

## Recall to prison

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When you are released from a fixed-term sentence you are normally on licence. The length of the licence depends on the length of your overall sentence and when you committed the offence leading to the sentence:

- If the offence leading to your sentence was committed before 4 April 2005 and your sentence is 12 months or more, then (unless the judge said that your licence should last for the whole sentence) your licence will expire at the three quarter point. If you are recalled then your licence can be extended to the end of your sentence (see below).
- If the offence leading to your sentence was committed on or after 4 April 2005 your licence lasts your whole sentence.

If you break your licence conditions you can be recalled. 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).

### ***Who makes the decision?***

The power to recall you to prison arises when your licence is revoked. Your probation officer does not have the power to revoke your licence. This decision is made by officials in the Post-Release Team of the Public Protection Unit in the Ministry of Justice. However the decision will be made on the basis of a recommendation from the Probation Service. In practice your probation officer will have completed a form setting out why he or she thought recall was necessary in your case. This will have been approved by a senior probation

officer and then sent to the Post-Release Team.

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

### ***What happens now?***

When you are recalled you will normally be taken to the nearest local prison (a remand prison, which means you will be held in category B conditions). What should happen now is that your case will be referred to the Parole Board. Then the following steps should be followed:

- The prison tells the Post-Release Team at the Ministry of Justice that you have arrived. The Post-Release Team should then prepare a dossier of papers to be disclosed to you. The dossier should include a copy of the report from the Probation Service recommending your recall, and a copy of the recall decision.
- The dossier will ask you if you want to make representations in writing to the Parole Board. This is when you should try and obtain legal assistance to make sure that all relevant matters are dealt with. The dossier may give you a time limit to put in representations. However you can put in representations after this time limit expires if the Parole Board has not yet made a decision.
- Your probation officer, if this was not already included in the document recommending your recall, should prepare what is called a risk management plan, setting out proposals for further licence conditions should the Parole Board decide to release you.

### ***The Parole Board***

The Parole Board considers the information in the recall dossier and any representations submitted on the papers. It will make a decision on your case even if you do not submit representations. Because of the large number of recalls there are sometimes delays in the Parole Board making decisions even though guidance suggests it should make its first decision 20 days after recall.

The Parole Board will decide whether you were property recalled. Even if it thinks you were correctly recalled it should release you if it is satisfied that you pose an acceptable risk to the public and that adequate risk management arrangements are in place.

The Parole Board must do one of four things:

- Direct immediate re-release on licence;
- Refuse to release you immediately, but direct your release at a future date;
- Refuse to release you but set a date for the next consideration of your case (not more than 12 months away);
- Refuse to release you or to set a date for a future review (where there is less than 12 months for you to serve).

### ***What if I am unhappy with the decision?***

The Parole Board should give reasons for its decision. If you are unhappy with the decision you can ask that the Parole Board reconsider your case at an oral hearing. The Parole Board says that it 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.

As can be seen above, the Parole Board has extensive power to set dates for your release and future reviews of your case. However you retain the right to be released in the following circumstances:

- If the offence leading to your sentence was committed before 4 April 2005 (and the sentencing judge did not order that your licence should last until the end of your sentence) after you are recalled you are entitled to be re-released at the ***three-quarter point*** of your sentence (your original licence expiry date). If the offence leading to your sentence was before 30 September 1998 then your release will be unconditional and you will not be on licence. If the offence was on or after 30 September 1998 you will be released at the three-quarter point of your sentence on licence again until the end of your sentence. This means you can be recalled again. If you are recalled again you can again make representations to the Parole Board as set out above. If the Board refuses to direct your release you are entitled to be released unconditionally at your sentence expiry date.
- If the offence leading to your sentence occurred on or after 4 April 2005, you will only be released before your sentence expiry if the Parole Board directs it, either the first time it considers your case or at a further review. You are entitled to unconditional release at your sentence expiry date.

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