



Ministry
of Justice

Variation and Authorisation

Changing and managing Licence Conditions Following Release

What is a licence condition?

Most individuals subject to custodial sentences will be released on a licence into the community under probation supervision. This means that a series of standard licence conditions will apply, but also that the Probation Practitioner (PP) may request additional licence conditions to mitigate the unique combination of risks and issues posed by the individual.

Additional licence conditions can range in type from curfews and exclusion zones, to requirements to attend accredited programmes, or to disclose specific information or documents, and many more.

These additional licence conditions must be approved by the decision maker, as described in the [Licence Conditions Policy Framework](#), prior to release. Additional licence conditions must be both necessary and proportionate in order to be applied and must continue to be so in order to remain on the licence.

What is a licence variation?

A licence variation is where the PP applies to the decision maker for a change to the additional conditions in the licence after the individual has been released from custody. This may be either where the individual is in the community, a hospital or in an Immigration Removal Centre (IRC).

As the additional licence conditions must remain necessary and proportionate throughout the course of the licence, there may be a need to add or remove a licence condition permanently as the risks and issues posed by the individual change over time. There will

be circumstances where a PP must consider a licence variation to ensure that the protection of the public, and specific individuals, remains paramount in the management of the case.

What is licence authorisation?

Licence authorisation is where the PP identifies that a temporary change to an additional licence condition is required. This is enshrined in the majority of additional licence conditions having text at the end which reads “without prior permission of your supervising officer” or similar, allowing for the PP to grant permission for the individual to act outside of the condition.

A licence authorisation should be used for exceptional circumstances only, and only in order to support a specific objective. It should only be approved where all other options to achieve the objective have been explored and deemed unsuitable. Where it is likely that the objective is required on a repeated basis then a licence variation request is more appropriate.

It does not cover activities that are approved under the standard licence conditions, such as approval for accommodation or employment for individuals on licence. Requests from individuals for permission to temporarily travel abroad must be reviewed under the separate processes described in the [Policy Framework on Travel and Transfer on Licence and PSS Outside of England and Wales](#).

Licence authorisation is a new term being introduced by this guidance document, although the activity it describes already takes place, but previously remained unnamed. Licence authorisation will be incorporated into an update to the Licence Conditions Policy Framework, expected in February 2022.

What is the difference between variation and authorisation?

Permanency and specific need are the primary differences between variation and authorisation. A licence variation is intended to be a permanent change to the licence, in that it is approved by the decision maker and a licence condition is either added or removed. Licence authorisation is a temporary change, allowing the offender to act outside of the licence condition for a temporary period of time.

However, it must be noted that licence authorisation does not act as a temporary variation in that alternative guidelines must be followed. Unlike a variation, authorisation is an on/off switch for a licence condition. It is the process by which the PP gives specific permission for an individual to undertake an activity that would be otherwise prohibited, and is not

reviewed by the decision maker setting the licence conditions. Ensuring that the details about what has been authorised is clear is important and will assist in the event an individual on probation behaves in a way that goes outside of the authorisation and the PP needs to consider breach.

Any approved authorisation must be as specific as possible. For example, in the case of a non-contact related condition, this would be a specific contact, or a specific occasion of contact or even via a specific means of contact. The authorisation must not be any wider in scope than is necessary to achieve the required objective.

How to apply for a licence variation?

The process for applying for a licence variation is set out in the Licence Conditions Policy Framework, which can be seen on GOV.UK here: [Licence conditions Policy Framework - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/licence-conditions-policy-framework). Additional guidance documents are available on Equip.

How to consider licence authorisation?

An individual on licence can informally seek approval to act outside of an additional licence condition as part of a normal conversation with their PP. This may come up as part of any form of conversation between the two, with the individual requesting to do something outside of their additional licence conditions.

During the consideration process, the PP must ensure that any relevant person has the opportunity to contribute to the decision making. Exact timescales for this will depend on the urgency of the request. For example, attending a funeral in an exclusion zone in four days' time will have a different sense of urgency than an individual requesting to be allowed to be present at the birth of their child in several months' time.

By rule of thumb, any individuals, agencies, or forums who were involved in discussing the risks and issues posed by the individual when setting up the original condition should be involved in any discussion about authorising activity outside of that condition. This includes specific leads on terrorism, serious organised crime and so forth, as well as case specific contacts such as a victim liaison officer (VLO) or via the Multi-Agency Public Protection Arrangements (MAPPA). The PP may also wish to discuss requests with their senior probation officer (SPO) where appropriate.

Where there is insufficient time to bring the request before a specific forum where the case has been previously discussed because it is a time sensitive request, then the PP must discuss it with the chair of that meeting instead or in the case of a MAPPA meeting, the MAPPA Coordinator for the area and a Police contact such as the police offender manager.

Licence authorisation decision making

The PP must then review the risk assessments and take into account any information provided by an individual/agency spoken to as part of the review process before coming to a decision, having carefully examined the associated balance of risks and benefits. They must document their final decision in case notes on NDelius, setting out the request, the related information provided (if not otherwise restricted, such as victim information), and the decision made.

Then the outcome of the consideration must then be relayed to the individual on licence, with confirmation of this recorded on NDelius in case notes including any response by the individual on licence.

Example

Mr Smith has an exclusion zone on his licence. It is put in place because of gang issues in an inner city. A close family member is in hospital in intensive care, and Mr Smith has asked permission from his PP to attend the hospital, which is inside the exclusion zone.

The PP considers the request, first speaking to other involved parties. This includes the MAPPA Coordinator, because the case was previously reviewed at a MAPPA level 2 meeting but there is insufficient time to wait until the next meeting to discuss. The PP grants permission for Mr Smith to enter the exclusion zone for this purpose (a licence authorisation), and notifies the local police as an additional risk mitigation.

Breach of licence under authorisation

When a PP grants authorisation for an individual on licence to act outside of a licence condition, it is on the understanding that it is for the purpose requested. In the example above, it is to access a hospital, but what if the PP then finds out that the individual undertook an unapproved action inside the exclusion zone as well or instead of visiting the hospital?

While the PP's cannot put insert specific instructions into the licence condition itself, they are able to give instructions to the individual on licence to specify what they can and cannot do. A failure to follow those instructions will be a breach of the good behaviour condition, as well as any other conditions that may apply.

Example

After his visit to the hospital, Mr Smith visited a friend's house inside the exclusion zone. In his subsequent meeting, he did not disclose this to his PP. However, the PP was then informed due to police intelligence that Mr Smith was at his friend's property.

As this was never requested or authorised, it would be a breach under the standard licence condition for good behaviour for failing to abide by his PP's instructions, and potentially deliberately misleading them if pre-meditated.

Contact points for this guidance

Any queries regarding this guidance can be directed to LicencePolicy.CPP@justice.gov.uk