

CRIMINAL JUSTICE AND COURTS ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Criminal Justice

Release and recall of prisoners

Section 9: Test for release after recall: determinate sentences

169. *Section 9* amends the provisions dealing with the recall and further release of prisoners in Chapter 6 of Part 12 of the Criminal Justice Act 2003. It adds to the public protection test, applicable prior to this Act, to include consideration of whether the offender is highly likely to breach their licence conditions if released. This test applies where the Secretary of State is determining whether a recalled prisoner is suitable for automatic release and, where they are subject to discretionary release, when the Secretary of State and recall adjudicators are considering re-release.
170. *Subsection (2)* inserts a new subsection (4A) into section 255A of the Criminal Justice Act 2003 to require the Secretary of State to consider the likelihood of further non-compliance with licence conditions when deciding on the appropriate type of recall for an offender, as well as whether they present a risk of serious harm to the public.
171. *Subsection (3)* amends section 255B of that Act which deals with recalled offenders who are subject to automatic release after 28 days. *Subsection (3)(b)* inserts a new subsection (3A) in section 255B which provides that the Secretary of State must consider when exercising discretionary release powers whether it appears that the offender would be highly likely to breach a condition contained in their licence. This is in addition to the existing restriction based on risk of serious harm to the public.
172. Where a referral is made to a recall adjudicator to consider the offender's release before the end of the automatic release period, *subsection (3)(d)* inserts further subsections in section 255B – (4A), (4B) and (4C) – which set out the basis on which the adjudicator may consider release in these circumstances.
173. New subsection (4A) provides for the directions the recall adjudicator may make when determining the referral. New subsection (4B) reproduces the current public protection release test to be applied by the adjudicator when considering release. New subsection (4C) adds to that test by restricting the adjudicator's power to release where the adjudicator considers the offender would be highly likely to breach a condition contained in their licence if released.
174. *Subsection (3)(e)* replaces the current subsection (5) to make clear that the Secretary of State must give effect to any direction of the recall adjudicator to release.
175. *Subsection (4)* makes the same changes in respect of the discretion of the Secretary of State and recall adjudicators to release recalled offenders not subject to the automatic release provision in section 255B who are, instead, liable to be detained until the end of their sentence. It imposes a restriction on the exercise of the discretion where

*These notes refer to the Criminal Justice and Courts Act 2015
(c.2) which received Royal Assent on 12 February 2015*

the prisoner would be highly likely to breach a condition contained in their licence if released by inserting new subsections (3A), (4A), (4B) and (4C) in section 255C of the Criminal Justice Act 2003 . These replicate the new subsections inserted in section 255B.

176. *Subsection (5)* repeals section 256 of the Criminal Justice Act 2003. Section 256 provides for how the Secretary of State and the Parole Board deal with referrals of recalled prisoners where the Board does not direct immediate release. This section is no longer needed as provision for how the Secretary of State and, now, recall adjudicators are to deal with such cases is now made in each of the relevant sections of that Act as amended by section 9.
177. *Subsection (6)* replaces subsection (1) of section 256A of the Criminal Justice Act 2003 with three new subsections, (1), (1A) and (1B), dealing with the further review of recalled prisoners. For a recalled prisoner who is serving one sentence of imprisonment the prisoner must have their case referred to a recall adjudicator annually. Where the prisoner is serving multiple sentences, however, and the recall period is running concurrently with the custodial part of another sentence (for example, where a further sentence has been imposed in addition to the recall for offences committed while on licence) then the case will not be referred to an adjudicator until the custodial part of the other sentence has been completed and the prisoner can be released on all sentences – rather than referred annually during that period.
178. *Subsection (6)(d)* replaces the provision for the Parole Board to fix a date for release on licence (section 256A(4)(b) of the Criminal Justice Act 2003) with provision for a recall adjudicator to direct that the prisoner be released on licence as soon as conditions in the direction are met. This is to allow conditional release of an offender on a given set of circumstances, for example when a particular accommodation is available.
179. *Subsection (6)(f)* inserts new subsections (4A) and (4B) in section 256A to provide that recall adjudicators must apply the risk of breach of a licence condition test as well as the public protection test when considering the release of recalled prisoners whose cases have been referred to an adjudicator on their review date under section 256A.
180. *Subsection (7)* removes a transitional provision for prisoners subject to earlier release provisions which becomes redundant on the repeal of section 256 of the Criminal Justice Act 2003.
181. *Subsection (8)* provides that the amendments made by this section apply to those recalled before the day on which these changes are brought into force, as well as those recalled after that date.