
EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends section 255A of the Criminal Justice Act 2003 (c. 44) (“the 2003 Act”).

Sections 255A to 255D of the 2003 Act provide for the release of prisoners after recall. There are two different release from recall schemes under these provisions. Under section 255B recalled prisoners are automatically re-released after 28 days imprisonment (14 days if the sentence is less than 12 months). Recalled prisoners not suitable for automatic release are released under section 255C and are liable to imprisonment until the end of their sentence unless re-released earlier by the Secretary of State or the Parole Board. Section 255A identifies which process will apply to a prisoner and section 255A(4) sets out the test for suitability for automatic release.

Article 2(2) of this Order amends the test to be applied by the Secretary of State in deciding whether a person is suitable for automatic release following recall. Under the amended test those aged 18 or over serving a sentence of less than 12 months must be automatically released, unless they are being managed under multi-agency public protection arrangements (MAPPA) level 2 or 3 or have been charged with a serious offence at point of recall, defined as murder or any offence listed in Schedule 18 to the Sentencing Act 2020. Offenders who do not automatically qualify for automatic release will be considered under new subsection (4)(b) for such release only if the Secretary of State is satisfied that the person will not present a risk of serious harm to members of the public if released at the end of the automatic release period.

Article 2(3) amends section 255B of the 2003 Act. Subsections (8) and (9) allow for recalls subject to automatic release to be altered to release under section 255C of the 2003 Act. New subsection (10) prevents a recall, where automatic re-release applies under new section 255A(4)(a) of the 2003 Act, being changed to a recall subject to the release provisions of section 255C of the 2003 Act, except where an offender is charged with a serious offence whilst still in custody serving the recall.

This Order applies to a person recalled before, on or after commencement of this Order.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.