



Ministry
of Justice



HM Prison &
Probation Service

Policy name: Early Release on Compassionate Grounds (ERCG)

Reference: N/A

Re-issue Date: 16th August 2023

Implementation Date: 13th May 2022

Replaces the following documents (e.g. PSIs, PSOs, Custodial Service Specs) which are hereby cancelled:

- Chapter 12 to PSO 6000
- Chapter 12 to PSO 4700
- PSI 29/2010 (Chapter 12)
- PI 06/2010 (Chapter 12)

Introduces amendments to the following documents: N/A

Action required by:

×	HMPPS HQ	×	Governors
×	Public Sector Prisons	×	Heads of Group
×	Contracted Prisons	×	The Probation Service
×	Under 18 Young Offender Institutions	×	Other providers of Probation and Community Services
	HMPPS Rehabilitation Contract Services Team		

Mandatory Actions: All groups referenced above must adhere to the Requirements section of this Policy Framework, which contains all mandatory actions.

For Information: Governors must ensure that any new local policies that they develop because of this Policy Framework are compliant with relevant legislation, including the Public-Sector Equality Duty (Equality Act, 2010).

Section 4 of the Policy Framework contains guidance to implement the mandatory requirements set out in section 3 of this Policy Framework. Whilst it will not be mandatory to follow what is set out in this guidance, clear reasons to depart from the guidance should be documented locally. Any questions concerning departure from the guidance can be sent to the contact details below.

In this document the term Prison Governor also applies to Directors of Contracted Prisons / Secure Training Centres and Registered Managers of Secure Children's Homes.

In this document the reference to serving prisoner applies to those serving a Sentence of Imprisonment, including indeterminate sentences, and those committed to custody in relation to a Term of Imprisonment i.e., a fine defaulter, contemnors or those serving Detention and Training Orders.

How will this Policy Framework be audited or monitored: Applications submitted and reviewed by Public Protection Casework Section (PPCS) in Her Majesty's Prison and Probation Service (HMPPS) are recorded, which includes the reason for the application and decision in respect of ERCG.

Any re-occurring issues with the applications being submitted will be brought to the attention of senior staff within PPCS and the Policy Lead for ERCG for this to be looked into.

Resource Impact: No additional resource demand will be made by this Policy Framework.

Contacts:

- ✦ For advice regarding the policy for ERCG email SentenceCalculationPolicy@justice.gov.uk
- ✦ For advice on individual applications email PPCS at Pre-releaseteama@justice.gov.uk
- ✦ For advice on individual applications for a child or young person contact the Youth Custody Service (YCS) Release and Resettlement Team at YCSPT-Release@justice.gov.uk

Deputy/Group Director sign-off: Gordon Davison, Public Protection Group Director (HMPPS)

Approved by OPS for publication: Kevin Reilly (Deputy Director Prisons) and Peter Greenhill (NPS Head of Operations) (Pre OPS Chairs), March 2022.

Revisions

16 August 2023	Amendment to paragraph 4.17, which does not broaden the ERCG policy but provides further examples of the types of illness that can be considered under the scheme. The list is not exhaustive.
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1. Purpose

- 1.1 The Secretary of State may release a serving prisoner at any point in the sentence if they are satisfied that exceptional circumstances exist which justify the prisoner's release on compassionate grounds.
- 1.2 Any exceptional circumstances must be considered, including cases under Article 3 of the European Convention on Human Right (ECHR) – Freedom from torture and inhuman or degrading treatment or punishment. The Policy Framework sets out guidance on the types of circumstances in which individuals may be considered for Early Release on Compassionate Grounds (ERCG) and the relevant application process.
- 1.3 Where circumstances arise which are not specifically referenced in this document and there is any uncertainty, advice should be obtained from Public Protection Casework Section (PPCS) in HMPPS via **Pre-releaseteam@justice.gov.uk** or, if the case involves a child or young person, the Youth Custody Service (YCS) Release and Resettlement Team via **YCSPT-Release@justice.gov.uk**.
- 1.4 The fundamental principles underlying the approach to ERCG are:
- a) **The early release of the prisoner will not put the safety of the public at risk.** In all applications for ERCG, the Secretary of State must be satisfied that the prisoner can be safely managed in the community.
 - b) **There is a specific purpose to be served by early release.** There must be a clear reason to consider the early release of the prisoner before they have served the sentence imposed on them by the sentencing court.
 - c) **A decision to approve ERCG will not be based on the same facts that existed at the point of sentencing and of which the sentencing or appeal court was aware.**

2. Outcomes

- 2.1 The main aim of the Policy Framework is to make the application process clear and concise for all those involved, ensuring that where an application is necessary it can be completed and considered quickly.
- 2.2 This document sets out the following:
- ✦ Clarification on the eligibility of prisoners for ERCG, and who is responsible for consideration of the case.
 - ✦ The criteria relevant to different types of exceptional circumstance.
 - ✦ The application processes relevant to the different reasons for ERCG consideration.
 - ✦ The information that must be included in support of an application and the roles of those involved in making an application.
 - ✦ The application forms.
 - ✦ Guidance on submitting or re-submitting an application for ERCG.
 - ✦ The actions that must be taken following an ERCG refusal/approval decision.
 - ✦ Agencies who should be informed of an approved ERCG release.
 - ✦ Licence expiry, licence condition variations post release and recall.

3. Requirements

Relevant legislation

3.1 The relevant legislative provisions which allow for early compassionate release are referenced below:

- Subsection 241(3) of the Sentencing Act (SA) 2020 in relation to children and young people subject to a Detention and Training Order (DTO).
- Section 248 of the Criminal Justice Act (CJA) 2003 in relation to any prisoner serving a determinate sentence.
- Subsection 258(4) of the CJA 2003 in relation to those committed to custody for nonpayment of fine or for contempt.
- Section 30 of the Crime (Sentences) Act 1997 in relation to any prisoner serving an indeterminate sentence.

Process requirements

3.2 All applications for ERCG should be submitted in line with the guidance set out in Section 4 of this Policy Framework

3.3 PPCS will process and consider applications for ERCG. Applications involving children and young people should initially be considered by the YCS Release and Resettlement Team – see paragraphs 3.6 to 3.17 below for further guidance.

3.4 The relevant application form should be completed, unless the application is being made directly to PPCS – see paragraphs 4.41 to 4.44. All required reports as set out in this document for the relevant type of application should be completed and submitted with the application; further guidance on this can be found in Section 4. To avoid unnecessary delays, an application must contain all information required to make an informed decision.

3.5 Where ERCG is recommended by PPCS, the final decision to allow early release will be taken by the Secretary of State or an official with delegated authority.

Applications for children and young people

3.6 The guidance set out in paragraphs 4.1 to 4.59 of this Policy Framework should be followed for an application being made on behalf of a sentenced child or young person detained within the secure estate i.e., detained in an under 18 Young Offender Institute (YOI), a Secure Training Centre (STC) or Secure Children's Home (SCH). Where the guidance refers to 'prisoner' this should be read as child or young person and 'PPCS' as the YCS Release and Resettlement Team for cases involving children and young people.

3.7 The Governor (YOI), Director (STC) or Registered Manager (SCH) should be made aware of any exceptional circumstances affecting a child or young person, so that they may review the case in line with criteria set out in this Policy Framework and make an application if appropriate.

3.8 A Youth Offending Team (YOT) Case Manager will be required to complete the relevant report for the application and provide the necessary information in place of a Community Offender Manager (COM) and the child or young person's Secure Setting Caseworker should provide a report in place of the Prison Offender Manager (POM).

- 3.9 Release on Temporary Licence (ROTL) or Mobility, should be considered where it is clear that the circumstances that the child or young person is facing can be dealt with by temporary release rather than by permanent release from their sentence. Guidance on ROTL for children and young people is available from Secure Setting and guidance on Mobility should be sought from the YCS Release and Resettlement Team.
- 3.10 An application being made on behalf of a child or young person should be submitted to the YCS Release and Resettlement Team at **YCSPT-Release@justice.gov.uk** for initial consideration.
- 3.11 Where the YCS Release and Resettlement Team recommend ERCG for a child or young person, and this is endorsed by someone of Deputy Director level or above, or where release is not recommended but the application is due to the health and/or social care needs of the child or young person, the application with all supporting reports/documentation will be submitted to PPCS for review.
- 3.12 In cases where the YCS Release and Resettlement Team refuse ERCG (excluding applications made due to the health and/or social care needs of the child or young person which must be reviewed by PPCS), they will inform the secure setting holding the child or young person that ERCG has been refused.
- 3.13 Where applications have been submitted to PPCS for review, the process for communicating decisions is set out in paragraphs 4.52 and 4.61.
- 3.14 The Governor, Director or Registered Manager, should discuss the outcome of the application with the YOT Case Manager and the staff currently caring for the child or young person and decide how best to disclose the decision to them. Where ERCG is refused, the decision may have a considerably negative impact on the child or young person and care should be taken to assess if any additional support or safeguarding measure are required, as well as an increased programme of interventions as part of their formulation within the secure setting.
- 3.15 The initial submission, any re-submission where necessary, and outcome of an application for ERCG should be recorded on Youth Justice Application Framework (YJAF) by the Secure Setting Caseworker.
- 3.16 Any reports, including medical reports, obtained in relation to the application must be disclosed to the child or young person, unless there are reasons to withhold the information e.g. parental consent is required. Particular care should be paid to information sharing to ensure it is trauma-informed and takes into account diverse needs.
- 3.17 For further advice specific to ERCG for children and young people or to alert the YCS Release and Resettlement Team to an especially urgent case contact **0345 3636 363** or email **YCSPT-Release@justice.gov.uk**.

4. Guidance

Eligibility

- 4.1 All determinate sentenced prisoners and those serving terms of imprisonment, including civil imprisonment, may be considered for ERCG by PPCS at any point in the sentence or term.

- 4.2 Indeterminate sentenced prisoners (those serving sentences of life imprisonment, Imprisonment for Public Protection 'IPP' or Detention for Public Protection 'DPP') may be considered for ERCG by PPCS at any point in the sentence. PPCS will consult with the Parole Board on the case where this is practical.
- 4.3 Prisoners within the parole window of their sentence or those who have been recalled to custody from licence will have any compassionate circumstances considered as part of the general parole process. However, where there are exceptional circumstances which may require compassionate release imminently an application should be made in line with this Policy Framework.
- 4.4 Remand prisoners and those solely detained under immigration powers cannot be considered for ERCG under this Policy Framework. Any concerns, including those relating to the health or family circumstances of a remand prisoner or immigration detainee, must be brought to the attention of the relevant court or to the Home Office respectively.

Restricted patients

- 4.5 Prisoners who are subject to sentences of imprisonment and who have been detained in hospital are managed, on behalf of the Secretary of State, by the Mental Health Casework Section (MHCS). There are three primary scenarios that can arise where a prisoner will be subject to a sentence of imprisonment whilst they remain detained in a psychiatric hospital under the Mental Health Act 1983 (the 1983 Act):
- i. A prisoner is transferred to and detained in a hospital when serving the sentence (Sections 47/49 of the 1983 Act).
 - ii. A prisoner was directed to hospital by a court for treatment of a mental disorder alongside a prison sentence under a hospital and limitation direction (section 45A of the 1983 Act).
 - iii. A prisoner who has committed an offence which has led to a sentence of imprisonment when they were already subject to a hospital and restriction order (sections 37/41 of the 1983 Act). In such cases the prisoner may have acquired the sentence whilst detained in hospital or when discharged into the community under the 37/41 hospital order.
- 4.6 Mentally disordered prisoners who are subject to sections 47/49, section 45A or section 37/41 are collectively known as 'restricted patients'. More information about restricted patients can be found at the following link: **Mentally disordered offenders: The Restricted Patient System 2017**
<https://www.gov.uk/government/publications/mentally-disordered-offenders-the-restricted-patient-system>
- 4.7 Restricted patients who are subject to sentences of imprisonment and detained in a hospital under the 1983 Act can be considered for ERCG as if they remained in prison custody. However, MHCS must be advised of any ERCG applications to ensure due consideration has been given for the need for continued treatment of an existing mental disorder. Additionally, MHCS will be required to make a separate determination on discharging the prisoner from hospital in conjunction with the compassionate release from the prison sentence.
- 4.8 MHCS can be contacted at **MHCSMailbox@justice.gov.uk** or via phone at **07812 760 ext. 274 / 582 / 523 / 356**.

Release on Temporary Licence

- 4.9 Release on Temporary Licence (ROTL) may be used to help a prisoner to deal with compelling compassionate circumstances and might be more appropriate than ERCG in some instances. This might be, for example, where it is clear that only temporary release is needed to deal with the matter, such as with some family crises, or where a medical condition may improve with treatment outside the prison. In cases where ERCG is under consideration and there is an immediate need for essential care and treatment in the community, the Prison Governor should give consideration to temporary release on Special Purpose Licence (SPL) for eligible prisoners, whilst the application for ERCG is being processed. ROTL may also be granted on a back-to-back basis without the need for the prisoner's return to prison.
- 4.10 Guidance on temporary release on SPL, including the eligibility criteria and processes, can be found in the ROTL Policy Framework. Further information about ROTL can be sought from the Release Policy Team at release.policy@justice.gov.uk.

APPLICATIONS

Timescales for making an application

- 4.11 There are no prescribed timescales for completing an application for ERCG. The exceptional nature of the circumstances in which this policy applies may make for complex cases with the involvement of multiple agencies and reports. However, it is imperative that applications are expedited as far as possible and that, when submitted, they provide all the necessary information for PPCS to make an informed decision and, where relevant, recommendation to the Secretary of State without delay. Applications should only be submitted once all relevant information has been obtained.
- 4.12 Those making the application should take account of the urgency of the case and be minded that PPCS require adequate time to consider the application, which may necessitate referral to an Independent Medical Adviser for their assistance or to the Parole Board. Further guidance on submitting the application is provided in paragraphs 4.45 to 4.49.
- 4.13 In certain circumstances it may be advisable to pre-emptively commence the application process in advance of a decision being sought. For example, a prisoner with a terminal illness may not immediately fit the criteria for ERCG; however, it may be apparent to the prison that their condition could advance such as to render them eligible. In such cases, it is recommended that the prison collate as much information as possible to avoid delays to the submission of an application to PPCS should circumstances change rapidly.

Making an application

- 4.14 Any member of staff within the prison, the prisoner, their family or a representative, may bring the circumstances of a case to the attention of the Prison Governor in order that they be reviewed and where appropriate an application made for ERCG. All members of staff should familiarise themselves with the fundamental principles underlying the approach to ERCG found at paragraph 1.4.
- 4.15 The Prison Governor may take the decision to assign a member of prison staff overall responsibility for managing and progressing an ERCG application, particularly if the case is complex and will involve several agencies/departments. The member of staff assigned to

the case must keep the prisoner's record and the OMU updated with the progress of the application at all times to avoid any delays in case of illness or leave.

- 4.16 When preparing an application, consideration should be given to the length of the sentence still outstanding and any remarks made by the judge at sentencing. This will be especially relevant if the court was aware of the circumstances pertinent to the ERCG application at the time of sentencing, but the situation has changed significantly since the point of sentencing which is why an application is now being made. The prison making an application should request a copy of the Judge's Sentencing Remarks, unless already kept on file, from PPCS by completing the form at Annex C and sending this via email to PPCS at TranscriptPublicProtection@justice.gov.uk. The email should be marked 'ERCG Application'.

Guidance for applications due to a prisoner's health and/or social care needs

- 4.17 Applications may be made where the prisoner is incapacitated or has health conditions such that the experience of imprisonment causes suffering greater than the deprivation of liberty intended by the punishment. Conditions could include paralysis, those who have experienced severe strokes, respiratory illnesses, cardiovascular disease and different types of dementia. This is not an exhaustive list but is intended to provide examples of the types of illness that may be considered to meet the criteria for ERCG.
- 4.18 ERCG may also be considered for prisoners suffering from a terminal illness who are in the last few months of life and medical advice provides that the prisoner would be better accommodated at a hospice/hospital or in some cases, a domestic setting providing the necessary care can be provided.
- 4.19 Conditions which are self-induced, for example a prisoner refusing food or medical treatment, will not in themselves qualify the prisoner for ERCG. However, should such conditions result in the prisoner meeting the criteria set out in paragraph 4.17, an application should be made.
- 4.20 Resource and cost implications of maintaining staff on bed-watch duties at an outside hospital/hospice are not grounds to justify ERCG.
- 4.21 Where the criteria due to the prisoner's health and/or social care needs are met, the case must be submitted to PPCS, irrespective of whether the Prison Governor supports release or not. The Prison Governor has delegated authority to refuse an application where it is clear the criteria as set out in paragraphs 4.17 or 4.18 are not met.
- 4.22 In cases where a prisoner would fall under the criteria to be considered for ERCG but has expressed their wish to stay in prison, an application should still be made if the Prison Governor is satisfied, on advice provided by those caring for the prisoner, that ERCG is in the best interests of the prisoner.
- 4.23 Prison Service Order 3050 paragraphs 7.17 and 7.18 must be referred to when making an application based on the prisoner's health and/or social care needs. Where a prisoner has been assessed as not having capacity, then the principles of Best Interest should be used – see **Mental Capacity Act 2005 Code of Practice for further guidance, [Mental-capacityact-code-of-practice-pdf \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/101212/mental-capacity-act-code-of-practice-pdf)**.

Completing the application form

- 4.24 The application form in Annex A to the Policy Framework should be completed for applications due to a prisoner's health and/or social care needs. All sections of the

application are required to be completed, apart from Section 8 in situations where the prisoner is incapacitated or is too unwell to provide comments or does not wish to do so.

- 4.25 The application must include a multidisciplinary report completed by all roles currently caring for the prisoner. This must include, but is not limited to, a report from the prison GP/locum and an additional report from the medical specialist(s) – this is usually a consultant – involved in the care of the prisoner. The reports should provide a diagnosis, assessment of incapacity/frailty, prognosis, treatment pathway/plan and, where applicable, a clear indication of life expectancy. The medical professionals completing the reports must not be asked to give an opinion of whether ERCG is appropriate as this is not within their remit.
- 4.26 Applications where it is anticipated that social care will be continued or initiated upon release must include social care assessments and post release care plans. A Community Offender Manager (COM) together with local authorities will be required to define the level of personal care required to be delivered in the community and the availability to the prisoner.
- 4.27 Medical reports must be disclosed to the prisoner, unless there are reasons for withholding the information: e.g. in certain mental health cases disclosure may cause the prisoner distress or lead to self-harm. The Prison GP/medical specialist should be consulted in cases that involve disclosure to someone with learning difficulties or a mental illness or where the prisoner is too unwell or incapacitated to be aware of such disclosure.
- 4.28 The Secretary of State must be satisfied that the principles of ERCG are met as set out in paragraph 1.4 – including that the early release will not put the safety of the public at risk – and that adequate arrangements can be put into place for the prisoner's care and treatment outside of prison custody.

Guidance for non-medical related applications

Tragic family circumstances

- 4.29 Applications being made due to tragic family circumstances would need to demonstrate that the circumstances of the prisoner or their family have changed to the extent that if the prisoner were to serve the sentence imposed, the family's hardship would be of exceptional severity, greater than the court could have foreseen.
- 4.30 In cases where a partner or parent is terminally ill, early release would depend on what other help or support is available to them and/or any risk posed to the welfare of children or vulnerable adult(s) in their care.
- 4.31 In this section the reference to family circumstances should also be read as circumstances involving non-family members, but where the connection between the prisoner and the individual(s) is equivalent to that of a family relationship.
- 4.32 The Prison Governor must be in support of the early release of the prisoner where the application is due to tragic family circumstances. If the Prison Governor is not in support of early release because it does not meet the fundamental principles set out in paragraph 1.4 and does not address the criteria in paragraph 4.29, the application should not be submitted. The Prison Governor has delegated authority to refuse the application where the criteria are not met.
- 4.33 The Secretary of State would need to be satisfied there is a real and urgent need for the prisoner's permanent presence with their family and that early release will bring significant

benefit to the prisoner or their family, equivalent quality of which cannot be provided by any other person or agency. The Secretary of State must be satisfied that the principles of ERCG are met as set out in paragraph 1.4 – including that early release will not put the safety of the public at risk.

Other exceptional circumstances

- 4.34 Other unprecedented circumstances may arise which are exceptional and would fall to be considered in line with this Policy Framework. The Prison Governor should be informed of any such circumstances, in order that they may be reviewed and if appropriate an application submitted for ERCG.
- 4.35 Any application would need to establish that there is a genuine and vital reason for the prisoner's permanent early release and the circumstances cannot be dealt with by either temporary release arrangements (refer to ROTL information in paragraphs 4.09 to 4.10) or any other person or agency.
- 4.36 The application will be considered in the same way as those for tragic family circumstances. The Prison Governor should only submit the application if in support of early release based on the information available in relation to the circumstances affecting the prisoner. The Prison Governor has delegated authority to refuse the application if it does not meet the exceptional threshold described in paragraph 4.35. The Prison Governor should not support an application if it does not meet the fundamental principles set out in paragraph 1.4.

Completing the application form

- 4.37 The application form in Annex B to the Policy Framework should be completed for ERCG applications for all non-medical related cases. All sections should be completed.
- 4.38 A COM must provide as full an account as possible of the circumstances on which the application is being made and a risk assessment for the early release of the prisoner.
- 4.39 As part of the application the Prison Governor must provide details of the prisoner's behaviour in custody, a full assessment of risk and reasons for supporting the application. Reports from the family doctor or Social Services, if appropriate, should also be submitted with the application.
- 4.40 Relevant reports from the COM, POM, Prison Governor and Social Services must be disclosed to the prisoner, unless there are reasons for withholding the information.

Applications for exceptional circumstances based on Article 3 of the ECHR

- 4.41 This section includes circumstances which have arisen since the imposition of the sentence which render the punishment originally imposed no longer justifiable on penological grounds.
- 4.42 Applications on these grounds should be submitted directly to PPCS by the prisoner or their representative; setting out the exceptional circumstances that make further detention in accordance with a lawful sentence imposed by the court no longer justifiable, or where the detention is in breach of Article 3, along with any supporting evidence/reports being relied upon in the application.
- 4.43 Depending on the issues raised in the application, PPCS on behalf of the Secretary of State will consider whether to commission any additional reports, or assessments, which they

consider appropriate for a decision to be made. Any representatives of the prisoner will be informed of any reports obtained and be provided with the opportunity to comment on them.

- 4.44 There is no application form for an application being made under this section of the Policy Framework. However, full details of the reason(s) ERCG should be considered, and all reports being relied on in the application must be submitted to PPCS.

APPLICATION PROCESS

Submitting an application

- 4.45 Applications for ERCG should be sent to PPCS at **Pre-releaseteama@justice.gov.uk**.
- 4.46 PPCS will be responsible for liaising with all relevant parties, where necessary, when considering an application. They may also consult an Independent Medical Adviser for health and social care-related cases and, where appropriate and if time allows, seek advice from the Parole Board, or commission any further reports, when considering an application.
- 4.47 There is a requirement for the Secretary of State to pay due regard to any recommendations the courts may make (usually recorded on the Trial or Committal Record Sheet issued by the Court). The prison must therefore check to see if the courts have made any recommendations for additional licence conditions and, if so, details of these must be brought to the attention of PPCS when making the application. This is to ensure that should the application be approved, PPCS are already aware of the recommendations, and this does not cause any delay in release taking place.
- 4.48 A decision will normally be made within two weeks on receipt of the completed application, but more quickly if the circumstances require it, where all the necessary information required to reach a decision has been received. It is imperative that all essential information in support of the application is submitted to PPCS with the application to avoid any unnecessary delays.
- 4.49 If an application requires an urgent decision, for example where the life expectancy of the prisoner is extremely short, PPCS must be alerted by telephone (contact numbers: **07967 329325** and **07773 039050**) and by email at **Pre-releaseteama@justice.gov.uk**, at the earliest opportunity. When the application is submitted the email should also include 'URGENT' in the subject line.
- 4.50 Where early release is approved, PPCS will liaise with all relevant parties when preparing the licence. The COM will be contacted regarding any additional licence conditions, including any conditions affecting the victim(s).
- 4.51 The Parole Board is responsible for agreeing what licence conditions should be imposed for those being released from an indeterminate sentence and certain determinate sentences. If any additional licence conditions are proposed by the COM, PPCS will liaise with the Parole Board.

Refusal of an application

- 4.52 If the decision is taken to refuse ERCG for an application submitted by the Prison Governor, PPCS will notify the prison in writing. For an application submitted by the YCS Release and Resettlement Team, PPCS will notify them of the decision, who will inform the secure setting holding the child or young person.

- 4.53 The Prison Governor, in consultation with the COM/POM and with support of the Prison Key Worker (if the prisoner is eligible for a Key Worker) and those caring for the prisoner, should decide how best to disclose the decision to the prisoner. Where ERCG is refused the decision may have a significantly negative impact on the prisoner and care should be taken to assess if any further support or safeguarding measures are required, e.g. opening of an Assessment, Care in Custody and Teamwork (ACCT) document, or arranging for the prisoner to speak to a trusted person within the prison or arranging a phone call to their family. In some cases, the prisoner may not, due to their health, be sufficiently able to understand the decision and therefore the prison may take the view not to inform them.
- 4.54 The outcome of the decision should be recorded in the prisoner's core record and on Offender Management in Custody (OMIC) case notes in Digital Prison Services (DPS) by the POM.
- 4.55 Where a decision to refuse early release is made, it does not stop the case being resubmitted. Often PPCS will ask that the case is kept under review so that the application can be re-submitted when, for example, there is a clearer prognosis. It is important that Prison Governors keep PPCS advised of developments in such cases.
- 4.56 For applications made directly to PPCS (not by the Prison Governor or the YCS Release and Resettlement Team) the prisoner or their representative will be advised of the decision to refuse ERCG by PPCS in writing.

Re-submitting an application initially refused

- 4.57 If the circumstances of the case change and a review is required, the Prison Governor should update the application where necessary and re-submit the form to PPCS. Any updated supporting evidence, for example a new report from the Prison GP and/or updated assessment by the medical specialist(s), must also be attached when re-submitting the application. PPCS may also request any updated reports and assessment where necessary.
- 4.58 There are no set time periods before a further review may be carried out or limit on the number of times a case may be re-submitted. However, the application must always be resubmitted with the most up to date information from all relevant parties.
- 4.59 The prisoner's core record and OMIC case notes in DPS should again be annotated to record that the application has been re-submitted.

Approval of an application

- 4.60 If early release is approved by the Secretary of State, PPCS will notify the prison in writing via email and provide the licence, where necessary, to be issued to the prisoner.
- 4.61 Where the application is for a child or young person PPCS will notify the YCS Release and Resettlement Team of the decision, who will inform the secure setting holding the child or young person and provide the relevant licence and/or Notice of Supervision for those serving DTOs.
- 4.62 For applications made directly to PPCS the prisoner or their representative will also be informed of the decision to approve ERCG.
- 4.63 For the majority of applications, the approval of ERCG will be a positive outcome for the prisoner. In cases where there is any concern however, that the decision to release will cause distress for the prisoner, e.g. a prisoner with advanced dementia who may not be

able to fully understand what the decision will mean, or where the prisoner did not wish to leave prison, but on advice of those caring for the individual an application was still made, care should be taken when speaking with the prisoner and any concerns discussed with the hospice/hospital or similar institution that will be caring for the prisoner on release.

- 4.64 A licence will be applicable if the sentence being served would otherwise attract a licence on release. Where the prisoner is approved for ERCG, the licence will start from the date early release takes place and run until the licence expiry for the sentence, or for life if the prisoner is serving an indeterminate sentence (for those subject to IPP sentences, please also refer to <https://www.gov.uk/government/publications/managing-parole-eligible-offenders-on-licence-policy-framework> for guidance on the IPP Licence Termination process).
- 4.65 Prisoners released early from a term or sentence which would not be subject to licence normally, e.g. contemnors, will be released unconditionally (except where the prisoner has an outstanding licence period from a previous sentence).
- 4.66 The decision to release should be recorded in the prisoner's core record and OMIC case notes in DPS, so it is clear as to the reason for early release and the date agreed for release. The release code on Nomis that should be used for the release is 'Early Release on Compassionate Grounds'
- 4.67 Where a duty COM has assisted with the application, a COM must be assigned once approval for release is received. The COM will then assume management responsibility of the case on release.

RELEASE AND RECALL

Release procedures

- 4.68 Prisoners should be released in line with all relevant release procedures set out in Prison Service Instruction 72/2011 – Discharge. Children and young people should be released in line with the established pre-discharge processes.
- 4.69 When releasing prisoners who are detained in psychiatric hospitals under the Mental Health Act 1983, MHCS must be advised to ensure that the necessary procedures are completed to lift or remove the authority for detention and restriction orders. MHCS can be contacted at MHCSMailbox@justice.gov.uk
- 4.70 It is important that for health and social care releases care packages are in place prior to release taking place, including GP registration, and that all partners, (NHS, local authority, community health providers) and Probation are involved in release planning.

Informing victims of early release

- 4.71 If there is Victim Liaison Officer (VLO) involvement in the case the COM or POM (depending on who holds responsibility for the case) will liaise with the VLO throughout the sentence and should inform the VLO of any application regarding ERCG. The VLO will discuss the application with the victim and make a request for any licence conditions on behalf of the victim. The VLO should also be informed of the decision and may provide a summary for the victim, provided by PPCS, explaining ERCG and that the decision for early release has been made.
- 4.72 If a victim is concerned about a prisoner's release and does not qualify for the Probation

Service (PS) Victim Contact Scheme (VCS), they should contact the HMPPS Victims Helpline by e-mailing victim.helpline@justice.gov.uk or calling **0300 060 6699**. The helpline will then seek advice from the prison and may be told the month of release and the length of time on licence only.

Varying licence conditions following release

- 4.73 As with all forms of release on licence it is possible to vary the licence conditions to facilitate the management of supervision of the prisoner following release. Guidance can be found in Licence Conditions Policy Framework or via the Licence Policy team at licence.variations@justice.gov.uk.
- 4.74 Where the licence conditions were agreed by the Parole Board, any variation requests should also be addressed initially to PPCS at the above email address, who can consult the Parole Board regarding the proposed changes.
- 4.75 For variations to youth licences advice should be sought from the relevant team within the YOI or the YCS Release and Resettlement Team at YCSPT-Release@justice.gov.uk for children and young people placed within the secure estate.

Failure to comply with licence conditions and recall to prison custody

- 4.76 As with any other release on licence, a prisoner released early on compassionate grounds must comply with the conditions imposed on them. If a prisoner does not comply with conditions of their licence, they may be recalled to prison to continue serving their sentence in custody.
- 4.77 There is no question of a prisoner being recalled simply because of a change in their compassionate circumstances. The usual threshold for recall will be applied in relation to compliance with licence conditions and level of risk the prisoner poses. Guidance on recall and re-release can be found in the Recall, Review and Re-Release of Recalled Prisoners Policy Framework. Guidance for children or young people serving a DTO can be found in Youth Justice Board Case Management Guidance.
- 4.78 A standard determinate sentenced prisoner, released early on compassionate grounds, may still be recalled as a fixed term recall as well as a standard recall. Where an offender is recalled as a fixed term recall before the original Conditional Release Date (CRD) of their sentence, release will be automatic after serving the fixed term period or at the CRD (as adjusted for any time spent unlawfully at large, 'UAL') whichever provides the later date.

Annexes -

Annex A - Application Form – Health and/or Social Care Needs

Annex B - Application Form – Non-medical related

Annex C - Transcript Request Form