

Indeterminate Sentences, Parole & the Parole Board

What is an indeterminate sentence?

An indeterminate sentence does not have a fixed release date, although the sentencing court will set a minimum term of imprisonment (the ‘tariff’). 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).

How and when is an ISP released?

ISPs have no automatic right to be released. They are eligible for release on licence (parole) once their tariff has expired (TED). However, ISPs will only be released if the Parole Board (PB) directs release.

Once released by the PB, an ISP, unless serving an IPP sentence, will remain on licence for life, subject to recall. If serving an IPP sentence, an ISP can apply for the licence to be lifted after 10 years.

The PB is an independent body. Its job is to assess the risk of serious harm a prisoner might pose to the public on licence. It acts like a court. It will only direct release if satisfied it is ‘no longer necessary’ for the protection of the public for a prisoner to be confined.

Parole

Prisoners serving the following type of determinate sentences also have a parole end date (PED) at which point the PB can direct release (discretionary release) before the automatic release date:

- Sentences of 4 years+ for violent or sexual offences, under the CJA 1991: PED is at the halfway point of the sentence;
- Extended Public Protection (EPP) sentences imposed before 14 July 2008 under the CJA 2003: PED is at the halfway point of the custodial term;
- Extended Determinate Sentences (EDS) imposed on or after 13 April 2015: PED is at 2/3 of the custodial term. The PED for prisoners serving an EDS, who were convicted before 13 April 2015, and

given a custodial term of 10 years or more or the offence was under Schedule 15B CJA 2003, is also at the 2/3 point;

- Sentences for Offenders of Particular Concern (SOPC) under s.236A of the CJA 2003, imposed on or after 13 April 2015 for a Schedule 18A CJA 2003 offence: PED was originally at the halfway point of the custodial term but is now also at 2/3.

The parole process

The Generic Parole Process Policy Framework (GPP) governs the parole process. It sets out the timescales and processes for pre, on, and post-tariff reviews.

Pre-Tariff Reviews

ISPs are eligible to have their cases referred to the PB to consider their suitability for transfer to open conditions up to three years before their Tariff Expiry Date (TED). This is called a Pre-Tariff Review (PTR). The Board can only recommend, not direct, a transfer. The Secretary of State (SSJ) can refuse the Board’s recommendation.

An ISP will only get a PTR if the Secretary of State refers their case to the PB, unless an application for a *Guittard* review is made (see below). A referral will only happen where it is decided that there is a reasonable prospect of the Board making a positive recommendation. This decision is made at what is called a ‘sift review’.

The sift process starts with a pre-tariff Sentence Planning and Review Meeting (SPRM) at the prison. This will include involvement by an ISP’s offender manager and supervisor. The notes from the SPRM will be sent to the Public Protection Casework Section (PPCS) at the Ministry of Justice, which then conducts a review on behalf of the SSJ, to decide whether to refer the case to the PB.

As a consequence of the case of *R (Guittard) v Secretary of State* (2009) in some circumstances, the Secretary of State is

required to consider an ISP's suitability for a transfer to open conditions without involvement of the PB. However it will only be granted on the following bases:

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

On-Tariff and Post-Tariff hearings

It is a statutory requirement that ISPs have their cases referred to the PB at their TED. The Framework sets out a strict timetable for the parole process. The PPCS starts compiling a dossier two weeks before review initiation. This is week '0'. The dossier will contain historical information such as the judge's sentencing remarks, previous convictions, previous parole decisions as well as reports from the prison and probation. The dossier must be completed by week 8, formally referred to the PB, and disclosed to prisoners, who have 4 weeks from the point of referral to add their representations to the dossier.

A single PB member will conduct an initial review. By week 14 a decision will be issued. The Board can decide to either refuse or direct release or, that an oral hearing is necessary. If the decision is negative, a prisoner has 28 days in which to ask the Board for an oral hearing. Otherwise the decision stands.

There is no right to an oral hearing but the case of *Osborn & Others v PB* [2013] decided that fairness to the prisoner should be the overriding consideration when the Board consider such a request. If granted, then the hearing should be listed no later than week 26.

Oral hearings

Usually the Board consists of a panel of three. The panel will hear evidence from witnesses

including the offender manager and supervisor as well as the prisoner. A decision must be issued within 14 days of the hearing

The Board has the power to direct release but only to recommend transfer to open conditions. If it directs release, it will then set licence conditions. If it recommends transfer, the SSJ can overturn that recommendation. The decision to confirm or refuse the recommendation must be made within four weeks. If the recommendation is refused then the Secretary of State will then set the timeframe for the next hearing.

Reconsideration Mechanism

Once the Parole Board has made a decision there is a 21-day period when the decision is provisional and the Secretary of State or prisoner can ask for reconsideration. Victims can ask the Secretary of State to act on their behalf. You can apply to shorten this period

The process is designed to be quicker than judicial review but the grounds and threshold are similar; it is not a merits appeal and reviews will only be granted if the decision is deemed irrational or procedurally unfair.

Timelines are strict. Applications must be made in writing and within 21 days of a decision. Forms are available in OMU. If no application is made, the decision becomes final after 21 days. The other party to the application must respond within 7 days.

A judicial PB member will conduct the review on the papers. The decision will be available to the public. If a review is granted, it could be conducted by a new or the same panel on the papers or, at an oral hearing. If the application is refused, the original decision stands

Legal aid is available to fund representation at both pre and post tariff hearings and for review applications.

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