

NIPS Policy on Conditional Early Release (CER)
[Revised September 2022]

Introduction

This document sets out the Northern Ireland Prison Service (NIPS) policy for the operation of the Conditional Early Release (CER) Scheme.

2. Under Article 17 of the Criminal Justice (NI) Order 2008 (hereafter referred to as “the 2008 Order”) the NIPS is required to release fixed-term prisoners on licence at the end of their “requisite custodial term”, save those prisoners serving extended custodial sentences under Article 14 of the 2008 Order. That standard release date is referred to as the Custody Expiry Date (CED).

3. Article 19 of the 2008 Order affords the Department of Justice (DOJ) a discretionary power to release certain prisoners on licence before it is required to do so under Article 17 of the 2008 Order. This power is exercised by the NIPS as an agency of the DOJ through the CER Scheme.

4. It is designed to allow suitable prisoners who are assessed as suitable to return to the community on a supervised and conditional licence up to 135 days before their CED in order to aid their rehabilitation and resettlement back into the community.

5. A prisoner must apply to be considered for early release through the CER Scheme; they are not automatically considered.

6. Release on licence includes the standard conditions set out in the Criminal Justice (Sentencing) (Licence Conditions) (Northern Ireland) Rules 2009. A licence may also include such other conditions as may be required or recommended by the sentencing court and such other conditions as the DOJ deems necessary (see Article 24 of the 2008 Order).

7. Any prisoner released pursuant to Article 19 of the 2008 Order through the CER Scheme must be placed on a curfew for the duration of their period of early release, as per Article 26 of the 2008 Order, and that curfew may be electronically monitored (i.e. the prisoner might be “tagged”).

8. Prisoners who fail to comply with any licence condition may be recalled to custody at any time before the CED is reached (see Articles 28 to 31 of the 2008 Order).

Policy intention

9. Public confidence in the criminal justice system is of paramount importance to NIPS. NIPS cannot operate the discretionary CER Scheme in such a way that would damage that confidence. If it employed the discretion to release prisoners before the end of their custodial sentence who were unsuitable, that would damage public confidence in the CER Scheme and, by implication, the criminal justice system.

10. As a result, NIPS has introduced non-statutory requirements into the CER Scheme to ensure that confidence is maintained.

11. Prisoners will only be considered suitable for early release through the CER Scheme if:

- a. They can demonstrate they present a low risk to the public and a low likelihood of re-offending or have an ACE score of up to 20 (and therefore within the bottom tertile of medium likelihood of re-offending) if all other criteria are met;
- b. They can demonstrate they will benefit in rehabilitation terms from early release through the CER Scheme through successful integration into the community; and
- c. They can demonstrate that their early release will not damage public confidence in the criminal justice system.

Consideration under the CER Scheme

12. The CER Scheme operates on the basis of two sets of criteria:
 - a. The first are statutory criteria, as set out in Article 19 of the 2008 Order; and
 - b. The second are non-statutory criteria, which are outlined below and are divided into two subcategories:
 - i. There are criteria to assess whether a prisoner is deemed 'presumed unsuitable' for early release; and
 - ii. There are behavioural criteria.

13. The process of considering an application for early release under the CER Scheme is sequential.
 - a. The statutory criteria are considered first. It is only if they are satisfied that the decision-maker moves on to consider the non-statutory criteria.
 - b. When considering the non-statutory criteria, the decision-maker considers the first sub-category criteria, namely the presumed unsuitable criteria. It is only if the prisoner satisfies the requirements therein that the decision-maker moves onto consider the second sub-category of non-statutory criteria, namely the behavioural criteria.

14. This sequential process is set out below:

Statutory Criteria

15. Under Articles 19(1) and 19(2) of the 2008 Order the following statutory criteria apply.
 - a. The applicant must be a fixed-term prisoner under the terms of the 2008 Order. This excludes life sentence prisoners and those serving indeterminate custodial sentences.

- b. Release cannot be before 135 days from the day on which the prisoner will have served the requisite custodial period (i.e. not before 135 days from the prisoner's CED).
- c. The requisite custodial period must be at least 6 weeks in length.
- d. The prisoner must have served at least 4 weeks.
- e. The prisoner must have served at least one half of the requisite custodial period.

16. Article 19(3) of the 2008 Order excludes the following prisoners from early release:

- a. A prisoner serving an extended custodial sentence.
- b. A prisoner who is subject to a hospital order or transfer direction within the meaning of the Mental Health (Northern Ireland) Order 1986 (NI 4).
- c. A prisoner who is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003.
- d. A prisoner who is liable to removal from the United Kingdom.
- e. A prisoner who has been released on licence under this Article and recalled subsequently during the currency of the sentence.
- f. A prisoner who has been released on licence on compassionate grounds under Article 20 and has been recalled subsequently during the currency of the sentence.
- g. A prisoner who is on a restricted transfer to Northern Ireland.

17. A prisoner is not automatically entitled to be released through the CER Scheme if they satisfy the above statutory criteria. The decision-maker must next consider the non-statutory criteria.

Non-statutory Criteria

18. The non-statutory criteria detailed below have been imposed in order to maintain public confidence in the CER Scheme.

19. They fall into two sub-categories:

- a. Some prisoners are presumed unsuitable for release under the CER Scheme because of the offence for which they are serving a sentence or because of their previous history; and
- b. Behavioural criteria.

20. The decision-maker should consider the issue of potential presumed unsuitability first and only if the prisoner is not presumed unsuitable, or if there are exceptional circumstances as described below, should they move on to consider the behavioural criteria.

a) Is the Prisoner Presumed Unsuitable?

21. The Justice Minister has decided that some offending will deem a prisoner to be presumed unsuitable for early release.

22. These types of offending are excluded in order to ensure that the general public, and the victims of crime in particular, have confidence in the CER Scheme.

23. The exclusions below identify those prisoners who have been convicted and sentenced for a crime the serious nature of which deems them presumed unsuitable for consideration for early release and who, if so released, could undermine public confidence in the CER Scheme and by implication the wider criminal justice system.

24. Prisoners are deemed presumed unsuitable for early release if they are subject to a current Prevention Order or are serving a sentence for:

- a. An offence involving or associated with homicide (including any offence which has contributed to or led to the death of an individual or individuals); or
- b. prisoners who are serving a sentence for sexual offending; or
- c. A terrorism offence or an offence that was connected or associated with terrorism; or

- d. An offence involving or associated with explosives; or
- e. An offence involving or associated with a firearm and/or ammunition; or
- f. An offence in which an offensive weapon was used; or
- g. An offence involving or associated with threatening behaviour or domestic violence in an intimate or close family relationship; or
- h. An offence under the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 that is a domestic abuse offence, a child aggravated domestic abuse offence or any other offence aggravated by domestic abuse; or
- i. An offence involving cruelty; or
- j. An offence under the Harassment Order (Northern Ireland) 1997; or
- k. An offence perpetrated on the grounds of race, religion, sexual orientation, transphobia, sectarianism or disability; or
- l. An offence involving or associated with grievous bodily harm; or
- m. An offence involving or associated with aggravated burglary.

25. The decision-maker can deem prisoners unsuitable after examining the factual circumstances of the offending for which they have been sentenced. The decision is not determined by looking only at the category of offence for which he or she was convicted and sentenced. For example, a prisoner might only have been convicted of robbery, but an offensive weapon was used. That prisoner would be deemed as presumed unsuitable, even though they were not convicted of an offensive weapon offence. The decision-maker must only consider the factual circumstances upon which the prisoner was sentenced. This information should be sourced from the Structured Outline of Case or Depositions and not rely solely on the Pre-Sentencing Report. The prosecution might have agreed to omit from the sentencing exercise certain facts that were originally part of its case. In such cases there may have been a basis of plea document agreed between the prosecution and defence. The onus rests on the prisoner to supply same with his application.

26. The above exclusions follow closely those that are already applied in England and Wales and which deem applicants to be 'presumed unsuitable' for the Home Detention

Curfew Scheme (which allows prisoners nearing the end of their sentences to be released early from custody).

27. If a prisoner is deemed to be presumed unsuitable, they are not automatically excluded from early release under the CER Scheme; they are presumed to be unsuitable for early release. A prisoner can rebut that presumption, but only if they are able to demonstrate to the decision-maker there are exceptional circumstances in support of their release, and that such release will not have an adverse effect on public confidence in the CER Scheme and the criminal justice system. This imposes a high threshold. As a general rule, such exceptional cases will stand out.

28. It is not possible to give definitive guidance on what will constitute exceptionality because such cases will be, by definition, exceptional. However, the following non-exhaustive example could amount to exceptional circumstances:

- a. The prisoner is infirm by nature of disability or age or both; and
- b. The prisoner's infirmity has reduced his/her likelihood of re-offending since his/her committal to prison for the index offending; and
- c. In the opinion of the decision-maker release would not damage public confidence in the CER Scheme.

29. Another example, again non-exhaustive, could be:

- a. The prisoner is assessed as presenting an extremely low likelihood of re-offending (i.e. less than simply being assessed as low); and
- b. The prisoner has no previous convictions other than for the sentence they are currently serving; and
- c. In the opinion of the Governor, release would not damage public confidence in the scheme.

30. Exceptional circumstances speak to rebutting a prisoner's presumed unsuitable status. If a prisoner is presumed unsuitable, in addition to establishing exceptional circumstances, the prisoner must also satisfy the remaining behavioural based non-

statutory criteria set out at 'b' below. Therefore, a prisoner cannot claim to have established exceptional circumstances by virtue of satisfying those behavioural criteria and presenting as low risk is not of itself an exceptional circumstance.

b) Behavioural Criteria

31. If a prisoner is not excluded by virtue of the statutory and non-statutory criteria set out above, he/she will be considered under the following additional criteria.

- a. The prisoner must demonstrate a low likelihood of re-offending.
 - i. Where an ACE score has been calculated this will need to be in the low category i.e. a score of 15 or less. However, in order to reflect the dynamic nature of this assessment process prisoners with an ACE score between 16 and 20 (at the low end of the medium category) will also be considered. A score of 21 or over represents an unacceptable level of likelihood of re-offending and will result in refusal.
 - ii. Where an ACE score is unavailable the decision-maker will use the relevant information available to them, as well as the additional tests currently used to determine whether a prisoner is eligible for temporary release, home leave and entry to the semi-open conditions. The decision maker must use these tests to satisfy him or herself that the applicant presents a low likelihood of reoffending and as described at a.1 above.
- b. The prisoner must have demonstrated good behaviour while in custody. This will require the following.
 - i. The prisoner must be on the enhanced regime under the Progressive Regimes and Earned Privileges Scheme (PREPS) or tier 2 if in separated conditions. This sift will be used to identify those prisoners who have accessed available and/or offered interventions and work programmes in prison; those who have positively engaged with their personal development

plan; those whose behaviour in custody has given no cause for concern; those who have accepted responsibility for their offending behaviour; those who have demonstrated that they can be trusted to work with a reduced level of supervision; and those who have demonstrated a willingness to use their personal time constructively. If a prisoner has not been in prison long enough to progress to enhanced regime or Tier 2 but the Governor is satisfied that he/she displays the necessary behaviours for this status then the Governor can consider them as having met this requirement.

- ii. The prisoner has not been found guilty at adjudication for a period of at least 12 weeks prior to the date of their application for CER (or since their entry to custody if that is sooner) and must remain adjudication free until the date of any early release.
 - iii. The prison must have been drug free for a period of at least 12 weeks prior to the date of their application for CER (or since their entry to custody if that is sooner) and must remain drug free until the date of any early release.
- c. The prisoner must demonstrate that they have a satisfactory release plan. That includes demonstrating that, if released early, they have stable and supportive accommodation available to them in the community and that they will be permitted to reside in that accommodation. The accommodation must have been approved by the Probation Board for Northern Ireland (PBNI).
 - d. The prisoner must have complied fully with all conditions imposed during any periods of temporary release.
 - e. The prisoner must have paid any offender levy in full.
32. Failure to satisfy any of the above criteria will result in refusal.
33. Release is a discretionary decision and even if all of the criteria are met, there might be other reasons, including human rights reasons, leading to a refusal. For example, a

prisoner might satisfy all of the criteria but would face a risk of harm if released early, leading to a refusal of their application.

Making an Application

34. Prisoners who wish to apply should complete an application form in full. The onus is on the individual prisoner to provide all relevant information. This will include but is not restricted to describing who lives at the proposed address, nature of relationship with the occupant and so forth.

35. If the prisoner falls within one of the presumed unsuitable categories and they are attempting to rely upon exceptional circumstances, they must explain what those exceptional circumstances are in the application.

36. The completed application form should be sent to the relevant PDU.

37. PRISM will assign an individual case number that will follow the application.

38. A significant amount of preparatory and assessment work is involved in the consideration an application for CER. Therefore, an applicant should expect to wait four weeks from the date of application for a decision.

39. To avoid an early inundation of applications and to allow for an assessment more contemporaneous to the potential early release date, prisoners will not be able to make an application until 8 weeks before their CER eligibility date.

Decision

40. A NIPS Governor will make the first instance decision on whether or not a prisoner's application for early release through the CER scheme should be granted or refused.

41. The Governor will consider the statutory criteria first, then the non-statutory criteria in manner described above.

42. If the Governor is satisfied that the prisoner is not excluded by reason of statutory criteria and the presumed unsuitable criteria, he/she should cause the application to be referred to the Co-ordinator so that they will complete a Release Plan. This is done using a CER Assessment Request Form (CER 2a).
43. The Release Plan will partially inform the behavioural criteria assessment, but asking for a Release Plan does not mean the application is being granted.
44. The Release Plan should confirm whether or not there is accommodation available to the prisoner in which he/she would be permitted to reside if released early, and whether PBNI assess that accommodation as suitable. If PBNI consider it necessary they may seek a Home Circumstances Report in respect of the suitability of the accommodation.
45. The Release Plan/CER Assessment should also raise any other issues the co-ordinator considers relevant. For example, the Co-ordinator may also wish to highlight a need for additional conditions. The Co-ordinator should also record any other issues that Licensing & Legislation Branch at NIPS HQ may wish to take into account when authorising the prisoner's licence.
46. Once complete, the Co-ordinator should attach the Release Plan/CER Assessment to the CER 2a and return it to the designated office. The Co-ordinator should endeavour to complete a prisoner's Release Plan/CER Assessment within 14 days of the request being received. This is particularly important for prisoners serving very short sentences.
47. When the Release Plan is available the Governor will consider the behavioural criteria before making a final decision.
48. The Governor must ensure that decisions are made in a fair and consistent manner.
49. The Article 8 ECHR rights of both the prisoner and their family are engaged as part of this process and must be borne in mind by the decision-maker. Decision makers should take into account all factors they believe to be relevant and in particular have regard to

the competing priorities of the Article 8 ECHR rights of the prisoner and their family against the need to protect the public and to ensure ongoing public confidence in the scheme, as well as the fact that the applicant is a sentenced prisoner whom the court intended would remain in custody for a specified period in order to punish him/her and protect the public. The CER Scheme is discretionary and concerns releasing a prisoner *before* the sentencing court intended. A prisoner is not entitled to early release as a right.

50. The Governor must keep a record the reasons for their decision, setting out their decision on each of the criteria, as well as their consideration of Article 8.

51. The prisoner should be informed of the Governor's decision in writing. This communication should set out, potentially in brief terms, the reasons for the decision.

52. If the decision is to release, the Governor should specify the conditions he/she decided were required, although these will be replicated on the licence itself.

53. In certain cases, release on CER may only be appropriate if additional conditions are included on the licence (over and above the standard conditions and curfew). In such cases, any non-standard conditions should be discussed with the prisoner before a final decision is made in order to establish the likelihood of compliance. Should the prisoner indicate an unwillingness or inability to comply with such restrictions that are considered necessary, release on CER should be refused.

54. In cases where non-standard licence conditions are considered appropriate, these should be included in the prisoner's Release Plan and attached to the CER Assessment Request Form (CER 2a). This will allow PBNI the opportunity to assess their ability to monitor such conditions in the community. There may be a need for discussion between NIPS and PBNI for a certain type of condition. When applying non-standard licence conditions, NIPS must have assurance from PBNI that these conditions can be effectively monitored in the community. This assurance should be sought before the decision to grant release on CER is made.

55. It may also be the case that non-standard licence conditions that do not require community supervision are appropriate. In such cases, the relevant organisation/ authority should be consulted prior to the decision to release the prisoner on CER licence.

56. When the decision to release a prisoner on CER has been made, they should be made aware of the licence conditions as early as possible. This will provide prisoners with the opportunity to familiarise themselves with these conditions from the outset, hopefully lessening the potential for non-compliance once released.

57. If a prisoner is refused CER it may be considered appropriate to review the prisoner's circumstances at a later date; if so, a review date should be entered in PRISM. There is no obligation to review.

Appeal

58. An application for early release under the CER Scheme will be decided at first instance by a Governor. If the decision is to refuse, the applicant will be informed that they have a right of appeal to the Deputy Director (Policy, Legislation & Estates), Prisons at NIPS Headquarters.

59. A written request for an appeal setting out the basis of the appeal should be addressed to CERappeals@dojni.gov.uk.

60. While the Deputy Director can examine the preceding Governor's decision, they will make their own determination on whether the prisoner meets the requirements for release through the CER Scheme.

61. The Deputy Director will have available the materials from the first instance decision. They will consider the written request for an appeal and any additional materials submitted along with it. The Deputy Director, if appropriate, may request further information, but the onus is on the prisoner to provide the relevant information with his application and his appeal.

62. Appeals will be determined within a reasonable timescale and the decision relayed back to the PDU and the prisoner advised.

Release

63. The CER qualifying date will be calculated automatically by PRISM.

64. In all cases where the prisoner's CER qualifying date falls on a Sunday, Good Friday or Christmas Day, release must be postponed until the following Monday or the next day (if not a Sunday). The prisoner must never be released before the CER qualification date.

65. On the determined CER release date, the prisoner will be released from NIPS custody. The prisoner movement should be recorded in PRISM, i.e. 'Released on CER'.

66. Before release the Governor should undertake a final discharge check to ensure that the prisoner still meets all the criteria detailed above. In particular a check should be made if any adjudications and drug tests or failure to comply with temporary release since the CER application was made and approved.

67. If a CER application has been approved on PRISM, but a prisoner is subsequently remanded on further matters; drops from the enhanced regime; ACE score moves outside the range or sentence recalculation deems prisoner not eligible; the system will automatically cancel the CER application; remove the CER release date from the diary and reinstate the prisoners EDR/CED.

68. If a CER application has been approved on PRISM and a prisoner subsequently fails a drug test, has a guilty adjudication within 12 weeks of CER release date or fails to comply with temporary release an alert will be sent to Management to review the application.

Breaches of Licence

69. Compliance with the licence conditions will be managed by the Community PBNI Officer. Should a prisoner breach any licence condition, NIPS HQ should be notified immediately. Notification and paperwork in relation to a request for recall must be mailed to NIPS.LicensingUnit@justice-ni.gov.uk with 'CER Recall' marked in the subject box. This should include details of the condition breached and the reasons that recall should be considered. The Deputy Director (Policy, Legislation & Estates), Prisons will make a decision on whether or not the breach merits a recall to custody.

70. Other sources may also notify NIPS of facts that could lead to a decision to recall the prisoner to custody, e.g. Police Service of Northern Ireland (PSNI) notification of a caution. Again, the decision to recall a prisoner to custody will fall to NIPS HQ.

Recall to custody

71. If a prisoner breaches licence conditions, the DOJ may revoke the CER licence and recall the prisoner to custody. Again this power is exercised by the NIPS as an agency of the DOJ as part of the CER Scheme. The decision to recall must therefore be made by NIPS. Should the decision to recall the prisoner be made, immediate notification should be issued to the relevant PSNI desk, accompanied by a written request to return the prisoner to custody. The breach record should be updated in PRISM.

72. For practical reasons, it may not be possible to return the prisoner to the establishment from which they were released on CER. If this is case, a suitable establishment should be identified and PSNI should be notified (as part of the recall notice) which establishment will receive the prisoner. The (receiving) establishment should also be notified at the time of recall. Local arrangements will need to be in place to ensure relevant documentation is forwarded as appropriate.

73. In practice, most - if not all - breaches will result in the prisoner being recalled. However, in cases where breaches are less serious, NIPS may consider issuing a warning

letter to the prisoner. However should a pattern of non-compliance develop the prisoner will be recalled forthwith.

74. When a prisoner has been recalled from CER licence, they must remain in prison until the EDR/CED has been reached. A recall from CER will preclude the prisoner from any future release on CER licence as the recall will become a Statutory Exclusion in terms of future assessment.

75. PSNI should treat recalls from CER as a matter of priority. A recalled prisoner is treated as 'unlawfully at large' (UAL) from the date the recall notice is signed. When the prisoner is returned to custody, all days where the prisoner was unlawfully at large shall be added to the original EDR.

76. Upon (re)admission to a NIPS establishment, the prisoner must receive written notification of the reason for the recall.

Appeal against recall

77. A prisoner whose CER licence has been revoked, has the right of appeal against the decision to return them to custody. On return to custody the prisoner may make written representations to the Director of Prisons.

78. Where the prisoner notifies NIPS of their intention to appeal the recall, a copy of all assessments, release and recall paperwork should be sent by PDU staff to the Director of Prisons **within five working days**. Such requests should be e-mailed to NIPS.LicensingUnit@justice-ni.gov.uk marked as 'CER Recall Appeal' in the subject box

Police Service of Changes to Address and Changes of CER Licence Conditions

79. Only NIPS may sanction a change to the curfew address for a prisoner. It is acknowledged that a change of curfew address may on occasions need to be sanctioned

retrospectively. Community based PBNI staff should make an application to vary the license to Licensing & Legislation Branch at NIPS HQ providing details of any meaningful representations made on behalf of the prisoner.

80. Similarly, only NIPS may vary the conditions of a CER licence. This applies to changes of address and changes of curfew hours. PBNI should contact Licencing & Legislation Branch at NIPS HQ.

Other CER Scheme Policy Materials

81. The document entitled '*Operational Guidance - Conditional Early Release (CER)*' is no longer valid and should be disregarded.

82. The document entitled '*Practice Note of 17 June 2015*' is no longer valid. It has been removed from the DOJ website and should be disregarded.

Review of the CER Scheme

83. This CER Scheme will be subject to periodic review by the NIPS.

September 2022