

Draft Order laid before Parliament under section 330(5)(a) of the Criminal Justice Act 2003 (c. 44), for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2024 No. #

PRISONS, ENGLAND AND WALES

**The Criminal Justice Act 2003 (Suitability
for Fixed Term Recall) Order 2024**

Made - - - - *****
Coming into force - - *2nd April 2024*

The Secretary of State, in exercise of the powers conferred by section 256AZB(1)(a) and (2) of the Criminal Justice Act 2003(1), makes the following Order.

In accordance with section 330(5)(a) of that Act, a draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1.—(1) This Order may be cited as the Criminal Justice Act 2003 (Suitability for Fixed Term Recall) Order 2024.

(2) This Order comes into force on 2nd April 2024.

Further release after recall: suitability for automatic release

2.—(1) The Criminal Justice Act 2003 is amended as follows.

(2) In section 255A(2) (further release after recall: introductory), for subsection (4) substitute—

“(4) A person is suitable for automatic release only if—

(a) the person—

(i) is aged 18 or over,

(ii) is serving a sentence of less than 12 months,

(iii) has not been recalled on account of being charged with a serious offence,
and

(1) 2003 c. 44. Section 256AZB was inserted by section 137 of the Police, Crime, Sentencing and Courts Act 2022 (c. 32).

(2) Section 255A was substituted by section 114 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Subsection (4) was subsequently amended by section 9(4)(b) of the Offender Rehabilitation Act 2014 (c. 11).

- (iv) is not being managed at level 2 or 3, as specified in guidance for the time being issued under section 325(8)(3), by a responsible authority under arrangements made under that section (arrangements for assessing etc risks posed by certain offenders), or
- (b) where paragraph (a) does not apply, 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.
- (4A) For the purposes of subsection (4) “serious offence” means—
 - (a) murder, or
 - (b) an offence listed in Schedule 18 to the Sentencing Code(4).”.
- (3) In section 255B(5) (automatic release), after subsection (9) insert—

“(10) Subsections (8) and (9) do not apply where P falls within section 255A(4)(a), unless the Secretary of State receives information that, after being recalled, P has been charged with a serious offence (within the meaning of section 255A(4A)).”.

Application

- 3. This Order applies to a person who—
 - (a) has been recalled under section 254(1) of the Criminal Justice Act 2003 before the day on which this Order comes into force, and
 - (b) immediately before it comes into force, is being detained in pursuance of the sentence as a result of having been so recalled,

as well as applying to a person recalled on or after that day.

Date

Name
Minister of State
Ministry of Justice

(3) Section 325(8) was amended by paragraph 74(2) of Schedule 26 to the Criminal Justice and Immigration Act 2008 (c. 4). The guidance is the multi-agency public protection arrangements (MAPPA) guidance first published on 21 March 2014 and last updated on 20 March 2023 and can be accessed at <https://www.gov.uk/government/publications/multi-agency-public-protection-arrangements-mappa-guidance> .

(4) 2020 c. 17. Schedule 18 was amended by section 15 of the Counter-Terrorism and Sentencing Act 2021 (c. 11), section 147(2) of the Police, Crime, Sentencing and Courts Act 2022, paragraph 12 of Schedule 2 to the Domestic Abuse Act 2021 (c. 17), paragraph 80 of Schedule 22 to the Sentencing Act 2020, paragraph 20 of Schedule 14 to the Online Safety Act 2023 (c. 50).

(5) Section 255B was substituted by section 114 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and amended by section 9(5) of the Offender Rehabilitation Act 2014 and sections 136(2) and 139(2)(a) of the Police, Crime, Sentencing and Courts Act 2022.

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.