

Criminal Justice and Courts Bill

Fact sheet – Test for release after recall

Introduction

1. Offenders who are released from prison on licence to continue serving their sentence under supervision in the community can be recalled to prison if they fail to comply with the conditions in their licence. This includes requirements to be of good behaviour, not to commit further offences, to live and work only as approved by the supervising officer and not travel abroad without permission.
2. There are two types of recall for prisoners serving a determinate sentence – that is, a sentence of a fixed length – who breach their licence conditions. The first is a *Fixed Term Recall (FTR)* of 28 days after which an offender is released automatically to continue serving the sentence on licence. This is appropriate for lower risk offenders where a breach of licence is not considered to indicate the public is at risk. A short, fixed period back in prison is sufficient to deal with the breach, to remind the offender that they must comply with the licence or face going back to prison, to review and, if required, put in place revised arrangements to continue with their supervision in the community when they are re-released.
3. The second type of recall is a *Standard* recall, which means the offender is liable to be held until the end of the sentence but is referred to the independent Parole Board to decide whether they should be released earlier. An offender given a standard recall is referred to the Board soon after being returning to prison and, if the Board does not release them, their case will be reviewed annually until the end of the sentence. In addition, the Secretary of State has the power to re-release a recalled prisoner at any point, provided that would not put the public at risk and where it is considered they can be safely managed back in the community.

What is the current position?

4. Under the current provisions, in the Criminal Justice Act 2003, an offender must not be given a FTR if they present a risk of serious harm to the public. Such offenders must, therefore, be given a standard recall so that they will only be released again before the end of their sentence if the Parole Board or Secretary of State judges that it would be safe to do so. All other offenders can be considered for a FTR.
5. There are some offenders, though, who are persistently or wilfully non-compliant with their licence conditions – but not necessarily high risk – and for whom FTRs are also inappropriate. Some offenders receive repeated FTRs – on the basis that, although they keep breaching their licence conditions, they do not present a risk to the public.

What are the proposed changes?

6. The Bill introduces a new test to be applied when deciding on the type of recall that is appropriate for a recalled offender. In addition to the current 'public

protection' test – which will remain the overriding consideration – the Secretary of State will also have to consider whether the offender appears highly likely to breach a condition of their licence if released automatically after 28 days, so that an FTR would not be appropriate and they should be given a standard recall.

7. The Bill also introduces a test for the Parole Board and the Secretary of State to apply when considering whether to re-release a recalled offender. Again, the primary consideration is whether the offender should remain detained for public protection reasons – but an additional element to the test will be whether the offender appears highly likely to breach a condition of their licence again if released. This means that likelihood of further non-compliance, as well as public protection, must be considered when the release of recalled prisoners is assessed.
8. The objective of this change is to deter offenders from repeatedly breaching their licence conditions, or wilfully refusing to submit to supervision, because they will know that if they do they face serving the remainder of their sentence in prison.
9. In order to respond to the changing nature of the prison population and the operation of the test in practice we are also enabling the Secretary of State to amend, through secondary legislation, the test to be applied when deciding on the type of recall or on the re-release of recalled offenders.
10. For consistency and clarity the Bill also sets out the test which is applied by the Parole Board when considering whether to re-release a recalled prisoner serving an indeterminate sentence – which means, an offender with no automatic release date sentenced to life or Imprisonment for Public Protection (IPP) who may be held indefinitely unless released by the Board. The test for release following recall in these cases is the same public protection test as applied by the Board when considering initial release. This test will also be able to be amended by the Secretary of State through secondary legislation so far as it applies to prisoners serving an IPP sentence.