a deportation or removal breached a person’s rights

under the Human Rights Act to an independent assessment by immigration tribunal judges on the facts and proportionality of each case.

There were several key principles that were established in these cases. In Razgar, there were five stages of analysis that were established and then later endorsed in Huang. These were:

- a. Is there interference with private or family life?
- b. Is it in accordance with the law?
- c. Is there a legitimate aim?
- d. Is there interference necessary in a democratic society?
- e. Is it proportionate to that aim?

In Huang, it was held that the immigration appeal tribunal must decide whether removal is proportionate under Article 8. Secondly, the court in this case established that tribunals should weigh the public interest in immigration control against the individual's rights under Article 8. And finally, Huang confirmed that the immigration tribunal is the primary forum for deciding Article 8 proportionality.

Following the UK's exit from the EU, FNOs from the EU are subject to different legal routes depending on the circumstances of their crime. EU citizens and family members with residence rights under the European Union (Withdrawal Agreement) Act 2020 are exempt from automatic removal if their offence was undertaken before 31 December 2020.

Removal is instead decided under a framework derived from EU free movement law, which offers stronger protections against deportation. No particular length of prison sentence triggers deportation. With the exception of Irish citizens, if an EU citizen has committed a crime after 31 December 2020, they are liable to automatic deportation.

Prisons refer all cases involving FNOs to the Home Office's Foreign National Offenders Returns Command (FNORC). An FNO who is not eligible for automatic deportation under the Borders Act can be considered on the grounds of their deportation being conducive to the public good. Deportation can be pursued on the ground of criminality if the person:

- "has received a custodial sentence of 12 months or more for a single conviction for a single offence in the UK or overseas

- 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”.<sup>46</sup>

Removal can also be pursued for the following reasons:

- The offender is a threat to national security,
- Court recommended deportation,
- The person’s involvement in gun or serious drug crime regardless of the length of sentence received,
- Regardless of if the person has not yet been convicted of a criminal offence, if there is evidence that the FNO’s conduct or presence in the UK has or will cause serious harm,
- Involvement in a sham marriage.

### Routes to removal

Currently, offenders can be removed from this country through various means including deportation; the early removal scheme; the facilitated return scheme; prisoner transfer agreements; and the tariff-expired removal scheme.

The early removal scheme is available to FNOs eligible for removal that are serving a fixed-term prison sentence and allows for the removal of FNOs at an *“earlier point than would otherwise be possible for the sole purpose of removal or deportation from the UK”*.<sup>47</sup> Once deported they cannot legally return to the UK, and are no longer subject to imprisonment and are free once back in their home country. The Home Office considers all cases, but in most cases prison governors are responsible for authorisation. Any prisoner can now be considered so long as their offence is not terror related. Similarly, the Tariff-Expired Removal Scheme applies to FNOs serving indeterminate sentences.<sup>48</sup>

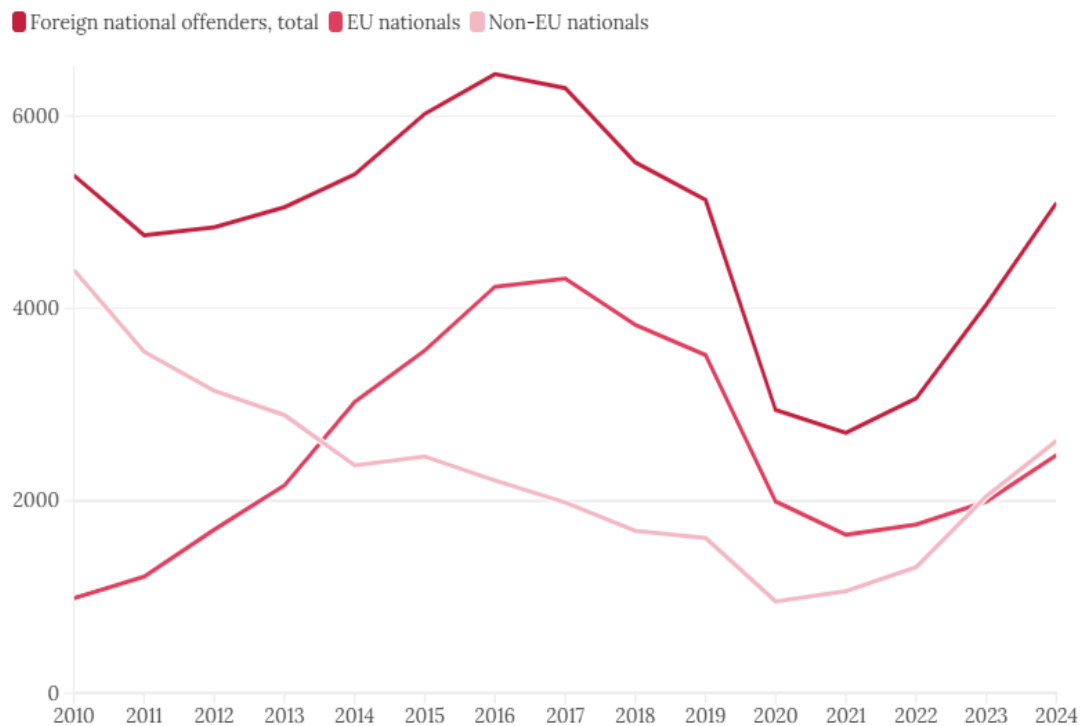
FNOs under this scheme can be released up to four years before their earliest release date. This was originally 12 months, but it was increased in 2022 and has most recently been increased to 48 months this year under the Nationality and Borders Act 2022.<sup>49</sup> So, the minimum pre-removal custodial period is now 30% compared to the previous 50%. The Government has recently stated their

intention to remove the minimum requirement of sentence completion, meaning that FNOs could face immediate removal in the Sentencing Bill, which is likely to pass early next year.<sup>50</sup>

The facilitated return scheme is a voluntary programme run by the Home Office which offers money to help FNOs to resettle in their home country on the condition that they withdraw any appeals or applications to remain in the UK. This scheme is available to all FNOs liable for removal. A participant in the scheme can receive £1,500 if they are serving a custodial sentence or £750 if they have completed their sentence. The scheme is designed to “*encourage FNOs to leave the UK at the earliest possible opportunity, thereby reducing the resources and costs associated with time spent in prison and immigration detention*”.<sup>51</sup>

Prisoner transfer agreements allow for FNOs serving custodial sentences to be transferred to see out the rest of their sentence in their home country. This can be carried out if there is a reciprocal prisoner transfer agreement between the UK and the respective country. The UK has 110 such prisoner transfer agreements - they differ between countries with some requiring the consent of the prisoner, and some not.<sup>52</sup> Countries include Albania, France, Romania, Pakistan, Poland and the United States. Consent is generally required for these transfer agreements, but not always.

**Figure 10: FNO deportations since 2010<sup>53</sup>**



### Removal history

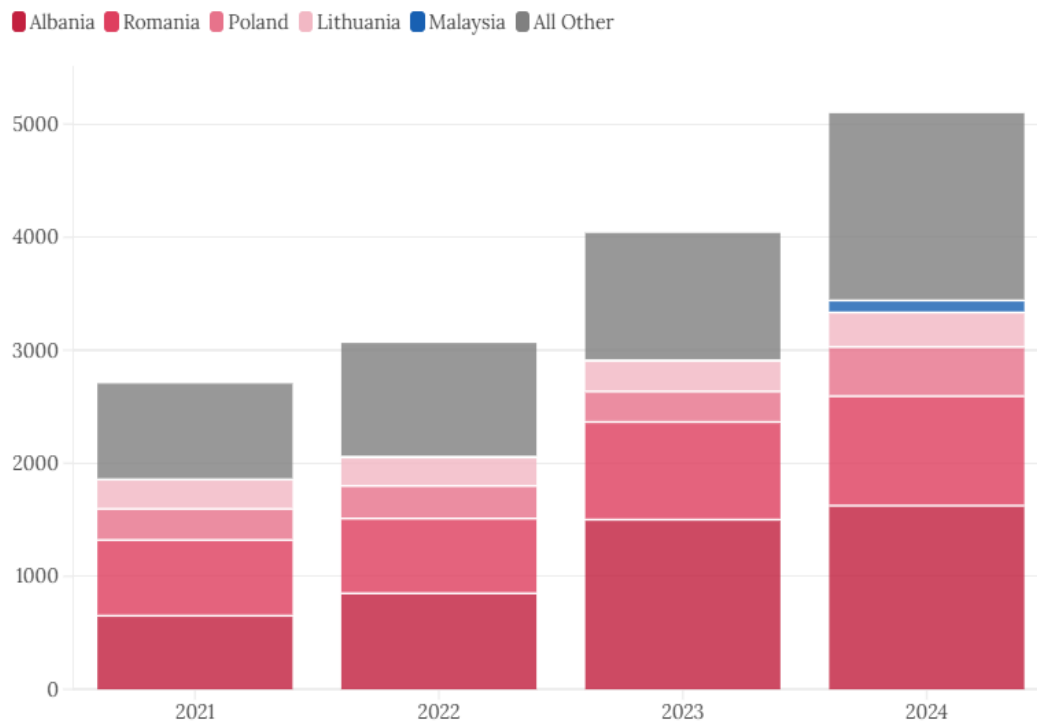
The number of FNOs removed from the UK averaged around 5,500 per year during the period from 2010 to 2019. FNO returns reached a peak in 2016 at 6,437, subsequently falling to below 3,000 per year during the pandemic in 2020 to 2021. Since then, returns of FNOs have been gradually increasing, although in the latest year they were still 18% below the 2016 peak.<sup>54</sup>

The early removal scheme is responsible for around two fifths of FNO deportations from the UK. Between January 2010 and June 2022, around 12,800 people were removed under the facilitated return scheme, meaning it featured in approximately one in every five removals during that period.<sup>55</sup>

In total, the UK has removed 945 people to 50 countries and territories under prisoner transfer agreements from 2010 to 2023.<sup>56</sup> The net effect on prison spaces will be smaller, as some prisoners come to the UK from other countries under the same agreements.

In the year ending June 2025, there were 5,265 FNO returns, representing a 16% increase on the previous year – 48% were EU nationals and 52% were non-EU nationals. And in the period between 5 July 2024 and 31 January 2025, the early release scheme was responsible for over half of deportations.<sup>57</sup>

**Figure 11: Breakdown of FNO returns by nationality 2021-2025<sup>58</sup>**



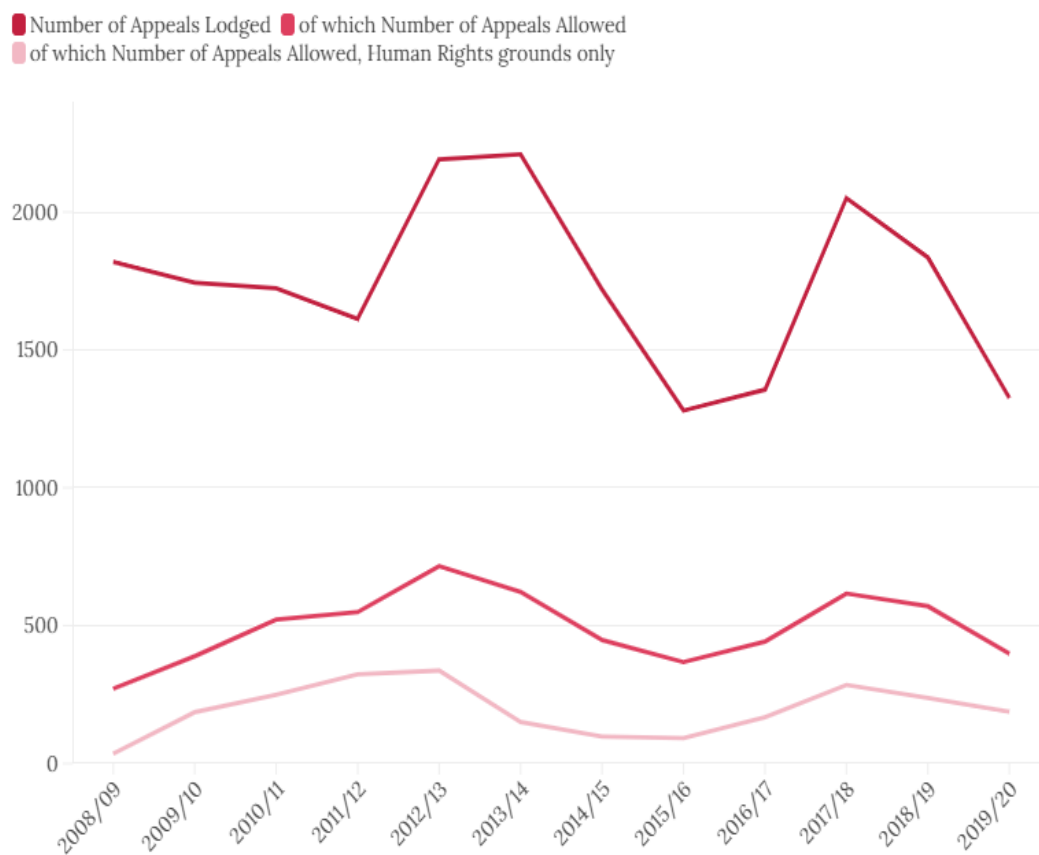
As shown in Figure 11, FNO returns have been increasing in recent years. Removals of Albanian offenders have been the largest group of returns. They were steadily increasing until 2024 and took a slight downturn in the most recent year ending June 2025.

Building on the 2021 prisoner transfer agreement, the previous Conservative government signed a deal to send 200 Albanian prisoners to serve the balance of their sentences in Albania. In return, the UK helps Albania modernise its prisons. The deal outlined that the total cost for the Ministry of Justice to modernise Albanian prisons was around £8 million over two years.<sup>59</sup> This equated to £32 per prisoner per day – a significant saving compared to £109 per Albanian prisoner per day in prisons in England and Wales.<sup>60</sup>

As shown in Figure 12, between April 2008 and June 2021, just over a tenth of appeals against removal succeeded on human rights grounds. Home Office management data records 21,521 appeals in that period, of which 6,042 succeeded. Of the successful appeals, nearly 2,400 were successful on human rights grounds only.

Most of these are thought to be Article 8 cases as indicated by a subsequent review. Between 2016 and 2021, of 1,011 appeals against deportation by FNOs that were allowed on a human rights basis, nearly three-quarters were allowed solely on Article 8 grounds.<sup>61</sup>

**Figure 12: FNO appeals against deportation 2008-2021<sup>62</sup>**



## Removals and the ECHR

While the UK's future as a signatory of the ECHR continues to be debated, there are steps that can be taken to apply its protections more proportionately to domestic cases. The courts must also ensure that its application to protect the

rights of FNOs is not infringing on the rights of UK citizens. In other words, if an FNO appealed deportation due to an infringement on their Convention rights under the Human Rights Act, would this jeopardise the safety of the public?

The Conservative party recently announced its intention to withdraw from the ECHR when in government and repeal the Human Rights Act 1998. This presents the opportunity for an entirely new legal framework free from having to align with Articles 3 or 8 that could radically increase deportations. However, the Labour Government has stated that it will not take the UK out of the ECHR. With over three and a half years until the next General Election must come and the prisons capacity crisis showing no signs of abating in the meantime, it is crucial to consider what other legislative changes could go some way towards increasing successful deportations of FNOs while the UK remains a signatory to ECHR.

As outlined above, Article 8 is a qualified right that was incorporated into the Human Rights Act from the ECHR. So, while the application of Article 3 cannot be changed as long as the UK remains in the ECHR, the Government can restrict the application of Article 8. And given that nearly three-quarters of appeals against removal that were granted to FNOs between 2008-2021 were on the grounds of Article 8, changing its application could radically increase FNO removals.

The Human Rights Act states that,

*“There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”*<sup>63</sup>

Looking at FNOs, there is a strong argument that interference with Article 8 would be in the interest of public safety, the prevention of disorder and crime, and for the protection of the rights and freedoms of others.

The Government has done this before in 2014 and the current Government is in the process of building on this. The Cameron Government's Immigration Act 2014 changed how Article 8 applications are handled, instructing courts and

tribunals to prioritise the public interest in maintaining immigration control over an individual's right to private and family life. This legislation also made it harder for FNOs to successfully challenge deportation with sentences of four or more years requiring "*very compelling circumstances*" and for shorter sentences, the claim needs to outweigh the public interest.<sup>64</sup>

Exceptions to deportation were also established in this legislation, including long-term lawful residence and integration for private life and where deportation would be 'unduly harsh' for a partner or child of the offender in question. It is important to note that 'unduly harsh' does not mean uncomfortable, inconvenient, undesirable or difficult.<sup>65</sup>

## Recommendations and conclusion

### Recommendations

**Recommendation 1** – The Government should introduce tougher legislation to tighten the application of Article 8 regardless of ECHR membership

Legislative action on the interpretation of Article 8 has been taken in the past, and the Government has signalled its intention to build on this. But it needs to go further. The rate at which Article 8 applications are successful clearly shows this is not working how it was intended. A recent example exemplifies this: an Albanian FNO's deportation was halted partly because his son had an aversion to foreign chicken nuggets. An immigration tribunal cited it would be 'unduly harsh' for the FNO's son to return to Albania due to his food sensitivities – the only example of which listed in court documents was "*the type of chicken nuggets that are available abroad*".<sup>66</sup>

The de jure application of Article 8 under the Human Rights Act alone needs to be further restricted and de facto practice needs to be tightened to ensure it is being applied properly. The Government should therefore tighten the code published in 2014, making the following changes under Part 5A of the Immigration Act 2014:

#### **1. Clarify that family life formed after conviction carries little weight – making Immigration Rule 398(c) statutory**

Looking at whether deportation is proportionate under section 117C(6) of the Nationality, Immigration and Asylum Act 2002, considerations to family or private life should not be given any material weight after the commission of the offence unless exceptional circumstances exist.

In the *Hesham Ali v SSHD* [2016] UKSC 60, it was stated that "*The Rules are relevant to, but not determinative of, the proportionality assessment required by Article 8*". Putting this on a statutory footing would therefore give it equal weight to the Human Rights Act Article 8 clauses so it is binding rather than guiding.

It is worth noting that while Parliament can pass legislation instructing courts how to weight Article 8 rights relative to public safety, if it instructs to give no weight at all to relationships formed post-conviction (for

example), it is likely the courts would make a declaration of incompatibility. And the UK government could get taken to Strasbourg itself for breach of Article 8 in a direct court action.

**2. Replace “unduly harsh” with a higher threshold - align with ECtHR thresholds in *Üner v Netherlands* (2006), *Jeunesse v Netherlands* (2014) and *Unuane v UK* (2020)**

As established above, if deportation would be ‘unduly harsh’ for a partner or child of the offender in question, this is a legitimate reason for appeal from the UK. But this precedent has been used in a disproportionate manner.

*Üner v Netherlands* (2006), *Jeunesse v Netherlands* (2014) and *Unuane v UK* (2020) cases looked at the proportionality of deporting FNOs in light of their private and family rights under Article 8 and the best interests of their children. They established that national authorities must conduct a proper proportionality assessment under Article 8.

In particular, *Üner* established the ‘*Üner criteria*’ which is a set of factors for courts to balance the public interest against private and family life rights - notably that removal can be allowed despite Article 8 rights if the public interest is strong enough. And *Unuane v UK* ruled that the UK had breached Article 8 because it did not provide a proportionality assessment that “adequately considered the best interests of the children”. The case established that sufficient weight must be given to the negative impact on family life and that ‘unduly harsh’ requires a proper balancing exercise.

So, for the purpose of section 117C(5), the effect of deportation on a qualifying child or partner should be regarded as unduly harsh only if it would result in exceptional and irreversible harm to that person. The threshold should be raised so that it mirrors the exceptional and irreversible harm thresholds usually used in Strasbourg cases above.

**3. Make very compelling circumstances apply to all offenders, not just those with 4 or more years sentences**

A court or tribunal may not find that deportation is disproportionate under Article 8 unless satisfied that the case presents very exceptional circumstances compelling in nature, assessed against the strong public interest in removal.

## **Recommendation 2** – Introduce a Diversion Scheme

The Government should introduce a Diversion Scheme for lower-level crime committed by FNOs, in which these perpetrators are deported before they are convicted, as a substitute for incarceration. This should be applied to crimes that carry a sentence of up to two years.

There are some international examples of similar schemes. For example, the United States operates a pre-trial diversion policy under Title 8 of the Code of Federal Regulations. In this, the Attorney General may “*permit any alien applicant for admission to withdraw his or her application for admission in lieu of removal proceedings... or expedited removal*”.<sup>67</sup>

If the Department of Homeland Security uses an expedited removal, an inadmissibility bar (usually of five years) is applied to the alien in question. This carries no criminal conviction.<sup>68</sup> On the southern border, Border Patrol agents run a Consequence Delivery System (CDS) through which they find on the first apprehension of an alien, either federal prosecution or expedited removal are the most effective courses of action.<sup>69</sup>

The Home Office would retain information on FNO removal under the diversion policy so that FNOs in question would not be allowed to re-enter the country. This would not only prevent the FNO population in prisons in England and Wales from increasing, but it would also lessen the cost of FNOs.

## **Recommendation 3** – Remove the minimum requirement for the early removal scheme

Under the previous Conservative government, the minimum requirement was for an offender to have served 50% of their sentence, this was subsequently reduced to 30% under the Labour Government and is currently in place. As outlined above, the Government has signalled its intention to take this further and remove the minimum requirement for the early removal scheme altogether.

There is international precedent for this policy. For example, in Italy a ‘judicial expulsion’ can be ordered as an alternative to a current term of imprisonment or as a substitute penalty to imprisonment. Both are applicable to sentences of two years or less but only to crimes of irregular entry or stay in Italy.<sup>70</sup> In Spain, an FNO who has been sentenced to a custodial sentence of more than a year can

have their sentence substituted by “expulsion from Spanish territory”. A judge can also order for part of the sentence to be served and substitute the rest of their sentence with expulsion.<sup>71</sup>

The Government should press ahead with the removal of the minimum requirement for the early removal scheme at an accelerated pace. Introducing this means that offenders who have not qualified for the Diversion Scheme, perhaps as they have chosen to go through the court process in the hopes they would not be convicted, can be removed at the earliest opportunity post-conviction. This policy alongside the Diversion Scheme allows for a comprehensive set of deportation levers for new offenders.

#### **Recommendation 4** – Expand the ‘deport now, appeal later’ policy

Legislation passed in 2014 introduced the system known as ‘deport first, appeal later’. This policy means that the Government can send FNOs back to their home nation before they can appeal against the decision. They can be removed from the UK and they can have their appeal heard through a video link.

The current Government has recently expanded this list from the original eight countries to 23.<sup>72</sup> The list of countries that qualify for this policy are:

- |             |             |
|-------------|-------------|
| ● Albania   | ● Indonesia |
| ● Angola    | ● Kenya     |
| ● Australia | ● Kosovo    |
| ● Belize    | ● Latvia    |
| ● Botswana  | ● Lebanon   |
| ● Brunei    | ● Malaysia  |
| ● Bulgaria  | ● Mauritius |
| ● Canada    | ● Nigeria   |
| ● Estonia   | ● Tanzania  |
| ● Finland   | ● Uganda    |
| ● Guyana    | ● Zambia    |
| ● India     |             |

Apart from Albania and Nigeria, this list omits the countries that are responsible for the majority of FNOs in prisons in England and Wales as shown in Figure 8. So, for this policy to be truly effective in decreasing the number of FNOs in prisons, this list needs to contain more of the countries outlined in Figure 8.

The remaining countries that make up the top 10 FNO nations are:

- Poland
- Romania
- Ireland
- Lithuania
- Jamaica
- Pakistan
- Somalia
- Portugal

The Home Secretary has the power to review and amend the countries on the deport now, appeal later list. Allowing removal before an appeal applies on a case-by-case basis, but being from a designated safe country strengthens the Home Secretary's case for deportation. And Section 80AA list of the Nationality, Immigration and Asylum Act 2002 already contains a list of countries the Home Office deems as safe.

Two actions should be taken to address this. First, the Home Office should put in place scheduled reviews of potential countries that could be added to the list. These reviews should happen at least bi-annually and should look at countries of interest:

- A.** The review should consider how effective adding this country would be in reducing the number of FNOs in English and Welsh prisons.
- B.** The safety of the home nation should be considered for both the FNO and possible dependants. The Home Office must ensure that there is no real risk of serious or irreversible harm to the individual or dependants if they are removed.
- C.** The viability of the home nation to conduct a fair remote appeal should be considered. This would include access to legal representation, sufficient internet access, diplomatic cooperation and arrangements, legal fairness and procedural safeguarding, and the assurance of no political interference.

Second, the remaining countries that are in the EU should be added immediately. Given that all EU countries fall within the Nationality, Immigration and Asylum Act's safe countries, Poland, Romania, Lithuania, and Portugal are all already deemed as safe by the Home Office. And looking more broadly, based on 2023

prison population figures and the cost of incarceration in 2023, these FNOs cost the taxpayer over £124 million in 2023 alone. Therefore, as there is no real risk of serious harm to these offenders if they were deported and there is significant cost incurred by housing them in our prisons, these countries should be added to the 'deport now, appeal later' list at an accelerated pace.

Finally, for countries on this list that do not cooperate with the deportation policy, the Home Office should signal their intention to stop issuing new visas to countries to work as a diplomatic tool to encourage an increase in the volume of removals to these countries. There would be unintended consequences for non-offenders trying to seek legal settlement in the UK, so the Government should only stop issuing new visas as a last resort.

## Conclusion

The prison population in England and Wales has reached dangerous levels in recent years and we cannot continue like this. And with inmate capacity across the prison estate at 98% in October 2025, the demand on our prisons is not being alleviated. There are several reasons our prisons have reached this tipping point: an increased backlog on the crown court due to the COVID-19 pandemic, tougher and therefore longer sentences have been on the rise since 2023 due to an increase in sentences for violent crimes, an increase in the number of offenders being recalled to prison, and a lack of prisons being built.

There is a clear group of inmates that should not be in our prisons: foreign national offenders (FNOs). Britain is not open to business for crime. But with English and Welsh prisons housing 10,800 foreign national offenders, one could be forgiven for thinking it is. What's more, FNOs have cost the taxpayer over £3.2 billion since 2019 alone.

It is crucial for the integrity of our justice system, immigration system and tax system to send a clear message: if you come to this country and commit crime, you cannot stay. But on average, only 5,500 FNOs a year were removed from the UK between 2010 and 2019 - only around half of the annual FNO population.

Britain expects migrants to abide by our laws and should not tolerate it when that does not happen. So, more needs to be done to ensure this, and fast. This paper has identified several areas of FNO removal that need to change and recommends a series of pragmatic reforms to accelerate deportations:

- The Government should introduce tougher legislation to tighten the application of Article 8 regardless of ECHR membership,
- A Diversion Scheme should be introduced,
- The Government should remove the minimum requirement for the early removal scheme,
- And the Government should expand the 'deport now, appeal later' policy and stop issuing new visas to countries that do not comply.

In taking these steps and increasing the level of FNO deportations, this paper offers options to not only address the urgent issue of prison capacity but also alleviate the court backlog and reduce the associated cost.

## Costings Methodological note

- 1) We used MoJ data to calculate the cost of legal aid per crime higher case.<sup>73</sup>
- 2) We used CPS data to calculate the average cost to the CPS of convicting someone.<sup>74</sup>
- 3) We used government data on the average cost per prisoner for each year from 2019/20 - 2023/24. We used an inflation calculator to estimate the cost for 2024/25 since figures are not available. Note that this data is the average cost per prisoner for a year's stay in prison.
- 4) Used data from a written question in parliament to calculate cost to HMCTS for 1.4 sitting days.<sup>75</sup>
- 5) Found the number of FNOs per year (from 2019/20 - 2024/25).
- 6) Given that around 7% of determinate sentences come from the magistrates courts and the FNOs in question are all in prison, we have assumed they went through the Crown Courts.<sup>76</sup>
- 7) Adding the court costs for each year assumes that every FNO in prison undergoes a full court process within a given year - implying a custodial sentence of 12 months and no carryover. But given the average custodial sentence is 22 months, we have adjusted the total court costs by 55%.
- 8) To calculate how many new nurses salaries the 2024/25 FNO cost is equivalent to, we found the starting salary (£31,048).<sup>77</sup> And for new teachers, we took the average of the starting salaries for England excluding London (£31,650).<sup>78</sup> And for police officer salaries, we found the police starting salary (£40,776). And according to the Met Police, the average cost to train a police constable over the three year course is £210,000 - this includes wages and operating costs.<sup>79</sup> For prison officer salaries, we used HMPPS' starting salary of £33,746.<sup>80</sup> These comparisons do not include non-pay associated costs.

## Endnotes

---

- <sup>1</sup> Increasing the Capacity of the Prison Estate to Meet Demand – National Audit Office ([link](#))
- <sup>2</sup> Prison Population: Monthly Prison Figures 2025 – Ministry of Justice, October 2025, Onward Analysis ([link](#))
- <sup>3</sup> Offender Management Statistics Quarterly: Q4 2024 – Ministry of Justice ([link](#))
- <sup>4</sup> Foreign National Offenders: Appeals on Human Rights Grounds 2008 to 2021 – Home Office ([link](#))
- <sup>5</sup> Onward analysis and methodology note
- <sup>6</sup> Increasing the Capacity of the Prison Estate to Meet Demand – National Audit Office (NAO) ([link](#))
- <sup>7</sup> Prison Population: Monthly Prison Figures 2025 – Ministry of Justice, October 2025; Onward analysis ([link](#))
- <sup>8</sup> Reducing the Backlog in the Criminal Courts – House of Commons Committee of Public Accounts, UK Parliament ([link](#)).
- <sup>9</sup> Criminal Court Statistics Quarterly, January to March 2025 – Ministry of Justice ([link](#))
- <sup>10</sup> Prison Population Statistics (monthly statistics for August) – Ministry of Justice ([link](#))
- <sup>11</sup> Court waiting times undermine justice / Independent Sentencing Review – Law Society Press Office ([link](#))
- <sup>12</sup> “Why are prisons so full in England and Wales?” – The Guardian, 14 September 2024 ([link](#))
- <sup>13</sup> “Why are prisons so full in England and Wales?” – The Guardian, 14 September 2024 ([link](#))
- <sup>14</sup> MoJ, Offender management quarterly April - June 2025 ([link](#)) & MoJ, Offender management quarterly April - June 2024 ([link](#)) & MoJ, Offender management quarterly April - June 2023 ([link](#)) & MoJ, Offender management quarterly April - June 2022 ([link](#)) & MoJ, Offender management quarterly April - June 2021 ([link](#))
- <sup>15</sup> “Why are prisons so full in England and Wales?” – The Guardian, 14 September 2024 ([link](#))
- <sup>16</sup> Migrant Convictions and the Prison Population (on over-representation of non-citizens in prison) – Migration Observatory, University of Oxford ([link](#))
- <sup>17</sup> “Three of Every Four Prisoners Released Are Recalled Back to Prison” – Prisoners’ Advice Service ([link](#))
- <sup>18</sup> Increasing the Capacity of the Prison Estate to Meet Demand – National Audit Office (NAO) ([link](#))
- <sup>19</sup> Increasing the Capacity of the Prison Estate to Meet Demand – National Audit Office (NAO) ([link](#))
- <sup>20</sup> Prisons Capacity and Performance – Parliamentary Office of Science and Technology (POST), UK Parliament, 7 October 2024 ([link](#))
- <sup>21</sup> BBC News report on early release of prisoners due to capacity pressures (early release numbers in England and Wales) – BBC News ([link](#))
- <sup>22</sup> Prison Population Statistics – Ministry of Justice ([link](#)) & Approval Tracking – More in Common ([link](#))
- <sup>23</sup> Performance Tracker (Prisons) – Institute for Government; Increasing the Capacity of the Prison Estate to Meet Demand – National Audit Office; Prison Population Projections 2024 to 2029 – Ministry of Justice; Onward analysis ([link](#)) ([link](#)) ([link](#))
- <sup>24</sup> Performance Tracker (Prisons) – Institute for Government; Increasing the Capacity of the Prison Estate to Meet Demand – National Audit Office; Prison Population Projections 2024 to 2029 – Ministry of Justice; Onward analysis ([link](#)) ([link](#)) ([link](#))
- <sup>25</sup> The Telegraph, David Lammy: I didn’t have a; the facts to tell MPs about accidental releases, 6th November 2025 ([link](#)).
- <sup>26</sup> The Ministry of Justice, Releases in error data, ([link](#)).
- <sup>27</sup> Offender Management Statistics Quarterly, Q4 2024 – Ministry of Justice ([link](#))
- <sup>28</sup> Onward analysis
- <sup>29</sup> Offender management statistics quarterly: January to March 2024 – Ministry of Justice ([link](#))
- <sup>30</sup> Prison Population: Monthly Prison Figures 2025 (October) – Ministry of Justice ([link](#))

- 
- <sup>31</sup> Onward analysis
- <sup>32</sup> Foreign National Offenders in UK Prisons: Powers to Deport – House of Lords Library ([link](#))
- <sup>33</sup> TaxPayer’s Alliance analysis ([link](#))
- <sup>34</sup> The Daily Express, *Shocking cost of locking up foreign criminals in British jails* ([link](#))
- <sup>35</sup> Crown Prosecution Service Annual Report and Accounts 2024–2025 – Crown Prosecution Service ([link](#)); CPS Data Summary Q4 2024–2025 – CPS ([link](#)); Costs per Place / Costs per Prisoner 2023–2024 Summary – Ministry of Justice ([link](#)); Written Parliamentary Question UIN 4727 (30 Nov 2023) – UK Parliament ([link](#)); Offender Management Statistics Quarterly Q4 2024 – Ministry of Justice; Onward analysis ([link](#))
- <sup>36</sup> Onward analysis
- <sup>37</sup> “Rachel Reeves feels budget heat” – The Times ([link](#))
- <sup>38</sup> Typical starting wage for nurses – Nurses.co.uk ([link](#)); Teacher pay and benefits – Get Into Teaching (Department for Education); Onward analysis ([link](#))
- <sup>39</sup> Metropolitan Police starting salary information ([link](#)); Metropolitan Police FOI disclosure on lifetime cost per officer; Onward analysis ([link](#))
- <sup>40</sup> HM Prison & Probation Service, *Prison Officer Pay* ([link](#)).
- <sup>41</sup> Immigration Act 1971 – UK Parliament ([link](#)); UK Borders Act 2007 – UK Parliament ([link](#))
- <sup>42</sup> UK Borders Act 2007 – UK Parliament ([link](#))
- <sup>43</sup> European Convention on Human Rights (full text) – Council of Europe ([link](#))
- <sup>44</sup> European Convention on Human Rights (full text) – Council of Europe ([link](#))
- <sup>45</sup> *R (Razgar) v Secretary of State for the Home Department* [2004] UKHL 27 ([link](#)); *Huang v Secretary of State for the Home Department* [2007] UKHL 11 – House of Lords judgments ([link](#))
- <sup>46</sup> Foreign National Offenders in UK Prisons: Powers to Deport – House of Lords Library ([link](#))
- <sup>47</sup> Foreign National Offenders in UK Prisons: Powers to Deport – House of Lords Library ([link](#))
- <sup>48</sup> Foreign National Offenders in UK Prisons: Powers to Deport – House of Lords Library ([link](#))
- <sup>49</sup> Immigration (Removal of Foreign National Offenders) Regulations 2025 (SI 2025/9780348273168, 23 September 2025) – UK legislation ([link](#))
- <sup>50</sup> In brief: Deportation and early removal of foreign national offenders – House of Commons Library, 2 February 2024 (Debate Pack / Research Briefing) ([link](#)).
- <sup>51</sup> Foreign National Offenders in UK Prisons: Powers to Deport – House of Lords Library ([link](#))
- <sup>52</sup> Foreign National Offenders in UK Prisons: Powers to Deport – House of Lords Library ([link](#))
- <sup>53</sup> Ministry of Justice returns summary table 2010–2024 – Ministry of Justice ([link](#))
- <sup>54</sup> Immigration System Statistics: “How many people are returned from the UK?” – Home Office, year ending June 2025 ([link](#))
- <sup>55</sup> Deportation of foreign national offenders – House of Commons Library Research Briefing, 2 August 2024 (Briefing Paper 8062) ([link](#))
- <sup>56</sup> Deportation of foreign national offenders – House of Commons Library Research Briefing, 2 August 2024 (Briefing Paper 8062) ([link](#))
- <sup>57</sup> Immigration System Statistics: “How many people are returned from the UK?” – Home Office, year ending June 2025 ([link](#))
- <sup>58</sup> Immigration System Statistics: “How many people are returned from the UK?” – Home Office, year ending June 2025 ([link](#))
- <sup>59</sup> “UK and Albania agree groundbreaking new arrangement on prisoner transfers” – UK Government / Home Office news release ([link](#))
- <sup>60</sup> “UK and Albania agree groundbreaking new arrangement on prisoner transfers” – UK Government / Home Office news release ([link](#))
- <sup>61</sup> Foreign National Offenders: appeals lodged and allowed on human rights grounds, 2008 to 2021 – Home Office ([link](#))
- <sup>62</sup> Foreign National Offenders: appeals lodged and allowed on human rights grounds, 2008 to 2021 – Home Office ([link](#))
- <sup>63</sup> Human Rights Act 1998, Schedule 1 Part I, Chapter 7 – UK legislation ([link](#))

- 
- <sup>64</sup> “Criminality: Article 8 ECHR cases” (Article 8 public interest / exceptions guidance) – Home Office guidance ([link](#))
- <sup>65</sup> “Criminality: Article 8 ECHR cases” (Article 8 public interest / exceptions guidance) – Home Office guidance ([link](#))
- <sup>66</sup> Coates J., “Criminal’s deportation case halted over son’s dislike for chicken nuggets”, *The Independent* ([link](#))
- <sup>67</sup> Cornell Law School, *Withdrawal of application for admission*, ([link](#)).
- <sup>68</sup> Catholic Legal Immigration Network, Inc., ‘The Unlawful Presence Bars: Do They Continue to Run After Reentry to the United States?’ 2020 ([link](#))
- <sup>69</sup> United States Government Accountability Office, *Border Patrol: Actions Needed to Improve Oversight of Post-Apprehension Consequences* 2017 ([link](#))
- <sup>70</sup> “Expulsion of foreigners and case law” – Border Criminologies Blog, Centre for Criminology, University of Oxford, February 2020 ([link](#))
- <sup>71</sup> “Sustitución de la pena de prisión por expulsión” (substituting prison sentences with expulsion) – Consejo General de la Abogacía Española ([link](#))
- <sup>72</sup> “More foreign criminals to be deported under expanded scheme” – BBC News ([link](#)); Home Office NS ([link](#))
- <sup>73</sup> Legal Aid Crime Higher: total expenditure and workload volume ([link](#)); Litigator Graduated Fee Scheme workload and spend – Ministry of Justice data ([link](#))
- <sup>74</sup> Crown Prosecution Service Annual Report and Accounts 2024–2025 – Crown Prosecution Service ([link](#)); CPS Annual Report 2023–2024 – Crown Prosecution Service ([link](#))
- <sup>75</sup> Reducing the Crown Court Backlog – House of Lords Library, 13 March 2025 ([link](#))
- <sup>76</sup> Sentencing types and criminal justice system statistics – Sentencing Council for England and Wales ([link](#))
- <sup>77</sup> Typical starting wage for nurses – Nurses.co.uk ([link](#))
- <sup>78</sup> Teacher pay and benefits – Get Into Teaching (Department for Education) ([link](#))
- <sup>79</sup> Metropolitan Police starting salary information ([link](#)); Metropolitan Police FOI disclosure on lifetime cost per police officer ([link](#))
- <sup>80</sup> HM Prison & Probation Service, *Prison Officer Pay* ([link](#)).

---

## Support Onward

Onward is an independent, not-for-profit thinktank. We rely on the generous support of individuals and trusts, as well as partnerships with charities and businesses, to support our leading programme of research and events.

### Individual and Trust donations

Onward's core programme of research is funded by individual and trust donations. If you are an individual or represent a philanthropic trust and would like to support our ongoing research agenda, we would love to hear from you. We do not accept corporate funding for research reports. Please contact us on [office@ukonward.com](mailto:office@ukonward.com) if you would like to donate by cheque or you can donate electronically using Onward's account details below.

UK Onward Thinktank Ltd  
Not-for-profit company no. 11326052  
Bank: Natwest  
Account number: 21328412  
Sort code: 50-10-05

Please note that Onward retains copyright and full editorial control over any written research it produces, irrespective of funding.

### Partnerships with companies and charities

Alongside our research, we want to work closely with charities, trusts and businesses, large and small, to further the political debate and bring the expertise and ideas from outside government to bear on the policymaking process. If you would like to partner with Onward as a sponsor of one of our roundtable events or conferences, or to join our Business Leaders Network to engage further with our work, please get in touch at [office@ukonward.com](mailto:office@ukonward.com).

### A commitment to transparency

Onward is committed to transparency and will publish the names of individuals and organisations who give us more than £5,000 of support each year. This is published on our website twice a year.