Draft Order laid before Parliament under section 330(5)(a) of the Criminal Justice Act 2003 (c. 44), for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2025 No.

PRISONS, ENGLAND AND WALES

The Criminal Justice Act 2003 (Suitability for Fixed Term Recall) Order 2025

Made - - - - ***

Coming into force in accordance with article 2

The Secretary of State makes this Order in exercise of the powers conferred by sections 256AZB(1)(a) and (2), 330(3) and 330(4)(a) of the Criminal Justice Act 2003(**a**).

In accordance with section 330(5)(a) of that Act, a draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, extent and application

1.—(1) This Order may be cited as the Criminal Justice Act 2003 (Suitability for Fixed Term Recall) Order 2025.

(2) This Order extends to England and Wales.

(3) This Order applies to a person who—

(a) has been recalled under section 254(1) of the Criminal Justice Act 2003 before 2nd September 2025,

(b) immediately before 2nd September 2025 is being, or is liable to be, detained in pursuance of the sentence as the result of having been so recalled, and

(c) is not being dealt with in accordance with section 255B of that Act following consideration of the person's case by the Secretary of State under section 255A(2) of that Act,

as well as applying to a person recalled on or after that date.

Commencement

2.—(1) Subject to paragraph (2), this Order comes into force on 2nd September 2025.

(2) In relation to persons who—

(**a**) 2003 c. 44. Section 256AZB was inserted by section 137 of the Police, Crime, Sentencing and Courts Act 2022 (c. 32), and was amended by section 59(7) of the Victims and Prisoners Act 2024 (c. 44), but the amendment is not relevant to the power contained in section 256AZB(1)(a) and (2).

(a) have been recalled under section 254(1) of the Criminal Justice Act 2003 before 2nd September 2025,

(b) immediately before 2nd September 2025 are being detained in pursuance of the sentence as the result of having been so recalled, and

(c) are not being dealt with in accordance with section 255B of that Act following consideration of the person's case by the Secretary of State under section 255A(2) of that Act,

the amendments made by this Order have effect on and after the relevant day.

(3) In paragraph (2), "the relevant day" means—

(a) subject to sub-paragraph (b)—

(i) 2nd September 2025, where the person's sentence expiry date is on or before 30th November 2025;

(ii) 9th September 2025, where the person's sentence expiry date is after 30th November 2025 but on or before 28th February 2026;

(iii) 16th September 2025, where the person's sentence expiry date is after 28th February 2026 but on or before 30th April 2026;

(iv) 23rd September 2025, where the person's sentence expiry date is after 30th April 2026 but on or before 31st July 2026;

(v) 28th October 2025, where the person's sentence expiry date is after 31st July 2026 but on or before 30th November 2026;

(vi) 25th November 2025, where the person's sentence expiry date is on or after 1st December 2026;

(b) where the person is being detained in pursuance of the sentence as a result of the Parole Board having decided, following a reference under section 255C(4) of the Criminal Justice Act 2003, that the person is unsuitable for release, the later of—

(i) the day after the last day of the period of 56 days beginning with the day after the day on which the decision was made, and

(ii) the day determined in accordance with sub-paragraph (a).

(4) In paragraph (3) "sentence expiry date", in relation to a person, means—

(a) the date on which the sentence or term of imprisonment they are serving expires, or

(b) in the case of a person serving more than one sentence or term of imprisonment, the latest date on which any sentence or term of imprisonment they are serving expires.

Further release after recall: suitability for automatic release

3.—(1) The Criminal Justice Act 2003 is amended as follows.

(2) Section 255A (further release after recall: introductory)(**a**) is amended as set out in paragraphs (3) to (5).

(3) In subsection (4), for paragraph (a) (but not the "or" following it) substitute—

"(a) the person meets the conditions in subsection (4ZA),".

(4) After subsection (4) insert—

"(4ZA) The conditions referred to in subsection (4)(a) are—

(**a**) Section 255A was substituted by section 114 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Subsections (4) and (4A) were substituted by S.I. 2024/408.

(a) that the person is aged 18 or over;

(b) that the person is serving a sentence of less than four years;

(c) that the person is not serving a sentence in respect of an offence listed in Schedule 19AA (offences where offender not suitable for automatic release);

(d) that the person is not serving a fixed-term sentence imposed in respect of an offence within section 247A(2)(**a**) (terrorist prisoners);

(e) that the person does not fall within paragraph (aa) or (c) of section 325(2) (relevant terrorist offenders, etc);

(f) that the person has not been recalled on account of being charged with an offence;

(g) that the person is not being managed at level 2 or 3, as specified in guidance for the time being issued under section 325(8), by a responsible authority under arrangements made under that section (arrangements for assessing etc risks posed by certain offenders).".

(5) Omit subsection (4A).

(6) In section 255B(10)(**b**) (automatic release), for the words from "the Secretary of State" to the end substitute "the Secretary of State—

(a) receives information that results in a determination that P may be at risk of involvement in terrorism-related activity (within the meaning of section 325(9)),

(b) receives information that, after being recalled, P has been charged with an offence, or

(c) receives information that results in a determination that, if released at the end of the automatic release period, P would be managed at level 2 or 3, as specified in guidance for the time being issued under section 325(8), by a responsible authority under arrangements made under that section (arrangements for assessing etc risks posed by certain offenders).".

(7) After Schedule 19A, insert Schedule 19AA, which is set out in the Schedule to this Order.

Secretary of State
Ministry of Justice

(**a**) Inserted by section 1(2) of the Terrorist Offenders (Restriction of Early Release) Act 2020 (c. 3). Amended by paragraphs 9(4), 21(4) and 45(2) of Schedule 13 to the Counter-Terrorism and Sentencing Act 2021 (c. 11), section 27(2) of that Act, paragraph 226 of Schedule 24 and paragraph 226 of Schedule 41 to the Sentencing Act 2020 (c. 17) and section 144(8) of the Police, Crime, Sentencing and Courts Act 2022 (c. 32).

(**b**) Subsection (10) was inserted by S.I. 2024/408.

SCHEDULE

Article 3

"SCHEDULE 19AA

Section 255A(4ZA)

OFFENCES WHERE OFFENDER NOT SUITABLE FOR AUTOMATIC RELEASE

1 An offence under the Official Secrets Act 1911(**a**).

2 An offence under the Official Secrets Act 1920(**b**).

3 An offence under the Official Secrets Act 1989(**c**).

4 An offence under section 13 of the Terrorism Act 2000(**d**) (uniform and publication of images).

5 An offence under section 21D(**e**) of that Act (tipping off: regulated sector).

6 An offence under section 36(2) of that Act (failure to comply with an order, etc of constable in connection with terrorist investigation).

7 An offence under section 51(2) of that Act (failure to move a vehicle when required to do so).

8 An offence under section 116(3) of that Act (failure to stop a vehicle when required to do so).

9 An offence under section 120B(**f**) of that Act (offences in relation to counter-terrorism financial investigators).

10 An offence under paragraph 3(7)(**g**) of Schedule 5 to that Act (wilfully obstructing a search of a cordoned area).

11 An offence under paragraph 14 of Schedule 5 to that Act (making a false or misleading statement in connection with terrorist investigation).

12 An offence under paragraph 15(4)(**h**) of Schedule 5 to that Act (wilfully obstructing an urgent search).

13 An offence under paragraph 16(3) of Schedule 5 to that Act (failure to comply with an urgent explanation notice: England and Wales and Northern Ireland).

14 An offence under paragraph 32(3) of Schedule 5 to that Act (failure to comply with an urgent explanation notice: Scotland).

(**a**) 1911 c. 28.
(**b**) 1920 c. 75.
(**c**) 1989 c. 6.
(**d**) 2000 c. 11. Section 13 was amended by section 2 of, and paragraph 36 of Schedule 4 to, the Counter-Terrorism and Border Security Act 2019 (c. 11).
(**e**) Inserted by S.I. 2007/3398 and amended by paragraph 75 of Schedule 8 to the Crime and Courts Act 2013 (c. 22).
(**f**) Inserted by section 42(1) of the Criminal Finances Act 2017 (c. 22).
(**g**) As amended by paragraph 2(2) of Schedule 17 to the National Security Act 2023 (c. 32).
(**h**) As amended by paragraph 2(3) of Schedule 17 to the National Security Act 2023 (c. 32).

15 An offence under paragraph 11 of Schedule 5A(**a**) to that Act (failure to comply with disclosure order or making false or misleading statement in purported compliance: England and Wales and Northern Ireland).

16 An offence under paragraph 21 of Schedule 5A to that Act (failure to comply with disclosure order or making false or misleading statement in purported compliance: Scotland).

17 An offence under paragraph 1(3)(**b**) of Schedule 6 to that Act (failure to comply with requirement to provide financial information).

18 An offence under paragraph 18(**c**) of Schedule 7 to that Act (port and border controls: failure to comply with duty, etc).

19 An offence under paragraph 15(**d**) of Schedule 5 to the Counter-Terrorism Act 2008 (breach of foreign travel restriction order).

20 An offence under paragraph 30(**e**), 30A(**f**) or 31(**g**) of Schedule 7 to that Act (offences relating to terrorist financing and money laundering).

21 An offence under paragraph 15 of Schedule 1 to the Counter-Terrorism and Security Act 2015(**h**) (failure to hand over travel documents or hindering a search).

22 An offence under paragraph 23 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019(**i**) (failure to comply with a duty relating to border security or obstructing a search).

23 An offence in relation to which the foreign power condition has been determined to have been met in relation to the conduct that constituted the offence under section 69A of the Sentencing Act 2020(**j**) (including as applied by section 238(7) of the Armed Forces Act 2006(**k**)).

24 An offence under the National Security Act 2023(**l**).

25 An offence to which section 16 of that Act applies.

26 An offence in relation to which the foreign power condition has been determined to have been met in relation to the conduct that constituted the offence under section 20 of that Act (aggravating factor where foreign power condition met: Northern Ireland).

27 An offence proved to have been aggravated by reason of the foreign power condition being met in relation to the conduct that constituted the offence under section 21 of that Act (aggravating factor where foreign power condition met: Scotland).

(**a**) Schedule 5A was inserted by paragraph 3 of Schedule 2 to the Criminal Finances Act 2017 (c. 22). Paragraph 11 was amended by S.I. 2022/500 and S.I. 2023/149.
(**b**) As amended by S.I. 2001/4019 and section 41(4) of the Criminal Finances Act 2017 (c. 22).
(**c**) As amended by S.I. 2011/1938.
(**d**) 2008 c. 28. Paragraph 15 of Schedule 5 was amended by S.I. 2023/149.
(**e**) As amended by section 145(5) and (6) of the Policing and Crime Act 2017 (c. 3), S.I. 2022/500 and S.I. 2023/149.
(**f**) As inserted and amended by section 145(7) and (8) of the Policing and Crime Act 2017 (c. 3), and as amended by S.I. 2022/500 and S.I. 2023/149.
(**g**) As amended by section 145(9) of the Policing and Crime Act 2017 (c. 3), S.I. 2022/500 and S.I. 2023/149.
(**h**) 2015 c. 6.
(**i**) 2019 c. 3.
(**j**) 2020 c. 17. Section 69A was inserted by section 19(2) of the National Security Act 2023 (c. 32).
(**k**) 2006 c. 52. Subsection (7) was inserted by section 22 of the National Security Act 2023 (c. 32).
(**l**) 2023 c. 32.

28 (1) An attempt to commit an offence specified in a preceding paragraph of this Schedule ("a listed offence").

(2) Conspiracy to commit a listed offence.

(3) An offence under Part 2 of the Serious Crime Act 2007(**a**) in relation to which a listed offence is the offence (or one of the offences) which the person intended or believed would be committed.

(4) Incitement to commit a listed offence.

(5) Aiding, abetting, counselling or procuring the commission of a listed offence.

29 A reference in any of the preceding paragraphs of this Schedule to an offence ("offence A") includes—

(a) a reference to an offence under section 70 of the Army Act 1955(**b**) or section 70 of the Air Force Act 1955(**c**) as respects which the corresponding civil offence (within the meaning of that Act) is offence A,

(b) a reference to an offence under section 42 of the Naval Discipline Act 1957(**d**) as respects which the civil offence (within the meaning given by that section) is offence A, and

(c) a reference to an offence under section 42 of the Armed Forces Act 2006(**e**) as respects which the corresponding offence under the law of England and Wales (within the meaning given by that section) is offence A,

and section 48 of the Armed Forces Act 2006 (attempts etc. outside England and Wales) applies for the purposes of paragraph (c) as if the reference in subsection (3)(b) to any of the following provisions of that Act were a reference to that paragraph."

(**a**) 2007 c. 27
(**b**) 1955 c. 18
(**c**) 1955 c. 19
(**d**) 1957 c. 33
(**e**) 2006 c. 52

EXPLANATORY NOTE

(This note is not part of the Order)

This Order primarily amends section 255A of the Criminal Justice Act 2003 (c. 44) ("the 2003 Act"). It also amends section 255B, and inserts Schedule 19AA into the 2003 Act.

Sections 255A to 255D of the 2003 Act provide for the release of prisoners after recall. Under section 255B recalled prisoners are automatically re-released after 28 days imprisonment (14 days if the sentence is less than 12 months). Recalled prisoners not suitable for automatic release are released under section 255C and are liable to imprisonment until the end of their sentence unless re-released earlier by the Secretary of State or the Parole Board. Section 255A identifies which process will apply to a prisoner and section 255A(4) and (4A) sets out the test for suitability for automatic release.

Articles 3(2) to 3(5) of this Order amend the test to be applied by the Secretary of State in determining whether a person is suitable for automatic release following recall. The previous test provided that those aged 18 or over and serving a sentence of less than 12 months must be automatically released, unless they are being managed under multi-agency public protection arrangements (MAPPA) level 2 or 3 or have been charged with a serious offence at point of recall, defined as murder or any offence listed in Schedule 18 to the Sentencing Act 2020. Article 3(3) replaces the criteria in section 255A(4)(a) with a reference to meeting the conditions in new section 255A(4ZA). Article 3(4) inserts section 255A(4ZA), which provides that a person will be suitable for automatic release where they are 18 or over, serving a sentence of less than four years, not serving a sentence for an offence listed in new Schedule 19AA, not a relevant terrorist offender under section 325 of the 2003 Act, not serving a sentence for an offence in section 247A(2) of the 2003 Act, not recalled in connection with a further offence, and not managed at MAPPA level 2 or 3. Article 3(5) is a consequential amendment to the insertion of section 255A(4ZA).

Article 3(6) of this Order amends section 255B(10), which applies after an offender has been informed they will be released at the end of the automatic release period. The section is amended to provide that, where the offender has been charged with a further offence, or where the Secretary of State determines that the offender would be a relevant terrorist offender within section 325(2) (relevant terrorist offenders, etc) or be managed at MAPPA level 2 or 3 if released at the end of the automatic release period, the Secretary of State may direct that the person will not be released on that date, and instead will be released under section 255C.

Article 3(7) of this Order inserts Schedule 19AA into the 2003 Act, which contains the list of offences which are not suitable for automatic release.

A full Impact Assessment has been prepared for this instrument and will be published on the legislation.gov.uk website.

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