

URGENT via email

FAO Secretary of State for Justice/PPCS

15 April 2020

Dear Mr Davidson

Applications for vulnerable and elderly prisoners at highest risk from COVID-19 for Early Release on Compassionate Grounds (ERCG)

We are writing with respect to your power to grant early release to prisoners. The specific purpose of this letter is to request that you issue an urgent notice, amending the guidance on ERCG contained in Prison Service Order 6000 to reflect current circumstances and permit the release of prisoners in categories vulnerable to Covid-19.

As you will be aware, to date 207 prisoners in England and Wales have tested positive for Covid-19 in 57 prisons, and there have been 10 deaths. Many other prisoners throughout the system are at high risk of becoming seriously ill and dying. We understand that, as to date, the two temporary release provisions brought in earlier this month have resulted in just 18 releases.

The caseworkers at Prisoners Advice Service are currently spending their entire working time advising such prisoners and their families in this terrifying situation. The request we are making to you here is within the current framework of existing law and would contribute greatly towards alleviating the situation for the most vulnerable.

The legal framework

1. Criminal Justice Act 2003 s248 states:

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The Secretary of State may at any time release a fixed term prisoner on licence if he is satisfied that exceptional circumstances exist which justify the prisoners' release on compassionate grounds.

2. PSO 6000 Chapter 12: APPENDIX A COMPASSIONATE RELEASE CRITERIA states:

The criteria applied in medical and tragic family circumstances cases are as follows:

(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 past; and
- there are adequate arrangements for the prisoner's care and treatment outside prison; and
- early release will bring some significant benefit to the prisoner or his/her family.

(iii) General

- The following factors need also to be considered:
- whether **temporary release** under the Prison Rules could significantly reduce the prisoner's and/or family's suffering;
- the length of the sentence still outstanding; the effect on the overall sentence passed by the court if early release is granted; and any remarks which the trial judge made on sentencing which may have a bearing on the question of release;

- the wishes of the prisoner and his/her family and the level of benefit which would derive to the prisoner and/or the family from permanent release;

in medical cases, the diagnosis and prognosis; in particular whether there is a specific estimate of life expectancy; and the degree of incapacitation.

In addition the Secretary of State may release a prisoner if he is satisfied that other exceptional circumstances exist. [Our emphasis]

3. Articles 2, 3 and 8 of the European Convention on Human Rights protect the Right to Life, protect against Inhuman and Degrading Treatment and protect the Right to Private Life.

Submissions

The above articles of the ECHR are clearly engaged in the current situation.

We are of the view that the guidance on ERCG needs to be amended/clarified by way of a statement issued to Governors and Directors across the prison estate to the effect that they should (a) actively consider making ERCG referrals for prisoners at high risk of serious complications from coronavirus and (b) that they can and should apply the ERCG criteria flexibly in relation to those in the high risk groups. Likewise, decision makers in PPCS on behalf of the Secretary of State should be asked to actively consider referrals from governors on this basis.

This should apply to the following prisoners, although the list is not exhaustive:

1. Those with any of the conditions set out in government guidance on 'shielded groups', ie:

- Solid organ transplant recipients.
- People with specific cancers:

- people with cancer who are undergoing active chemotherapy
- people with lung cancer who are undergoing radical radiotherapy
- people with cancers of the blood or bone marrow such as leukaemia, lymphoma or myeloma who are at any stage of treatment
- people having immunotherapy or other continuing antibody treatments for cancer
- people having other targeted cancer treatments which can affect the immune system, such as protein kinase inhibitors or PARP inhibitors
- people who have had bone marrow or stem cell transplants in the last 6 months, or who are still taking immunosuppression drugs
- People with severe respiratory conditions including all cystic fibrosis, severe asthma and severe COPD.
- People with rare diseases and inborn errors of metabolism that significantly increase the risk of infections (such as SCID, homozygous sickle cell).
- People on immunosuppression therapies sufficient to significantly increase risk of infection.
- Women who are pregnant with significant heart disease, congenital or acquired. [It is noted that action has already been taken in relation to the situation of pregnant prisoners.]

2. Those who are defined in government guidance as at 'increased risk of severe illness from coronavirus', ie:

- aged 70 or older (regardless of medical conditions)
- under 70 with an underlying health condition listed below (ie anyone instructed to get a flu jab as an adult each year on medical grounds):
- chronic (long-term) respiratory diseases, such as asthma, chronic obstructive pulmonary disease (COPD), emphysema or bronchitis
- chronic heart disease, such as heart failure
- chronic kidney disease
- chronic liver disease, such as hepatitis

- chronic neurological conditions, such as Parkinson's disease, motor neurone disease, multiple sclerosis (MS), a learning disability or cerebral palsy
- diabetes
- problems with your spleen – for example, sickle cell disease or if you have had your spleen removed
- a weakened immune system as the result of conditions such as HIV and AIDS, or medicines such as steroid tablets or chemotherapy
- being seriously overweight (a body mass index (BMI) of 40 or above)
- those who are pregnant [Again, it is noted that action has been taken in this regard]

The government established an ERCG policy contemplating that the Governor and PPCS in conjunction (for determinate sentenced prisoners) would be able to grant release when there is an imminent risk of death soon, and not solely where death was inevitable and could not be avoided, such as in the case of a long-standing terminal illness. Here, the risks posed to ill or elderly prisoners in high risks from COVID-19 groups, are capable of being avoided by release or temporary release and their low risks to the public suitably managed by alternate means, such as licence conditions, monitoring or HDC.

What we are now asking:

- (1) That you confirm as soon as possible whether the Secretary of State For Justice/Public Projection Casework Section will review the ERCG guidance as a matter of urgency in the light of the Covid-19 pandemic.
- (2) That you provide us with copies of all guidance currently used in ERCG and temporary release requests, beyond that contained in PSO 6000.

We hope that this communication will be received favourably and this urgent situation addressed; however, should your answer be in the negative and the policy

remain inflexible, we reserve the right to rely on your response in future legal proceedings that we take on behalf of our clients.

Yours faithfully



Lubia Begum-Rob

Director

Prisoners' Advice Service