

The Prison Service has now published guidance about prison releases in response to the Covid-19 pandemic.

Full details are included in documents called '*End of Custody Temporary Release*' and '*Covid-19: Use of Compassionate ROTL*' which can be found at <https://www.gov.uk/government/publications/covid-19-prison-releases>

Below we summarise some of the key points of these policies.

End of Custody Temporary Release (ECTR)

End of Custody Temporary Release (ECTR) has been introduced as part of measures to limit the spread and impact of Covid-19 in the prison estate.

It means that some people in prison who are within two months of their release date can be temporarily released from custody, subject to strict criteria and risk assessments.

It will operate for releases from the 7th April 2020 for the duration of the 'Transmission Control Period' as set by the Secretary of State for Health and Social Care

Criteria for ECTR

There are three levels of criteria which must be met to be suitable for release on ECTR:

1. Statutory criteria
2. Criteria set out in the Direction made by the Secretary of State
3. Policy criteria, against which prisoners are assessed for suitability

1. Statutory Criteria

The statutory criteria for ECTR is set out in Rule 9A of the Prison Rules 1999 and Rule 5A of the Young Offender Institution Rules 2000, 'Coronavirus Restricted Temporary Release'

This applies only to those serving standard determinate sentences with an automatic release point and those committed to custody for fine default or contempt.

The following people are excluded from being eligible for ECTR:

- Those whose sentence is subject to initial Parole Board release - this includes Indeterminate Sentenced Prisoners (life and IPP), extended sentences, sentences for serious offences of particular concern (SOPCs), and terrorist

offenders who will be released under section 247A of the Criminal Justice Act 2003;

- Registered sex offenders (including those who are currently on the register, and those who will be subject to the notification requirements and signing the register on release);
- Category A prisoners and Restricted Status prisoners;
- Remand prisoners and those committed to custody for trial or sentencing or to be otherwise dealt with by a Court (i.e. those not yet serving a custodial sentence)
- Those being deported who have exhausted in country appeal rights; and
- Those who have committed an offence whilst on ROTL.

2. Criteria set out in the Direction made by the Secretary of State

Within the statutory criteria, the Secretary of State can decide who should be considered for release by setting policy criteria and restrictions.

This criteria is set out by a Direction of the Secretary of State. There are no exemptions from the Direction criteria, even in exceptional circumstances.

The Direction signed by the Secretary of State on 7th April 2020 specifies that those eligible must:

- i. Be assessed as having a low or medium Risk of Serious Harm level
- ii. Not be eligible for MAPPA management on release
- iii. Not be serving a sentence of any length for any of the violent or sexual offences specified in Schedule 15 of the Criminal Justice Act 2003, or one on the list of further violent and sexual offences set out in Annex A of the *End of Custody Temporary Release* guidance.
- iv. Not serving a sentence of four or more years imprisonment for an offence on the 'Possession of weapon offences' list set out at Annex B of the *End of Custody Temporary Release* guidance;
- v. Be within 61 days of their conditional release date
- vi. Have already served at least half the custodial term they were sentenced to
- vii. Not be serving a fixed term or standard recall
- viii. Not be identified as posing a risk of domestic abuse or a concern related to child safeguarding (see Annex C of the *End of Custody Temporary Release* guidance)
- ix. Not be assessed as posing a risk to national security if released.

The Direction signed by the Secretary of State on 24th April 2020 covering children and young people is the same, except that:

- i. where they are serving a Detention and Training Order (DTO) rather than a standard determinate sentence they must be within 61 days of the one-half point of the term of the DTO
- ii. They must not be serving a sentence for one of the sentences listed in Annex D of the *End of Custody Temporary Release* guidance ('Young Offenders – drug offence exclusions'). These extra exclusions for serious drug offences are because children and young people are subject to a different system of security categorisation.

3. Policy criteria

The guidance says that 'not everyone who meets the criteria above has to be released' and that 'prisoners can be excluded for other reasons'.

There is no right to be released under ECTR and release can be targeted at specific prisons to relieve particular pressures in relation to Covid-19 or staffing.

There are some other more general exclusions set by policy. Prisoners must:

- i. Not be serving a sentence for a Covid-19-related offence, for example an offence under the Coronavirus Act 2020 or a conviction for theft of medical supplies intended to tackle Covid-19
- ii. Have suitable accommodation to be released to and, where relevant, the property owner agrees to the installation, charging and maintenance of any devices to support electronic monitoring
- iii. Not be subject to any outstanding charges, or have been referred to the police or the Independent Adjudicator
- iv. Their healthcare, including any Covid-19 considerations, must be able to be safely managed post-release
- v. Fundamentally, they must not present a level of risk of harm, reoffending, failure to return or other significant challenge that cannot reasonably be managed in the community.

There is a very strong presumption that prisoners who do not meet the conditions above are not to be eligible for ECTR unless there are exceptional circumstances.

Assessment process

A central Offender Management Hub will consider a list of potentially eligible adult prisoners, and work with local establishments, probation services and the police to assess individuals.

For children and young people, this will be done by the Youth Custody Service Release and Resettlement teams (YCS RRTs), working with Casework and Social Work teams in local secure settings and Youth Offending Teams to assess individual cases.

There will be a presumption that those who meet the statutory and policy criteria should be released, but subject to checks and assessments of the following:

- i. They are willing to take part in the ECTR process
- ii. They have not been mistakenly identified as falling in the eligible group
- iii. Any previous failures on ROTL
- iv. They must have a verifiable, safe and suitable address to be released.
- v. A prison based Healthcare check has been completed considering whether their release can be safely managed (both for themselves and others).
- vi. The release would not put them or others at any health or Covid-19 risks.
- vii. Due consideration of any expected further criminal charges or adjudications being managed locally.
- viii. Due consideration of any underlying safeguarding concerns and known risks to individuals or children.
- ix. Due consideration of any behaviour which is such that the Governor considers it unlikely that the individual can be trusted to complete the licence.

Final decisions on release will be made by the central team on behalf of the Secretary of State.

Individuals will be told about decisions by the establishment they are in.

Establishments will liaise with Electronic Monitoring Services (EMS) to arrange tagging of individuals prior to release.

Conditions of release

If someone is released on ECTR they will be expected to follow the following licence conditions. Further conditions can be added as necessary based on the individual circumstances of the case.

They must:

- a) be of good behaviour and not behave in a way which undermines the purpose of the licence period;
- b) not commit any offence;
- c) comply with all current Government Covid-19 announcements, directions and guidelines;
- d) keep their temporary licence with them at all times throughout the release on temporary licence, and must provide it if requested to do so by a police officer or a probation officer;
- e) reside at their address between the hours of 7pm and 7am unless otherwise authorised by a variation to the licence;
- f) not partake in gambling, or making payments for other games of chance;
- g) not consume alcohol or enter any premises whose primary function is the sale and consumption of alcohol; i.e. pubs, club and bars. They may enter licenced premises such as supermarkets provided they do not purchase or consume alcohol;
- h) not contact the media (including any person or place associated with broadcasting or publication), either directly or via a third party;
- i) not upload, add or modify any material on any social networking site or internet chat-room either directly or via a third party;
- j) not take unauthorised controlled drugs or psychoactive substances;
- k) not return to the establishment with any unauthorised articles; and
- l) not leave the United Kingdom.

Those released on ECTR will also be subject to electronic monitoring, which means they must:

- a) allow an electronic device to be fitted to their person, or if electronically monitored by another device, carry that device on their person at all times;
- b) allow the installation of any equipment associated with electronic monitoring and/or install any electronic monitoring equipment provided to them as directed;
- c) not damage or tamper with the electronic device or equipment associated with electronic monitoring;
- d) ensure at all times that the electronic device is sufficiently charged;
- e) immediately report to the prison or any person nominated by the prison if the electronic device or equipment associated with electronic monitoring is not working correctly;
- f) allow any person nominated by the prison to check whether the electronic device or equipment associated with electronic monitoring is working correctly.

Supervision after release

Adults released on ECTR will not be subject to statutory probation supervision, as they remain prisoners in legal terms.

However, they will be given an offender manager to remain in contact with for the duration of the temporary licence.

To help keep in contact, they should also be given a mobile phone prior to release if they do not already own one.

For children and young people, the YOT will provide the normal level of statutory supervision, taking into account adjustments made during the COVID-19 pandemic.

Return to custody

If someone is released on ECTR they can be returned to custody. Governors can revoke the licence if it does not remain safe or appropriate for them to remain in the community. Police will then be instructed to arrest the individual and return them to custody.

What happens after ECTR licence?

When the ECTR expires

The ECTR licence will expire at the point they would otherwise have been released automatically on licence.

At this point the individual will move onto the standard probation licence. The prison should give them both licences at the point of release, and explain the difference to them.

When the Transmission Control Period Ends

When the Transmission Control Period ends, those released on ECTR will not automatically have their licence revoked.

The guidance says that review will be carried out to decide what will happen next. If you are uncertain what this means for you speak with the offender manager you were given when you were released.

ECTR and Home Detention Curfew (HDC)

If someone is eligible for both ECTR and Home Detention Curfew the process that is likely to be completed earliest should be prioritised.

For more information about HDC see our information sheet or the Home Detention Curfew (HDC) Policy Framework.

Use of Compassionate ROTL during Covid-19 pandemic

Permanent Early Release on Compassionate Grounds

The Secretary of State can release prisoners permanently in exceptional compassionate circumstances.

There is more information about this in PSO 6000 for determinate sentence prisoners and in PSO 4700 for indeterminate sentence prisoners.

If someone believes they meet the threshold for permanent compassionate release they can apply for it on this basis as usual.

However, the Secretary of State has decided that the appropriate procedure to consider the release of prisoners on the basis of health conditions or particular vulnerability during the Covid-19 outbreak is through Release on Temporary Licence (ROTL).

This is because release on compassionate grounds for vulnerability reasons will only be justified for the duration of the Covid-19 outbreak.

Compassionate release on ROTL

For the reasons given above, if someone believes they should be considered for compassionate release on grounds of Covid-19 vulnerability, it is worth them applying for Special Purpose Licence (SPL).

SPL is a type of Release on Temporary Licence (ROTL). Sections 6.27-6.31 of the *ROTL Policy Framework* set out the circumstances under which a SPL can be issued.

In the present circumstances of the Covid-19 pandemic, prisoners in the following groups should also be considered for a temporary release under SPL:

- a. Pregnant women
- b. Prisoners with their babies in custody
- c. Those defined by the NHS guidelines as 'extremely vulnerable' to Covid-19.

Prisons must take active steps to identify individuals in the groups above and invite them to apply for ROTL, in accordance with the Policy Framework, where they are eligible and willing.

Assessment process

The *ROTL Policy Framework* sets out the procedure for deciding on whether to issue a Special Purpose Licence.

Prisoners should be assessed against the normal criteria for SPL suitability including the need to maintain public safety and the public's confidence in the justice system.

Normal constraints apply around Standard and Restricted ROTL, as well as the need to seek input from the Offender Manager and external agencies including the police.

The following should also be considered:

- that releases will be for longer periods than normal SPL
- the very unusual circumstances in which the release is taking place – i.e. during a period of lockdown and other measures which could affect risk, compliance and behaviour in the community.
- the risk to the prisoner's health, and potentially their life, if temporary release is not granted. This will need to take into account the extent to which their health can be protected by shielding measures in custody
- whether the individual has suitable accommodation to be released to, and whether their social care and health needs can be met post-release. Release will only take place once this is in place, including consideration of how they will travel safely to their accommodation.

Although the full risk assessment process must be followed, these cases should be considered urgent and be dealt with as quickly as is practical.

Prisons should seek advice from healthcare to confirm the medical status for prisoners identifying themselves as in the groups above.

Prisons may need to seek advice in the cases of prisoners who do not fall directly within the three groups above but who, in the clinical judgement of the establishment's healthcare provider, face an equivalent level of extreme vulnerability that would justify their consideration for temporary release.

Decisions will be made by individual prisons as to whether to recommend temporary release, but all proposed releases must be endorsed by the Deputy Director of Prisons on behalf of the Secretary of State before the release can take place.

Appealing a decision

If you are unhappy with a decision that has been made about your release you can make a formal complaint using the normal prison complaints process – there is more information in the *Prisoner Complaints Policy Framework*. If the complaint is upheld and a release recommended, this must still be endorsed by the Deputy Director of Prisons.

Contact our Advice and Information Service

We are a small service and we are independent of the prison service.

We can give you information on prison rules, life in prison and how to get help in prison.

Our Advice and Information service is currently unable to take direct calls. You can still contact our service in the following ways:

- Leave a short voicemail on our freephone number - 0808 802 0060.

This number is for **prisoners** only. This number is **free** and you do not need to put it on your PIN.

- Write to us at:

**Prison Reform Trust
FREEPOST ND 6125
London
EC1B 1PN**

- email us at advice@prisonreformtrust.org.uk

We will do our best to respond to all enquiries as quickly as possible.

If you are a family member or a friend of someone in prison you may wish to contact the **Prisoners' Families Helpline** on 0808 808 2003 between 9am and 8pm.