

insideinformation – fact sheet

Licence Conditions

Information courtesy of Matthew Bellusci of Petherbridge Bassra Solicitors Bradford

When an offender is released from prison they will be released on licence with conditions. Section 250 (1) of the Criminal Justice Act 2003 governs standard conditions that will be placed on an offender's licence. If sentenced after 4th April 2005 following the commission of that Act. For offences committed before 4th April 2005 when the Criminal Justice Act 2003 came into force, the imposition of conditions and enforcement thereof are set out in Section 37 of the Criminal Justice Act 1991.

A person subject to a licence shall comply with such conditions which shall include on his release conditions which will include supervision by a probation officer as may for the time being be specified in the licence; and the Secretary of State may make rules for regulating the supervision of any description of such persons.

Conditions can be standard or a special condition requesting the offender not to do a specific thing. These types of conditions are a requirement to reside at approved premises, a requirement not to contact or maintain contact with a certain person and exclusion zones. There is no definitive list of licence conditions. They can be worded in a certain ways in order to manage risk.

Standard conditions include the following: -

- Maintaining contact with probation.
- Undertake work (including voluntary work) only with the approval of the probation officer.
- Responsible officer and obtain his prior approval in relation to any change in the nature of that work.
- Not travel outside the United Kingdom, the Channel Islands or the Isle of Man without the prior permission of the responsible officer, except where he is deported or removed from the United Kingdom in accordance with the Immigration Act 1971 or the Immigration and Asylum Act 1999.
- Be of good behaviour, and not behave in a way which undermines the purposes of the release on licence, which are to protect the public, prevent re-offending and promote successful re-integration into the community.
- Not commit any offence.

Licence conditions will be enforced and in doing so the Secretary of State for Justice must consider the following:

- (a) The protection of the public,
- (b) The prevention of re-offending, and
- (c) Securing the successful re-integration of the prisoner into the community.

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In order for the conditions to be lawful they must be both necessary and proportionate to the needs of protecting the public of prevent re offending. Necessary means that no other means of managing a particular risk is available or appropriate; and proportionate means that the restriction on the offender's liberty is the minimum required to manage the risk.

Licence conditions are not designed to be punitive, and are designed for risk management and public protection purposes (see *R (on the Application of Carman) -v- Secretary of State for the Home Department* [2004] EWHC 2400 (Admin)). Further, they are subject to the scrutiny of the Administrative Court by way of Judicial Review due to the principles of reasonableness, necessity and proportionality.

Further, they may infringe an offender's Human Rights and the most typical is their right to a private and family life pursuant to Article 8 (1) ECHR. The State is entitled to interfere with Article 8 rights in accordance with Article 8(2), so long as it is in pursuance of legitimate aims, but only if reasonable and proportionate to those aims.

Thus, providing the proposed conditions correspond with a legitimate purpose, any corresponding interference with the Claimant's Article 8 rights will be justified so long as that interference is reasonable and proportionate to the stated Purpose. Once again these issues can be resolved in the Administrative Court.

If an offender breaches the terms of their licence, they render themselves to return to prison and will not be released unless directed to do so by the Parole Board. The power to recall lies with Probation Service therefore it is essential that the conditions in place are necessary, proportionate to manage risk.

In our experience, it is essential that an offender contacts his Solicitors if they have concerns about a certain condition on their licence prior to or after release. As challenging a licence condition is a complex issue and you need to act promptly as an offender's liberty and freedom will be directly affected if they breach and they are returned to prison.

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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