

Howard League for Penal Reform's response to HMPPS consultation on Release on Temporary Licence (ROTL) policy framework

March 2019

Summary

1. The Howard League for Penal Reform recognises that release on temporary licence (ROTL) is an important step in supporting people in prison to maintain vital links with the community and prepare them for release. We welcome the recent rise in the number of incidences of ROTL which is likely to have had a positive effect on both prisoners and public safety.
2. We have had sight of the response to this consultation by the Prison Reform Trust and endorse that response. We highlight five additional points for the Ministry of Justice to consider.
3. This policy should not apply to children. A separate progressive policy should be developed in accordance with children's rights that recognise their enhanced need for community contact as they grow and develop.
4. Changes to the Childcare Resettlement Licence are welcome but should go further to ensure that young people are not suddenly cut off from important parental contact on their 18th birthdays in line with developments in law and policy across the justice system.
5. The blanket ban on release on temporary licence for foreign nationals liable to deportation should be removed.
6. The improvements to the process should be accompanied by clear timeframes for decision-making. This will make the process more effective both for prisoners and community partners.
7. Private sector decision-making about release on licence should be monitored to ensure that those decisions are made lawfully (see *LW v Sodexo* [2019] EWHC 367 (Admin)).

1. About the Howard League for Penal Reform

- 1.1 Founded in 1866, the Howard League is the oldest penal reform charity in the world. The Howard League has over 12,000 members, including prisoners and their families, lawyers, criminal justice professionals and academics. The Howard League has consultative status with both the United Nations and the Council of Europe. It is an independent charity and accepts no grant funding from the UK government.
- 1.2 The Howard League works for less crime, safer communities and fewer people in prison. We achieve these objectives through conducting and commissioning research and investigations aimed at revealing underlying problems and discovering new solutions to issues of public concern. The Howard League's objectives and principles underlie and inform the charity's parliamentary work, research, legal and participation work as well as its projects.
- 1.3 Our legal team works directly with children and young adults in prison.
- 1.4 The Howard League would welcome the opportunity to provide further information about any of the points below.

2. Context and scope of this response

- 2.1 The Howard League welcomes the renewed focus on release on temporary licence (ROTL).
- 2.2 The most recent data on the incidences of ROTL show there has been an increase, with 97,356 incidences of ROTL in July-September 2018, a seven per cent increase on the previous quarter. This is welcome.
- 2.3 The Howard League welcomes aspects of the new ROTL policy framework, especially the reversal of the decision by a former Secretary of State for Justice to place a blanket ban of ROTL and open conditions for people with a prior absconding history.
- 2.4 The Howard League recognises that ROTL is an important step in supporting people in prison to maintain vital links with the community and prepare them for release. As the response by Lord Keen of Elie to a parliamentary question on 5 March 2018 notes, research shows that release on temporary licence "reduces the risk of reoffending" Hansard (2019).
- 2.5 We have had sight of the response to this consultation by the Prison Reform Trust and endorse that response. We highlight five additional points for the Ministry of Justice to consider.

3. The policy should not apply to children

- 3.1 The policy is not clear as to whether it applies to children. In our view, this policy should not apply to children. A separate progressive policy should be developed in accordance with children's rights that recognises their enhanced need for community contact as they grow and develop. The UN Convention on the Rights of the Child requires that in all decisions affecting children, their best interests should be a primary consideration (Article 3). The Convention also requires that children are detained for the shortest appropriate period of time (Articles 37) and release on temporary licence can clearly support this by helping to prepare children for release at the earliest

opportunity. Finally, Article 40 of the Convention provides for the constructive reintegration of the child into society, an aim which can clearly be furthered by a progressive approach to release on temporary licence. This approach would accord with stated government policy that “the Government has made a commitment to give due consideration to the articles of the UN Convention on the Rights of the Child (UNCRC) when making new policy and legislation (2017, p.120).”

- 3.2 The care and management of young people PSI (08/2012) clearly states that Governors must utilise the use of ROTL.

4. The Childcare Resettlement Licence

- 4.1 Changes to the Childcare Resettlement Licence are welcome given the critical importance of reducing the impact of prison on the bond between children and their parents. This includes changing the eligibility criteria to provide for childcare for children aged 16 and 17 in line with the legal definition of a child.

- 4.2 We believe that the policy should go further to ensure that young people are not suddenly cut off from important parental contact on their 18th birthdays in line with developments in law and policy across the justice system. Young adults are still developing physically and psychologically until their mid-twenties (Royal College of Psychiatrists, 2015). Young adults should be unambiguously singled out as a distinct category within the criminal justice system (Justice Committee, 2016). In the words of the Lord Chief Justice, the full attributes of adulthood are not magically conferred on a child’s 18th birthday (R v Clarke [2018] EWCA Crim 185).

5. Remove the blanket ban on ROTL for foreign nationals liable to deportation

- 5.1 There should not be a blanket ban on the opportunity for a foreign national to receive ROTL where the Home Office Immigration Enforcement has confirmed that the person will be deported once they have served their sentence. All ROTL is risk assessed in any event. This blanket ban should now be removed in favour of a non-discriminatory and individualised risk based approach.

6. The process should be accompanied by clear timeframes

- 6.1 The improvements to the process should be accompanied by clear timeframes for decision-making. This will make the process more effective both for prisoners and community partners.
- 6.2 Page 13 of the policy framework outlines the ROTL procedure, identifying several steps without providing a timeframe for when each step needs to be carried out. The policy does not provide a timeframe for when an application is to be considered. Clear time frames would help to manage expectations and enable good planning, especially where a person is hoping to engage in education, training or work outside the establishment. It would accord with the procedural rights afforded by Article 8 of European Convention on Human Rights.

7. Scrutiny of private sector decision making

- 7.1 The new framework proposes to allow directors of private prisons to make decisions about ROTL. Decisions about ROTL are very important and engage Article 8 of the European Convention on Human Rights. They also come at a cost as extra staffing and resources may be required.

7.2 It is therefore essential that if the private sector is to make decisions about ROTL, clear processes are in place to ensure that those decisions are made lawfully and that private prisons are fully accountable for the decisions they make (see *LW v Sodexo* [2019] EWHC 367 (Admin)).

8. Concluding observations

8.1 The Howard League recognises the importance release on temporary licence and welcomes renewed focus on how best to achieve it. The proposed policy framework is a good start but could go much further. We would be happy to meet with the Ministry of Justice to discuss this further.

The Howard League for Penal Reform

March 2019

References

Cabinet Office (2017) *Guide to Making Legislation*, July 2017

Available

at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/645652/Guide to Making Legislation Jul 2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/645652/Guide_to_Making_Legislation_Jul_2017.pdf)

Gove, M (2016) *Letter to the Justice Select Committee*, 19 May 2016

Available

at:

<https://www.parliament.uk/documents/commons-committees/Justice/correspondence/letter-190516-michael-gove-response-prison-safety-report.pdf>

Hansard (2019) *Prisoners Release: Written Question – HL1386*, 5 March 2019

Available at: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2019-02-19/HL1386/>

House of Commons (2016) *Research briefing: Prisoners release on temporary licence*, 3 June 2016

Available at: <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06878>

House of Commons Justice Committee, *The Treatment of Young Adults in the Criminal Justice System*, 26 October 2016

Available at: <https://publications.parliament.uk/pa/cm201617/cmselect/cmjust/169/169.pdf>

Royal College of Psychiatrists (2015) *Written Evidence from the Royal College of Psychiatrists*, 2 October 2015

Available

at:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justicecommittee/the-treatment-of-youngadults-in-thecriminal-justice-system/written/22190.html>