



Criminal Justice and Immigration Act 2008

2008 CHAPTER 4

PART 2

SENTENCING

Release and recall of prisoners

29 Release of prisoners after recall

- (1) In section 254 of the Criminal Justice Act 2003 (c. 44) (recall of prisoners while on licence)—
 - (a) subsections (3) to (5) cease to have effect;
 - (b) in subsection (7) for “subsections (2) to (6)” substitute “this section”.
- (2) After section 255 of that Act (recall of prisoners released early under section 246) insert—

“255A Further release after recall: introductory

- (1) This section applies for the purpose of identifying which of sections 255B to 255D governs the further release of a person who has been recalled under section 254 (“the prisoner”).
- (2) The prisoner is eligible to be considered for automatic release unless—
 - (a) he is an extended sentence prisoner or a specified offence prisoner;
 - (b) in a case where paragraph (a) does not apply, he was recalled under section 254 before the normal entitlement date (having been released before that date under section 246 or 248); or
 - (c) in a case where neither of the preceding paragraphs applies, he has, during the same term of imprisonment, already been released under section 255B(1)(b) or (2) or section 255C(2).

- (3) If the prisoner is eligible to be considered for automatic release the Secretary of State must, on recalling him, consider whether he is suitable for automatic release.
- (4) For this purpose “automatic release” means release at the end of the period of 28 days beginning with the date on which the prisoner is returned to prison.
- (5) The person is suitable for automatic release only if the Secretary of State is satisfied that he will not present a risk of serious harm to members of the public if he is released at the end of that period.
- (6) The prisoner must be dealt with—
 - (a) in accordance with section 255B if he is eligible to be considered for automatic release and is suitable for automatic release;
 - (b) in accordance with section 255C if he is eligible to be considered for automatic release but was not considered to be suitable for it;
 - (c) in accordance with section 255C if he is a specified offence prisoner or if he is not eligible to be considered for automatic release by virtue of subsection (2)(b) or (c);
 - (d) in accordance with section 255D if he is an extended sentence prisoner.
- (7) The prisoner is an “extended sentence prisoner” if he is serving an extended sentence imposed under section 227 or 228 of this Act, section 58 of the Crime and Disorder Act 1998 or section 85 of the Powers of Criminal Courts (Sentencing) Act 2000.
- (8) The prisoner is a “specified offence prisoner” if (not being an extended sentence prisoner) he is serving a sentence imposed for a specified offence within the meaning of section 224.
- (9) The reference in subsection (8) to a specified offence (within the meaning of section 224) includes a reference to—
 - (a) an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 as respects which the corresponding civil offence (within the meaning of the Act in question) is a specified offence, and
 - (b) an offence under section 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of England and Wales (within the meaning given by that section) is a specified offence.
- (10) Section 48 of the Armed Forces Act 2006 (attempts, conspiracy etc.) applies for the purposes of subsection (9)(b) as if the reference in subsection (3)(b) of that section to any of the following provisions of that Act were a reference to subsection (9)(b).
- (11) In subsection (2)(b) the “normal entitlement date” means the date on which the prisoner would (but for his earlier release) have been entitled to be released under section 244.
- (12) For the purposes of subsection (2)(c) terms of imprisonment which are consecutive and terms which are wholly or partly concurrent are to be treated as a single term if—
 - (a) the sentences were passed on the same occasion, or

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- (b) where they were passed on different occasions, the prisoner has not been released under this Chapter at any time during the period beginning with the first and ending with the last of those occasions.
- (13) In subsection (5) “serious harm” means death or serious personal injury, whether physical or psychological.
- (14) In this section, “term of imprisonment” includes a determinate sentence of detention under section 91 of the Sentencing Act or under section 228 of this Act.

255B Automatic release

- (1) A prisoner who is suitable for automatic release must—
 - (a) on his return to prison, be informed that he will be released under this subsection, and
 - (b) at the end of the 28 day period mentioned in section 255A(4) (or such other period as is specified for the purposes of that subsection), be released by the Secretary of State on licence under this Chapter (unless he has already been released under subsection (2)).
- (2) The Secretary of State may, at any time after a prisoner who is suitable for automatic release is returned to prison, release him again on licence under this Chapter.
- (3) The Secretary of State must not release a person under subsection (2) unless the Secretary of State is satisfied that it is not necessary for the protection of the public that he should remain in prison until the end of the period mentioned in subsection (1)(b).
- (4) If a prisoner who is suitable for automatic release makes representations under section 254(2) before the end of that period, the Secretary of State must refer his case to the Board on the making of those representations.
- (5) Where on a reference under subsection (4) relating to any person the Board recommends his immediate release on licence under this Chapter, the Secretary of State must give effect to the recommendation.
- (6) In the case of an intermittent custody prisoner who has not yet served in prison the number of custodial days specified in the intermittent custody order, any recommendation by the Board as to immediate release on licence is to be a recommendation as to his release on licence until the end of one of the licence periods specified by virtue of section 183(1)(b) in the intermittent custody order.

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

- (1) This section applies to a prisoner who—
 - (a) is a specified offence prisoner,
 - (b) is not eligible to be considered for automatic release by virtue of section 255A(2)(b) or (c), or
 - (c) was eligible to be considered for automatic release but was not considered to be suitable for it.

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- (2) The Secretary of State may, at any time after the person is returned to prison, release him again on licence under this Chapter.
- (3) The Secretary of State must not release a person under subsection (2) unless the Secretary of State is satisfied that it is not necessary for the protection of the public that he should remain in prison.
- (4) The Secretary of State must refer to the Board the case of any person to whom this section applies—
 - (a) if the person makes representations under section 254(2) before the end of the period of 28 days beginning with the date on which he is returned to prison, on the making of those representations, or
 - (b) if, at the end of that period, the person has not been released under subsection (2) and has not made such representations, at that time.
- (5) Where on a reference under subsection (4) relating to any person the Board recommends his immediate release on licence under this Chapter, the Secretary of State must give effect to the recommendation.
- (6) In the case of an intermittent custody prisoner who has not yet served in prison the number of custodial days specified in the intermittent custody order, any recommendation by the Board as to immediate release on licence is to be a recommendation as to his release on licence until the end of one of the licence periods specified by virtue of section 183(1)(b) in the intermittent custody order.

255D Extended sentence prisoners

- (1) The Secretary of State must refer to the Board the case of any extended sentence prisoner.
- (2) Where on a reference under subsection (1) relating to any person the Board recommends his immediate release on licence under this Chapter, the Secretary of State must give effect to the recommendation.”
- (3) In section 256 of that Act (further release after recall) in subsection (1) (powers of Board on a reference) for “section 254(3)” substitute “section 255B(4), 255C(4) or 255D(1)”.