



## **Covid-19: Use of Compassionate ROTL**

24<sup>th</sup> April 2020

1. This document is supplementary to the [Release on Temporary Licence \(ROTL\) Policy Framework](#). It does not change the procedure set out in the Policy Framework, but clarifies how to interpret the provisions around compassionate temporary release under a Special Purpose Licence during the Covid-19 pandemic.

### **Background**

3. The Ministry of Justice and Her Majesty's Prison and Probation Service are implementing measures to limit the spread and impact of Covid-19 in the prison estate, protect the health of staff and prisoners, maintain safety and order, and minimise the impact of the pandemic on the NHS.
4. Creating headroom in prisons by a combination of new buildings and some temporary releases is one part of this package of measures, because it will allow more space to shield and isolate vulnerable prisoners and new entrants to custody.
5. One part of that response is the End of Custody Temporary Release (ECTR) scheme, which provides for the early release of some low-risk prisoners who are within two months of their normal release date.
6. Some prisoners, however, may be particularly affected by the direct or indirect consequences of the pandemic but not qualify for ECTR (for example because they are further from their release date). Depending on the individual circumstances of their case they may merit consideration for compassionate release.

### **Permanent Early Release on Compassionate Grounds**

7. There are statutory powers for the Secretary of State to release prisoners permanently in exceptional compassionate circumstances. These powers are contained in s.248 of the Criminal Justice Act 2003 in respect of fixed term prisoners and in s.30 of the Crime (Sentences) Act 1997 for indeterminate sentenced prisoners. The policy and guidance on the application of those powers is contained, respectively, in Prison Service Order (PSO) 6000 for determinate sentence prisoners and in PSO 4700 for indeterminate sentence prisoners.
8. No changes are being made to the policy and approach under those permanent compassionate release powers in response to Covid-19. Prisoners can apply under the existing processes set out in those PSOs if they consider there are sufficiently compelling exceptional compassionate reasons for them to be released. This is typically used, for example, where a prisoner has a terminal health condition and has a short life-

expectancy or is severely incapacitated and bedridden – but each case will be considered on its individual merits and circumstances.

9. The Secretary of State has decided that the appropriate procedure for the release of prisoners on compassionate grounds, on the basis of health conditions or particular vulnerability during the Covid-19 outbreak, is the scheme for Release on Temporary Licence (ROTL) by way of Special Purpose Licence (SPL). This is because release on compassionate grounds for vulnerability reasons will only be justified for the duration of the Covid-19 outbreak. The ROTL scheme ensures that prisoners can be returned to prison once the justification for temporary compassionate release ends, if they are still serving the custodial element of their sentence at that point.
10. For this reason, where a prisoner believes they should be considered for compassionate release on grounds of Covid-19 vulnerability, they should be directed to the policy on SPL under the ROTL Policy Framework, rather than make an application under s248 or s.30 – unless they believe they meet the very high threshold for permanent compassionate release.

### **Compassionate release on ROTL**

11. Sections 6.27-6.31 of the ROTL Policy Framework set out the circumstances under which a Special Purpose Licence can be issued, subject to a case-by-case assessment of whether it would be safe and appropriate to do so.
12. The Secretary of State has decided that in the present circumstances of the Covid-19 pandemic, prisoners in the following groups merit consideration for a temporary release under a Special Purpose Licence:
  - a. Pregnant women
  - b. Prisoners with their babies in custody
  - c. Those defined by the NHS guidelines as 'extremely vulnerable' to Covid-19.
13. 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**

14. The ROTL Policy Framework sets out the procedure for deciding on whether to issue a Special Purpose Licence. It is important to remember that the ROTL process is voluntary, and a prisoner may remain in custody if they do not wish to be considered for release in this manner.
15. Where prisoners meet the criteria in paragraph 12 for their risk to be assessed for possible release, they should be considered for ROTL based on a case-by-case assessment of whether it would be safe and appropriate to do so. This involves the normal constraints set out in the Framework around Standard and Restricted ROTL, as well as the need to seek input from the Offender Manager and external agencies including the police.
16. Although the full risk assessment process must be followed, these cases are by their nature urgent. Assessments and decisions should be expedited wherever operationally practical, taking into account the wider constraints imposed by the response to Covid-19.
17. Prisoners should be assessed against the normal criteria for SPL suitability which includes the need to maintain public safety and the public's confidence in the justice

system. In this context, the risk assessment will need to bear in mind that these releases will be for longer periods than normal SPL and take account of 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.

18. The assessment itself will need to consider 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, and need to be carefully weighed against the other considerations.
19. Part of the assessment process will also consider 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.
20. These Covid-19 releases under Special Purpose Licence will involve some prisoners who would not in normal times be released on temporary licence, but for whom it may be appropriate in these unique circumstances. Additionally, releases may take place from establishments less familiar with the ROTL process. It is for the prison to take the decision on 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.

#### *Applications for ROTL under existing Rule 9 policy for other prisoners*

21. Prisoners who do not fall within the groups identified in paragraph 12 may still apply for SPL under the Policy Framework in the normal way and their application will be considered on its individual merits in accordance with the Framework.
22. Before proceeding to risk assessment for these prisoners, the governor must be satisfied that there are sufficient grounds to do so. The fact of the Covid-19 epidemic will not normally be sufficient grounds for proceeding to undertake a risk assessment for a prisoner who does not fall within one of the three groups identified in paragraph 12 above. However, this may still be justified on the exceptional circumstances and all the circumstances of relevance to the release of a prisoner on compassionate grounds put forward by or on behalf of the prisoner must be considered.
23. Prisons should seek advice from the establishment's healthcare provider to confirm the medical status for prisoners identifying themselves as in the groups above. Similarly, 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.
24. In considering whether exceptional circumstances apply, a highly relevant factor will be the prisoner's precise individual medical condition, the risk to their 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. It should be clear, though, that the circumstances must be exceptional and stand out for release to be considered.
25. Where prisoners are ineligible for ROTL in law or assessed to be unsuitable for release under SPL, our wider package of measures, including the End of Custody Temporary Release (ECTR) scheme for low-risk prisoners nearing their automatic release date, will

help prisons operate measures to shield in custody those who may be vulnerable to Covid-19.

### **Appeals against decisions**

26. As set out in the Policy Framework, where a prisoner is dissatisfied with a decision either on whether to commence a full risk assessment or on whether to release following the assessment, they may submit a formal complaint via the normal HMPPS complaints process. If the complaint is upheld and a release recommended, this must still be endorsed by the Deputy Director of Prisons.

### **Licence conditions**

27. Prisoners released under a Special Purpose Licence must abide by the provisions of that licence. The licence can be revoked and the offender returned to custody for breach of a condition or for any other reason.

28. A new licence has been issued for this form of SPL based on the current ROTL licence but including a condition to abide by government instructions on social distancing and appropriate behaviour in response to Covid-19.