Indeterminate Sentences (Lifers and IPPs)

What is an indeterminate sentence?
An indeterminate sentence does not have a fixed term. All prisoners subject to life imprisonment or Imprisonment for Public Protection (IPP) are, for the purposes of their management, classed as indeterminate sentence prisoners (ISPs).

When is an indeterminate sentence prisoner released?
Unlike a prisoner serving a determinate or fixed sentence who must be released at the end of that sentence, prisoners subject to life or IPP sentences have no automatic right to be released. Instead they (unless released on compassionate grounds) must serve at least the minimum period set by the sentencing court (the ‘tariff’). However, release on expiry of the minimum period is not automatic.

Release only takes place once the Parole Board (who are solely responsible for the decision) are satisfied that the risk of harm a prisoner poses to the public is acceptable.

Serving the life sentence
The key document as regards progress through the life sentence remains PSO 4700 (renamed the Indeterminate Sentence Manual), although many of its chapters have been cancelled and replaced:

- Chapter 4 ‘serving the Life Sentence’ has been replaced by PSI 36/2010 ‘Serving the Indeterminate Sentence’. This states that sentence plans for ISPs must be ‘achievable’ and not ‘aspirational’, and should identify the risks to be reduced rather than interventions to be undertaken.
- The fixed ‘lifer stages’ through which adult lifers were previously required to progress have been removed and initial categorisation of Lifers and IPP prisoners is determined by a revised ICA1 (males) and ICA3 (females)
- Where the prison subsequently wants to raise the security category the prisoner must be notified in writing of the reasons and evidence, and can make written representations before the decision is taken. The decision can be appealed through the prison complaints procedure.
- PSI 36/2010 states that prisoners who maintain their innocence should be advised about the problems associated with this stance and risk assessment and offending behaviour work will still take place. It makes clear that it is unlawful for the Parole Board to refuse to consider the question of release solely on the grounds the prisoner denies guilt.
- Chapter 7 ‘Risk Assessment’ is replaced by the Public Protection Manual (PSI 29/2010)
- Life and IPP prisoners in terms of sentence plans and how they operate now come under the Offender Model III Implementation Manual (PSI 29/2010)
- PSI 36/2012 ‘Generic Parole Process’ sets out the timescales and processes for pre and post-tariff reviews.

When can I be moved to open conditions?
In general pre-tariff ISPs are eligible to have their cases referred to the Parole Board to consider their suitability for transfer to open conditions up to three years before the expiry of their tariff. In order to target Parole Board and NOMS resources effectively, the Secretary of State refers only those pre-tariff cases to the Parole Board where there is a reasonable prospect of the Board making a positive recommendation.

Each case must be considered on its own merits but there will be a presumption that a prisoner is not suitable for pre-tariff review in certain circumstances including: Category A, proven adjudication for serious violence in last 12 months, attempted or successful escape or abscond in last two years or OASys assessment of high/very high risk of harm.

The guidance in PSI 13/2015 excludes any prisoner with a history of abscond, escape or

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serious ROTL failure from transfer to open conditions unless they can establish the following exceptional circumstances: they have made significant progress in reducing their risk of harm and risk of absconding and there are compelling circumstances beyond their control requiring a move to open or the move is absolutely necessary to provide evidence of reduced risk for parole reviews and the need for resettlement work cannot be met by a progressive regime in closed conditions or a refusal would be manifestly unjust or unfair. In practice, the threshold for establishing that such exceptional circumstances exist is insurmountably high and appears close to a blanket ban.

A ‘Progression Regime’ in closed category C conditions is now in operation at HMP Warren Hill for prisoners who are ineligible for open conditions.

**How can I get a Guittard application?**

As a consequence of the case of *R (Guittard) v Secretary of State* (2009) the Secretary of State is required to consider an ISP’s suitability for a transfer to open conditions without the need for a recommendation from the Parole Board. The application is made to the Public Protection Casework Section of the Ministry of Justice. They decide whether to grant such an application based on the following:

- Reports must contain evidence that the prisoner has made significant progress in identified risk factors; and
- There must be a consensus amongst report writers that the prisoner is suitable and safe to be transferred to open conditions; and
- There are no areas of concern identified by report writers which would clearly benefit from further exploration by an oral hearing of the Parole Board; and
- The prisoner has demonstrated in his representations that there are clear benefits to being transferred to open conditions immediately rather than following the established process.

**What about temporary release in open conditions?**

Under the guidance set out in PSI 13/2015, ISPs are ineligible for ROTL unless in an open prison. They can only be granted ROTL from Category C conditions in exceptional circumstances. Once in open conditions they are subject to the Restricted (as opposed to Standard) ROTL arrangements.

ROTLP cannot be taken in the first three months after transfer to open prison save in exceptional circumstances, and they must be accompanied/supervised by staff on at least the first three instances of resettlement day release.

All ROTL must have a clear recorded link to an objective identified in the prisoner’s sentence plan and/or resettlement goals.

Escorted absences, also known as ‘town visits’ have now been abolished.

**When will compassionate release be considered?**

The Secretary of State retains the discretion to release ISPs on compassionate grounds in the following circumstances:

- The prisoner is suffering from a terminal illness and death is likely to occur (within 3 months) or is bedridden/similarly incapacitated; and
- The risk of re-offending (particularly of a sexual or violent nature) is minimal; and
- further imprisonment would reduce the prisoner’s life expectancy; and
- there are adequate arrangements for the prisoner’s care and treatment; and
- early release is of some significant benefit to the prisoner or his/her family.