



# Criminal Justice and Courts Act 2015

## 2015 CHAPTER 2

### PART 1

#### CRIMINAL JUSTICE

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

#### **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.”,
  - (c) in subsection (4)—
    - (i) for “that period” substitute “the period mentioned in subsection (1) (b)”, and

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- (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)).
    - (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.

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- (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—
    - “(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.

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- (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.