

Release on Temporary Licence (ROTL)

SELF HELP TOOLKIT

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PRISONERS' ADVICE SERVICE

THE INDEPENDENT LEGAL CHARITY PROVIDING INFORMATION AND REPRESENTATION TO PRISONERS

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What is it?

Under Prison Rule 9 (Prison Rules 1999) you can, in certain circumstances, be granted temporary release during your sentence. Prison Service Order 6300, Release on Temporary Licence, describes ROTL as:

'the mechanism that allows prisoners to participate in activities outside the prison that directly contribute to their resettlement into the community and the development of a purposeful law-abiding life'.

The purpose of ROTL is therefore to help you to prepare for your resettlement into the community. However, PSO 6300 also confirms that

'(T)he decision to allow temporary release must always be balanced by an active consideration, by means of rigorous risk assessment for maintaining public safety and the public's confidence in the judicial system'.

As a result, there is no right to ROTL and you will not get it automatically. You must apply for it and there is no presumption that your application will be granted.

ROTL is an umbrella term. It covers four different types of temporary release on licence:

1. Resettlement Day Release (RDR)
2. Resettlement Overnight Release (ROR)
3. Childcare Resettlement Licence (CRL)
4. Special Purpose Licence (SPL).

Am I eligible for ROTL?

Not every prisoner is eligible for ROTL. You are not eligible if you are:

- Cat A (or restricted status); or
- on the escape list; or
- subject to extradition proceedings; or

- on remand or convicted but not yet sentenced or
- on remand in respect of further charges (or sentencing for further offences); or
- you are on the Basic level of the Incentive and Earned Privilege (IEP) scheme, unless exceptional circumstances apply.

In addition, you will also not be able to apply for RDR or ROR if you are Cat B or if you have a history of escape or absconding or have committed a serious breach of a previous ROTL licence.

If you are transferred to a prison of a lower category you will not be eligible for any ROTLs for three months (to allow for a new risk assessment) unless exceptional circumstances apply. This is also known by prisoners as the 'lay down' period.

There are now two categories of ROTL - **Standard** and **Restricted**. Restricted ROTL was introduced to ensure prisoners, who are considered to be more dangerous, are subjected to greater scrutiny and safeguards. If you are subject to Restricted ROTL, your eligibility is very much decreased.

You will be subject to Restricted ROTL if you are:

- a prisoner who is serving an indeterminate sentence; or
- subject to Multi-Agency Public Protection Arrangement (MAPPA) at any level or category; or
- serving a sentence for a serious violent offence; or
- assessed as High or Very High risk of serious harm according to your Offending Assessment System (OASys).

If none of the above applies, you will be eligible for Standard ROTL.

What does Restricted ROTL mean?

If you are subject to the Restricted ROTL regime, the following applies:

- you will not be able to apply for ROTL if you are still in closed conditions; and
- you will be subject to the Enhanced Behaviour Monitoring arrangements whilst in open prison before you can be eligible for ROTL; and
- your release on ROTL will have to be endorsed by a governor; and
- you will be subject to stricter monitoring whilst on ROTL; and
- you must be accompanied or supervised by staff on at least three of your initial ROTLs.

You should be aware that not all prisons offer ROTL for those subject to the Restricted regime.

Which ROTL can I have and when can I apply for it?

If you are eligible for ROTL, it will usually only be granted towards the end of your sentence. An eligibility date will be set out with all the other key dates in the sentence calculation sheet given to you by the prison. However, when you can apply also depends on what type of ROTL you want and, of course, whether you are subject to the Restricted or Standard regime.

Prison Service Instruction (PSI) 13/2015, 'Release on Temporary Licence', sets out in detail the requirements of each type of ROTL and how and when each one can be applied for. In addition to that guidance, each prison must produce a leaflet setting out its individual policy on ROTL. This must be available to all offenders. It must set out the types of ROTL available at that prison, how to apply for it, how often it will be granted and how the necessary risk assessment will be conducted. You should ask for a copy of this local policy.

1. If you are applying for Resettlement Day Release (RDR):

RDR allows you to spend time outside prison during the day time. It does not include an overnight stay.

You will be granted day release so that you can undertake activities linked to objectives in your sentence plan. Such activities must come within four categories. These are:

- i. paid/unpaid work placements; or
- ii. training or education; or
- iii. maintenance of family ties; or
- iv. other activities linked to a sentence plan.

You will be eligible for RDR either 24 months before your conditional release date or once you have served half of the custodial element of your sentence (whichever calculation gives the later date),

How often you can apply for RDR will depend on the Governor and local policy. It will usually be limited at first. RDR to maintain family ties will begin gradually and may only take place once every 14 days. Once you are assessed as suitable for regular day releases, if you are Cat C or entitled to Standard ROTL from closed conditions, then your categorisation should be reviewed with a view to being found eligible for open conditions.

2. If you are applying for Resettlement Overnight Release (ROR):

ROR allows you to spend a period of time, not usually ever more than four nights in a row, at a release address. It is to assist with re-establishing ties with your family and the community and/or to enable you to find work/training and/or to organise accommodation for your eventual release.

You can usually only obtain ROR after successfully completing at least one RDR.

If you are serving a determinate sentence you can apply for ROR either nine months before your release date, or when you have served half the custodial element of your sentence (minus half the relevant remand time). Unless exceptional circumstances apply, no ROR should take place earlier than nine months before your release date. Exceptional circumstances might be if you are the primary carer of children under 16 or of a person requiring substantial care due to old age, infirmity or disability. Alternatively, if there is a key sentence plan objective that can only be facilitated by overnight release.

If you are subject to the Restricted regime in open conditions or you are subject to the Standard regime and are suitable for open conditions, you can apply for one ROR in each period of 28 days. However, how often you are granted ROR will vary according to the prison's local policy.

If you are subject to the Standard regime and a female in closed conditions or a male and Cat C, you can apply for a maximum of two RORs in the six months before your release.

3. If you are applying for Childcare Resettlement Licence (CRL):

The purpose of CRL is to maintain the tie between a parent and their child (or children). CRL allows you to spend up to three nights at a time away from the prison with your children. However, you can only apply for CRL if:

- i. you had sole caring responsibility for a child or children and will resume that care on release; and
- ii. your child is under 16.

It is up to you to persuade the ROTL board that you are the sole carer.

When conducting the risk assessment, in addition to the usual considerations, the ROTL board must make the safety of your children its overriding concern. The board must obtain Local Authority approval before granting CRL if a child is in care. The prison is also obliged to make a regular assessment of your sole carer status.

Once the child turns 16, your eligibility for CRL ends. However you may then be eligible for ROR instead.

There is, unlike in the case of ROR or RDR, no minimum eligibility date for CRL. However, you cannot apply if you are a male subject to the Restricted regime and in closed conditions or a female subject to the Restricted regime and not yet assessed as suitable for open conditions.

The frequency of release on CRL is up to the Governor. It is likely that the first release will be a short day release and subsequent releases will build up to the maximum of three days away from prison. However, you may apply for CRL once every two months.

You can also combine CRL with ROR (if you later become eligible for ROR after you have started having CRL).

4. If you are applying for Special Purpose Licence (SPL):

SPL will be granted for short periods of temporary release. It is often applied for at short notice. It allows you to respond to exceptional personal circumstances. These will usually be specific. The grounds on which you may be granted SPL will include:

- **Compassionate grounds.** These can be funerals, visiting dying relatives or other tragic personal circumstances and emergency situations. They will include situations where: an offender, who has children under 16, comes into custody and has to sort out care; or where an offender needs to deal with crises with vulnerable or elderly family members for whom she or he has caring responsibilities. The definition of family will include a partner, parent, child, siblings (including stepsiblings), a fiancé or fiancée or a person who has been in loco parentis to you. It is up to you to persuade the ROTL board of the closeness of your relationship to the family member.
- **Medical grounds.** This could be if you have a hospital appointment or medical emergency. In some cases, if you are in open conditions and the need is immediate and there is no time to conduct a full ROTL board, then exceptionally SPL might be authorised by a duty governor. However, you must then be accompanied by staff.
- **Marriage or civil partnership.** You can be granted SPL for this purpose although you may also use RDR or ROR if you are eligible.
- **Inter-prison visits.** You will be able to use SPL for such visits to a close relative in another prison provided your application passes the risk assessment.

- **Court proceedings.** This is when your presence is required and where it is in your interests to attend. It would include proceedings such as tribunals or family matters in civil courts. If your application does not pass the risk assessment, then such outings will be escorted rather than under SPL.
- **Conferences with legal advisors.** SPL for this will only be exceptional.

You will be eligible for SPL (unless you are excluded from ROTL altogether) even if you are subject to the Restricted regime. However if you are subject to the Restricted regime *you must either be in, or suitable for, open conditions* (and in a prison that offers Restricted ROTL) unless there are exceptional circumstances. Exceptional circumstances are where:

- you need urgent medical treatment in the community;
- a ROTL board has sat that includes a senior manager;
- a governor has agreed that accompanied SPL is appropriate on the basis that you are not an escape risk and your physical conditions make escape very unlikely.

If you are subject to the Restricted regime the risk assessment will include the Enhanced Behaviour Monitoring review and input from your offender manager.

There is no minimum eligibility period for SPL. Of course all applications will be subject to the usual risk assessment although this may have to be accelerated in emergency situations.

SPL is granted for specific events and will not therefore be regular. It will not normally be granted for more than a few hours at a time but can be longer. The maximum would not normally be more than four nights in every 28 days. However, a governor can agree to grant back-to-back licences in exceptional circumstances.

How do I apply for a ROTL?

If you are eligible for ROTL, you make an application for ROTL using specific application forms (ROTL-APP). Each type of ROTL has its own application form. The form requires you to put in details of why you want ROTL, what for and the details of the planned activity, including such things as your travel arrangements and the time it will take you to travel to your destination and back. You must ensure your application fits with the criteria for each type of ROTL. In particular, you need to show how the planned ROTL activity fits with your sentence plan/resettlement goals.

You may be able to get help with your application from your personal officer or offender supervisor if you have one. Since your offender manager will be involved in the risk assessment, s/he may also assist you. Unfortunately there is no legal aid to fund advice about or assistance with your application from a solicitor.

What happens next? Who decides?

Once the prison has received your application, it must carry out a risk assessment. The decision to grant ROTL is the responsibility of the Secretary of State but a governor acts on his or her behalf. However, the actual risk assessment is done by a ROTL board. The board will consist of a manager, a personal officer or other prison officer with knowledge of your case, and an offender supervisor or seconded probation officer. You may be invited to attend all or part of the consideration.

Having done the risk assessment, the board will make a written recommendation. If ROTL is recommended the board will also put forward appropriate licence conditions. The recommendation is then considered by the Governor, who will make the final decision as to whether or not to grant the licence.

How is the decision made?

Prison Rule 9(4) says that *“an offender shall not be released if the Secretary of State is of the opinion that the release of the offender would be likely to undermine public confidence in the administration of justice’ and not ‘...unless the Secretary of State is satisfied that there would not be an unacceptable risk of his committing offences whilst released or otherwise failing to comply with any condition upon which is he released.’* For this reason the risk assessment conducted in respect of any application for ROTL is rigorous. PSO 6300 says that, *‘Governors have an overriding duty, when considering any release, to ensure that both public safety and public confidence in the system are maintained.’*

The board (and then the governor) *“is not simply assessing the risk of releasing you but also the risk of allowing you to carry out a particular outside activity.”* The board must be persuaded that the purpose of the release is in line with your individual sentence plan and/or resettlement goals.

In order to undertake that risk assessment, the board must gather a great deal of information about your case. A ROTL dossier will be prepared with all the relevant information. The board will contact your outside probation officer (offender manager) for his/her input, he/she will also consult the police as well as check out the proposed accommodation where that is relevant. In the case of CRL, the Local Authority may also be consulted. The board will also obtain reports from within the prison about your behaviour and progress.

When making its recommendation the board must consider the following:

- records of any previous custodial sentences;
- a list of your previous convictions, including spent convictions;
- the latest OASys report (including the latest sentence plan). This will include an analysis of your offence(s) and your behaviour and progress in prison;
- any comments from the offender manager, police or other agencies plus (in Restricted ROTL cases) relevant information from ViSOR and a notification regarding whether the prisoner is managed at MAPPA Level 2 or 3;
- a history of previous ROTLs;
- any feedback from you from the most recent ROTL/period of ROTL (where previously requested by a board);
- employer feedback on the most recent ROTL/period of ROTL (where applicable);
- the latest Parole Report (if applicable);
- any representations made by the victim;
- any current security information and any current Prison National Management Information System (PNOMIS) case notes;
- other specific areas of concern such as drug/alcohol abuse, or mental illnesses;
- information about your home circumstances and proposed address.

Once the governor has made his or her decision, you will be notified. The decision will be in writing. You are entitled to written reasons for the decision.

If my application is successful what happens?

If the board grants your application for ROTL, the prison will draw up a licence, which must be signed by you before you are released. In addition to standard licence conditions, there will be conditions that are relevant to your particular application.

How your release is managed will depend on the local policy at your prison. You may find that you are required to bear some costs that are associated with the ROTL activity such as travel costs or meals except if you are on SPL. If you are working in the community and earning at least the minimum wage when on ROTL, you will be expected to pay travel costs and for any meals. However there is funding available to assist, at the governor's discretion, if it would cause you undue hardship to pay for such things. If you are released to a hostel or B&B, the prison will meet the reasonable cost of such accommodation.

You will be issued with a detailed timetable with which you will have to comply. This will specify the time it will take to travel to your destination and how long the agreed activity will take. You must always take the agreed route and mode of transport. This will generally be the most direct, unless a different route is preferable for reasons of travel cost or known disruption, or where a further condition (i.e. an exclusion zone) conflicts.

If you are on SPL, funding will be available where the grounds for the ROTL are compassionate, medical, helping the police or attending court if attendance is required. It will not be available if the grounds are marriage, attending court voluntarily or for private healthcare appointments.

You will also be obliged to fill in a feedback form after each ROTL. In addition, the prison will monitor your progress whilst you are on ROTL or shortly after. The level of monitoring will depend on whether you are subject to the Restricted or Standard regimes. The aim is for all prisoners on ROTL to be electronically monitored. At present the system to do so is not in place.

What if my application is refused?

There is no formal appeal against a refusal to grant you ROTL. You must use the standard complaints procedure. Unfortunately, legal aid is not available to fund legal advice and assistance with such an 'appeal'. You must submit a COMP1 form addressed to the governor. If you are dissatisfied with the response you can then submit a COMP1A form. If you remain dissatisfied, you can appeal to the Prisons and Probation Ombudsman.

Can I be recalled from ROTL and what are the consequences?

You can be recalled from ROTL if you have breached your licence conditions. There are four categories of ROTL failure for which you may be recalled:

1. failure to return to prison;
2. late return to prison;
3. alleged offending whilst on ROTL; and
4. other breaches of licence conditions such as alcohol or drug use.

In addition, you must be recalled to prison if the governor does not believe it is safe or appropriate for you to remain on licence.

If recalled, on return to custody, you will be placed on report and your ROTL will be suspended. Any breach of licence whilst on ROTL must be reviewed. This review

must take place within 24 hours. If the review decides the breach was acceptable, you may be allowed ROTL again.

You must also be recalled if you are arrested whilst on a ROTL. If you are not subsequently charged or are acquitted after trial, then you may be eligible for ROTL again. If you are convicted of an offence whilst on ROTL, then you will not be eligible for a further ROTL whilst you are serving that sentence – unless there are exceptional circumstances.

What if I am serving an indeterminate sentence?

If you are serving a life sentence or other form of indeterminate sentence, you are still entitled to apply for ROTL. Because you can only have Restricted ROTL, you will not be eligible until you are suitable for open conditions. In addition to being subject to the Restricted ROTL regime, there are specific extra provisions that will apply to your application.

An application for SPL and CRL could be granted shortly after you are transferred to open conditions. For other types of ROTL, the prison relies on a calculation based on the period of time after you were considered suitable for transfer to open conditions and the provisional date for your next parole hearing. You can apply for supervised RDR after one quarter of the time between transfer to open conditions and the next parole hearing has been served. You can apply for unsupervised RDR, when one half of that time has been served. Once two thirds of that time has passed, you are eligible to apply for ROR or RDR or overnight CRL.

What if I am a foreign national?

If you are a foreign national, the prison is obliged to confirm your immigration status with the department of Home Office Immigration Enforcement (HOIE) before considering your application for ROTL. If you are a foreign national who has exhausted your appeal rights and are subject to a deportation order, you cannot be considered for ROTL at all.

If you have not exhausted your appeal rights in the UK but are liable for deportation you are still eligible. However, your application for ROTL must be considered on an individual basis and be subject to assessment to a strengthened risk assessment. Further details are set out in PSI 37/2014 Eligibility for Open Conditions and for ROTL of Prisoners Subject to Deportation Proceedings.

What if I have or had confiscation proceedings?

If you have outstanding confiscations proceedings, this will affect your application for ROTL although you will still be potentially eligible. The guidance in the PSI says that when your risk is being assessed special attention is to be paid to the risk of absconding in light of impending proceedings or the presence of an unpaid confiscation order. Of course if you are to serve a consecutive sentence in default of a confiscation order, your eligibility date will be recalculated on the basis of the overall sentence.

What if I have been recalled?

If you have been recalled to prison having been released on licence either at your conditional release date or by the Parole Board, you are still potentially eligible for RDR (and ROR provided you are within nine months of your release date). A ROTL board will have to take into account the fact and circumstances of your recall. Further, if you offended on licence and received another prison sentence, your ROTL eligibility date will be recalculated if the release date of the new sentence is later than the sentence end date of the original sentence.

What effect will a refusal by the Parole Board have?

If the Parole Board has considered your case and has either refused to recommend your release or your transfer to open conditions, the prison is obliged to undertake a fresh ROTL board to assess your eligibility for ROTL. The new board must consider the Parole Board's assessment of your risk. If the board is satisfied that risks identified by the Parole Board have been addressed, your eligibility for ROTL can remain. However, it is likely that the frequency may be reduced at first.

What if I am appealing my conviction or sentence?

The PSI says that you are still eligible but governors must take into account of the fact that you may need to be produced for the hearing of your appeal.

What if I have a history of absconding?

The general rule is that you will not be eligible for ROTL if you have a history of absconding. However an application may be granted in exceptional circumstances. If you are subject to the Standard regime you may be considered for SPL if you have made significant progress to reduce your risk of harm (and the risk of absconding is considered very unlikely).

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