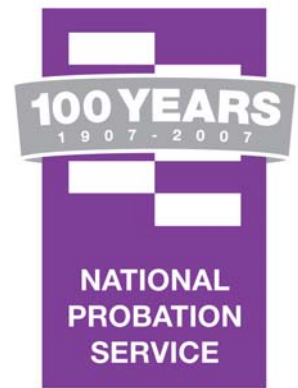


# Probation Circular



## PC22/2007 – END OF CUSTODY LICENCE (ECL)

**IMPLEMENTATION DATE:** Immediate

**EXPIRY DATE:** June 2012

**TO:** Chairs of Probation Boards, Chief Officers of Probation, Secretaries of Probation Boards

**CC:** Board Treasurers, Regional Managers

**AUTHORISED BY:** Richard Mason, Head of Offender Assessment and Management Unit

**ATTACHED:** Annex A – List of exclusions

Annex B – Recall pro-forma

### RELEVANT PREVIOUS PROBATION CIRCULARS

None

### CONTACT FOR ENQUIRIES

[Peter.king6@homeoffice.gsi.gov.uk](mailto:Peter.king6@homeoffice.gsi.gov.uk)

[Paul.hindson2@homeoffice.gsi.gov.uk](mailto:Paul.hindson2@homeoffice.gsi.gov.uk)

## PURPOSE

To provide guidance to Probation Areas on the operation of the new release scheme known as End of Custody Licence (ECL).

## ACTION

Chief Officers should ensure that all staff are made aware of the contents of this Circular so that the guidance it contains can be implemented before the first requests for ECL reporting instructions are issued by prisons. The first releases are expected to take place on Friday 29 June; prisons will contact probation offices to arrange reporting instructions for those eligible for release on that day at least 48 hours beforehand.

## SUMMARY

On Tuesday 19 June 2007 the Secretary of State for Justice announced a new release scheme which is to be known as End of Custody Licence. Prisoners eligible for ECL will be released from prison under temporary licence up to 18 days earlier than would otherwise be the case. Those prisoners who would be subject to probation supervision on release will have their supervision period extended by the duration of the ECL, the licence period under National Standards effectively starting up to 18 days early. This circular clarifies the expectations on probation staff who will be involved in the management of offenders released on ECL.

## Introduction

On Tuesday 19 June 2007 Lord Falconer announced the introduction of a new release scheme known as End of Custody Licence. The scheme makes use of Prison Rule 9 and YOI Rule 5 which allow for the temporary release of prisoners. Under the scheme eligible prisoners will be released up to 18 days early and will not be expected to return to prison at the end of the ECL. The first prisoners to be released on ECL are expected to leave custody on Friday 29 June. ECL will remain operational until further notice.

## Eligibility

All prisoners aged 18 years and over who are serving a determinate custodial sentence of between four weeks and under four years will be eligible for release on ECL, subject to serving a minimum 7 days in custody from date of sentence, except for those excluded as a result of their offence type or for other reasons. Exclusions include registered sex offenders and those serving sentences for serious violent crimes, and those who have broken the terms of temporary release in the past. A full list of exclusions is attached at Annex A.

Prisoners will not be required to apply for ECL, but must be considered for it if they are eligible. Prisoners may, however, opt out of the scheme if they wish.

Unless they have opted out of the scheme, all prisoners who meet the eligibility criteria and have not already been released on home detention curfew will be released on ECL provided they have indicated that they have an address to go to.

The Probation Service is not required to conduct a risk assessment or an accommodation check prior to a prisoner's release on ECL.

## Release arrangements

Where a prisoner is subject to probation supervision on release (i.e. any young offender and adults serving sentences of 12 months or more) the prison establishment will contact the probation office which covers the proposed release address at least seven days prior to release in order to arrange reporting instructions. Clearly, it will be difficult for establishments to give seven days notice in relation to the first prisoners released under the scheme; for this group, prisons will provide minimum notice of two clear working days to probation offices.

If the prison's information systems indicate that there is a nominated Offender Manager, and the proposed ECL address is in an area other than that covered by that Offender Manager, the prison will discuss the proposed release arrangements with the nominated Offender Manager before contacting the probation office responsible for the proposed address.

The first contact with the offender should be arranged for the day of release, or if that is impracticable, the next working day, in line with current National Standards.

Prisoners subject to post release supervision will be issued with two separate licences; one to cover the period on ECL, the other for their statutory period of licence supervision. Prisoners will be required to be of good behaviour while on ECL. Any additional conditions which would apply to the supervision licence (e.g. those requested by the Offender Manager) will also be included in the ECL licence.

Adult prisoners serving under 12 months will not be supervised on ECL; neither will they be subject to electronic monitoring.

### **Discharge grants and subsistence allowance**

Offenders on ECL will be paid the normal discharge grant plus a subsistence payment (including housing costs where necessary) in lieu of benefits payments until their formal release date. It is likely that the first prisoners released on ECL will be given their subsistence payments as a lump sum on release from custody. Thereafter a process will be established through DWP shared service centres to make payments directly to prisoners by means of weekly giro cheques.

### **OASys**

The case management systems within the Prison Service (LIDS and C-NOMIS) will have new reception and discharge codes to show which offenders have been released under ECL or recalled under this scheme. HMPS OASys is in the process of being changed so the system recognises these codes. However, it may not be possible to implement this before ECL comes into operation.

In the interim Offender Managers should make a request for temporary control if they are to manage an offender who has been released under ECL. HMPS OASys staff will be advised that there may be an increase in the number of temporary control requests. OASys users will be notified once the required changes have been made to HMPS OASys.

### **Case management systems**

There will be no change to the way commencements of post release supervision are recorded in Probation Service case management systems. It will not be necessary to differentiate between a release on ECL and the statutory licence that follows it. Therefore, a new licence type is not being created within case management systems. To reflect the fact that a statutory licence is effectively beginning up to 18 days early, supervision on licence should be commenced using the same code and description as the statutory licence that will follow at the end of the ECL period. This is no different from the present arrangements for recording commencements.

Offender Managers should record in an accompanying contact log entry that the offender has been released on ECL.

Case management systems differ in the way they handle enforcement activity. Consideration is being given to the best method of recording an offender's non-compliance on ECL so that it does not affect existing functionality for counting failed attendances on statutory licence. Further guidance on this subject will be issued shortly.

### **Probation supervision**

The statutory period of licence supervision (for those subject to post release supervision) does not, in law, begin until the date on which the offender would normally have been released. However, offenders on ECL are to be supervised as though statutory licence supervision began

at the point of release on ECL, and the contact requirements for licence set out in National Standards are to be applied in the normal way.

In other words, the statutory post release licence for these offenders is effectively starting up to 18 days early, and is extended by the period on ECL. For the purposes of performance management and compliance with National Standards, the day of release on ECL should be regarded as Day 0.

## Recall

Offenders on ECL are in the community under Prison Rule 9 (or YOI Rule 5) rather than, as noted above, under statutory licence. This means that up until the end of the ECL period an offender is subject to recall by the Governor (or Controller, if released from a private prison) if breaches are drawn to the Governor's (or Controller's) attention.

Because ECL is a form of Release on Temporary Licence rather than a statutory licence, recall proceedings must be instigated immediately following an offender's **first** breach of the ECL licence conditions (including a first failure to report to probation). The Offender Manager has no discretion in this matter.

A central point of contact within the Post Release Section of NOMS will be operational in time for the first ECL releases on 29<sup>th</sup> June. Offender Managers will use this point of contact to instigate recall instead of contacting the establishment from which the offender was released. The contact number will be **020 7035 3883**. Initial contact will be by telephone; this must be followed up immediately by sending the recall pro-forma (Annex B) to the Post Release Section, as an attachment to an email to [ecl.enforcement@justice.gsi.gov.uk](mailto:ecl.enforcement@justice.gsi.gov.uk). Staff in the Post Release Section will take responsibility for liaising with the establishment and will inform the Offender Manager of the outcome and the date on which the offender has been returned to custody.

If for any reason an Offender Manager is unable to contact the central point of contact and needs to instigate recall proceedings immediately they should, during normal working hours, telephone the Discipline Office of the establishment from which the offender was released or, if outside normal working hours, contact the duty Governor at that establishment. The phone call must be followed immediately by the Offender Manager faxing the recall pro-forma to a **named** representative of the Governor (or Controller) copied to the Post Release Section email address given above.

## Release following recall from ECL

Prisoners recalled from ECL will be released on the date on which release would have taken place had ECL not been granted. The required contact levels for such offenders will be those specified by National Standards for supervision on licence, as though ECL had not taken place.

## Equality impact assessment

The effect of the implementation of ECL has been the subject of an equality impact screening, which indicates that a full equality impact assessment is unnecessary.

**PRISONERS INELIGIBLE FOR END OF CUSTODY LICENCE**

The scheme will not apply to those released early under the Home Detention Curfew Scheme. Other prisoners will be eligible to be considered for the scheme subject to the following exclusions:

- (a) Prisoners serving a sentence for a serious violent offence as listed in the table below
- (b) Prisoners subject to the registration requirements of the Sex Offenders Act 1997/Sexual Offences Act 2003
- (c) Prisoners who have previously escaped custody
- (d) Prisoners who have breached temporary release conditions,
- (e) Prisoners who have offended at any time during a period of temporary release
- (f) Prisoners currently serving a sentence for failing to return from temporary release
- (g) Prisoners who report that they do not have a release address
- (h) Foreign prisoners who meet the criteria for referral to BIA for consideration for removal/deportation, as set out in PSO 4630 unless BIA have notified the prisoner of a decision not to deport
- (i) Prisoners who are subject to extradition proceedings
- (j) Sentenced prisoners who are remanded into custody on further charges, or who are awaiting sentence following further convictions
- (k) Prisoner who have, on the current sentence, been recalled to custody either for breaching HDC conditions or breach of general licence conditions
- (l) Prisoners under the age of 18
- (m) Prisoners serving DTO sentences
- (n) Prisoners required to undertake a treatment programme as a condition of their supervision licence unless that programme can be arranged to commence during the ECL period

**Offences for which prisoners will be excluded for release on ECL**

<b>OFFENCE</b>
<b>Violence Against the Person</b>
Murder
Attempt to commit murder or a conspiracy to commit murder
Manslaughter
Soliciting murder (section 4 of the Offences against the Person Act 1861)
Wounding with intent to cause grievous bodily harm (section 18 of the Offences Against the Person Act 1861)
Malicious wounding (section 20 of the Offences Against the Person Act 1861)
Torture (section 134 of the Criminal Justice Act 1988)
Attempting to choke, suffocate or strangle in order to commit or assist in committing an indictable offence (section 21 of the Offences Against the Person Act 1861)
Maliciously administering poison etc. so as to endanger life or inflict grievous bodily harm (section 23 of the Offences Against the Person Act 1861)
Causing bodily injury by explosives (section 28 of the Offences Against the Person Act 1861)

<b>OFFENCE</b>
Using explosives etc. with intent to do grievous bodily harm (section 29 of the Offences Against the Person Act 1861)
Placing explosives etc. with intent to do bodily injury (section 30 of the Offences Against the Person Act 1861)
Setting spring guns etc. with intent to do grievous bodily harm (section 31 of the Offences Against the Person Act 1861)
Causing explosions likely to endanger life or property (section 2 of the Explosives substances Act 1883)
Attempt to cause explosion, or making or keeping explosive with intent to endanger life or property (section 3 of the Explosive Substances Act 1883)
Child destruction (section 1 of the Infant Life (Preservation) Act 1929)
Cruelty to children (section 1 of the Children and Young Persons Act 1933)
Infanticide (section 1 of the Infanticide Act 1938)
<b>Firearms offences</b>
Possession of firearm with intent to endanger life (section 16 of the Firearms Act 1968)
<b>Burglary</b>
Burglary with intent to inflict grievous bodily harm on a person
Aggravated burglary (section 10 of the Theft Act 1968)
<b>Criminal Damage</b>
Arson endangering life (section 1(2b) of the Criminal Damage Act 1971)
<b>Violence relating to aircraft, railways etc</b>
Hijacking (section 1 of the Aviation Security Act 1982)
Destroying, damaging or endangering safety of aircraft (section 2 of the Aviation Security Act 1982)
Other acts endangering or likely to endanger safety of aircraft (section 3 of the Aviation Security Act 1982)
Other acts endangering or likely to endanger safety of aircraft (section 6 of the Aviation Security Act 1982)
Offences in relation to certain dangerous articles (section 4 of the Aviation Security Act 1982)
Endangering safety at aerodromes (under section 1 of the Aviation and Maritime Security Act 1990)
Hijacking of ships (section 9 of the Aviation and Maritime Security Act 1990)
Seizing or exercising control of fixed platforms (section 10 of the Aviation and Maritime Security Act 1990)
Destroying fixed platforms or endangering their safety (section 11 of the Aviation and Maritime Security Act 1990)
Other acts endangering or likely to endanger safe navigation (section 12 of the Aviation and Maritime Security Act 1990)
Offences relating to Channel Tunnel trains and the tunnel system (Articles 4,5, 6,7 and 8 Part II of the Channel Tunnel (Security) Order 1994 (S.I. 1994/570))
Shooting at naval vessels (section 85(2) of the Customs and Excise Management Act 1979)
<b>Miscellaneous violence</b>
Causing or allowing the death of a child or vulnerable adult. (Section 5 of the Domestic Violence and victims of Crime Act 2004)
Genocide, crimes against humanity, war crimes and related offences), other than one involving murder (section 51 or 52 of the International Criminal Court Act 2001)
Hostage-taking (section 1 of the Taking of Hostages Act 1982)



# Breach of End of Custody Licence

To be sent via email to [ecl.enforcement@justice.gsi.gov.uk](mailto:ecl.enforcement@justice.gsi.gov.uk)

XXX Area

OFFENDER DETAILS:	
<b>Name:</b> (First name, family name)	
<b>Date of Birth:</b>	
<b>Address:</b>	
<b>Post Code:</b>	
<b>Telephone Number:</b>	
<b>CRN Case Reference Number:</b>	
<b>Prison Number:</b>	
<b>Index Offence:</b>	
<b>Date of Release on End of Custody Licence:</b>	
<b>Conditional Release Date (halfway point of sentence):</b>	

PROBATION DETAILS:	
<b>Name:</b>	
<b>Official Title:</b>	
<b>Office Location:</b>	
<b>Tel No:</b>	
<b>Date report completed and signed:</b>	

**RESTRICTED**

**1. Nature of Breach**

Please provide a brief outline of the circumstances of the breach:

Is the offender's whereabouts currently known? If yes, give detail:

**2. Further charges**

If offender has been arrested on suspicion or convicted of an offence, please provide detail:

**Offender Manager**

**Signature:**

**Name:**

**Date:**

**Line Manager**

**Signature:**

**Name:**

**Date:**

**Assistant Chief Officer or equivalent**

**Signature:**

**Name:**

**Date:**