

Recall to prison (determinate sentence prisoners)

If you are serving a fixed sentence of 12 months or more and have been released on licence you are liable to be recalled by the Secretary of State (SofS) at any point during the licence period.

Who makes the decision?

The power to recall you to prison arises when your licence is revoked. The recall decision is made by the Casework Section in the NOMS Public Protection Unit, usually following a request from your probation officer. Common reasons for recall are failure to attend probation appointments or where it is alleged that further offences have been committed (which breaches the requirement to be of good behaviour and not to do anything that undermines the purposes of being on licence). The recall request will have been approved by a senior probation officer and then sent to the Public Protection Unit.

Once a decision has been made to revoke your licence there is legal power to arrest you and recall you to prison. You are considered to be “unlawfully at large” for any period between licence revocation and return to prison.

Types of recall

On 14 July 2008 new recall provisions contained in the Criminal Justice and Immigration Act 2008 came into effect. There are now three types of recall: fixed term, standard and emergency.

Fixed term recall

This is recall for a fixed period of 28 days, to be used where you have been assessed as eligible and suitable.

You will be eligible **unless**:

- You are serving an extended sentence;
- You are serving a sentence imposed for a sexual or violent crime listed in Schedule 15 of the CJA 2003;
- You were recalled before your automatic release date after being

released early on Home Detention Curfew or compassionate grounds;

- You have been recalled before on the same sentence.

Once you are identified as **eligible** then your **suitability** must be considered. You will only be released at the end of the 28 day period if you are not considered to present an ‘identifiable’ risk of serious harm (either physical or psychological) based on a current OASys assessment. If assessed as high or very high risk then you will not be considered suitable.

Standard recall

A standard recall is appropriate where you are either not eligible for a fixed recall because you are serving an extended sentence or a sentence for a violent or sexual offence specified under Schedule 15 of the CJA 2003, or you are eligible for fixed recall but your risk is felt to make you unsuitable. This type of recall can result in your remaining in prison until the end of your sentence. However either the SofS or the Parole Board can release you earlier if they are satisfied that your imprisonment is no longer necessary for the protection of the public.

Emergency recall

This is identical to the standard recall except that you have been identified as a risk of serious harm and/or that your risk of re-offending is unmanageable or imminent.

What happens next?

On return to custody all prisoners are entitled to know the reasons for their recall and make representations to the Parole Board. If you make representations then your case must be referred to the Parole Board ‘expeditiously’. If the Parole Board recommends release this decision is binding on the SofS. However under the new recall provisions if you are recalled on or after 14 July 2008 and do not make

representations then your case is no longer automatically referred to the Parole Board for consideration for release. Whether you are referred then depends on the type of recall and whether the SofS has exercised the executive power of release.

If you make representations against a **fixed term** recall, your case must be referred to the Parole Board immediately and if the Board orders immediate release then the SofS must release you. The SofS through the Post Release Team can also exercise an executive power to re-release before the 28 days expire if an offender manager makes a request in writing. Additional licence conditions can be added to your original licence at point of release.

If you are a **standard** recall you will have your detention reviewed by the Public Protection Casework Section and/or the Parole Board depending on the type of sentence you are serving.

If you are on an **extended** sentence then your case must be immediately referred to the Parole Board who can order release. If they decline to release your case must be referred back to the Parole Board within 12 months. For all other standard recall cases the SofS has the power to re-release at any time but in any event cases must be referred to the Parole Board for consideration once you have been in custody for 28 days. The Parole Board can order immediate release; fix a date for future release within one year; make no recommendation for release in which case the SofS must refer the case back to the Board within a year, or sooner if the circumstances or risk assessment change; order release at sentence expiry (when there is less than a year left to serve).

What if I am under the Criminal Justice Act 1991?

If you are under the 1991 Act (you are serving a sentence for an offence committed before 4 April 2005) and you are released on licence under the 1991 Act then you are liable to recall up to your licence expiry date (LED). If you have been recalled prior to 14 July 2008 then you remain subject to the recall procedures

in PSI 48/2007 and have to be released at your LED. However if you are recalled on or after 14 July 2008 then you will be treated the same as if you were under the Criminal Justice Act 2003. So if you are re-released your licence is in force until your sentence expires. You also remain liable to remain in custody up to your sentence expiry date unless released by the Parole Board or SofS's executive power.

What if I am unhappy with the Parole decision?

The Parole Board should give reasons for its decision. If you are unhappy with the decision you can ask the Parole Board to reconsider your case either on the papers again or at an oral hearing. The Parole Board will not allow an oral hearing in every case. If you want an oral hearing you should therefore set out the reasons why this is necessary. For example it may be that you dispute the facts that have been asserted by the Probation Service in the document recommending your recall and think you should have an opportunity to question the probation officer.

If the Board agrees to an oral hearing it will be held at the prison in which you are located. You are entitled to legal representation at the hearing. The Parole Board will apply the same test for release as when it considers cases on the papers, and its decision will be one of the four options set out above.

What if the Board refuses to release me?

If the Parole Board refuses to grant you an oral hearing, or refuses your release after holding one, the only way the decision can be challenged further is by way of judicial review proceedings in the Administrative Court. This is a complicated procedure and you should seek legal advice.

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