



Ministry
of Justice



HM Prison &
Probation Service

Policy name: Sentence Calculation Policy Framework

Reference: N/A

Re-issue Date: 17 April 2024

Implementation Date: 28 June 2022

Replaces the following documents (e.g. PSIs, PSOs, Custodial Service Specs) which are hereby cancelled: PSI 03/2015 Sentence Calculation – Determinate Sentenced Prisoners.

Action required by:

<input type="checkbox"/>	HMPPS HQ	<input checked="" type="checkbox"/>	Governors
<input checked="" type="checkbox"/>	Public Sector Prisons	<input type="checkbox"/>	Heads of Group
<input checked="" type="checkbox"/>	Contracted Prisons	<input type="checkbox"/>	HMPPS-run Immigration Removal Centres (IRCs)
<input type="checkbox"/>	National Probation Service	<input checked="" type="checkbox"/>	Youth Custody Estate
<input type="checkbox"/>	HMPPS Rehabilitation Contract Services Team	<input checked="" type="checkbox"/>	Women's Estate
<input type="checkbox"/>	Other providers of Probation and Community Services		

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

How will this Policy Framework be audited or monitored?: HMPPS Deputy Directors of Custody and Controllers will monitor compliance with the mandatory requirements set out in this framework. HMPPS contract management will hold providers to account for the delivery of the mandated requirements in accordance with the contract.

Resource Impact: This Policy Framework requires staff responsible for carrying out sentence calculations to obtain a licence to operate, by passing the existing courses delivered by HMPPS Learning and Development Group. To maintain the licence to operate, staff will also be required to pass a refresher course every subsequent 2 years to ensure knowledge is up to date. Learning will be offered on a face to face basis or/and online.

Contact: ReleasePolicyTeam@justice.gov.uk

Deputy/Group Director sign-off: Claire Fielder

Approved by OPS for publication: Sarah Coccia, OPS Chair, April 2022

<u>Date</u>	<u>Changes</u>
10 April 2024	Changes concerning the Digital Calculate Release Date Service (page 7); the addition of Appendix (ii) – (iv); and 60A and 60B added to Schedule 15

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1. **Purpose**

1.1 The aim of this Policy Framework and the attached operational guidance is to support staff in a sentence calculation role to ensure that:

- Release dates for determinate sentenced prisoners are calculated correctly in accordance with the relevant legislation;
- Prisoners are lawfully detained in custody;
- Prisoners are released on the correct date;
- The risk of a release in error is minimised.

1.2 The Policy Framework replaces Prison Service Instruction (PSI) 03/2015. It will:

- Introduce a requirement for staff who carry out sentence calculations to obtain a 'licence to operate' in the sentence calculations role.
- Provide clarification on 'blind calculations/checks' and when they must be carried out.
- Require the 2 day check before release to be carried out by a Band 4 or above.

1.3 The Operational Guidance attached to the framework will:

- Incorporate the changes that are required by the Police, Crime, Sentencing and Courts Act 2022 that come into effect on 28 June 2022.
- Consolidate guidance, previously issued by senior leader bulletins, in respect of the following legislative changes:
 - Terrorist Offenders (Restriction of Early Release) Act 2020;
 - Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020;
 - Sentencing Act 2020;
 - Counter Terrorism and Sentencing Act 2021.
- Clarify which figures must be used when calculating a daily monetary rate for the purposes of appropriating monies paid towards a term in default of a confiscation order.
- Provide guidance on how to treat individual sentences within a single term (created by multiple sentences imposed before 03/12/12 for offences committed before 04/04/05) when a sentence for an offence committed on or after 04/04/05 is imposed consecutively. Preparations for a habeas corpus case in 2017 highlighted that guidance for this scenario was missing from PSI 03/2015.
- Provide guidance on how to calculate re-release points following the different types of recall from licence.

2 **Evidence**

2.1 The mandatory requirements of the framework and the attached operational guidance reflect the release provisions for determinate sentences set out in legislation.

3 **Outcomes**

3.1 Determinate sentenced prisoners:

- Have their sentences calculated in accordance with the correct release legislation;

- Are lawfully detained in custody when they are required to be; and
- Are released on the correct date.

4 Requirements

Legal requirements

- 4.1 Release dates of determinate sentences must be calculated in accordance with the relevant legislation. There is no discretion in the process. Staff carrying out initial calculations and any of the checks required by this policy, must be aware of and apply the detailed operational guidance at Annexes A – D which gives effect to the following legislative provisions.
- 4.2 Chapter 6 of the Criminal Justice Act 2003 (CJA 2003) and schedule 20B to that Act (as amended) set out the release points and licence periods for all determinate sentences.
- 4.3 Section 240ZA and section 240A of the CJA 2003 set out what counts as relevant remand time and tagged bail time (respectively) and when it must be applied as time served towards the sentence.
- 4.4 Section 327 of the Sentencing Act 2020 (SA 2020) provides for time spent in custody abroad pending extradition to the UK to be directed by the sentencing court as time served towards the sentence they impose.
- 4.5 Section 23(3) of the Criminal Justice Act 1961 states that where release dates fall on weekends or Bank Holidays (except for sentences of 5 days or less when release will be on the Saturday) release dates must be brought forward to the immediately preceding weekday which is not a Bank Holiday. However, the Secretary of State has a power to bring forward that release by up to 2 eligible days. The Discretionary Friday/Pre-Bank Holiday Release Scheme Policy Framework provides a presumption that that the release date is generally brought forward to the Thursday subject to any variation agreed by the Governor. (Where a Home Detention Curfew eligibility date (HDCED) falls on a weekend or Bank Holiday and release is authorised on that date, the release must be deferred until the following working day).

Police custody

- 4.6 Time spent in police custody following remand by a court, on arrest following sentence in absence or recall from licence, for example, before being transferred to prison custody, will be treated as remand/sentenced time spent in custody irrespective of when the offence was committed or the sentence was imposed.
- 4.7 Police custody as part of an investigation before sentence is treated as remand to custody time, but only for sentences imposed before 03/12/12 for offences committed before 04/04/05. A person would have to be detained under section 118(2) of Police and Criminal Evidence Act 1984 (PACE 1984), or Section 41 of the Terrorism Act 2000. Police custody would begin on:
- The arrival of the person at any police station after arrest; or
 - Arrest at a police station after accompanying an officer there voluntarily and where the person was detained there or was detained elsewhere (in hospital for example) in the charge of a constable.

No release, if subject to other/further matters

- 4.8 If a prisoner is in custody serving a determinate sentence(s) and an indeterminate sentence, release cannot take place until the prisoner is entitled to be released from both types of sentence.
- 4.9 A prisoner cannot be released at the point that the custodial part of the determinate sentence(s) has been served if the prisoner then becomes subject to detention under an order of an immigration officer under the immigration legislation, or subject to remand to custody by a court, in connection with a further offence(s).

Mistakes by the sentencing court

- 4.10 Under Section 142 of the Magistrates' Courts Act 1980, the magistrates' court have the power to re-open a case at any time after sentencing in order to correct mistakes.
- 4.11 Under Section 385 of the Sentencing Act 2020, Crown Courts have the power to amend a sentence when a mistake has been made only within 56 calendar days following sentencing. This is called amending under the Slip Rule. The amended sentence is calculated from the original sentence date, unless the court directs otherwise.
- 4.12 There is no legal requirement for the Prison Service to check the validity of the sentence imposed by the court. However, where a warrant or sentence is ambiguous, or appears to be invalid, the sentencing court must be contacted without delay so that it has the opportunity to clarify the intention of the court and issue an amended warrant where necessary.
- 4.13 If the sentencing court maintains that the original sentence or warrant is valid, or the problem with a Crown Court sentence is noticed after the 56 day time limit has expired, advice must be sought from the sentence calculation helpline at the Ministry of Justice on how to proceed further.

Other Requirements

- 4.14 The following sections Paras 4.15 to 4.47 list the key requirements and actions surrounding the calculation process.

Sentence calculation staff – Licence to operate

- 4.15 Governors must ensure that all staff carrying out initial sentence calculations and any of the sentence calculation checks required by this policy, have obtained, or are working towards obtaining, a licence to operate by completing and passing the sentence calculation courses relevant to the type of establishment in which they operate. Staff who are working towards obtaining the licence must be mentored and have their calculations checked by a member of staff holding a licence to operate.
- 4.16 Once a licence to operate has been obtained, staff must attend a refresher course when reminded. The reminder will be issued 2 years after the licence to operate was obtained and the refresher must be undertaken within the following 14 months. The licence to operate will expire if the member of staff does not pass the refresher course.
- 4.17 For staff already in post at the point of commencement of the 'licence to operate' requirement:
- Staff in Secure Training Centres (STCs) must have successfully passed the bespoke Youth Custody Services (YCS) course within the last 2 years; and
 - Staff in all other establishments, must have successfully passed the Advanced Sentence Calculations course within the last 2 years.

Where such courses were passed 2 years or more before commencement of the 'licence to operate' requirement, staff must undertake a refresher course by the end of December 2023.

- 4.18 On implementation of this framework, if there are no members of staff in the establishment who have passed the relevant YCS or Advanced Sentence Calculations course, the Governor must identify and designate the most experienced staff to carry out the 2 day checks and mentoring and take immediate action to enrol those staff on the first available relevant course.
- 4.19 If, for unforeseen reasons in the future, an establishment is put in the position of having no staff with a 'licence to operate', immediate action must be taken to enrol the most experienced staff, designated by the Governor in the meantime to carry out 2 day checks and mentoring, on the first available relevant course.

Checks required/blind calculations

- 4.20 The 2 day check must be completed by a Band 4 or above.
- 4.21 The first calculation sheet completed following imposition of the initial sentence must be filed in the warrant folder after being initialled by the person who carried out the calculation. This will become the 'master calculation sheet'. Every subsequent calculation/amendment must be annotated on the 'master calculation sheet' and initialled by the member of staff who carried out the particular sentence calculation action.
- 4.22 Staff completing the following sentence calculation actions must carry out a 'blind calculation':
- Initial calculation on imposition of original sentence and any subsequent sentence imposition/variation on appeal;
 - Countersigning the initial calculation of original sentence and any subsequent sentence imposition/variation on appeal (Subject to para 4.26 exemption);
 - Transfer reception calculation (subject to para 4,26 exemption);
 - Countersigning of the transfer calculation (subject to para 4.26 exemption);
 - Reception from recall and/or a period of unlawfully at large (UAL);
 - Countersigning the reception from recall and/or a period of UAL;
 - 14 day check;
 - 2 day check.
- 4.23 A 'blind calculation' means carrying out a full calculation of the release dates for the sentence(s) as though it was a new initial calculation. It must be undertaken without reference to any earlier completed calculation sheets. Only on completion of the 'blind calculation' should the previously completed calculation sheet(s) be viewed. This will ensure any discrepancies in the release dates come to light and can be investigated.
- 4.24 Once a 'blind calculation' has been carried out:
- If the dates agree with dates on the 'master calculation sheet', there is no need to file the fresh calculation sheet (used for the blind calculation) in the warrant file, but the 'master calculation sheet' must be initialled to verify that the required 'blind calculation' has been completed.
 - If the dates do not agree with those on the 'master calculation sheet', the discrepancy must be investigated and brought to the attention of a Band 4 (or above) for confirmation of the correct dates. Once the correct release dates are confirmed, the 'master calculation sheet' in the warrant folder must be updated and initialled as above.

- The sentence calculation helpline must be contacted if further advice/clarification is required to establish the correct release dates.

4.25 The Band 4 (or above) is responsible for ensuring the 'blind calculations' are being completed in line with the above requirements.

Exemption from carrying out manual blind checks

4.26 As the Digital Calculate Release Date Service (CRDS) is rolled out across the estate, the requirement to carry out certain manual checks can be replaced with the CRDS.

4.27 Currently, the only checks that can be replaced with the CRDS are the blind countersign check on initial calculation of a sentence and the checks carried out on transfer.

4.28 Replacing the manual checks with the CRDS must not take place without agreement from the Area Executive Director for the establishment and instruction from the Digital Team. Once agreed, the CRDS process that must be followed for carrying out transfer checks is set out in [Appendix ii](#) and for the blind countersign check on initial calculation of a sentence the process is set out in [Appendix iii](#).

Timing of sentence calculations and checks – flow chart is at [Appendix \(i\)](#)

4.29 Release dates must be calculated and checked by a second member of staff within five working days of any relevant event taking place that impacts on release dates. If some of the required documentation (see Para 4.38 below) is missing, the calculation must still be done within 5 days and marked as provisional. The sentence must be checked and recalculated as necessary once all the data is received.

4.30 The calculation sheet must be initialled by the person carrying out the calculations and the person checking the calculation declaring whether or not the calculation was a blind calculation. PNOMIS must be updated as per the guidance in chapter 7 of [PSI 23/2014](#).

4.31 A release date notification slip must be provided to the prisoner no later than 5 working days after the imposition of a sentence, or an event requiring an amendment to the calculation. The slip must be marked provisional where further information is required before the calculation can be confirmed. Once the calculation is confirmed a revised release date notification slip must be issued. A copy of the release date notification slip must be retained on the warrant file and must be signed by the person who checked the calculation.

4.32 Calculations must be checked 14 calendar days before the release date by a different person to those who carried out the initial calculation and check. This check must be a blind calculation (see Para 4.23 above). The calculation sheet must be endorsed and initialled by the checker to confirm the check has been completed in accordance with the requirements of the framework. The guidance in Para 7.10 of [PSI 23/2014](#) must be followed to validate the release dates and verify that the 14 day check has been completed.

4.33 Calculations must be checked 2 working days prior to release by a person who is different to those who carried out the initial calculation and check and different to the person who carried out the 14 day check. This must be a blind calculation (see Para 4.23 above) The calculation sheet must be endorsed and initialled by the checker to confirm the check has been completed in accordance with the requirements of this framework. The guidance in Para 7.10 of [PSI 23/2014](#) must be followed to validate the release dates and verify that the 2 day check has been completed. The check must include confirmation that there are no further matters

on which the prisoner is being detained to prevent the release taking place, and that the relevant licence has been produced and details the correct information.

- 4.34 Where a calculation on transfer is found to have been incorrect, other than a purely arithmetical error, the error must be reported to the sentence calculation helpline in the Ministry of Justice immediately.
- 4.35 Where it is found that a particular sentencing scenario is not covered by the guidance or there is any doubt as to how the guidance should be applied, advice must be sought from the sentence calculation helpline in the Ministry of Justice.
- 4.36 Where it is found that a release in error has occurred it must be reported immediately by phone to 0207 147 4021 the National Incident Management Unit (NIMU) and followed up with a report on the Incident Reporting System (IRS) within 24 hours. Once it has been reported to NIMU by phone and updated on IRS, a Report of Abscond / TRF / Release in Error proforma must be completed and sent to the DD for Prisons' Office via ddprisons@justice.gov.uk. Further information about Incident Management can be found in the Incident Management Manual Policy Framework.
- 4.37 The letter template at [Appendix iv](#) must be used to instruct the police to arrest the offender and return them to custody.

Immediate release from court

- 4.38 Where an immediate release from court occurs, the initial calculation and countersigned blind check must be completed immediately and confirmation of the release provided to the court along with a copy of the relevant release licence. Any delay may result in the person being returned to the prison and a claim for unlawful detention. The countersigning blind check will act as the 2 day check and must be completed by a Band 4 or above.
- 4.39 Where the immediate release results in a balance of uncredited remand time, an alert must be created on NOMIS - 'Unused Rx-Immediate calc req'd on recall'. The alert will ensure that the case is flagged should the person return to prison as a recall.

Unused remand alert appears on reception following recall

- 4.40 Reception staff booking in a recalled offender where the unused remand alert appears, must bring the person's case to the immediate attention of the sentence calculation staff.
- 4.41 Sentence calculation staff must:
- Treat the calculation as a priority on the first working day opportunity;
 - Give effect to an immediate release from recall where required and avoid unlawful detention of the offender; and
 - De-activate the alert, once the balance of remand time has been applied to the sentence calculation.

Documentation required to perform a calculation

- 4.42 The following documentation is required before a release date can be accurately calculated:
- Order of Imprisonment (warrant)
Providing that the Order of Imprisonment/warrant has the name of the court, name of defendant and date of the hearing it is valid. It does not necessarily have to be on a prepared form and may be hand-written.

If the warrant has been produced from the Common Platform system, it will incorporate the details of the offence and the sentence breakdown.
If the warrant is pre-Common Platform, the following two documents for Crown Court trial cases will be required in addition to the warrant:

- Trial record sheet - provides the breakdown of the sentence and the date the offence was committed. This information is required in the calculation of HDC eligibility dates when there are presumed unsuitable offences or ineligible sentences within the overall sentence envelope.
 - Indictment - This document provides details of the date of the offences and under which legislative section they were committed. These details are required to identify what remand time is relevant to which sentences and whether Post Sentence Supervision applies to those sentences of less than 2 years.
- Details of prospective added days awarded on adjudication (ADAs)
The DIS7 adjudication paperwork will detail any prospective ADAs. Prospective ADAs can only be applied to the sentence if the period of remand during which they were awarded is being applied to the sentence imposed.
 - Remand warrants
These are required to help determine what remand time is relevant to sentences. If remand warrants have been mislaid, or where the remand warrant does not specify the dates of offences, a copy of the relevant court register, obtained from the court concerned covering the period of remand in dispute will be required.
 - Police custody records (PACE 1984)
Police custody as part of the investigation process that occurs before the sentence is imposed is only applicable to sentences imposed before 03/12/12 in respect of offences committed prior to 04/04/05. Written confirmation from the relevant police station must be obtained before police custody is applied to the sentence. Periods spent in police detention must relate to the offence for which the prisoner was arrested and sentenced.
 - Previous custodial records (back records)
Back records must be obtained from the last releasing establishment to be able to check for any previous periods of remand that affect the current sentence and to check for information that may affect other processes such as eligibility for future HDC release. A provisional calculation can be made in the absence of back records providing the calculation is checked and amended as necessary as soon as the back records are received and have been examined.

NB Where a prisoner is received following revocation of licence, the original warrants and other records must be scanned immediately from the last releasing establishment to the holding prison and the hard copies posted immediately as they are still the current documents for the sentence to which the prisoner is subject.

Warrant folders and contents

- 4.43 The warrant folder for those in custody must be kept in a secure location and separate to the core F2050. Once the prisoner is discharged from custody, the warrant folder must be married up to the core record and archived.
- 4.44 The warrant folder must contain documentary evidence for every sentence calculated and every adjustment made to that sentence/the release dates, along with copies of any licence on which the prisoner is released.

- 4.45 It must also contain the warrants for any ongoing but, as yet, unsentenced cases.
- 4.46 Examples of documents that must be filed in the warrant folder (this list is not exhaustive) are:
- Remand warrants (relevant to a sentence calculation and any outstanding court appearances);
 - Immigration detention order;
 - Sentencing warrant(s);
 - Trial record sheet (Crown Court) – where the warrant wasn't produced through the Common Platform;
 - Indictment (Crown Court) – where the warrant wasn't produced through the Common Platform;
 - Court extract (magistrates' court – where required);
 - Appeal order;
 - DIS7s containing details of any added days awarded (ADAs) on adjudication;
 - Evidence of date of arrest (where applicable);
 - Evidence of police custody (where applicable);
 - E-mail evidence from courts/CPS, or other agency, containing information relevant to the calculation;
 - Decision from the Public Protection Casework Section (PPCS) to allow time spent abroad pending extradition to count;
 - Letter from the Cross Border Transfer Section for prisoners transferred from other jurisdictions;
 - Advice provided by the sentence calculation helpline team in the event that they were consulted about a complex calculation;
 - Decision from PPCS where special remission (RPM) has been granted;
 - Decision from the Secretary of State for Justice (SSJ), or from PPCS as a delegated authority, where early release on compassionate grounds (ERCG) has been granted;
 - Parole Board release (including re-release after recall) decision;
 - Pay-out proforma giving effect to a release (where applicable);
 - Decision to authorise removal under the Early Removal Scheme (ERS);
 - Decision from PPCS authorising removal under the Tariff Expiry Removal Scheme (TERS);
 - Confirmation of imposition of a non-custodial sentence from court i.e. discharge authorisation form from escort staff;
 - Court bail decision and bail release paperwork;
 - Home Detention Curfew approved form;
 - Sentence calculation sheet(s);
 - Release licence;
 - Licence recall decision and confirmation of type of recall.
- 4.47 As documents are added to the warrant folder, they must be recorded on the index sheet attached to the cover of the warrant folder.
- 4.48 Where a prisoner is sentenced, the completed sentence calculation sheet(s) detailing the overall current release dates must be filed at the top of the collection of documents in the right-hand side of the warrant folder. All sentencing warrants (trial record sheets and indictments) relevant to the calculation of the current release dates must be filed immediately behind the calculation sheet. Only the release licence can be filed on top of the latest calculation sheet except where there is also an ongoing remand case – see Para 4.45 below.
- 4.49 Where a prisoner is sentenced and is also subject to remand for further matters, the latest remand warrant for the ongoing case(s) must be filed in a clear wallet on top of the calculation

sheet for the sentence. Where the release date on the calculation sheet is later than the next court appearance, the remand order must be marked NFR. If the next court appearance date is later than the release date of the calculation sheet, the calculation sheet must be marked NFR. This will minimise the risk of missing a Not For Release (NFR) case.

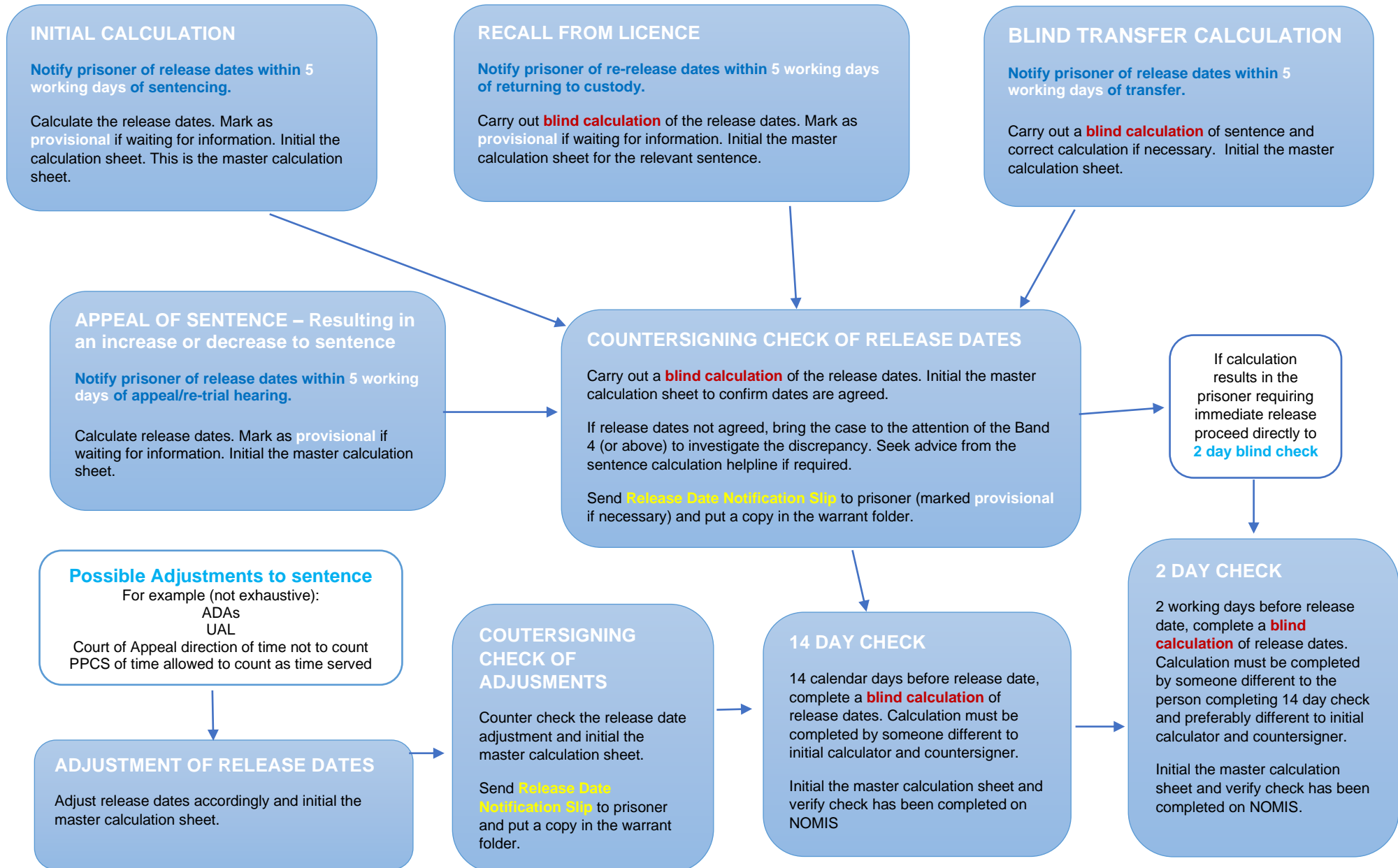
- 4.50 Where a prisoner is transferred to an Immigration Removal Centre (IRC), although the core record may transfer with the prisoner, the warrant folder must be retained at the prison establishment and married up with the core record once it is returned from the IRC.
- 4.51 Where a prisoner is transferred to a jurisdiction that is outside England and Wales (Scotland/Northern Ireland for example), the warrant folder and record must be retained at the last holding establishment in England/Wales.

5 **Guidance**

- 5.1 The instructions that must be followed for calculating release dates for the different types of sentence and term, multiple sentences, and combinations of sentences types will be found in the operational guidance in Annexes A – D attached.

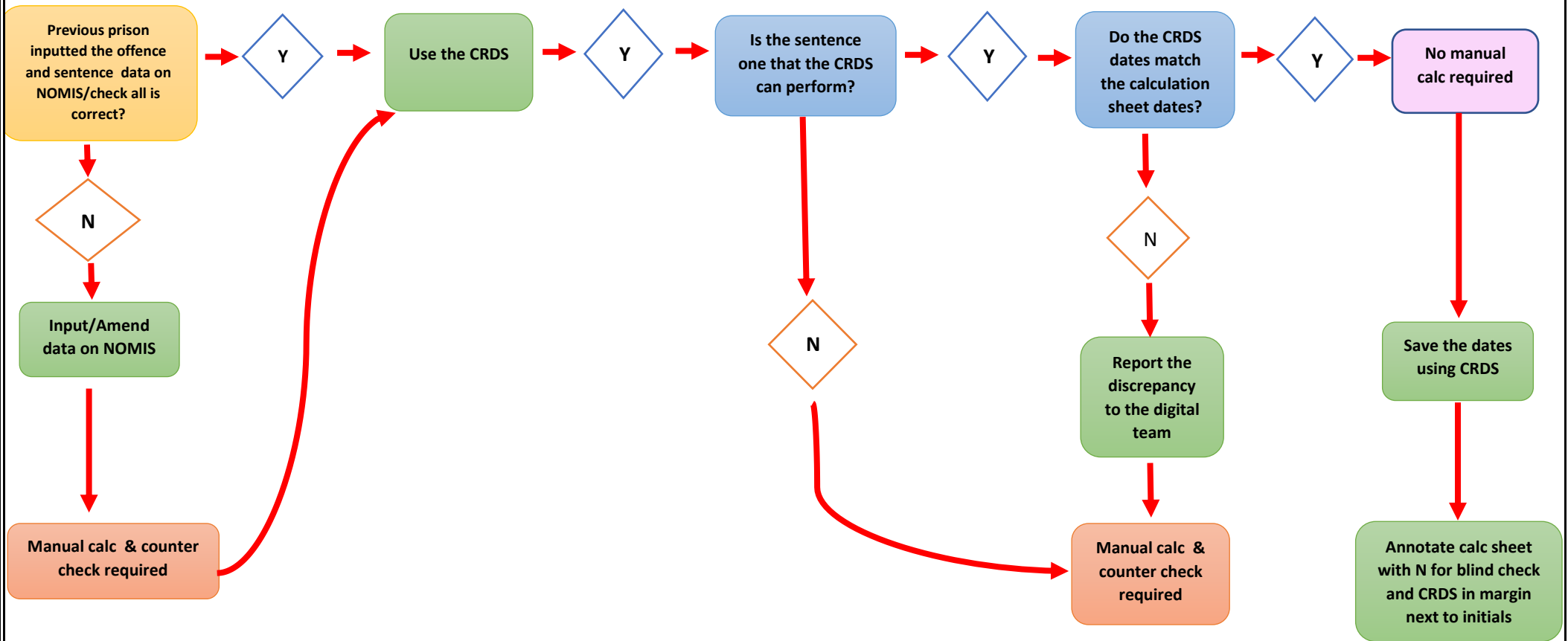
SENTENCE CALCULATION CHECK PROCESS

APPENDIX (i)



TRANSFER CHECK USING THE DIGITAL CALCULATE RELEASE DATE SERVICE (CRDS)

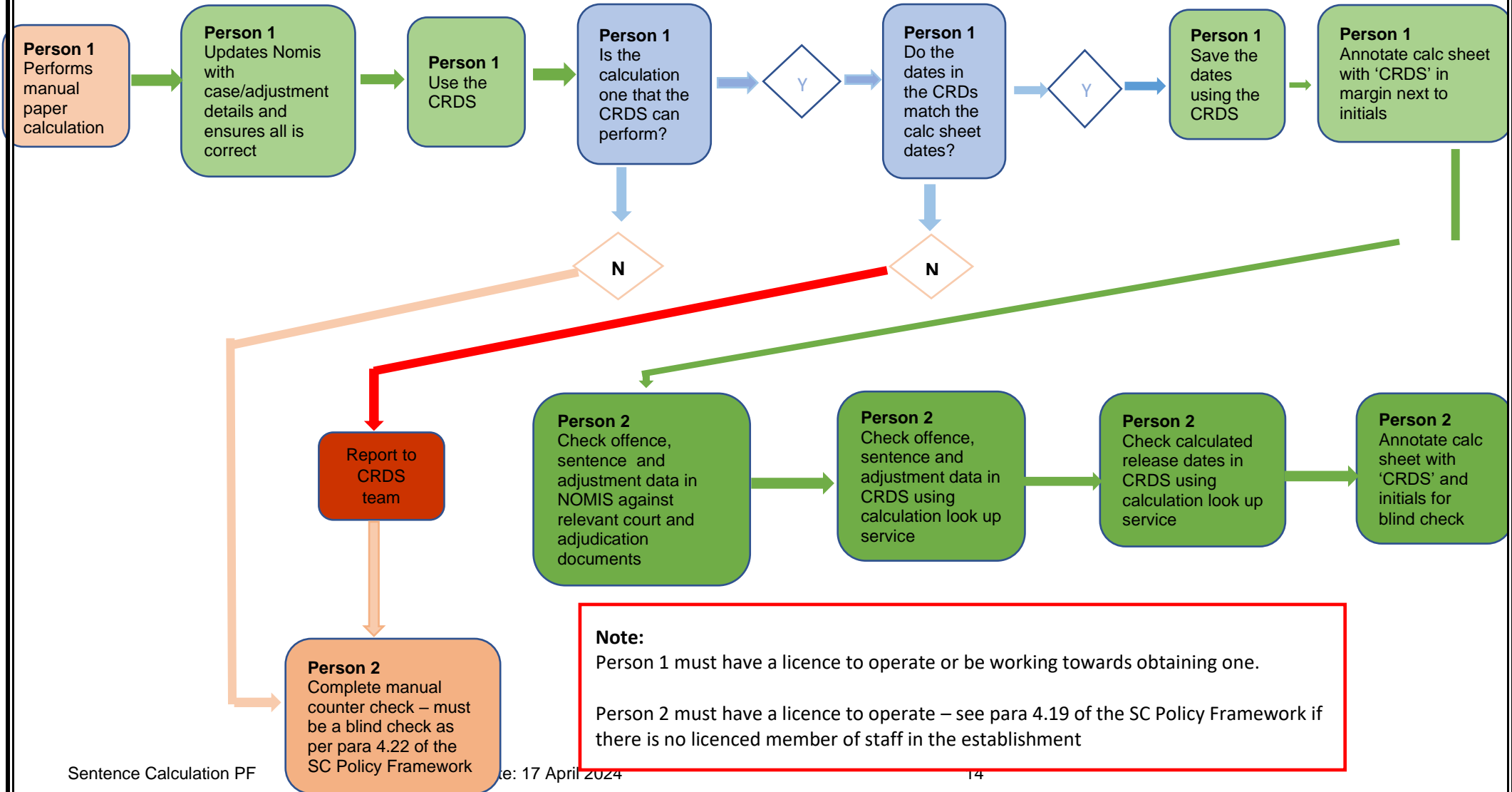
To be followed **ONLY** where agreement has been obtained from the Area Executive Director



Initial calculation and check process using the Digital Calculate Release Date Service (CRDS)

Appendix iii

To be followed **ONLY** where agreement has been obtained from the Area Executive Director.



To: _____ Police

Appendix iv

From: HM Prison/YOI _____ Tel. No: _____

Re: Request for the arrest and return to prison custody of:

Full Name	
Date of Birth	
PNC ID	
Discharge Address	

Please be advised that the above named offender has been released from their sentence before they were entitled to be. Legally they are still required to be in custody. Therefore, they have been released in error and are unlawfully at large (UAL). They must be arrested and returned to prison custody in accordance with Section 49 of the Prison Act 1952:

Prison Act 1952*49 Persons unlawfully at large.*

1. *Any person who, having been sentenced to imprisonment or custody for life or ordered to be detained in youth detention accommodation or in a young offenders institution, or having been committed to a prison or remand centre, is unlawfully at large, may be arrested by a constable without warrant and taken to the place in which he is required in accordance with law to be detained.*

Although it is through no fault of their own, the offender is in the same UAL position as if they had escaped or absconded and must be returned to prison to complete the outstanding custodial requirement of the sentence.

Delete as applicable:

The release in error has taken place before the point of the sentence when initial release would be on licence. Therefore, there is no licence revocation notice and no breach notice. The arrest must be made in relation to the attached Order of Imprisonment.

or

The release in error has taken place from a period being served following revocation of licence, the arrest must be made in relation to the attached Order of Imprisonment and revocation notice.

Once arrested and returned to custody, the offender does have an option to apply to the Secretary of State, under Section 49(2) of the Prison Act 1952, to ask for the time spent unlawfully at large to be counted as time served, but they must be returned to custody before such an application can be made.

In light of the above, please confirm that you will make the necessary arrangements for the arrest of _____.

Signed:**Dated:**