

# insideinformation – fact sheet

## LED / SED

### Information courtesy of Sarah Holland of Millerchip Murray Solicitors Coventry

*“My index offence was committed before April 2005. I was released on licence in October 2008 after serving 3 years and 4 months. 28 days later I was recalled for breaching my licence conditions, the prison are stating that I fall within Criminal Justice Act 2003 and I will remain in custody until my SED – June 2010. I have heard that the period that I must serve depends on the date my index offence was committed.”*

The correspondent was sentenced under the Criminal Justice Act 1991, and accordingly would have been released at 2/3 point of his sentence on licence to ¾ point of his sentence (LED). Thereafter, he would have been at risk of recall if he committed any further offences.

Mr A states that he was recalled 28 days after release from custody. He has now been informed that he will remain in custody until his sentence expiry date.

The position with respect to CJA 1991 prisoners changed with the introduction of the Criminal Justice and Immigration Act 2008, which came into force on 14<sup>th</sup> July 2008. The pre-CJIA 08 position was that prisoners if recalled for the first time prior to their LED (3/4 point of sentence) were released at their LED on licence until SED.

The CJIA 08 changed that position. The correspondent is ineligible for a Fixed Term Recall (28 days) if serving a sentence for a sexual or violent offence, it is his second recall, or his Probation Officer does not support release, accordingly therefore most CJA 1991 prisoners will be affected.

Prisoners recalled after 14<sup>th</sup> July 2008 who are deemed unsuitable for a Fixed Term Recall (28 days) will be detained until their sentence expiry date.

This point was challenged on 13<sup>th</sup> August 2009, R on application of Darren Young (2009)\* law report pending. LJ Walker confirming in judgement that Section 33(3), Criminal Justice Act 1991, has been repealed. Anybody recalled after the 14<sup>th</sup> of July 2008, is now subject to the provisions of the CJIA 2008.

Although it was submitted that s33 (3), remained in effect following the inception of the CJA 2003 and that there was no mention of s33 (3) in the list of amended legislation that accompanied the CJIA 2008, it was held that the absence of s33 (3) from that list was due to the fact that it had already been repealed by the CJA 2003.

What is important now is the date of the recall and not the date of release on licence. Although the learned judge criticised this stating that it would have made more sense to go by the date of release. Consequently, he indicated that there may be some sympathy from the court to somebody who was released prior to the 14<sup>th</sup> of July 2008 and was recalled after that date.

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The reason for that observation was that if a prisoner sought the advice of a lawyer as to what might happen to him should he breach the terms of his licence, then the answer would have been different before the inception of the CJIA 2008.

It was submitted that to alter the sentencing regime retrospectively was entirely wrong. The learned judge held that when sentenced, a person was entitled to know the consequences of breaching his licence after release. He saw no objection to the consequences of a breach of the licence being changed prior to release as the person being released would have had ample opportunity to take legal advice as to the consequences of any subsequent breach.

The case of Stellato {Paul Stellato v Secretary of State for the Home Department [2006] EWCA Civ 1639} deals with an entirely different class of prisoner. Stellato should have been released unconditionally in the first place therefore; the imposition of licence conditions and the subsequent recall were unlawful.

Applying this to the correspondent's facts:

He was recalled after 14<sup>th</sup> July 2008 and therefore, as it stands, he will remain in custody until his SED. He will of course be subject to regular reviews by the Parole Board who will direct his release if satisfied that recall was unjustified or if his risk can be safely managed in the community.

In passing judgement LJ Walker did say that the position **may** be different for someone recalled prior to 14<sup>th</sup> July 2008 who has been told they must remain in custody until the expiry of their sentence. Anyone so affected would be advised to consult a prison law solicitor.

It is important therefore that you contact a prison law solicitor to ask for assistance immediately after you are recalled. Particularly if you are aware you will not be released at SED. The first review being the crucial, particularly given that if you are unsuccessful at the first parole review, a further review could take upwards of 12 months.

*NB: R on application of Darren Young (2009) Counsel for the applicant was Andrew Malloy St Philips Chambers.*

*In July's issue of Inside Time a correspondent wrote regarding SED and LED. The answer and subsequent erratum led to some confusion. Inside Time is grateful to **Sarah Holland of Millerchip Murray Solicitors** who has investigated the question and provided a definitive answer on the subject and subsequent changes that apply.*

### IMPORTANT NOTICE

Information is given on a strictly 'without-liability' basis, and should be considered for use as guidance only. If you propose taking further action based upon this information you are strongly advised to take further and more specific legal advice before doing so.

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