

Section 5.16: Request to terminate an IPP or DPP licence

An individual sentenced to Imprisonment for Public Protection (IPP) or Detention for Public Protection (DPP) has the right, under section 31A of the Crime (Sentences) Act 1997,<sup>1</sup> for consideration to be given to terminating their IPP licence from 10 years after their initial release. This is regardless of whether they have subsequently been recalled to prison at any point during the ten years.

For the purposes of this guidance, reference to the IPP sentence will also include the DPP sentence. A DPP sentence was given to an individual who was under 18 at the time the offence was committed.

Following the commencement of the relevant section of the Police, Crime, Sentencing and Courts (PCSC) Act 2022 on 28 June 2022, referrals to the Parole Board for termination of licence are now made automatically by the Secretary of State.

This provision puts on a statutory footing the Secretary of State's current policy of referring every *eligible* IPP individual to the Parole Board for consideration of having their licence terminated.

An automatic referral for termination can only be made after the qualifying period of ten years following the individual's first release from custody, irrespective of any subsequent recalls.

The individual no longer has the right to apply themselves directly to the Parole Board. This brings it in line with all other statutory referrals.

*Rule 31*

It is only the Parole Board that can terminate an IPP licence. Rule 31 deals explicitly with termination of these licences.

*PART 4 Termination of licence*

*References to terminate IPP licences*

*31.—(1) Where the Secretary of State makes a reference for an offender's licence to be terminated under section 31A of the 1997 Act, the Secretary*

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<sup>1</sup> Section 31A of the 1997 Act was inserted by the 2003 Act and has been amended by section 117(10)(a) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 c. 10, and paragraph 141 of Schedule 16 to the Armed Forces Act 2006 c. 52.



*of State must serve any reports or evidence at the same time as making the reference to the Board.*

*(2) ...*

*(3) ...*

*(4) Where the Board receives a reference, a panel appointed under rule 5(5) must consider the application in accordance with section 31A(4) of the 1997 Act.*

*(5) In considering the reference, the panel may—*

*(a) make a decision on the papers, or*

*(b) direct that the reference should be decided by a panel at a hearing.*

*(6) Where a panel considers the reference on the papers or at a hearing, it must decide to—*

*(a) terminate the offender's licence;*

*(b) amend the offender's licence in accordance with section 31(3) of the 1997 Act, or*

*(c) dismiss the reference.*

*(6A) Where the reference has been made for an offender who is in prison having been recalled under section 32 of the 1997 Act, the panel must consider the reference in accordance with section 31A(4B) of that Act.*

*(7) The decision under paragraph (6) or (6A) must—*

*(a) include the reasons for that decision; and*

*(b) if a hearing was directed under rule 31(5)(b), be provided to the offender and the Secretary of State within 14 days of that hearing.*

*(7A) Any decision made by the panel under paragraphs (5), (6) or (6A) is provisional, and becomes final if no application for reconsideration under rule 28 is received within the period specified by that rule.*

*Duty members should note the following points:*

- Rules 31(2) and 31(3) were removed from the Rules
- Rule 31(6), in respect of IPP prisoners who are in the community, enables a panel to direct termination if it is satisfied that the licence is no longer necessary to protect the public from risk.
- Rule 31(6A) requires the panel to consider whether the recalled IPP prisoner is suitable for unconditional release – that is to say, that if they are released it is not necessary for the IPP licence to be in place to protect the public.<sup>2</sup>

*Roles of PPCS and Probation Service*

As mentioned above, the Secretary of State is required by law to make the referral to the Parole Board once the individual becomes eligible.

This referral must be made even if the individual has been recalled to custody and their licence has been revoked, or if the individual is serving another sentence at the time the referral is made.

PPCS is responsible for commissioning and compiling reports from the Probation Service and formally referring an information pack to the Parole Board to consider.

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<sup>2</sup> *If the question of releasing the recalled IPP prisoner has also been referred to the Board, it can consider the test for release in parallel.*

The COM will normally make contact with the individual on licence to discuss the referral and then will write a report for the Board. They must write a report even if they are not supporting the termination.

COMs will provide a recommendation about the termination of an IPP licence. The Rules only specify that a view or recommendation on suitability for release or progression to open conditions must not be given in HMPPS reports. There is no similar prohibition on report writers providing a recommendation on termination of an IPP licence and a recommendation should, therefore, be included in the reports.

The individual on licence can also write their own views and submit them as written representations. They may seek legal advice about writing their representations.

If victims are signed up to the Victim Contact Scheme, they have a right to be notified of the referral and are entitled to submit a Victim Personal Statement (VPS). The VPS should confine itself to the impact that termination of the licence may have on the victim and not express a view about the termination. If the victim chooses to make a VPS, it will be added to the dossier of information provided to the Board.

Once all the information has been collated, a "*Request for Termination of IPP licence*" form is completed and attached to the information pack and sent to the Parole Board.

Instructions for HMPPS practitioners on terminating IPP licences are set out in the HMPPS Policy Framework on [\*managing parole eligible offenders on licence\*](#).

#### *Managing cases: stage one – receiving the application*

Once the information pack has been received and checked to ensure it contains all the required information and is eligible to be considered, it will be submitted to the duty member for consideration.

A referral for termination of licence can only come from the Secretary of State. If the Board receives an application directly from an individual on licence, it cannot undertake the review but will instead issue the following note to the individual:

*"Thank you for your request about terminating your IPP licence. On 28 June 2022, the Police, Crime, Sentencing and Courts Act 2022 changed the law about how requests to terminate an IPP licence are managed. The Parole Board can no longer accept an application directly from you, or anyone acting on your behalf.*

*It is only the Secretary of State who can request that the Parole Board consider terminating an IPP licence. The Secretary of State must, by law, ask the Parole Board to do this once you become eligible.*

*We would strongly recommend that you contact your Community Offender Manager (or your nearest Probation Office if you are unsure who this is) and ask them whether you are now eligible and if an application is being prepared. More information about this can be found on the Board's web pages here: [\*IPP Licence Termination information\*](#)."*

It is important to check if this is the first referral or if there have been previous requests that were refused. There must be a minimum of 12 months between each request. If the request is within 12 months of any previous request, the case should be returned to PPCS to investigate and advise.

A "*Request for Termination of IPP licence*" form, together with any information, should contain the following information:

1. Notification of initial release (date)
2. Previous release decisions (if recalled)
3. Release licence
4. Any post-release licence variation requests and outcomes
5. Licence termination application form
6. Reports from probation/police on up-to-date position
7. Current location (if back in custody) and any other sentences being served
8. Additionally, the previous parole dossier may be required for cases where the individual is back in custody; however, section 3 of the termination report should contain relevant information. The previous dossier should only be directed where absolutely necessary.

*Managing cases: stage two – considering the request*

Duty members will need to check they have all the required information to make a fair and swift determination.

***In most cases, it is expected that the individual will be in the community on licence when the referral is made. Things to consider:***

- The scale of progress across the ten-year period, including work that has been carried out in the community to address the individual's risk factors and to meet sentence planning objectives. The Termination Report should summarise the key events during the licence period since initial release, highlighting any areas of concern or progress;
- Content of previous progress reports submitted to PPCS;
- The individual's current circumstances in terms of the stability of their lifestyle, current accommodation and history, current employment and history, and current relationships and history;
- Whether they have been recalled at any time over the ten-year period and if details of any recall(s) are provided;
- Whether applications to vary the licence conditions have been made at any point since release, and, if so, the conditions under which any such variations were requested and granted (or refused);
- Whether the individual is still under supervision, and when was the last contact with the Probation Service;
- What is or has been the frequency and nature of contact, and how this changed over the licence period;
- How well the prisoner has engaged with supervision;
- How the individual has engaged with their sentence plan: have they completed all their objectives;
- What agencies and support networks the individual has in the community and what can continue post licence;

- How the individual has engaged with external agencies;
- If no longer under active supervision, when it was suspended;
- Evidence that checks with other relevant agencies listed in the Termination Report have been carried out. If the individual on licence has come to the attention of one or more of these agencies, the referral must still be made to the Parole Board, but full details must be provided;
- The current or last known risk of serious harm category. All four categories of risk of serious harm (public, children, known adult, staff) should be considered and noted on the application if there is more than one category relevant to the individual's risk;
- The current or last known MAPPA level;
- Any bespoke licence conditions still in place;
- Any previous requests to terminate the licence (with outcome); and
- The recommendation of the responsible officer and whether there is sufficient information to support their view.

If the individual has been returned to custody and/or serving another sentence for which they cannot yet be released from prison, please see the information below.

*If the individual is back in prison and/or serving another sentence*

The Secretary of State must make a referral even if the individual concerned has been recalled to prison and their licence has been revoked, or if they are serving another sentence at the time the referral is made.

Whilst this ensures all eligible individuals serving an IPP sentence are treated fairly and receive their entitlement to have the review of their licence considered at the time set out in legislation, duty members will need to carefully consider the implications of terminating the IPP licence for these cases.

Duty members may be required to consider terminating a licence in advance of the individual being re-released on the IPP sentence; or reaching the point of the new sentence where they will be either automatically released or referred to the Board for consideration of release.

*a) Referrals being made when the individual has been recalled on their IPP licence.*

Rule 31(6A) requires the Board to determine if the individual, if released, can be released unconditionally – that is to say they that they can be released without an IPP licence in place.

In cases where the question of an individual's re-release has also been referred to the Board, the panel determining their suitability for release can consider in parallel whether or not to terminate the IPP licence. In such cases, the duty member may direct that the IPP licence termination referral be combined with the recall referral and dealt with as part of the recall process.

In cases where only the question of IPP licence termination has been referred to the Board, the duty member must ask themselves whether the prisoner, if/when eventually released, should be released without any licence in place. In other

words, whether it is necessary for the protection of the public for them to still be subject to licence conditions if/when they are eventually released.

The duty member will need to carefully consider the circumstances of recall and consider whether they give rise to any concerns about public safety if/when the prisoner is eventually released that would require licence conditions to be in place to manage risk. If the duty member does have such concerns, it will normally be appropriate to direct that it is necessary for the protection of the public for the individual, when released, to be released on licence and to dismiss the referral.

Where an individual is back in custody, it may be necessary to direct an oral hearing to fairly determine the case.

Duty members should seek bespoke advice on these cases, as and when they arise, from the Practice Advisor.

*Duty members should note the following points:*

Where a recall happens fairly close to the requirement to consider terminating the IPP licence, it is likely that there may be a separate referral for the review of the recall. Duty members may wish to seek clarification on this if it is not clear within the information pack. As mentioned above, the duty member should consider directing that the referrals be combined and dealt with via MCA in the usual way. The MCA panel can then consider the termination of the licence, along with the review of recall.

The duty member should also check the date of the last review of the recall as the next periodic review may be due in the near future. If it is within six months of the current IPP licence termination referral, it may be more effective to defer consideration of termination of the licence and direct that it be combined with the next periodic review.

Where the recall has already been reviewed by the Board and re-release has been refused, or the next review is more than 12 months away, the duty member will need to deal with the licence termination referral.

*b) Referrals being made when the individual is back in custody, either following a recall on a different licence or given a new sentence.*

In these situations, duty members should check carefully whether the individual has also been recalled on their IPP licence or whether the recall and/or new sentence had no bearing on the IPP licence. Whilst unusual, it is possible for an individual to be recalled or given a new sentence that has no impact on the IPP sentence. However, it is difficult to envisage how the standard licence conditions “*be of good behaviour and not behave in a way which undermines the purpose of the licence period*” and “*not commit any offence*” will not have been breached in such circumstances.

Where the individual has been recalled on a different sentence, duty members will need to check the following:

- If the recall is related to another indeterminate or parole eligible determinate sentence, then there may be another referral from the Secretary of State for the review of recall in existence. In these circumstances, the duty member may wish to consider directing that the referrals be combined.
- If the recall is related to a non-parole eligible determinate sentence, the automatic release date will need to be checked. If it has not yet been reached, the individual cannot be released at this time, but the duty member will be considering whether the individual can be released on the IPP sentence unconditionally, that is to say without a licence in place, at a future date.

Duty members will also need to check the release criteria on the new sentence if there is one. It may not be possible for the individual to be released on the new sentence if:

- It is an indeterminate sentence – a separate referral will be required to determine release on such a sentence once the tariff expiry date has been reached.
- It is a parole eligible determinate sentence - a separate referral will be required to determine release on such a sentence once the parole eligibility date has been reached.
- It is a non-parole eligible determinate sentence subject to automatic release and that date has not yet been reached. The Board has no power to consider the release of such an individual.

Duty members will need to consider the above factors when determining the termination of a licence whilst the individual is in custody, either following recall on the IPP licence, recall on another sentence, or serving a new sentence.

***The critical point to remember is that the duty member needs to be satisfied that there are no residual concerns about public safety that would require licence conditions relevant to the IPP sentence to be in place to manage risk upon eventual release at some point in the future, before directing that the individual is suitable for unconditional release.***

In theory it is possible to determine that the individual, if released, will not pose any risk to the public that needs to be managed by licence conditions relevant to the IPP sentence. This would mean that unconditional release could take place at some point in the future. However, where another sentence is being served, duty members would need to be clear on all of the above points before directing that unconditional release on the IPP sentence can take place at some point in the future.

Where a decision is made that the individual does not pose any further risk to the public upon release, and that the individual can be released without any licence conditions relevant to the IPP sentence, duty members should be mindful that they will be doing so on the understanding that release will not take place now. Rather, it will take place in the future, once all other release criteria on any other sentences being served have been met. These cases may be better considered at an oral hearing.

### *Managing cases: stage three – the decision*

The decision to be made is whether the duty member is satisfied that it is no longer necessary for the protection of the public that the licence should remain/be in force; in which case the licence may be terminated.

In cases where an individual has been recalled, or is back in prison serving another sentence, the duty member must be satisfied that there are no longer any risks to the public that will need to be managed by licence conditions relevant to the IPP sentence upon any future release. This must be established before determining whether the prisoner is fit to be unconditionally released.

The referral should be dealt with as swiftly as possible, providing all required information is submitted with the information pack. The Board has given a broad indication that referrals will be dealt with on the papers within 14 days of receipt of the referral.

In making a decision, the duty member has the following options, as set out in the Rules:

- a) make a decision on the papers; or
- b) direct that the referral should be decided by a panel at a hearing.

If an oral hearing is considered necessary to properly consider the referral, then directions will need to be issued on an MCA Directions form. The Secretary of State should be directed to secure a suitable location for the oral hearing to take place.

If there is enough information to make a decision on the papers, the duty member can:

- a) terminate the licence (or, where the individual is back in prison, direct that future release be on an unconditional basis);
- b) amend the licence in accordance with section 31(3) of the 1997 Act; or
- c) dismiss the referral.

A decision must be supported by a sufficient explanation as to why it has been reached.

Once an IPP licence has been terminated, or future unconditional release is directed, all of the licence conditions related to that licence are discarded. There will no longer be any victim related conditions, such as a no-contact condition or an exclusion zone, and none of these may be re-imposed. The individual cannot be recalled on that licence as recall proceedings will no longer be an option. If the individual commits another offence, it will be dealt with separately.

Where an IPP licence is not terminated (or for an individual back in prison unconditional release is not directed) and either remains as originally submitted, or in an amended form, a further referral from the Secretary of State must take place every 12 months thereafter. Further referrals must not be made within a 12-month period.



A victim can request a summary of the Parole Board's decision about the termination of an IPP licence. Requests are made in the same way as for a summary of a full parole decision.

*Reconsideration Mechanism (rule 28) for IPP licence termination decisions*

Rule 31(7A) provides that a decision to terminate an IPP licence, or not to terminate it, remains provisional during the reconsideration mechanism timeframe. This provision came into force on 1 September 2022.

IPP licence termination decisions are provisional for 21 days before becoming final as they are subject to the Parole Board reconsideration mechanism and an application for reconsideration of them can be made. Either the individual or the Secretary of State can challenge the decision on the same grounds as reconsideration. An application can be made within 21 days from the date the decision was issued. Once the 21 days have expired, the decision becomes final.

Panels will need to ensure that relevant decisions include the paragraph explaining that the decision is subject to the reconsideration mechanism.

NOTE: However, decisions made under rule 31(6)(b), that is, where the individual's licence is amended in accordance with section 31(3) of the 1997 Act, are not eligible for reconsideration. Rule 28(1) only provides for decisions made under rules 31(6)(a) or (c), or (6A) to be eligible for reconsideration. A decision made under rule 31(6)(b) is a decision to amend the licence and is not eligible for reconsideration.

Decisions about IPP licence terminations cannot be set aside.