

## **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 you will be released automatically at the two thirds point of the custodial period, (unless it is for a specified offence on Schedule 15B of the CJA 2003 – see below).

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.

Prison staff consider things like:

- Likelihood of escape or abscond;
- The risk of harm to the public in the event of an escape or abscond;
- Any control issues that impact on the security and good order of the prison and the safety of those within it

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.

PSI 40/2011 *Categorisation and Recategorisation Of Adult Male Prisoners* has not been updated with the introduction of Extended Determinate Sentences, but does give guidance on Extended Sentence for Public Protection. However, the following applies to both:

You should have your security category reviewed at least once every 12 months,

If you are within 24 months of your earliest release date you should get a review every 6 months.

It could also be reviewed earlier if there is a significant change in circumstances.

### **When am I eligible for open conditions?**

If your release is subject to Parole you will generally need to be within 2 years of your 'Parole Eligibility Date' to be successful for open conditions.

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

However, PSI 40/2011 does state that 'assessment of a prisoner's individual risks and needs may support earlier categorisation to D'.

There are several reasons which may stop you being recategorised for open conditions - for example if you have previously escaped or absconded from prison, or have a significant history of serious offending. There are more details included in PSI 40/2011.

## 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.

PSI 22/2015 *Generic Parole Process for Indeterminate and Determinate Sentenced Prisoners (GPP)* contains the following references to EDS and EPP sentences:

Those serving an Extended Determinate Sentence (EDS) imposed **before 13/04/2015** where the custodial period was one of 10 years or more or the offence was listed in Schedule 5B of the CJA 2003 and 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 PED and at least every two years thereafter and until the expiry of their custodial term (Conditional Release Date - CRD), at which point they must be released.*

Those prisoners serving either a Standard Determinate Sentence (SDS) or an Extended Public Protection sentence (EPP) and who are or who may in the future be parole eligible will have their PED at the halfway point in their sentence. They will be reviewed annually until the expiry of their custodial term.

In order to successfully apply for Parole you will need to show that you have addressed any identified risk factors to a level that can be managed safely in the community.

This means working with Offender Manager and Offender Supervisor to complete objectives on your sentence plan. If you are not sure what you need to do you should speak to your Offender Manager or Offender Supervisor.

It is a good idea to get legal advice for parole.

There is more information about parole in

- PSI 22/2015 *Generic Parole Process for Indeterminate and Determinate Sentenced Prisoners (GPP)*
- A guide to help with your Parole Review, The Parole Board, Easy Read version
- Prisoner's Advice Service information sheet about Parole

## 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. You should make sure you know what date your licence ends.

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.

PSI 30/2014 *Recall Review & Re-Release Of Recall Offenders* sets out the test for Recall of Extended Sentenced Prisoners (EPP and EDS):

Extended sentence, extended sentence for public protection and extended determinate sentence prisoners can only be recalled if their behaviour indicates they present an increased risk of harm. This can either be where the risk has been clearly demonstrated or where the risk cannot be measured e.g. where the licensee fails to report on a regular basis or is out of contact entirely. Recall can be effected where an offender:

- 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 probation and the assumption can be made that any of (i) to (iii) may arise.

If you are recalled you will stay in custody until the end of your sentence. This is called a standard recall. PSI 30/2014 describes standard recall as follows:

All determinate sentence prisoners (including those serving an extended sentence) who are given a Standard Recall are liable to remain in custody until the end of their sentence. They may be re-released earlier if the Secretary of State or the Parole Board is satisfied that it is not necessary for the protection of the public for the prisoner to remain in custody.

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.

## **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 40/2011 *Categorisation and Recategorisation Of Adult Male Prisoners*

PSI 30/2014 *Recall Review & Re-Release of Recall Offenders*

PSI 22/2015 *Generic Parole Process for Indeterminate and Determinate Sentenced Prisoners (GPP)*

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

## Information sheets

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/>