

Governors
Healthcare Managers, SPS
Head of Health, SPS
Head of Nursing, SPS
PLSRD

21A/05

M MCARTHUR
ROOM 305C
CALTON HOUSE

6 June 2005

Subject

**Early Release on Licence on Compassionate
Grounds**

**John Porter
Head of Nursing**

The purpose of this circular is to provide updated guidance to Governors on the operation of section 3 of the Prisoners & Criminal Proceedings (Scotland) Act 1993 (The Act) which empowers Scottish Ministers to release prisoners early on licence on compassionate grounds. This circular replaces circular 107A/99, dated 27th October 1999.

1. Statutory Provision

Section 3 of the Act provides that:

- 3(1) "The Scottish Ministers may at any time, if satisfied that there are compassionate grounds justifying the release of a person serving a sentence of imprisonment, release him/her on licence".
- 3(2) "Before so releasing any long term or any life prisoners, the Scottish Ministers shall consult the Parole Board unless the circumstances are such as to render consultation impracticable".
- 3(3) "The release of a person under subsection (1) above shall not constitute release for the purposes of a supervised release order".

2. Eligibility

All prisoners irrespective of sentence length, or when they were sentenced, are eligible to be considered for early release on compassionate grounds.

3. Decisions

Decisions on early release on compassionate grounds are taken by Scottish Ministers, who are advised by Parole & Life Sentence Review Division (PLSRD) of the Scottish Executive Justice Department. All requests for such early release must therefore be submitted to PLSRD.

Governors are reminded, that under Prison Rule 123(1) (d), they may grant temporary release to a hospital on licence for low supervision prisoners, subject to the criteria in the accompanying direction being met.

4. General Principles

The following underlying general principles are to be taken into account in the consideration of every application for early release on licence on compassionate grounds:

- The release of the prisoner will not create a risk of re-offending or put the safety of the public at risk;
- A decision to approve release will not normally be made on the basis of facts that were known to the sentencing court, or where relevant the Appeal Court;
- There is a specific purpose to be served by early release;
- There are arrangements in place for the prisoner's supervision, care and treatment on release.

The detailed criteria for early release on compassionate grounds are set out in Annex 1. The paragraphs immediately below summarise these.

4.1 Health & Incapacity Grounds

Early release on compassionate grounds may be considered where a prisoner is suffering from a terminal illness and death is likely to occur soon. There are no fixed time limits but life expectancy of less than 3 months may be considered an appropriate period. **It is therefore essential to obtain a medical opinion that is as clear as possible as to the current level of incapacity and likely life expectancy.**

Early release may also be considered where the prisoner is bedridden (confined to their room, wheelchair or otherwise) or severely incapacitated. Consideration would also be given to any case in which the prisoner's further imprisonment would, in the light of the conditions in which he/she is being held, endanger or shorten his/her life expectancy.

Medical conditions that are self-induced, (for example, those caused by a "hunger strike") would not normally be considered as justifying early release.

4.2 Tragic Family Circumstances

Imprisonment inevitably affects a prisoner's family. Cases involving tragic family circumstances are normally more difficult to assess. It should be noted, however, that the death of a close relative would not normally be sufficient in itself to justify early release on compassionate grounds.

Consideration may be given, however, to cases in which, for example, a prisoner's spouse has died and there is no one to care for young children. Whether such an application would be approved would depend on a number of factors, including the risk to the welfare of children and the availability of support and care from other family members, friends or the social work authorities. Similarly, if a partner or parent were terminally ill much would depend upon support available from other quarters.

5. Application for Release

Forms for use by establishments depending on the nature of the case are attached. Further copies of the application forms are available on SPIN under Public folders/all Public Folders/Local Folders/Mail Folder. Completed forms should be sent to PLSRD at the address shown on the forms, but only after full consultation with SPS HQ Health Branch as detailed.

6. Application for Release on Medical Grounds

In order to ensure that all parties are appropriately alerted at the earliest opportunity, a two phase approach is to be adopted. The prison retains lead responsibility for the co-ordination of the case, supported by SPS HQ Health Branch.

When an establishment becomes aware that a prisoner may be a candidate for early release on compassionate grounds, the Health Care Manager (or designate) should inform SPS HQ Health Branch who will keep a log of prisoners with terminal diseases, those with a poor prognosis of recovery from illness, or injury; trends and types of problems.

There should then be a multi-disciplinary case conference, seeking and confirming as much information as possible to address the elements required in the application form.

On the basis of the case conference and after consultation with SPS HQ Health Branch, the establishment should then decide on either provisional notification or full submission to PLSRD

- (i) If a provisional notification is preferred there will be some detail missing, but all available information should be submitted to PLSRD (copies to SPS HQ Health Branch).
- (ii) If a full submission is required, the establishment should further involve SPS HQ Health Branch to ensure that full corporate support is available in the integration of health, security and other elements. The final submission should be made by the prison to PLSRD, copied to SPS HQ Health Branch.

Provided that the information provided is complete, a decision will normally be made within 2 weeks of receipt of an application but will be made more quickly where the circumstances require it. A decision to refuse an application does not mean that a case will not be re-considered. Where appropriate, PLSRD will invite Governors to keep a case under review. In such cases, for example, where there is a clearer prognosis or the period of life expectancy is further reduced Governors again should bring such developments to the attention of PLSRD.

3.1 Issues of Release Licences

If early release is granted, PLSRD will prepare the release licence and send it to the relevant establishment.

(a) Offence Terms

In the case of short-term prisoners, the licence will run to the halfway point of the prisoner's sentence, in other words to the date on which he would be unconditionally released. The licence of a long-term prisoner will run until the sentence expiry date. The licence of an extended sentence prisoner will run until the end of the extension period and in the case of a life prisoner it will be of indeterminate length.

(b) Non-Offence Terms

Where early release is from a non-offence term, the licence remains in force until the date on which the prisoner would have been released from the non-offence term. In the case of a long term prisoner this means the licence will be in force until the two-thirds point of the sentence. For a short-term prisoner the licence will run to the one-half point of the sentence.

(c) Two or More Sentences That are not Single Termed

Where a prisoner is subject to a short-term sentence that goes beyond the sentence end date (SED) of a long-term sentence, the licence under section 3 of the Act will remain in force until the SED of the short-term sentence and not the unconditional release date of the short-term sentence. *It is therefore imperative where a prisoner is subject to two or more sentences that are not single termed in accordance with section 27(5) of the Act that details of these sentences are provided at section 2 on the forms attached.*

7. Social Work Role

The role of social work in relation to compassionate release is contained within the National Objectives and Standards for Social Work Services in the Criminal Justice System. These standards state that:

- ❖ A request for release on compassionate grounds in terms of section 3(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 may be made by any party action on behalf of the prisoner, although in the majority of cases the Governor will be responsible for the initial notification to the Parole and Life Sentence Review Division of SE Justice Department. The most likely circumstances in which compassionate release will be granted are where the life expectancy of the prisoner is short.
- ❖ The primary information source will be a medical report commissioned by the Governor. A Home Background Report will also be requested, and should focus on the health care plan and willingness of family members, the health services and other agencies to provide an appropriate level of support.
- ❖ The Governor of the prison will notify both the social work unit in the prison and the relevant Local Authority of the imminent release of a prisoner on compassionate grounds, as soon as possible so that a supervising officer can be appointed. Where the social work unit in the prison has relevant information or knowledge about a prisoner, they must liaise as appropriate with the community-based social worker.

7.1 Recall to Prison for Breach of Licence

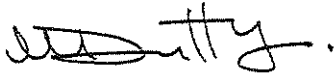
As with any other prisoner on licence, a prisoner released on compassionate grounds must comply with the conditions of the licence. If a prisoner's conduct or response on licence is unsatisfactory then he/she can, in the normal way, be recalled to custody.

If a prisoner, who has been granted compassionate release because of a terminal illness or other medical condition makes an unexpected recovery, consideration would be given to revocation of the licence and the prisoner's recall to custody.

8. Evaluation & Monitoring

SPS HQ Health Branch will be responsible for monitoring the effectiveness of this application process. Key elements will be: -

- The patient's age and diagnosis;
- Dates and the interval between firm diagnosis and death;
- The interval between firm diagnosis and the date of notification and/or submission to PLSRD;
- The dates and interval between specialists first diagnosis and firm prognostic opinion;
- Dates and interval between full submission, PLSRD/Ministerial decision and release;
- Dates and interval between release and death; and
- Comments on each stage



Mike Duffy
DIRECTOR OF PRISONS
June 2005

COMPASSIONATE EARLY RELEASE CRITERIA

I Medical

- ❖ The prisoner is suffering from a terminal illness and death is likely to occur soon or the prisoner is bedridden or similarly incapacitated; and
- ❖ The risk of re-offending is acceptable; and
- ❖ There are appropriate arrangements for the prisoner's supervision, care and treatment in the community; and
- ❖ Early release will bring some significant benefit to the prisoner and his/her family.

II Tragic Family Circumstances

- ❖ The circumstances of the prisoner or the family have changed to the extent that if he/she served the sentence imposed, the severity of hardship suffered would be *significantly* greater than that which the Court could have foreseen; and
- ❖ The risk of re-offending is acceptable; and
- ❖ It can be demonstrated beyond doubt that there is a real and urgent need for the prisoner's permanent presence with his/her family; and
- ❖ Early release will bring some significant benefit to the prisoner and his/her family.

III General

The following factors always require to be considered:

- ❖ Type of offence and prisoners supervision level;
- ❖ Whether temporary release in terms of the Prisons and Young Offenders (Scotland) Rules 1994 could reduce a prisoner's and/or the family's suffering or predicament;
- ❖ The length of the sentence outstanding, the effect on the overall sentence if early release is granted and any comments that the trial judge made on sentencing which may have a bearing on the question of early release;
- ❖ The wishes of the prisoner and his family and the level of benefit which would derive to the prisoner and/or his family from release on licence;
- ❖ In medical cases, the diagnosis and prognosis, in particular, whether there is an estimate of life expectancy and the degree of incapacitation.
- ❖ Scottish Ministers may also release a prisoner on compassionate grounds if they are satisfied that other exceptional circumstances exist.

APPLICATION FOR EARLY RELEASE ON COMPASSIONATE GROUNDS

Section 1: Details of Prisoner -To be completed by the Prison

SURNAME	FIRST NAME	SUPERVISION LEVEL
PRISONER NUMBER	D.O.B	SEX
ALIASES		

Does the victim notification scheme apply? Yes No

Section 2: Reason for Application

Medical Grounds	
Tragic Family Circumstances	
Other – Please Specify	

Is this a provisional notification or full submission

If a full submission, please give the date of previous provisional notification (if made)

Section 3: Details of Offence(s)/Sentence(s)

(a)	Name of court	
(b)	Offence(s)	
(c)	Sentence(s)	
(d)	Is the prisoner subject to a deportation order	Yes <input type="checkbox"/> No <input type="checkbox"/>
(e)	SED	(sentence expiry date*)
(f)	PQD	(parole qualifying date*) where applicable
(g)	EDL	(earliest date of liberation*)
(h)	Licence Expiry Date (Extended Sentence Prisoners)	
(i)	Next review date of suitability for release on parole/life licence	

Section 4: Progress Record

This application for early release includes assessments from:

- Section 4 - The Medical Officer (Medical Grounds Only)
- Section 5 - The Prison Social Work Unit
- Section 6 - The Governor

**Disregard item (e) (f) (g and (h)) of section 2 for life prisoners. If the prisoner is subject to two or more sentences that do not form a single term in accordance with section 27(5) of the Act, please provide details of each sentence.*

**Section 5: To be Completed by the Medical Officer
(for release on Health or Incapacity Grounds only)**

(a) I examined the prisoner on (dates):

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(b) The consultant (if any) involved in the case is:

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(c) The prisoner is suffering from:

--

(d) The prisoner is disabled in the following ways:

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(e) My prognosis/the prognosis of the consultant (ideally supported in writing) is:

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(f) Early release should be considered for the following reasons (Medical Officers should have in mind the following question: Does the condition of health render the prisoner incapable of committing further criminal acts, particularly of a violent or sexual nature.

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(g) I attach relevant medical reports in a sealed envelope

(h) If released, medical care would be available from:

Name		Name	
Address		Address	
Post Code		Post Code	
Tel:		Tel:	

Name (Block capitals)	
Signature	
Date	

Section 6: To be Completed by the Prison Social Work Unit

Please provide any information that you or community based colleagues may have in relation to the following:

- (a) To what extent are the relatives and friends aware of the prisoner's medical condition?
(Health or Incapacity Grounds Only)

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- (b) Describe the difficulties of the family circumstances/tragic family circumstances only

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- (c) Are there any reports (e.g. medical reports) confirming the circumstances?

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- (d) What other means of support does the family have (e.g. from relatives or friends)?

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- (e) What evidence is there that early release on compassionate grounds would ease the problems of the family circumstances?

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- (f) What is your assessment of the prospects of suitable resettlement arrangements being made in the event of release?

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- (g) I attach the most recent Home Background or Social Enquiry report on the prisoner

- (h) Name and Address of the prisoner's allocated supervising officer

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Name (Block caps)	
Signature	
Date	

Section 7: To be completed by the Governor

(a)	Present location of prisoner	
(b)	Was the prisoner's medical condition known to the sentencing court?	Yes <input type="checkbox"/> No <input type="checkbox"/>
(c)	What is your assessment of the prisoner's behaviour in prison?	
(d)	What is your assessment of the risk of the prisoner re-offending if released early on licence?	
(e)	Has temporary release under the Prisons and Young Offenders (Scotland) Rules 1994 been considered? Yes <input type="checkbox"/> No <input type="checkbox"/> If so, what result?	
(f)	Do you consider that the prisoner should be released early? Yes <input type="checkbox"/> No <input type="checkbox"/> Please state your reasons:	
(g)	I attach the Trial Judge report (where applicable) on the offence(s) relating to the prisoner's current sentence(s) <input type="checkbox"/>	
(h)	I attach a list of previous convictions <input type="checkbox"/>	

Name (Block caps)	
Signature	
Date	

On completion, this form should be sent to:

Scottish Executive Justice Department
 Parole & Life Sentence Review Division
 2nd Floor West
 St Andrew's House
 Edinburgh
 EH1 3DG