
DRAFT STATUTORY INSTRUMENTS

2008 No.

The Criminal Justice (Northern Ireland) Order 2008

PART 2

SENTENCING

CHAPTER 4

RELEASE ON LICENCE

Preliminary

Interpretation of this Chapter

16.—(1) In any provision of this Chapter “fixed-term prisoner” means a person serving a determinate custodial sentence for an offence committed after the commencement of that provision.

(2) In this Chapter—

“custodial sentence” means—

- (a) a sentence of imprisonment;
- (b) a sentence of detention in a young offenders centre;
- (c) a sentence of detention under Article 13(4)(b) or 14(5);

“determinate custodial sentence” means a custodial sentence for a determinate term.

(3) In this Chapter—

“prison” includes any place where a person serving a sentence falling within paragraph (b) or (c) of the definition of “custodial sentence” is liable to be detained;

“prisoner” includes a person serving a sentence falling within either of those paragraphs.

Duty of Secretary of State to release on licence

Duty to release certain fixed-term prisoners

17.—(1) As soon as a fixed-term prisoner, other than a prisoner serving an extended custodial sentence, has served the requisite custodial period, the Secretary of State shall release the prisoner on licence under this Article.

(2) In this Article “the requisite custodial period” means—

- (a) subject to sub-paragraph (b), the custodial period specified by the court under Article 8;
- (b) in relation to a person serving two or more concurrent or consecutive sentences, the period determined under Article 32(2) or 33(2)

Duty to release prisoners serving indeterminate or extended custodial sentences

18.—(1) This Article applies to a prisoner who is serving—

- (a) an indeterminate custodial sentence; or
- (b) an extended custodial sentence.

(2) In this Article—

“P” means a prisoner to whom this Article applies;

“relevant part of the sentence” means—

- (a) in relation to a indeterminate custodial sentence, the period specified by the court under Article 13(3) as the minimum period for the purposes of this Article;
- (b) in relation to an extended custodial sentence, one-half of the period determined by the court as the appropriate custodial term under Article 14.

(3) As soon as—

- (a) P has served the relevant part of the sentence, and
- (b) the Parole Commissioners have directed P’s release under this Article,

the Secretary of State shall release P on licence under this Article.

(4) The Parole Commissioners shall not give a direction under paragraph (3) with respect to P unless—

- (a) the Secretary of State has referred P’s case to them; and
- (b) they are satisfied that it is no longer necessary for the protection of the public from serious harm that P should be confined.

(5) P may require the Secretary of State to refer P’s case to the Parole Commissioners at any time—

- (a) after P has served the relevant part of the sentence; and
- (b) where there has been a previous reference of P’s case to the Parole Commissioners, after the expiration of the period of 2 years beginning with the disposal of that reference or such shorter period as the Parole Commissioners may on the disposal of that reference determine;

and in this paragraph “previous reference” means a reference under paragraph (4) or Article 28(4).

(6) Where the Parole Commissioners do not direct P’s release under paragraph (3)(b), the Secretary of State shall refer the case to them again not later than the expiration of the period of 2 years beginning with the disposal of that reference.

(7) In determining for the purpose of this Article whether P has served the relevant part of a sentence, no account shall be taken of any time during which P was unlawfully at large, unless the Secretary of State otherwise directs.

(8) Where P is serving an extended custodial sentence, the Secretary of State shall release P on licence under this Article as soon as the period determined by the court as the appropriate custodial term under Article 14 ends unless P has previously been recalled under Article 28

(9) The Secretary of State may by order provide that the reference in paragraph (b) of the definition of “relevant part of the sentence” in paragraph (2) to a particular proportion of a prisoner’s sentence is to be read as a reference to such other proportion of a prisoner’s sentence as may be specified in the order.

Power of Secretary of State to release on licence

Power to release prisoners on licence before required to do so

19.—(1) The Secretary of State may release on licence under this Article a fixed-term prisoner at any time during the period of 135 days ending with the day on which the prisoner will have served the requisite custodial period.

(2) Paragraph (1) shall not apply in relation to a prisoner unless—

- (a) the length of the requisite custodial period is at least 6 weeks; and
- (b) the prisoner has served—
 - (i) at least 4 weeks of the prisoner’s sentence; and
 - (ii) at least one-half of the requisite custodial period.

(3) Paragraph (1) shall not apply where—

- (a) the sentence is an extended custodial sentence;
- (b) the prisoner is subject to a hospital order or transfer direction within the meaning of the [Mental Health \(Northern Ireland\) Order 1986 \(NI 4\)](#);
- (c) the prisoner is subject to the notification requirements of Part 2 of the Sexual Offences Act [2003 \(c. 42\)](#);
- (d) the prisoner is liable to removal from the United Kingdom;
- (e) the prisoner has been released on licence under this Article during the currency of the sentence, and has been recalled to prison under Article 30; or
- (f) the prisoner has been released on licence under Article 20 during the currency of the sentence, and has been recalled to prison under Article 28.

(4) The Secretary of State may by order—

- (a) amend the number of days specified in paragraph (1);
- (b) amend the number of weeks specified in paragraph (2)(a) or (b)(i);
- (c) amend the fraction specified in paragraph (2)(b)(ii).

(5) In this Article “the requisite custodial period” has the same meaning as in Article 17.

(6) In this Article—

- (a) “fixed-term prisoner” includes a person serving a determinate custodial sentence for an offence committed before the commencement of this Article; and
- (b) in relation to such a prisoner, “the requisite custodial period” means one-half of the term of the sentence.

(7) For the purposes of this Article a person is liable to removal from the United Kingdom if that person

- (a) is liable to deportation under section 3(5) of the Immigration Act [1971 \(c. 77\)](#) and has been notified of a decision to make a deportation order against that person;
- (b) is liable to deportation under section 3(6) of that Act;
- (c) has been notified of a decision to refuse that person leave to enter the United Kingdom;
- (d) is an illegal entrant within the meaning of section 33(1) of that Act; or
- (e) is liable to removal under section 10 of the Immigration and Asylum Act [1999 \(c. 33\)](#).

Power to release certain prisoners on compassionate grounds

20.—(1) The Secretary of State may, if satisfied that exceptional circumstances exist which justify the release of a prisoner to whom this Article applies on compassionate grounds, at any time release the prisoner on licence under this Article.

(2) This Article applies to—

- (a) a fixed-term prisoner; and
- (b) a prisoner serving an indeterminate custodial sentence.

(3) The Secretary of State shall, before releasing a prisoner serving—

- (a) an indeterminate custodial sentence; or
- (b) an extended custodial sentence,

consult the Parole Commissioners unless the circumstances are such as to render such consultation impracticable.

(4) In this Article “fixed-term prisoner” includes a person serving a determinate custodial sentence for an offence committed before the commencement of this Article.

Duration of licences

Duration of licences: fixed-term prisoners

21.—(1) Where a fixed-term prisoner is released on licence under this Chapter, the licence shall, subject to any revocation under Article 28 or 30, remain in force for the remainder of the sentence.

(2) Paragraph (1) has effect subject to Articles 32(2) and 33(3) and (4).

Duration of licences: prisoners serving indeterminate custodial sentences

22.—(1) This Article applies where a person who is serving an indeterminate custodial sentence is released on licence under Article 18 or 20.

(2) The licence shall, subject to any revocation under Article 28 or order under this Article, remain in force for the remainder of the prisoner’s life.

(3) In this Article “qualifying period” means the period of 10 years beginning with the date of the prisoner’s release.

(4) Where

- (a) the qualifying period has expired, and
- (b) the Parole Commissioners direct the Secretary of State to do so,

the Secretary of State shall order that the licence is to cease to have effect.

(5) Where—

- (a) the qualifying period has expired; and
- (b) if the prisoner has made a previous application under this paragraph, a period of at least 2 years has expired since the disposal of that application, or such shorter period as the Parole Commissioners may have recommended on the disposal of the last previous such application,

the prisoner may make an application to the Parole Commissioners under this paragraph.

(6) Where an application is made under paragraph (5), the Parole Commissioners—

- (a) shall, if they are satisfied that it is no longer necessary for the protection of the public from serious harm that the licence should remain in force, direct the Secretary of State to make an order under paragraph (4) that the licence is to cease to have effect;
- (b) shall otherwise dismiss the application.

Licence conditions

Power of court to recommend licence conditions for sentences of 12 months or more

23.—(1) A court which sentences an offender to a determinate custodial sentence of 12 months or more in respect of any offence may, when passing sentence, recommend to the Secretary of State particular conditions which in its view should be included in any licence granted to the offender under Article 17 or 19 on release from prison.

(2) In exercising the powers under Article 24 in respect of an offender, the Secretary of State shall have regard to any recommendation under paragraph (1).

(3) A recommendation under paragraph (1) is not to be treated for any purpose as part of the sentence passed on the offender.

Licence conditions

24.—(1) In this Article—

- (a) “the standard conditions” means such conditions as may be prescribed for the purposes of this Article as standard conditions; and
- (b) “prescribed” means prescribed by the Secretary of State by rules.

(2) Any licence under Article 17 or 19 in respect of any prisoner serving one or more determinate custodial sentences of less than 12 months and no determinate custodial sentence of 12 months or more shall include—

- (a) such conditions as may be required by the court in passing sentence; and
- (b) so far as not inconsistent with them, the standard conditions.

(3) Any other licence under this Chapter

- (a) shall include the standard conditions; and
- (b) may include such other conditions of a kind prescribed for the purposes of this paragraph as the Secretary of State may for the time being specify in the licence.

(4) The Secretary of State may vary or cancel any conditions specified in a licence under this Chapter and may subsequently include additional conditions.

(5) Where a prisoner is released on licence under Article 18, the Secretary of State shall not—

- (a) include a condition under paragraph (3)(b) on release, or
- (b) subsequently insert, vary or cancel a condition under paragraph (4),

except after consultation with the Parole Commissioners.

(6) For the purposes of paragraph (5), the Secretary of State is to be treated as having consulted the Parole Commissioners about a proposal to include, insert, vary or cancel a condition in any case if they have been consulted about the implementation of proposals of that description generally or in that class of case.

(7) Paragraphs (2) and (3) have effect subject to—

- (a) Articles 25 and 26;
- (b) Articles 32(2) and 33(3) and (4).

(8) In exercising the powers to prescribe standard conditions or other conditions referred to in paragraph (3), the Secretary of State shall have regard to the following purposes of the supervision of offenders while on licence under this Chapter—

- (a) the protection of the public;
- (b) the prevention of re-offending;
- (c) the rehabilitation of the offender.

Licence conditions on re-release of prisoners serving sentence of less than 12 months

25.—(1) In relation to any licence under Article 17 or 19 which is granted to a prisoner serving one or more determinate custodial sentences of less than 12 months and no determinate custodial sentence of 12 months or more on release in pursuance of a direction or recommendation of the Parole Commissioners under Article 28 or 29, paragraphs (2) and (3) apply instead of Article 24(2).

(2) The licence—

- (a) shall include the standard conditions; and
- (b) may include such other conditions of a kind prescribed for the purposes of Article 24(3)
 - (b) as the Secretary of State may for the time being specify in the licence.

(3) In exercising the powers to include other conditions conferred by paragraph (2)(b), the Secretary of State shall have regard to any such conditions as are mentioned in Article 24(2)(a).

(4) In this Article “the standard conditions” and “prescribed” have the same meaning as in Article 24

Curfew condition to be included in licence under Article 19

26.—(1) A licence under Article 19 shall include a curfew condition complying with this Article.

(2) Where—

- (a) a licence under Article 19 is granted to a prisoner serving one or more determinate custodial sentences of less than 12 months and no determinate custodial sentence of 12 months or more, and
- (b) the court in passing sentence requires the licence to be granted subject to a condition requiring compliance with a curfew requirement,

that condition shall not be included in the licence at any time while a curfew condition required by paragraph (1) is in force.

(3) For the purposes of this Chapter a curfew condition is a condition which requires the released person to remain for specified periods at a specified place; and in this Article “specified” means specified in the condition.

(4) Specified periods shall not amount to less than 9 hours in any one day (excluding for this purpose the first and last days of the period for which the condition is in force).

(5) The curfew condition is to remain in force until the date when the released person would (but for being released) fall to be released on licence under Article 17.

(6) A curfew condition may (but need not) include an electronic monitoring requirement.

(7) The Secretary of State may by order amend paragraph (4) by substituting for a number of hours specified there such other number of hours as may be specified in the order.

Duty to comply with licence conditions

27. A person subject to a licence under this Chapter shall comply with such conditions as may for the time being be included in the licence.

Recall after release

Recall of prisoners while on licence

28.—(1) In this Article “P” means a prisoner who has been released on licence under Article 17, 18 or 20.

(2) The Secretary of State may revoke P’s licence and recall P to prison—

- (a) if recommended to do so by the Parole Commissioners; or
- (b) without such a recommendation if it appears to the Secretary of State that it is expedient in the public interest to recall P before such a recommendation is practicable.

(3) P—

- (a) shall, on returning to prison, be informed of the reasons for the recall and of the right conferred by sub-paragraph (b); and
- (b) may make representations in writing with respect to the recall.

(4) The Secretary of State shall refer P’s recall under paragraph (2) to the Parole Commissioners.

(5) Where on a reference under paragraph (4) the Parole Commissioners direct P’s immediate release on licence under this Chapter, the Secretary of State shall give effect to the direction.

(6) The Parole Commissioners shall not give a direction under paragraph (5) with respect to P unless they are satisfied that—

- (a) where P is serving an indeterminate custodial sentence or an extended custodial sentence, it is no longer necessary for the protection of the public from serious harm that P should be confined;
- (b) in any other case, it is no longer necessary for the protection of the public that P should be confined.

(7) On the revocation of P’s licence, P shall be—

- (a) liable to be detained in pursuance of P’s sentence; and
- (b) if at large, treated as being unlawfully at large.

Further release after recall for certain fixed-term prisoners

29.—(1) This Article applies where—

- (a) a fixed-term prisoner, other than a prisoner serving an extended custodial sentence, (“P”) is released on licence under Article 17 or 20; and
- (b) on a reference under Article 28(4) the Parole Commissioners do not direct P’s immediate release on licence under this Chapter.

(2) Subject to paragraphs (3) and (4), the Parole Commissioners shall either—

- (a) recommend a date for P’s release on licence; or
- (b) fix a date as the date for the next review of P’s case by them.

(3) Any date recommended under paragraph (2)(a) or fixed under paragraph (2) (b) must not be later than the second anniversary of the date on which the decision is taken.

(4) The Parole Commissioners need not make a recommendation under paragraph (2)(a) or fix a date under paragraph (2)(b) if P will fall to be released unconditionally at any time within the next 24 months.

(5) Where the Parole Commissioners have recommended a date for P’s release under paragraph (2)(a), the Secretary of State shall release P on licence on that date unless the Secretary of State has, before that date, referred P’s case to the Parole Commissioners.

(6) On a review required by paragraph (2)(b) or a reference under paragraph (5), the Parole Commissioners shall—

- (a) direct P’s immediate release on licence;
- (b) make a recommendation under paragraph (2)(a); or
- (c) fix a date under paragraph (2)(b).

(7) The Parole Commissioners shall not give a direction under paragraph (6)(a) with respect to P unless they are satisfied that it is no longer necessary for the protection of the public that P should be confined

(8) The Secretary of State shall give effect to any direction under paragraph (6)(a).

Recall of prisoners released early under Article 19

30.—(1) If it appears to the Secretary of State, as regards a person released on licence under Article 19 (“P”)—

- (a) that P has failed to comply with any condition included in the licence, or
- (b) that P’s whereabouts can no longer be electronically monitored at the place for the time being specified in the curfew condition included in the licence,

the Secretary of State may, if the curfew condition is still in force, revoke the licence and recall P to prison under this Article.

(2) P—

- (a) shall, on returning to prison, be informed of the reasons for the revocation and of the right conferred by sub-paragraph (b); and
- (b) may make representations in writing with respect to the revocation.

(3) The Secretary of State, after considering any representations under paragraph (2)(b) or any other matters, may cancel the revocation of P’s licence under this Article.

(4) Where the revocation of P’s licence is cancelled under paragraph (3), P is to be treated for the purposes of Article 19 as not having been recalled to prison under this Article.

(5) On the revocation of P’s licence, P shall be—

- (a) liable to be detained in pursuance of P’s sentence; and
- (b) if at large, treated as being unlawfully at large.

Conviction while licence remains in force

31. Where it appears to the court by or before which a person is convicted of an offence—

- (a) that the offence was committed while the person was on licence under this Chapter, and
- (b) that the person has not been recalled to prison,

the court shall inform the Secretary of State of the conviction.

Concurrent or consecutive terms

Concurrent terms

32.—(1) This Article applies where—

- (a) a person (“the offender”) has been sentenced by any court to two or more custodial sentences the terms of which are wholly or partly concurrent; and

- (b) the sentences were passed on the same occasion or, where they were passed on different occasions, the person has not been released under this Chapter at any time during the period beginning with the first and ending with the last of those occasions
- (2) Where this Article applies—
 - (a) nothing in this Chapter requires the Secretary of State to release the offender in respect of any of the terms unless and until the Secretary of State is required to release the offender in respect of each of the others;
 - (b) Article 17 does not authorise the Secretary of State to release the offender on licence under that Article in respect of any of the terms unless and until that Article authorises the Secretary of State to do so in respect of each of the others;
 - (c) on and after release under this Chapter the offender is to be on licence for so long, and subject to such conditions, as is required by this Chapter in respect of any of the sentences.
- (3) Where the sentences include one or more sentences of 12 months or more and one or more sentences of less than 12 months, the terms of the licence may be determined by the Secretary of State in accordance with Article 24(3)(b).
- (4) Where a person has been sentenced to one or more custodial sentences and to one or more life sentences, nothing in this Chapter requires the Secretary of State to release the person in respect of any of the custodial sentences unless and until the Secretary of State is required to release him in respect of each of the life sentences.

Consecutive terms

- 33.**—(1) This Article applies where—
- (a) a person (“the offender”) has been sentenced to two or more determinate custodial sentences the terms of which are to be served consecutively on each other; and
 - (b) the sentences were passed on the same occasion or, where they were passed on different occasions, the person has not been released under this Chapter at any time during the period beginning with the first and ending with the last of those occasions.
- (2) Nothing in this Chapter requires the Secretary of State to release the offender on licence until the offender has served a period equal in length to the aggregate of the length of the custodial periods in relation to each of the sentences.
- (3) Where any of the sentences is a sentence of 12 months or more, the offender is, on and after release under this Chapter, to be on licence—
- (a) until the offender would, but for having been released, have served a sentence equal in length to the aggregate length of the sentences; and
 - (b) subject to such conditions as are required by this Chapter in respect of each of those sentences.
- (4) Where each of the sentences is a sentence of less than 12 months, the offender is, on and after release under this Chapter, to be on licence until the relevant time, and subject to such conditions as are required by this Chapter in respect of any of the sentences, and none of the sentences is to be regarded for any purpose as continuing after the relevant time
- (5) In paragraph (4) “the relevant time” means the time when the offender would, but for having been released, have served a sentence equal in length to the aggregate of—
- (a) all the custodial periods in relation to the sentences; and
 - (b) the longest of the licence periods in relation to those sentences.
- (6) In this Article—
- (a) “custodial period”—

- (i) in relation to an extended sentence, means the appropriate custodial term determined under Article 14;
- (ii) in relation to any other custodial sentence, means the custodial period specified under Article 8(2);
- (b) “licence period” has the meaning given by Article 8(5).

Licences for sexual offenders

Breach of licensing for sexual offenders

34.—(1) In the [Criminal Justice \(Northern Ireland\) Order 1996 \(NI 24\)](#) for Article 27 substitute—

“Breach of licence conditions

27.—(1) If at any time while an offender is released on licence under Article 26 it appears, on complaint to a lay magistrate, that the offender has failed to comply with any of the conditions specified in the licence, the lay magistrate may—

- (a) issue a summons requiring the offender to appear before the appropriate court at a time specified in the summons; or
- (b) if the complaint is in writing and on oath, issue a warrant for the offender to be arrested and brought before the appropriate court.

(2) If—

- (a) a warrant is issued under sub-paragraph (1) requiring an offender to be brought before the Crown Court, and
- (b) the offender cannot forthwith be brought before the Crown Court because it is not being held,

the warrant shall have effect as if it directed the offender to be brought before a magistrates' court acting for the petty sessions district in which he resides.

(3) Where an offender is brought before a magistrates' court in pursuance of paragraph (2), that court shall commit the offender in custody or on bail to the Crown Court.

(4) Where the appropriate court before which an offender appears or is brought under this Article is the Crown Court and that Court is satisfied that the offender has failed without reasonable excuse to comply with any of the conditions specified in the licence, the Court may

- (a) impose on him a fine not exceeding £1000;
- (b) revoke the licence; or
- (c) suspend the licence for a specified period which is shorter than the remaining licence period.

(5) Where the appropriate court before which an offender appears or is brought under this Article is a court of summary jurisdiction and that court is satisfied that the offender has failed without reasonable excuse to comply with any of the conditions specified in the licence, that court may—

- (a) impose on him a fine not exceeding £1000;
- (b) if the remaining licence period is less than 6 months, revoke the licence; or
- (c) suspend the licence for a specified period which—
 - (i) is shorter than the remaining licence period; and
 - (ii) does not exceed 6 months.

- (6) Where a court revokes the licence of an offender under paragraph (4) or (5)—
- (a) the court shall order the offender to be returned to prison or, as the case may be, a young offenders centre; and
 - (b) the offender—
 - (i) shall be liable to be detained there in pursuance of his sentence until the date on which he would (but for his release) have served the whole of his sentence or order for detention; and
 - (ii) if at large shall be treated as being unlawfully at large.

(7) Where a court suspends the licence of an offender for a specified period under paragraph (4) or (5)—

- (a) the court shall order the offender to be returned to prison or, as the case may be, a young offenders centre; and
- (b) the offender—
 - (i) shall be liable to be detained there for that period in pursuance of his sentence or order for detention; and
 - (ii) if at large shall be treated as being unlawfully at large.

(8) In this Article “the remaining licence period”, in relation to an offender released on licence under Article 26, means the period beginning with the date of the making of an order under this Article and ending with the date on which the offender would (but for his release) have served the whole of his sentence or order for detention.

(9) In this Article “the appropriate court”, in relation to an offender released on licence in pursuance of an order under Article 26(1)(b), means—

- (a) if the Crown Court made the order, the Crown Court; and
- (b) if a court of summary jurisdiction made the order, a court of summary jurisdiction acting for the petty sessions district in which the offender resides

and if the order has been made on appeal, it shall be treated for the purposes of this paragraph as if it had been made by the court from which the appeal was brought.”.

(2) Paragraph (1) does not apply in relation to a failure to comply with any of the conditions specified in a licence under Article 26 of the [Criminal Justice \(Northern Ireland\) Order 1996 \(NI 24\)](#) if that failure occurred before the coming into operation of this Article.