

National Objectives for Social Work Services in the Criminal Justice System: Standards - Throughcare

CHAPTER 7 : ENFORCEMENT IN THE EVENT OF NON-COMPLIANCE

INTRODUCTION

232.A key task in statutory supervision of people released from custody on licence is to supervise compliance with the conditions of the licence. Supervising Officers have a responsibility to take all reasonable steps to advise and assist an offender to comply with the conditions of the licence.

233.A distinction needs to be drawn between actions to be taken by the Supervising Officer when a licensee is charged with a further offence during the period of the licence, and actions to be taken following failure to comply with any other requirement of the licence. The officer must notify SOHD immediately if he/she becomes aware that a licensee has been charged with a further offence during the period of supervision of the licence. There is no discretion in this matter.

234.It is a matter for the professional judgement of the Supervising Officer to determine at what point it is appropriate to report to SOHD any failure to an offender to comply with any other condition of the licence.

235.However, officers must remember that they act as Supervising Officers on behalf of the Secretary of State, to help to protect the community against social harm, and must therefore ensure that unacceptable and/or repeated failure to comply with the conditions of a licence is not condoned.

236.On notification of any failure on the part of an offender to comply with any condition of a licence, the Secretary of State may revoke a licence without reference to the Parole Board if it is considered that immediate recall is expedient in the public interest. However, SOHD will normally refer the matter to the Parole Board for a recommendation for action. There are several options open to the Board:

236.1 recommendation for revocation of the licence and recall to custody;

236.2 issue of a warning letter to the licence holder; or

236.3 no action (e.g. if the person has incurred a further custodial sentence which subsumes the licence period).

237.The Supervising Officer will be informed of the outcome as soon as possible after a decision is reached. All persons recalled to custody will be informed of the reasons for recall. They will also be advised that they are entitled to make representations to the Secretary of State in that regard, at which point their case will be resubmitted to the Parole Board. Should they make such representations they will be given a copy of the Supervising Officer's report to SOHD which has led to the recall, in accordance with the principles of open reporting (see Chapter 10 on Disclosure).

NON-COMPLIANCE WITH CONDITIONS OF LICENCE (OTHER THAN CHARGE FOR A FURTHER OFFENCE)

238. Any apparent failure to comply with the conditions of a licence must be followed up and investigated by the Supervising Officer and an explanation sought from the offender. Where the explanation for the failure to comply is unsatisfactory, the Supervising Officer will require to determine what action to take. In determining what is the appropriate action to take, the Supervising Officer will wish to consider:

238.1 the seriousness of the failure to comply;

238.2 the stage in the licence at which failure to comply occurred;

(NB. Failures to comply during the first 3 months of a licence should be regarded particularly seriously)

238.3 the general degree of compliance to date;

238.4 the offender's general level of co-operation to date;

238.5 how well is the offender resettling into the community; and

238.6 what action has been taken on any previous failure to comply with the licence requirements.

Cases of non-compliance with the conditions of licence which do not constitute a risk to the community or to the offender him/herself

239. In less serious cases of failure to comply with the conditions of licence, the Supervising Officer must re-emphasise the conditions of the licence and the likely consequences of repeated non-compliance.

240. Where unacceptable non-compliance continues:

240.1 The Supervising Officer must issue a formal warning to the offender. If the offender is present, he/she will receive this warning verbally before signing a written record of the warning. In cases where contact with the offender has been lost, the warning must be issued in a recorded delivery letter. In all cases the warning must be noted on the case file.

240.2 Continued unacceptable non-compliance must result in the Supervising Officer issuing a second and final warning to the offender following the same procedures as above. The second warning must also be noted on the case file and must specify that any further non-compliance will be notified to SOHD, which might result in the recall of the offender to custody.

241. Any unacceptable non-compliance thereafter must result in the Supervising Officer giving formal notification to SOHD. (NB The Supervising Officer must obtain the endorsement of his/her line manager prior to instituting any formal notification to SOHD.)

242. SOHD must always be informed, in writing, whenever contact with a licensee is not re-established within one month of his/her failure to keep an appointment.

Cases of non-compliance with the conditions of licence which also constitute a risk to the community or to the offender him/herself

243. SOHD must be notified in writing, without delay, of conduct and behaviour by the offender which is in breach of any of the conditions of a licence and constitutes a risk to the community or to the offender him/herself.

244. Where it is decided to report formally to SOHD any failure to comply with the conditions of licence, the notification must be made in writing by the Supervising Officer. In cases of urgency, Supervising Officers should notify SOHD by telephone and forward the written details and report as soon as possible thereafter.

245. The notification must be accompanied by a brief progress report. The progress report must record:

245.1 the date of release from prison, the form of licence and the designated length of the period of licence;

245.2 the nature of the failure to comply with the conditions of licence;

245.3 the level of contact with the offender;

245.4 the level of response from the offender;

245.5 an assessment of the offender's adjustment to release and the degree of his/her resettlement in the community;

245.6 any relevant personal/family factors; and

245.7 any recommendation for action.

RECALL OF LICENCE BY SECRETARY OF STATE "IN THE INTERESTS OF JUSTICE"

246. Under section 17 of the Prisoners & Criminal Proceedings (Scotland) Act 1993, the Secretary of State has the power to revoke the licence of any long-term or life prisoner if recommended by the Parole Board or where it appears to him to be expedient in the public interest and circumstances do not allow a Parole Board opinion to be obtained. Recall in this way need not be as a result of the commission of a further offence or breach of licence conditions. Where the Secretary of State acts without a Parole Board recommendation or the prisoner makes written representations, the case must be referred to the Parole Board for review. The power of the Secretary of State to act without a Parole Board recommendation should only be invoked in cases where the circumstances demand swift action.

247. The same procedures also apply for short- and long-term prisoners released on licence on compassionate grounds.

248. If it appears to be necessary to invoke these procedures, the Supervising Officer should notify SOHD by telephone and forward the written details and report as soon as possible thereafter.

CHARGE BY THE POLICE WITH A FURTHER OFFENCE

249. Where the Supervising Officer becomes aware, before SOHD does, that the offender has been charged by the police with any further offence (which has

occurred during the period of licence), the Supervising Officer must notify SOHD of the charge by telephone and confirm this notification in writing. The Supervising Officer must also provide a progress report on the offender's behaviour up to that point.

250. Where SOHD is the first to become aware of the charge, it must inform the Supervising Officer of the charge prior to seeking the above progress report from him/her.

251. The progress report must contain the information outlined in paragraph 245 above. (NB: instead of details of the failure to comply with licence conditions (paragraph 245.2) details must be given of; the nature of the further offence, date and name of court diet if known and the sentence imposed if known.)

252. Where it is known with sufficient notice that an offender on current licence is involved in further court proceedings, a report should be forwarded to court for that diet for submission to the Bench in the event of a finding or acceptance of guilt. The report forwarded to court should record the information outlined in paragraph 245 above.