

Probation Circular



PC12/2008 – CHANGES TO THE RELEASE ARRANGEMENTS FOR DCR PRISONERS

IMPLEMENTATION DATE: 23 May 2008

EXPIRY DATE: May 2013

TO: Chairs of Probation Boards, Chief Officers of Probation, Secretaries of Probation Boards
CC: Board Treasurers, Improvement and Development Managers

AUTHORISED BY: Gordon Davison, Head of Public Protection Unit

ATTACHED: Annex A - Notification to Probation Area
Annex B - Prison Letter to Offender Manager
Annex C – Equality Impact Assessment Form

RELEVANT PREVIOUS PROBATION CIRCULARS

PC 29/2007 Post Release Enforcement – Licence Conditions

CONTACT FOR ENQUIRIES

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PURPOSE

The purpose of this circular is to set out the new arrangements for the release of certain offenders sentenced under the Criminal Justice Act 1991.

ACTION

Chief Officers should bring this circular immediately to the attention of all staff with responsibility for the management of offenders serving custodial sentences.

SUMMARY

The Criminal Justice and Immigration Act 2008 makes changes to the release arrangements in respect of some DCR prisoners (prisoners sentenced to 4 years and over under the provisions of the Criminal Justice Act 1991). DCR prisoners whose sentence does not include a sentence for a sexual or violent offence specified in Schedule 15 to the Criminal Justice Act 2003, and whose halfway point of sentence falls on or after 9th June 2008, will be affected by this measure. This circular explains the change and how it impacts on the Probation Service.

Background

1. The Criminal Justice and Immigration Act 2008 (2008 Act), which received Royal Assent on 8 May, introduces important changes in respect of the release, recall and re-release of determinate and indeterminate prisoners. Whilst most of these changes are likely to be commenced during the summer of this year one of the measures which changes the release arrangements in respect of some DCR prisoners (prisoners sentenced to 4 years and over under the provisions of the Criminal Justice Act 1991) is being introduced ahead of the remaining 2008 Act measures. This Circular explains the changes and how they impact upon the Probation Service.
2. DCR prisoners affected by the new release provisions are entitled to be released automatically at the halfway point of their sentence (currently their PED). Upon their release they will be subject to probation supervision until the end of their sentence (rather than the $\frac{3}{4}$ point). Licence conditions in respect of these prisoners must be approved by the Governor on behalf of the Secretary of State. The change takes effect from 9th June 2008.

Prisoners Affected by the New Provisions

3. DCR prisoners who are affected by the change are those whose:
 - halfway point of sentence falls on or after 9th June 2008; and
 - sentence does not include a sentence for a sexual or violent offence specified in Schedule 15 of the Criminal Justice Act 2003.
4. They must be released automatically at the halfway point of their sentence. Failure to release such a prisoner would result in their being unlawfully detained.
5. DCR Prisoners who have been repatriated from a foreign jurisdiction to the United Kingdom or transferred from England and Wales to another UK jurisdiction in order to continue serving the remainder of their prison sentence are affected by the new provisions.
6. DCR prisoners detained in special hospitals under MHA 1983 powers are also affected by the new provisions providing that they have both a PED that falls on or after 9th June 2008 and are not serving their sentence for sexual or violent offence specified in Schedule 15.

Prisoners Not Affected by the New Provisions

7. Those DCR prisoners serving terms in default of payment, including confiscation orders, or civil terms of 4 years or more are not affected by the new provisions.

Identification of Prisoners

8. Establishments are responsible for identifying such prisoners. Once they have been identified they are responsible for alerting the relevant probation area. Notifications will be made using the form at **Annex A**. However, where an offender manager is completing a parole assessment on a prisoner who they believe might be affected by the new release provisions and this has not yet been confirmed by the establishment, they should contact the

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establishment to check before embarking upon or completing the assessment. Offender managers should note that DCR prisoners who have already received an adverse decision, but whose PED falls on or after 9th June will be affected by these provisions.

9. In addition to the notification at Annex A, when releasing a DCR prisoner under the new provisions, establishments are required to provide the offender manager both with a copy of the licence and the letter attached at **Annex B** to this Circular. This letter will normally be issued at least one week before the prisoner is entitled to be released. It explains the new release provisions and the implications of recall should the prisoner be recalled prior to the commencement of the new recall provisions. **The offender manager should bring this letter to the attention of the Post Release Section staff at the point of recall.**
10. When alerted to the fact that a prisoner is affected by the new release provisions Offender Managers should prepare for the prisoner's release at the halfway point of their sentence in accordance with the requirements of National Standards. Eligible DCR offenders do not automatically fall within the MAPPAs, as they are not serving a sentence for a sexual or violent offence specified in Schedule 15 of the Criminal Justice Act 2003. However, there may be offenders whose pre-release assessment of risk of serious harm will necessitate higher levels of supervision, additional licence conditions and/or the involvement of MAPPA partners (the "other" MAPPA category) on automatic release under these provisions. **Where any offender whose case is noteworthy, and/or falls under the local MAPPA, is being released under these provisions the responsible offender manager should inform the Helpdesk (details below).**

Licence conditions

11. All DCR prisoners who are eligible to be released under the new provisions will be subject to supervision and be liable to recall to custody until the end of their sentence. In cases where the Offender Manager wishes to submit a request to vary, add or delete a licence condition(s), such requests are to be determined by Governors on behalf of the Secretary of State, using the menu of additional conditions found in PC 29/2007 Post Release Enforcement - Licence Conditions. It will no longer be necessary to obtain a recommendation from the Parole Board. All requests for additional conditions which do not appear in the menu of additional conditions should be forwarded by the Governor to the Pre-Release Section (for requests made prior to the prisoner's release at the halfway point of the sentence) or the Post-Release Section (in relation to requests received after the prisoner has been released automatically at the halfway point of his sentence).

Effect of the new release provisions on the availability of a subsequent Section 116 – Return to Prison by the Courts

12. There will be no 'at risk' period on release for those who are subject to the new release provisions because they will have been released on licence to the end of their sentence. Therefore, they will not be subject to the provisions of a 'return to custody' by the Courts under section 116 of the Powers of Criminal Courts (Sentencing) Act 2000.

Effect on HDC Eligibility

13. DCR prisoners who are eligible to be released automatically at the halfway point of their sentence under the new provisions will be statutorily ineligible for release on HDC. This is because they are deemed to remain 91 Act long-term prisoners even though they will no longer be subject to the parole procedures and will be released on licence to the end of their sentence.

Revocation of licence of a DCR prisoner released under the new provisions

14. DCR prisoners automatically released at the halfway point of their sentence under these new provisions are liable to be recalled to custody if they breach the conditions of their licence 2008.

Recall prior to the commencement of the new Fixed Term Recall and Further Release Provisions under the Criminal Justice and Immigration Act 2008

15. DCR prisoners released under the new provisions are on licence to SED. If they are recalled on or after 9th June 2008 but **before** the commencement of the new recall provisions (likely to be introduced in July 2008), they must be re-released from recall no later than the $\frac{3}{4}$ point of their sentence (unless the Parole Board directs their re-release at an earlier point in the sentence).

16. If the offender is re-released from recall before the $\frac{3}{4}$ point of the sentence, s/he will be subject to a licence which will expire at the $\frac{3}{4}$ point and subsequently subject to the 'at risk' provisions of Section 116 of the Powers of the Criminal Courts (Sentencing) Act 2000.

17. If the offender is re-released from recall at the $\frac{3}{4}$ point of the sentence he will be subject to licence to SED.

18. Governors are required to send all licence condition variations and requests for additional licence conditions to the Parole Board for consideration. Any condition included which was not recommended by the Board is unlawful.

19. Fresh guidance will be issued to establishments ahead of the commencement of the new recall provisions. Guidance to the Probation Service will be included in the Probation Circular to be issued on the new Fixed Term Recall and Further Release provisions.

Temporary Helpdesk

20. There will be a helpdesk in operation until the end of July 2008 to deal with enquiries in connection with this circular and to receive the details of noteworthy cases as explained in paragraph 10. The line is open between 9.30 am and 4.30 pm. The number is 020 7035 8346.

From:

To: [Offender Manager]
Offender Manager's Address

Date

Name of Prisoner: [in full]
Prison number:
Date of Birth:

The above named offender has been identified as being affected by the new release provisions contained in the Criminal Justice & Immigration Act 2008 and therefore is no longer subject to a parole review at the half-way point of sentence.

As a result of the new provisions, the offender will be automatically released at the half-way point of sentence (the original PED) and will be subject to licence and supervision for the remainder of the entirety of the sentence, rather than the $\frac{3}{4}$ point.

The Conditional Release Date (previously PED) is:
Supervision will cease on the Sentence Expiry Date (SED) of:

In light of these changes, you may decide to review the prisoner's release plan. In the event that you decide to include or remove additional licence conditions such a request should be submitted to the Governor, if possible, at least 4 weeks ahead of the prisoner's release date.

A copy of the licence on which the prisoner will be released will be copied to you in the normal way, nearer to the release date.

Signed:

Date:

[Enter name & address of offender manager]

Dear

[Prisoner's Name and Prison Number]

The Criminal Justice and Immigration Act 2008 contains new release, recall and re-release from recall measures in respect of determinate sentence prisoners. One of these measures gives eligible DCR prisoners (i.e. those serving 4 years or more and who are subject to the release provisions of the Criminal Justice Act 1991) automatic conditional release at the halfway point of the sentence, on licence to the end of their sentence, rather than having to apply to the Parole Board for early release on parole as is currently the case. A DCR prisoner will be eligible for release under the new provisions providing that he / she has a PED of 9th June 2008 or later and is *not* serving a sentence for a specified sexual or violent offence (as listed at Schedule 15 of the Criminal Justice Act 2003).

The above named DCR prisoner is eligible for release under the new provisions and will be released automatically at the halfway point of his sentence, on licence to SED (rather than the $\frac{3}{4}$ point).

Until such time as the new recall provisions in the Criminal Justice and Immigration Act 2008 are introduced (likely to be in July 2008), a DCR offender released under the new release provisions and recalled before the commencement of the new recall provisions remains subject to the current arrangements for re-release after recall, i.e. is entitled to be re-released from recall at the $\frac{3}{4}$ point of the sentence.

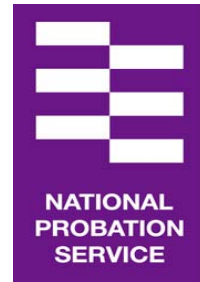
If the DCR offender is re-released by the Parole Board before the $\frac{3}{4}$ point, he is subject to licensed supervision that will expire at the $\frac{3}{4}$ point. In the event he is not recalled again during that period he is subject to the S.116 "at risk" provisions of the Powers of Criminal Courts (Sentencing) Act 2000 until SED.

Should you decide to pursue recall action in respect of the above named before the new recall provisions are commenced, please draw this letter to the attention of the Post Release Section (PRS) of NOMS HQ. This will ensure that following recall the offender is not detained in custody beyond the $\frac{3}{4}$ point of the sentence.

If you have any queries in respect of the contents of this letter, these should be directed to the appropriate Post Release Section Recall Team Manager.



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Annex C

Equality Impact Assessment

Preliminary Screening

Statistics & Research

Gathering Evidence through Community Engagement

Assessment & Analysis

Action Plan

The EIA Report

EQUALITY IMPACT ASSESSMENT
NOMS
Public Protection Unit

PRELIMINARY SCREENING

Date of Screening	23 May 2008
Name of Policy Writer	Jo Thompson
Director General	Phil Wheatley

PC12/2008 - Changes to Release arrangements for DCR Prisoners.	<input checked="" type="checkbox"/>	This is a new policy
	<input type="checkbox"/>	This is a change to an existing policy
	<input type="checkbox"/>	This is an existing policy

Policy Aims, Objectives & Projected Outcomes

The purpose of this circular is to set out the new arrangements for the release of certain offenders sentenced under the Criminal Justice Act 1991.

Will the policy have an impact on national or local people/staff?	NO
Are particular communities or groups likely to have different needs, experiences and/or attitudes in relation to the policy	NO
Are there any aspects of the policy that could contribute to equality or inequality?	NO
Could the aims of the policy be in conflict with equal opportunity, elimination of discrimination, promotion of good relations?	NO
If this is an amendment of an existing policy, was the original policy impact assessed?	NO

If your answer to any of these questions is **YES**, go on to the full EIA.

If you have answered **NO to any particular questions**, please provide explanatory evidence.

If you have answered **NO to all of these questions** then you must also attach the following statement to all future submissions that are related to this policy and ensure it is signed off by senior management. You must also include this statement within any regulatory impact assessment that is related to this policy.

“This policy was screened for impact on equalities on 23 May 2008. The following evidence has been considered. As a result of this screening, it has been decided that a full equality impact assessment is not required.”

Evidence to Support Preliminary Screening

FULL IMPACT ASSESSMENT

STATISTICS & RESEARCH

What relevant quantitative & qualitative data do you have in relation to this policy?

Please site any quantitative (e.g. statistical research) and qualitative evidence (monitoring data, complaints, satisfaction surveys, focus groups, questionnaires, meetings, research interviews etc) of communities or groups having different needs, experiences or attitudes in relation to this policy area.

Equality Target Areas	How does the data identify potential or known positive impacts? How does the data identify any potential or known adverse impacts?
Race (consider e.g. nationalities, Gypsies, Travellers, languages)	
Disability (consider social access and physical access)	
Gender	
Gender Identity	
Religion and Belief	
Sexual Orientation	
Age	

What research have you considered commissioning to fill any data gaps?

For example, you may need to ensure quantitative & qualitative data groups include stakeholders with respect to this policy.

N.B Include any recommendations in your action plan

Who are the stakeholders, community groups, staff or customers for this policy area?

What are the overall trends and patterns in this qualitative & quantitative data?

Disproportionality; regional variations; different levels of access, experiences or needs; combined impacts.

Please list the specific equality issues that may need to be addressed through consultation (and further research)?

GATHERING EVIDENCE THROUGH COMMUNITY ENGAGEMENT

INTERNAL STAKEHOLDER ENGAGEMENT: Consulting & involving Other Government Departments, Staff, Agencies & NDPBs

Does this policy affect the experiences of staff? How? What are their concerns?	
Staff	
Staff Networks & Associations	
Trade Unions	

How have you consulted, engaged and involved internal stakeholders in considering the impact of this proposal on other public policies and services?

For example your policy may affect access to housing, education, health, employment services.

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What positive and adverse impacts were identified by your internal consultees? Did they provide any examples?

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Feedback the results of this internal consultation and use it as a basis for work on external consultation

EXTERNAL CONSULTATION & INVOLVEMENT

How did your engagement exercise highlight positive and negative impacts on different communities?	
Voluntary Organisations	
Race	
Faith	
Disability Rights	
Gender	
Gender Identity	
Sexual Orientation	
Age	

Feedback the results of your community engagement (i.e. involvement and consultation) to all participants including internal and external stakeholders

ASSESSMENT & ANALYSIS

Does the EIA show a potential for differential impact on any group(s) if this proposal is introduced? If Yes, state briefly whether impact is adverse or positive and in what equality areas.

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What were the main findings of the engagement exercise and what weight should they carry?

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Does this policy have the potential to cause unlawful direct or indirect discrimination? Does this policy have the potential to exclude certain group of people from obtaining services, or limit their participation in any aspect of public life?

--

How does the policy promote equality of opportunity?

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How does your policy promote good relations? How does this policy make it possible for different groups to work together, build bridges between parallel communities, or remove barriers that isolate groups and individuals from engaging in civic society more generally?

--

How can the policy be revised, or additional measures taken, in order for the policy to achieve its aims without risking any adverse impact?

--

Are there any concerns from data gathering, consultation and analysis that have not been taken on board?

Please justify and explain the reason for your decision.

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ENSURING ACCESS TO INFORMATION

How can you ensure that information used for this EIA is readily available in the future?

(N.B. You will need to include this in your action plan)

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How will you ensure your stakeholders continue to be involved/ engaged in shaping the development/ delivery of this policy?

(N.B. You will need to include this in your action plan)

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How will you monitor this policy to ensure that the policy delivers the equality commitments required?

(N.B. You will need to include this in your action plan)

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Now submit your EIA and related evidence for clearance.

ACTION PLAN

Recommendations	Responsibility	Actions required	Success Indicators	Target Date	What progress has been made?
Data Collection					
Publication Arrangements					
Monitoring & Review Arrangements					
List other recommendations that are required					

Please ensure that the action plan is agreed by your Director/ Minister

THE EQUALITY IMPACT ASSESSMENT REPORT

The EIA report is a concise summary of the results of your EIA work. You should ensure that you cover the topics described below.

Background:

- Context of policy/programme
- Link to strategic aims and objectives
- Scope of the EIA work (e.g. if linked to previous EIA or work delivered by another Government Department)

Methodology:

- Approach to data collection and analysis
- Results of consideration of existing evidence

Consultation & Involvement:

- Stakeholder/community involvement in developing proposals
- List of organisations engaged (optional)

Assessment & analysis

- Key Findings from the data collection and community engagement
 - Positive impacts: existing or potential
 - Adverse impacts: existing or potential

Recommendations

- Describe how you will respond to the key findings by:
 - strengthening the potential for positive impact,
 - removing areas that may exacerbate or engender adverse impact
 - including measures to mitigate any adverse impact that may occur
 - including measures that ensure ongoing compliance with statutory obligations
 - monitoring arrangements
 - ensuring continued public access to information about the policy/programme.
 - action plan (optional)

Date of EIA Report

Date of Publication of Results

Ensure that the EIA Report is published on the Home Office website before your policy/programme is implemented.