

CRIMINAL JUSTICE AND IMMIGRATION ACT 2008

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 2: Sentencing

Section 29: Release of prisoners after recall

251. This section retains the power in section 254 of the 2003 Act for the Secretary of State to recall determinate sentence prisoners while on licence. Such prisoners will continue to have the right to be informed of the reason for their recall and to make representations against the decision to recall. However, the requirement to refer a recalled prisoner's case to the Parole Board and, following such a reference, the power of the Board to recommend re-release is repealed.
252. *Subsection (2)* inserts four new sections into the 2003 Act, which provide a new re-release procedure for prisoners recalled under section 254.

Section 255A Further release after recall: introductory

253. Section 255A introduces the new procedures governing further release following a prisoner's recall, including automatic release at the end of a fixed period of 28 days (subsection (4)). Subsection (2) provides that recalled prisoners will be eligible for automatic release unless they are serving an extended sentence or a sentence for a sexual or violent offence specified in Schedule 15, they have been released early on the home detention curfew scheme or on compassionate grounds and recalled before the date on which they would otherwise have been released or they have previously been recalled and released under section 255B(1)(b) or (2) or section 255C(2). However, eligible prisoners will only be released automatically if they are also suitable for automatic release, which means that the Secretary of State must be satisfied that they will not present a risk of serious harm to members of the public if they are released after 28 days (subsections (3) and (5)).
254. Subsection (6) summarises which of the new further release procedures will apply to which category of recalled prisoner:
- a) prisoners who are suitable for automatic release are dealt with under section 255B;
 - b) prisoners who are eligible but not suitable for automatic release, and prisoners serving a sentence for a specified offence and certain other prisoners, are dealt with under section 255C; and
 - c) extended sentence prisoners are dealt with under section 255D.

255. Subsection (7) defines “extended sentence prisoner” for this purpose as a prisoner serving an extended sentence under the 2003 Act, the Crime and Disorder Act 1998 or the 2000 Act.
256. Subsection (8) defines a “specified offence prisoner” for this purpose with reference to section 224 of the 2003 Act, namely as a prisoner serving a sentence imposed for an offence specified in Schedule 15 to the 2003 Act. Subsection (9) and (10) extend this definition to the relevant armed services offences (The definition of specified offence prisoner does not include those serving extended sentences).
257. Subsection (12) sets out how consecutive and concurrent sentences should be treated for the purpose of determining whether the prisoner is ineligible for automatic release because he has, during the same term of imprisonment, already been released under section 255(1)(b) or (2) or 255C(2).
258. Subsection (13) defines “serious harm” for the purpose of assessing a prisoner’s suitability for automatic release as a risk of death or causing serious physical or psychological personal injury.
259. Subsection (14) defines term of imprisonment to ensure that it includes determinate sentences of detention imposed on juveniles under section 91 of the 2000 Act or section 228 of the 2003 Act

Section 255B Automatic release

260. Subsection (1) requires the Secretary of State to inform a prisoner entitled to automatic re-release that he will be released after 28 days. It also requires him to release the prisoner automatically at the end of the 28 days unless he has already been released under the provisions of subsection (2).
261. Subsections (2) and (3) give the Secretary of State the discretionary power to release any recalled prisoner subject to automatic release at any time prior to the expiry of the 28 day recall period if the Secretary of State is satisfied that it is not necessary for the protection of the public for that prisoner to remain in prison.
262. Subsection (4) requires the Secretary of State to refer to the Parole Board the case of any prisoner subject to automatic release who exercises the right under section 254(2) to make representations against the decision of the Secretary of State to recall him. Subsection (5) provides that if the Parole Board then recommends immediate re-release, the Secretary of State must give effect to that recommendation.
263. Subsection (6) applies to prisoners serving a sentence of intermittent custody. Should such a prisoner be recalled from licence before the expiry of the custodial element of the sentence and subsequently be re-released they will be on licence until the end of one of the licence periods specified in the intermittent custody order.

255C Specified offence prisoners and those not suitable for automatic release

264. Subsection (1) provides that section 255C applies to recalled prisoners who are serving a sentence (other than an extended sentence) for a specified offence, to recalled prisoners who are ineligible for automatic release because of section 255A(2)(b) or (c) and to recalled prisoners who were eligible but were not considered suitable for automatic release.
265. Subsections (2) and (3) give the Secretary of State the discretionary power to release any recalled prisoner to whom this section applies at any time during the period of the recall if he is satisfied that it is not necessary for the protection of the public for that prisoner to remain in prison.
266. Subsection (4) requires the Secretary of State to refer to the Parole Board the case of any prisoner to whom this section applies who exercises the right under section 254(2)

to make representations against the decision of the Secretary of State to recall him. In any event, the Secretary of State is required to refer to the Board at the end of 28 days the case of any prisoner to whom this section applies who has not been released by that time. Subsection (5) provides that if the Parole Board recommends the immediate release of a prisoner referred to it under subsection (4), the Secretary of State must give effect to that recommendation.

267. Subsection (6) refers to prisoners serving a sentence of intermittent custody. Should such a prisoner be recalled from licence before the expiry of the custodial element of the sentence and subsequently be re-released they will be on licence until the end of one of the licence periods specified in the intermittent custody order.

255D Extended sentence prisoners

268. This section applies to those prisoners recalled under section 254(1) who are serving an extended sentence imposed under the 1998 Act, the 2000 Act or the 2003 Act.
269. The Secretary of State is required to refer all such cases to the Parole Board and must give effect to any subsequent recommendation by the Parole Board to release a prisoner immediately.
270. *Subsection (3)* of section 29 makes a minor consequential amendment to section 256 of the 2003 Act.