

## Prisoners Advice Service - Information Sheet

### Recall to Prison

Anyone released from prison on licence can be recalled if they breach their licence conditions. Recall can result in you remaining in prison for the whole of your licence period until your sentence end date (SED) or, indefinitely if you are an Indeterminate Sentenced Prisoner (ISP)

The recall procedure is set out in the Recall, Review and Re-Release of Recalled Prisoners Policy Framework re-issued in October 2021. A copy should be available in the prison library.

Legal Aid is available for recall cases.

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

The power to recall you to prison arises if your licence is revoked. The recall decision is made by the Public Protection Casework Section (PPCS) on behalf of the Secretary of State for Justice (SSJ) following a request from your probation officer. Common reasons for recall are failure to attend probation appointments or an allegation that you have committed a further offence (which amount to a breach of the requirement to be of good behaviour and not to do anything that undermines the purposes of being on licence).

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

#### ***Recall criteria for those on Determinate Sentences:***

Emergency recall procedures can be used if there is imminent risk of serious harm (RoSH), imminent risk of reoffending, they are MAPPA level 3 or a Critical public protection case.

Probation officers must consider whether to seek recall in cases where:

- a person has breached the conditions of their licence;
- a person's behaviour indicates that they present an increased or unmanageable RoSH to the public;
- there is an imminent risk of further offences being committed;
- contact between the OM and a person has broken down;
- they have reason to believe that a person is actively thinking about re-offending.

#### ***Recall criteria for those on Indeterminate sentences or Extended sentences (EPP, EDS)***

These offenders can only be recalled using emergency recall procedures and are ineligible for fixed term recall.

Probation officers must demonstrate a "causal link" between current behaviour and that at the time of the index offence. One of the following criteria must be met:

- Exhibits behaviour similar to behaviour surrounding the circumstances of the index offence;
- Exhibits behaviour likely to give rise (or does give rise) to a sexual or violent offence;
- Exhibits behaviour associated with the commission of a sexual or violent offence; or
- Is out of touch with probation and the assumption can be made that any of (i) to (iii) may arise.

Probation officers must also ensure there is evidence of RoSH to the public. This is determined using the 'life and limb' test.

Probation officers must also consider recall if they believe you are actively thinking about re-offending. The test for requesting recall is whether the RoSH or risk of reoffending can be managed in the community.

#### ***Allegations of further offences***

Where there are allegations of further offending, a decision to request recall must be based upon the person's reported behaviour. There is no requirement to wait for the outcome of police investigations or criminal procedures.

But, if remanded in custody on a new charge, the Community Offender Manager (COM) must consider whether in the event the charge is dropped and the offender released, risk could be managed. If so, recall may not be appropriate.

#### ***Home Detention Curfew (HDC) recalls***

The PPCS is responsible on behalf of the SSJ for authorising a recall, or to issue a warning letter or take no further action. When requesting the recall of a person on HDC for breach of standard licence conditions, probation officers will follow the requirements for recalling DS prisoners above.

#### ***Fixed Term recall (FTR)***

If you are not assessed as posing a RoSH to the public and you are not on an indeterminate sentence, EDS or EDD you can be considered for fixed term recall.

If serving a sentence of less than 12 months and you are given a FTR, it will be a 14 day fixed term, if serving over 12 months, it will be 28 days.

If new information suggests you would present RoSH if released at the end of the FTR, the recall can be converted to a 'standard recall'. If so, you must be notified immediately and provided with the updated version of the recall dossier. You may make representations.

If, following recall, probation assesses you as safe to be released before the end of the FTR period, they must submit a Part B and Part C report recommending executive release to the PPCS. Part B must be submitted no later than 15 working days. Probation must also complete a Part C report and submit it to the PPCS and it should contain clear timescales for release plans and an up to date risk management plan.

Prisons must ensure that FTR prisoners are re-released automatically on licence at the end of the FTR period unless they reach the sentence expiry date (SED) first. Where a prisoner has been released early on HDC and then received a 14/28 day FTR, prisons must ensure they are released on the 14th/28th day or CRD, whichever is later.

### **Standard recall**

If your recall is Standard, you can only be released before your sentence end if either the SSJ or the PB directs your release and, if they are satisfied that your risk can be safely managed in the community.

### **What happens after you are recalled?**

On return to custody, you must be informed of the reasons for your recall and given a recall dossier which your Prison Offender Manager (POM) should explain to you. You must be informed that you can make representations about your suitability for re-release and the deadline for representations. If financially eligible, you are entitled to legal aid. Prisons must ensure that you are provided with an official list of legal aid lawyers and the opportunity to make a legal telephone call.

The SSJ may direct review and re-release of a standard recalled prisoner at any time if requested by probation. Standard recalled prisoners still in custody after 28 days will be subject to a statutory Parole Board (PB) review. You may make representations. The PB will disclose its decision to all parties. The PB can:

- Direct immediate release
- Direct future release and provide a date;
- Make no directions for release; or
- Send the case to an oral hearing.

Determinate sentenced prisoners, including those serving extended sentences, must have their detention reviewed annually by the PB.

### **What if I am unhappy with the decision made at**

### **a paper hearing?**

The PB should give reasons for its decision. If you are unhappy with a decision made on paper you have the right to ask the PB to reconsider your case either on the papers or at an oral hearing. There is no right to be granted an oral hearing but the case of *Osborn & Others v Parole Board* in 2013 decided fairness to the prisoner should be the overriding consideration.

If you have an oral hearing it will be held either via phone or video link, or in person at the prison in which you are located. Your POM and OM (outside probation officer) will be asked to give evidence. Legal aid covers representation at the hearing.

### ***What if the Board refuses to release me after an oral hearing?***

If you are an ISP, on an extended sentence, (EDS or EPP) or SOPC see below for the reconsideration process. In some circumstances you may also have grounds to challenge the decision by judicial review in the Administrative Court. There is a 3 month time limit, Legal aid is available subject to means and the merits of the case.

If on a determinate sentence, the decision can only be challenged by judicial review as above.

### **Reconsideration of Parole Board decisions**

There is a 21 day reconsideration period following PB decisions for ISP, EDS, EPP and SOPC prisoners in which the decision is provisional and PB can be asked to reconsider it by the victim or their family, the SSJ or by you. The period can be extended or, exceptionally reduced. This means you cannot be released until the decision is confirmed after 21 days. It also gives you 21 days to ask for reconsideration of a decision you do not think is fair.

### **Further reviews if not released**

If you are not released, the PB must review your detention annually.

### ***What about after the licence period ends?***

You cannot be recalled once your licence ends. However, if you are serving a determinate sentence of more than a day but under 2 years, you will be subject to post-sentence supervision for 12 months after your CRD. Breaches are dealt with by the magistrates' court which may: send you to prison for up to 14 days; impose a fine or impose a 'supervision default order' requiring either you do unpaid work or obey an electronically monitored curfew. You have a right of appeal to the Crown Court.

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