

*Status: This version of this provision is prospective.*

*Changes to legislation: Criminal Justice and Courts Act 2015, Section 9 is up to date with all changes known to be in force on or before 16 April 2019. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*



# Criminal Justice and Courts Act 2015

## 2015 CHAPTER 2

### PART 1

#### CRIMINAL JUSTICE

##### *Release and recall of prisoners*

PROSPECTIVE

#### **9 Test for release after recall: determinate sentences**

(1) Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release etc of fixed-term prisoners) is amended as follows.

(2) In section 255A (suitability for automatic release after recall), after subsection (4) insert—

“(4A) But a person is not suitable for automatic release if—

- (a) it appears to the Secretary of State that the person is highly likely to breach a condition included in the person's licence if released at the end of the automatic release period, and
- (b) for that reason, the Secretary of State considers that it would not be appropriate to release the person at the end of that period.”

(3) In section 255B (automatic release)—

- (a) in subsection (2), at the end insert “ (but see subsections (3) and (3A)) ”,
- (b) after subsection (3), insert—

“(3A) The Secretary of State must not release P under subsection (2) if—

- (a) it appears to the Secretary of State that, if released, P is highly likely to breach a condition included in P's licence, and
- (b) for that reason, the Secretary of State considers that it is not appropriate to release P under that subsection.”

*Status: This version of this provision is prospective.*

**Changes to legislation:** *Criminal Justice and Courts Act 2015, Section 9 is up to date with all changes known to be in force on or before 16 April 2019. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (c) in subsection (4)—
    - (i) for “that period” substitute “ the period mentioned in subsection (1)(b) ”, and
    - (ii) for “the Board” substitute “ a recall adjudicator ”,
  - (d) after subsection (4) insert—
    - “(4A) On a reference under subsection (4), the recall adjudicator must determine the reference by—
      - (a) directing P's immediate release on licence under this Chapter,
      - (b) directing P's release on licence under this Chapter as soon as conditions specified in the direction are met, or
      - (c) giving no direction as to P's release,
 (but see subsections (4B) and (4C)).
    - (4B) The recall adjudicator must not give a direction under subsection (4A)(a) or (b) unless satisfied that it is not necessary for the protection of the public that P should remain in prison until the end of the period mentioned in subsection (1)(b).
    - (4C) The recall adjudicator must not give a direction under subsection (4A)(a) or (b) if—
      - (a) it appears to the recall adjudicator that, if released, P is highly likely to breach a condition included in P's licence, and
      - (b) for that reason, the recall adjudicator considers that it is not appropriate to give the direction.”, and
  - (e) for subsection (5) substitute—
    - “(5) The Secretary of State must give effect to any direction under subsection (4A)(a) or (b).”
- (4) In section 255C (extended sentence prisoners and those not suitable for automatic release)—
- (a) in subsection (2), at the end insert “ (but see subsections (3) and (3A)) ”,
  - (b) after subsection (3), insert—
    - “(3A) The Secretary of State must not release P under subsection (2) if—
      - (a) it appears to the Secretary of State that, if released, P is highly likely to breach a condition included in P's licence, and
      - (b) for that reason, the Secretary of State considers that it is not appropriate to release P under that subsection.”,
  - (c) in subsection (4), for “the Board” substitute “ a recall adjudicator ”,
  - (d) after subsection (4) insert—
    - “(4A) On a reference under subsection (4), the recall adjudicator must determine the reference by—
      - (a) directing P's immediate release on licence under this Chapter,
      - (b) directing P's release on licence under this Chapter as soon as conditions specified in the direction are met, or
      - (c) giving no direction as to P's release,
 (but see subsections (4B) and (4C)).

*Status: This version of this provision is prospective.*

*Changes to legislation: Criminal Justice and Courts Act 2015, Section 9 is up to date with all changes known to be in force on or before 16 April 2019. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4B) The recall adjudicator must not give a direction under subsection (4A) (a) or (b) unless satisfied that it is not necessary for the protection of the public that P should remain in prison.

(4C) The recall adjudicator must not give a direction under subsection (4A) (a) or (b) if—

- (a) it appears to the recall adjudicator that, if released, P is highly likely to breach a condition included in P's licence, and
- (b) for that reason, the recall adjudicator considers that it is not appropriate to give the direction.”, and

(e) for subsection (5) substitute—

“(5) The Secretary of State must give effect to any direction under subsection (4A)(a) or (b).”

(5) Omit section 256 (powers of Board where it does not direct immediate release).

(6) In section 256A (further review)—

(a) for subsection (1) substitute—

“(1) Where a case has been referred to a recall adjudicator under section 255C(4) or this section and the person has not been released, the Secretary of State must refer the person's case back to a recall adjudicator no later than the review date.

(1A) In the case of a person serving one sentence of imprisonment, “the review date” is the first anniversary of the determination by the recall adjudicator on the reference mentioned in subsection (1).

(1B) In the case of a person serving more than one sentence of imprisonment, “the review date” is—

- (a) the first anniversary of the determination by the recall adjudicator on the reference mentioned in subsection (1), or
- (b) if later, the day on which the person has served—
  - (i) the requisite custodial period, and
  - (ii) if the sentences include a life sentence, the minimum term.”,

(b) in subsection (2)—

- (i) for “that anniversary” substitute “ the review date ”, and
- (ii) for “the Board” substitute “ a recall adjudicator ”,

(c) in subsection (3), for “The Board” substitute “ A recall adjudicator ”,

(d) in subsection (4)—

- (i) for “Board” substitute “ recall adjudicator ”, and
- (ii) for paragraph (b) substitute—

“(b) directing the person's release on licence under this Chapter as soon as conditions specified in the direction are met.”,

(e) at the end of subsection (4) insert—

“(but see subsections (4A) and (4B)).”,

(f) after subsection (4) insert—

*Status: This version of this provision is prospective.*

*Changes to legislation: Criminal Justice and Courts Act 2015, Section 9 is up to date with all changes known to be in force on or before 16 April 2019. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

“(4A) The recall adjudicator must not give a direction under subsection (4) (a) or (b) unless satisfied that it is not necessary for the protection of the public that the person should remain in prison.

(4B) The recall adjudicator must not give a direction under subsection (4) (a) or (b) if—

(a) it appears to the recall adjudicator that, if released, the person is highly likely to breach a condition included in the person's licence, and

(b) for that reason, the recall adjudicator considers that it is not appropriate to give the direction.”, and

(g) for subsection (5) substitute—

“(5) The Secretary of State must give effect to any direction under subsection (4)(a) or (b).

(6) In subsection (1B)(b)—

“life sentence” means a sentence mentioned in section 34(2) of the Crime (Sentences) Act 1997, and

“the minimum term” means the part of the sentence specified in the minimum term order (as defined by section 28 of that Act).”

(7) In Schedule 20A (application of Chapter 6 of Part 12 to pre 4 April 2005 cases), omit paragraph 6(5) (certain determinations to be treated as determinations under section 256(1) of the Criminal Justice Act 2003).

(8) The amendments made by this section apply to a person recalled before the day on which they come into force as well as to a person recalled on or after that day.

**Status:**

This version of this provision is prospective.

**Changes to legislation:**

Criminal Justice and Courts Act 2015, Section 9 is up to date with all changes known to be in force on or before 16 April 2019. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 4 para. 1(1)(ca)(iii) and word inserted by [S.I. 2019/772](#) eg. 32(a)(ii)
- Sch. 4 para. 1(1)(ca)(i) word omitted by [S.I. 2019/772](#) eg. 32(a)(i)