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Criminal Justice and Courts Bill Fact sheet – Recall adjudicator

Introduction

1. Offenders who are released from prison on licence can be recalled to prison for non-compliance with the conditions in their licence.
2. The Secretary of State has the executive power to re-release a recalled prisoner, provided that would not put the public at risk and where it is considered they can be safely managed back in the community. Failing this, prisoners must be referred to the Parole Board to decide whether they should be re-released before the end of their sentence. This referral to the Board must take place within 28 days from the return to custody. If the Board does not release the prisoner at that point, the case will be reviewed annually until the offender has been released.
3. Cases are referred to the Parole Board in accordance with domestic case law which held that the recall of a determinate sentence offender engaged Article 5(4) ECHR¹. This requires a review of the lawfulness of the detention to be conducted by a court or court-like body. This requirement was fulfilled by referring cases to the Parole Board. .
4. Strasbourg jurisprudence, however, provides that where a person is lawfully sentenced to a determinate term of imprisonment by a competent court, the lawfulness of the detention has been decided by the court for the duration of the sentence period. As such, a determinate sentenced recalled offender has no rights under Article 5(4) to have their recall reviewed by the Parole Board.
5. In the recent case of *R (Whiston) v Secretary of State* [2014] UKSC 39 the Supreme Court held that domestic law does not need to give greater effect to the ECHR than is required by Strasbourg.

What are the proposed changes?

6. The Government is introducing an amendment to remove the statutory provisions requiring the referral of determinate sentence recall cases to the Parole Board. Instead the Secretary of State may appoint a 'recall adjudicator' to review the ongoing detention of those prisoners. The Secretary of State will be entitled to appoint the Parole Board or another person as a recall adjudicator.
7. There is no intention to alter the legislative framework in respect of indeterminate sentence prisoners (whether in relation to their initial release or when recalled to custody); their release will remain solely within the remit of the Parole Board. The Parole Board will continue to be the only body authorised to consider the initial release of determinate sentence offenders.
8. The objective of this change is to reduce the burden of the Parole Board and to continue to ensure the speedy review of the ongoing detention of determinate sentenced recalled offenders.
9. The provision creates a chief recall adjudicator, who will be responsible for overseeing the activities of recall adjudicators and be able to issue guidance in consultation with recall adjudicators and the Secretary of State. Recall adjudicators must act in accordance with any guidance issued by the chief recall adjudicator. The amendments also permit the Secretary of State to make procedural rules in respect of the proceedings of recall adjudicators.
10. The new process is intended to be fair, effective and to afford adequate safeguards to prisoners and it will make no difference to an offender if their case is allocated to an

¹ Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

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individual recall adjudicator or to the Parole Board acting in its capacity as a recall adjudicator.