

## **Extended Sentences**

### **What is an extended sentence?**

There are different versions of extended sentences but they have some similarities.

An extended sentence is a type of determinate sentence which includes two parts:

- a custodial period

The custodial period is like a determinate sentence which means you serve some of it in prison and the remainder on licence in the community (unless the type of extended sentence you have requires the Parole Board to authorise release and they do not - in which case you will serve all of this period in prison).

- an extended period of licence

This is an extra period on licence in the community. This will have been decided by the judge based on the 'length of time considered necessary for the purpose of protecting members of the public from serious harm.

This period should not exceed 5 years for a specified violent offence and 8 years for a specified sexual offence.

### **What are the different types of extended sentence?**

There have been several different types of extended sentence and this can cause confusion. Some have changed over time including what point in your sentence you get released and whether release is automatic or subject to parole.

Changes to extended sentences are not retrospective. This means that changes in the law that happened after you were sentenced will not affect the type of sentence you have.

You will need to know what kind of sentence you were given. If you don't know, you may be able to work it out if you know when you were sentenced and sometimes when you were convicted.

## **Extended Determinate Sentence (EDS)**

Extended Determinate Sentences were introduced in December 2012 by the LASPO Act. They replaced Extended Sentences for Public Protection (see below).

When and how you will be released depends upon:

- the length of the custodial period
- when you were sentenced

If you were sentenced before 13 April 2015 with a custodial period of less than 10 years, for an offence that is NOT specified in Schedule 15B of the CJA 2003 (see below) you will be released automatically at the two thirds point of the custodial period.

For example, with an EDS of 9 years, made up of 6 years custodial period and 3 years extended licence,

- you will be released automatically after two thirds of your time in prison (4 years),
- and then serve 5 years on licence – made up of the rest of your custodial period (2 years) plus the extended period (3 years) on licence.

If you were sentenced before 13 April 2015 with a custodial period of 10 years or more OR for a specified offence on Schedule 15B, you will not be released automatically at the two thirds stage but instead are eligible to apply for Parole at that stage. If you are unsuccessful you will be reviewed every year until the end of the custodial period when you will be released automatically.

If you were sentenced on or after 13 April 2015 you will not be released automatically at the two thirds stage but instead are eligible to apply for Parole at that stage and will only be released automatically at the end of the custodial period.

For example, with an EDS of 9 years, made up of 6 years custodial period and 3 years extended licence

- After two thirds of your time in prison (4 years), the Parole Board will decide if you can be released.
- If you are released you will then serve 5 years on licence – made up the remainder of your custodial period (2 years) plus the extended period (3 years).
- If you are not released at this stage, you will be reviewed every year until the end of the custodial period when you will be released automatically
- You will then have the extended period, 3 years, on licence in the community.

After release, you will be subject to supervision until the end of what is left of the custodial period plus the extension period. If you breach the conditions of your licence your offender manager can apply to have you recalled to prison.

## Extended Sentence for Public Protection (EPP)

This type of extended sentence was introduced in April 2005 by the Criminal Justice Act 2003. It was replaced by Extended Determinate Sentences in December 2012 (see above). For an EPP to be imposed you would need to have committed your offence on or after 4 April 2005 and be convicted of that offence before 3 December 2012.

An EPP is also known as a 'section 227 or 228' extended sentence. Sometimes it is just referred to as an 'extended sentence'.

When and how you will be released depends upon when you were sentenced and convicted.

If you were sentenced to an EPP before 14 July 2008 you will be subject to Parole at the halfway point of your custodial period. If you are not released on Parole you will be released automatically at the end of your custodial period.

For example, with an EPP of 8 years, made up of 6 years custodial period and 2 years extended licence:

- At the half way point of your time in prison (3 years), the Parole Board will decide if you can be released.
- If you are released you will then serve 5 years on licence – made up of the remainder of your custodial period (3 years) plus the extended period (2 years).
- If you are not released at this stage, you will be reviewed every year until the end of the custodial period when you will be released automatically
- You will then have the extended period, 2 years, on licence in the community.

If you were sentenced to an EPP on or after 14 July 2008, you will be automatically released at the halfway point of your custodial period

For example, with an EPP of 8 years, made up of 6 years custodial period and 2 years extended licence:

- you will be released automatically after half of your time in prison (3 years),
- and then serve 5 years on licence – made up of the rest of your custodial term (3 years) plus the extended period (2 years) on licence.

After release, you will be subject to licence until the end of what is left of the custodial period plus the extension period.

If you breach the conditions of your licence your offender manager can apply to have you recalled to prison.

## **'Section 85' extended sentence**

A 'section 85' extended sentence could be given for offences committed before 4 April 2005. It was introduced by the Powers of Criminal Courts (Sentencing) Act 2000.

You could still be given this type of sentence if your conviction was before 3 December 2012 for an offence committed before 4 April 2005.

PSI 30/2012 *The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012* explains the following:

Where the custodial term is less than 4 years, release is automatic at the half-way point of the custodial term and then on licence until the  $\frac{3}{4}$  point of the custodial term plus the extension period. The final  $\frac{1}{4}$  of the custodial term comes at the end of the extension period (but is no longer an 'at risk' period).

Where the custodial term is 4 years or more, release between the half (PED) and two-thirds (NPD) point is at the discretion of the Parole Board. Also then on licence until  $\frac{3}{4}$  point of custodial term plus the extension period.

## **Extended sentence of Detention**

Young people can be sentenced to an 'extended sentence of detention' in a young offender's institution. This is similar to the extended sentence for public protection for those over 18 but under 21.

It can be used if a young person is convicted of a specified offence and the Crown Court considers that there is a significant risk of serious harm to members of the public from the young person committing further specified offences.

If you have been sentenced to an extended sentence of detention and are having difficulty understanding this, we advise speaking to staff or your legal representative.

## **Special Sentence for Offenders of Particular Concern**

Although not classed in law as an extended sentence, the way a Special Sentence for Offenders of Particular Concern (SOPC) operates is similar to an extended sentence. It is also called a Section 236A sentence.

If you are sentenced on or after 13 April 2015 for an offence appearing on Schedule 18A to the Criminal Justice Act 2003 and the court decide NOT to impose an Extended Determinate Sentence or a life sentence, they must impose a SOPC.

The SOPC has a custodial period and a further licence period, but the further licence period will only ever be 1 year long.

You are eligible to apply for parole at the half way point of the custodial period and will be released automatically at the end of the custodial period. Any release is on licence for the remainder of the custodial period plus the further 1 year licence period.

For example, with a SOPC of 7 years, made up of 6 years custodial period and 1 year further licence period,

- After one half of your custodial period (3 years), the Parole Board will decide if you can be released.
- If you are released you will then serve 4 years on licence – made up of the remainder of your custodial period (3 years) plus the further licence period (1 year).
- If you are not released at this stage, you will be reviewed every year until the end of the custodial period when you will be released automatically
- You will then have the further licence period, 1 year, on licence in the community.

After release, you will be subject to supervision until the end of what is left of the custodial period plus the further licence period. If you breach the conditions of your licence your offender manager can apply to have you recalled to prison.

## Categorisation

Your security category determines what type of prison you can be held in. The *Security Categorisation Policy Framework* includes the rules and procedures about this.

Prison staff consider things like:

- How likely you are to escape or abscond
- The risk of harm to the public if you did escape or abscond
- Any ongoing criminal behaviour whilst you have been in custody;
- Any violent or other behaviour that impacts the safety of those in prison;
- Any control issues that impact on the security and good order in prison

Prison staff should regularly review your security category, unless you are already category D prisoner. They will change it if they think you have become safer or more dangerous.

If you are held in a Category B or C prison, you should have a review every 12 months until you have less than 3 years to serve before earliest release. When you have less than 3 years left to serve before your earliest release, you should have a review every 6 months.

You may also have your security category reviewed whenever there has been a significant change in your circumstances or behaviour that impacts on the level of security required, whether negative or positive.

If you are a category D prisoner you will not need regular reviews but could be recategorised if there has been a significant change in your circumstances or behaviour that impacts on the level of security required.

If you are a category A prisoner, staff who work at Prison Service Head Office will check your security category. Full guidance can be found in the following documents:

- PSI 08/2013 *The Review of Security Category – Category A / Restricted Status Prisoners*
- PSI 09/2015 *The Identification, Initial Categorisation and Management of Potential and Provisional Category A / Restricted Status Prisoners*

## When am I eligible for open conditions?

If your release is subject to Parole you will generally need to:

- have less than three years left to serve to earliest release (PED) *and*;
- have less than five years to automatic release (CRD).

For details about determinate sentences with a PED which this applies to please see paragraph 7.10 of the *Security Categorisation Policy Framework*.

If you are released automatically you will generally need to be within three years of your release date.

In addition to the above you must also be assessed as:

- low risk of abscond
- low risk of harm to the public
- unlikely to continue criminality while in custody
- unlikely to otherwise abuse the low security or disrupt the good order of the open estate.

The *Security Categorisation Policy Framework* allows for some exceptions, stating that:

Where individual circumstances indicate that Category D/Open would be appropriate with three years or more left to serve, a recommendation for Cat D/Open should be made to the Governing Governor of the establishment in which the individual is held, who must decide whether or not to approve the recommendation.

There are several reasons why you may not be recategorised for open conditions. These include if you:

- are currently on the Escape List (E-List)
- a Foreign National Prisoner where there is both a deportation order against you and your appeal rights from the UK have been exhausted.

If you have a history of escape, abscond or serious ROTL failure you can be considered for open conditions and ROTL, if:

- this happened more than two years ago AND
- you have only done this once on your current sentence.

There is more information about all of the above in the *Security Categorisation Policy Framework*.

## How do I check my release date?

When you arrive at prison, prison staff should work out your release dates.

You should be given a copy of your 'Release Dates Notification Slip' which will set out all dates relevant to a prisoner's release.

If you are transferred to another prison during your sentence your sentence calculation should be checked when you arrive at each prison and a new Release Date Notification Slip given to you.

If you are not sure or want to have your release date, parole eligibility date or licence end date checked you write an application to the sentence calculation clerk.

## Parole

Whether you need to apply for Parole to be released depends on your sentence – see previous pages for more information.

The *Generic Parole Process Policy Framework* includes the following references to EDS and EPP sentences:

5.6.3 Those serving an Extended Determinate Sentence (EDS) imposed before 13/4/2015 where the custodial period was one of 10 years or more or where the offence was listed in Schedule 5B of the CJA 2003, as well as all those serving an EDS imposed on or after 13/4/2015, will be parole eligible at the two thirds point of their custodial term. Their first review must take place no later than their Parole Eligibility Date (PED) and at least every two years thereafter until the expiry of their custodial term, at which point they must be released.

5.6.6. Those prisoners serving an Extended Public Protection (EPP) sentence that was imposed before 14/07/2008 are eligible for parole at the halfway point of their sentence and will be reviewed annually until the expiry of their custodial term.

To make a decision about your release, the Parole Board will be looking for evidence of how you have changed from the time the offence was committed to now. They will also be looking at the risk management plan for your release.

This means working with your Prison Offender Manager (POM) and Community Offender Manager (COM) to complete objectives on your sentence plan. If you are not sure what you need to do you should speak them about this

You are strongly advised to ask a legal representative to help you with your parole review.

There is more information about parole in our information booklet about *The Parole Board and Parole Reviews* as well as the *Generic Parole Process (GPP) Policy Framework*.

## What happens if I get recalled?

After you are released from custody you will be on licence for rest of the custodial term plus the extended period decided by the court. If you are not sure what date your licence ends speak to your Community Offender Manager.

Whilst on licence you will have conditions that you will need to follow. If you breach the conditions of your licence you could be recalled to prison.

The *Recall, Review and Re-Release of Recalled Prisoners Policy Framework* says the following about the recall of people serving Extended Sentences:

COMs must demonstrate a “causal link” in the current behaviour that was exhibited at the time of the index offence. At least one of the following criteria must be met when assessing whether to request the recall:

- i. Exhibits behaviour similar to behaviour surrounding the circumstances of the index offence;
- ii. Exhibits behaviour likely to give rise (or does give rise) to a sexual or violent offence;
- iii. Exhibits behaviour associated with the commission of a sexual or violent offence;  
or
- iv. Is out of touch with the COM and the vi. assumption can be made that any of (i) to (iii) may arise.

It also says:

All EPP and EDS individuals can only be recalled if their behaviour indicates they present an increased Risk of Serious Harm (RoSH) or re-offending. This can either be where the RoSH has been clearly demonstrated or where the RoSH cannot be measured e.g. where the licensee fails to report on a regular basis or is out of contact entirely.

If you are recalled you will stay in custody until the end of the your sentence. This is called a standard recall. The *Policy Framework* says the following:

Standard recall could result in the individual remaining in prison until their sentence expiry date (SED).

A standard recall will be applied in all cases where the individual is assessed as unsuitable for a fixed term recall. All indeterminate sentenced individuals and extended sentenced individuals will be recalled under standard recall provisions.

Standard Recall prisoners must have their cases referred to the Parole Board to be reviewed within 28 days of being returned to prison.

If you are serving an extended sentence or extended determinate sentence you are not eligible to be considered for the shorter Fixed Term Recall.

There is more information in our information sheet *Licence Conditions and Recall*.

## **Further information**

The following may be of interest to you. If you are unable to access them elsewhere feel free to contact our Advice and Information Service and we will be happy to send you a copy.

Useful PSIs and PSOs (these should be available in the library):

PSI 30/2012 *The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012*

PSI 03/2015 *Sentence Calculation – Determinate Sentenced Prisoners*

*The Security Categorisation Policy Framework*

*Recall, Review and Re-Release of Recalled Prisoners Policy Framework*

### Information sheets

PRT information sheet about *Categorisation*

PRT information booklet about *The Parole Board and Parole Reviews*

PRT information sheet about *Licence Conditions and Recall*

Easy Read '*Guide to help with your Parole Review*', by The Parole Board

Prisoner's Advice Service information sheet about '*Parole*'

Prisoner's Advice Service information sheet about '*Release, Licence and Conditions*'

### Articles

*Extended Determinate Sentences*, by Emma Davies and Kiran Mohammed of Hine solicitors

<http://www.insidetime.org/extended-determinate-sentences/>

## Contact our Advice and Information Service

We are a small service which provides information and advice for people in prison. We are independent of the prison service.

Our freephone information line is **0808 802 0060**.

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

This number is open:

|           |                   |
|-----------|-------------------|
| Monday    | 3pm – 5pm         |
| Wednesday | 10:30am – 12:30pm |
| Thursday  | 10:30am – 12:30pm |

When we are not taking calls you can still leave a short voicemail. Please give your name, prison number, the prison you are in and what information you are looking for. Voicemails will be checked during working hours Monday to Friday and we will respond as soon as possible by post or email a prisoner.

You can write to us at:

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

You do not need to use a stamp.