

Criminal Justice and Courts Bill

Fact sheet: creating a new offence of remaining unlawfully at large after recall and increasing the maximum sentence for the existing offence of remaining unlawfully after temporary release

Introduction and the current position

1. Currently, it is not a separate offence to remain unlawfully at large following a recall to custody. If no other offence is committed by an offender who has failed to return to custody, they can only be required to serve the outstanding part of their original sentence. There is no legal power to detain them beyond the end of the requirements of that sentence - unless they are prosecuted and imprisoned for another offence.
2. There are five different situations where an adult offender can be considered to be unlawfully at large:
 - (i) When a prisoner escapes from lawful custody. This includes an escape from an open prison.
 - (ii) When a defendant has been released on bail in criminal proceedings and fails, without reasonable cause, to surrender to custody.
 - (iii) When a prisoner is released temporarily on licence (e.g. for Resettlement Day Release, Resettlement Overnight Release, Child Resettlement or a Special Purpose Licence) and fails to return without reasonable excuse.
 - (iv) Offenders, who have served the custodial part of their sentence, have been released on licence and have been subsequently recalled, but have absconded.
 - (v) Offenders who are released early from the custodial part of their sentence on home detention curfew but are recalled and subsequently abscond.

All of the above, apart from (iv) and (v), are criminal offences.

3. Once a recalled prisoner is returned to custody, their case must be referred to the Parole Board. If the Parole Board is satisfied as to the risk to public protection, it must direct an offender's immediate re-release. It is therefore perfectly possible that some of the recalled offenders who have been unlawfully at large for some time (and living abroad) could be re-released relatively quickly. For example – if an offender can evidence that they have been living a law abiding life it might be difficult to argue that public protection requires their continued detention and they may be re-released by the Parole Board.
4. The Prison Rules in England and Wales (Prison Rules and legislation in Scotland and in Northern Ireland are separate from those in England and Wales) provide that a prisoner may be allowed to leave prison for short periods on a temporary licence (ROTL). Any release is always subject to licence and breach of that licence will lead to disciplinary proceedings, and to additional criminal proceedings in the case of failure to return to prison. There is no automatic right of entitlement for ROTL to be granted.

5. Under the Prisoners (Return to Custody) Act 1995 the offence of failing to return to custody from ROTL, without reasonable excuse, is currently a summary only offence with a maximum penalty of six months custody and/or a fine.

What is the proposed change?

6. The government intends to create a punitive measure for offenders who remain unlawfully at large after recall from licence to cover the circumstances in (iv) and (v) above; the provisions remaining unlawfully at large after recall give effect to this.
7. If the offender is given a custodial sentence for being unlawfully at large after recall they will serve at least the custodial period of the new sentence in custody before being released. For example, if an offender is prosecuted with the offence of being unlawfully at large and if the maximum two year sentence is imposed for the new offence then the punishment will be that a minimum period of twelve months will have to be served in custody before the offender can be considered by the Parole Board for potential re-release.
8. Prisoners who fail to return to custody from ROTL undermine the criminal justice system and some have also been implicated in criminal activity whilst they are outside of prison. The government wants to send a strong message (both to deter and punish) that failure to return from ROTL is unacceptable and warrants a custodial sentence up to and including two years. The provisions on remaining unlawfully at large after temporary release give effect to this.
9. The provisions in the Bill increase the maximum sentence for the offence of failure to return from release on temporary licence from six months to two years and will harmonise sentencing powers for offenders who are unlawfully at large after recall from a standard licence with those for offenders who do not return to prison after release on temporary licence.
10. This provides the courts with greater discretion to impose longer sentences where offenders abuse the privilege of ROTL by failing to return.