



**Law
Commission**
Reforming the law

Sentencing law in England and Wales Legislation currently in force

Part 3.12 – Judge recommending licence conditions

9 October 2015

Part 3. Sentencing powers and duties

3.12 Judge recommending licence conditions

1151

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Power to make recommendation

CJA 2003 s.238¹⁹²⁸: Power of court to recommend licence conditions for certain prisoners

s.238(1) - a court which sentences an offender to a term of imprisonment or detention in a young offender institution of twelve months or more in respect of any offence may, when passing sentence, recommend to the Secretary of State particular conditions which in its view should be included in any licence granted to the offender under this Chapter on his release from prison.

Duty of Secretary of State to have regard to judicial recommendation

CJA 2003 s.238¹⁹²⁹: Power of court to recommend licence conditions for certain prisoners

s.238(2) - in exercising his powers under section 250(4)(b) in respect of an offender, the Secretary of State must have regard to any recommendation under subsection (1).

Recommendation is not a sentence

CJA 2003 s.238¹⁹³⁰: Power of court to recommend licence conditions for certain prisoners

s.238(3) - a recommendation under subsection (1) is not to be treated for any purpose as part of the sentence passed on the offender.

Exclusion of certain youth sentences

CJA 2003 s.238¹⁹³¹: Power of court to recommend licence conditions for certain prisoners

s.238(4) - this section does not apply in relation to a sentence of detention under section 91 of the Sentencing Act or section 226B of this Act.

Other sources

Licence Conditions, NOMS PI 07/2011¹⁹³²

¹⁹²⁸ Commencement: 4 April 2005, SI 2005/950 art.2, Sch.1 para.19. The commencement of s.238 is of no effect in a case in which a court sentences an offender in respect of an offence committed before 4 April 2005, SI 2005/950 Sch.2 para.15.

¹⁹²⁹ Commencement: 4 April 2005, SI 2005/950 art.2, Sch.1 para.19. The commencement of s.238 is of no effect in a case in which a court sentences an offender in respect of an offence committed before 4 April 2005, SI 2005/950 Sch.2 para.15.

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¹⁹³² This document expired on 26 April 2015.

Judicial recommendations

- 2.21 The Criminal Justice Act 2003 introduced a power for sentencers, when passing sentences on those who have committed offences on or after 4 April 2005, to recommend to the Secretary of State the inclusion of specific additional licence conditions. The Secretary of State is required to give due regard to any such recommendation. There is a presumption that wherever possible, all such recommendations will be included when releasing a prisoner on licence. However, it is accepted that in some cases, the circumstances of the offender may have changed to such a degree that the concerns leading to the judicial recommendation are no longer relevant or that the condition may be detrimental to managing the offender's risk.
- 2.22 The Governor of the holding prison will send information on any judicial recommendations to the relevant Probation Trust shortly after the prisoner has been received after sentencing into custody using a copy of the record sheet 5089. Chief Executives of Probation Trusts have been advised to record locally any court-recommended condition(s) and ensure that it is considered prior to ANY type of release under Chapter 6 of the Criminal Justice Act 2003 occurring.
- 2.23 If the OM assesses the recommended instructions as not being necessary or proportionate to managing the risk of the offender in the community, they must consult with PPCS to seek authority to omit such conditions from the licence. In cases where PPCS feels it to be detrimental or inappropriate to include the court-recommended licence condition in the licence, it will write to the sentencing judge to advise him/her of the decision and will provide reasons, and will also inform the Governor of the holding prison so that it may be recorded.