EXPLANATORY MEMORANDUM TO

THE CRIMINAL JUSTICE ACT 2003 (SUITABILITY FOR FIXED TERM RECALL) ORDER 2025

2025 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Rt Hon Shabana Mahmood MP, Lord Chancellor and Secretary of State at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

2.2 Claire Fielder, Director for Youth Justice and Offender Policy, at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Fiona King, Head of Recall Policy at the Ministry of Justice can be contacted with any queries regarding the instrument at Fiona.King1@justice.gov.uk

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Instrument amends the criteria which determine whether offenders serving a determinate sentence are suitable for automatic release following recall ("fixed term recall") or can be liable to be detained until the end of their sentence, subject to earlier re-release by the Secretary of State or Parole Board ("standard recall"). The test is being amended to mandate the application of fixed term recall for offenders who are aged 18 or over at the point of recall and serving a sentence of under four years.

4.2 This does not apply to offenders who are managed at level 2 or 3 under the Multi Agency Public Protection Arrangements ("MAPPA"), those who have been recalled on account of being charged with an offence, those who have been convicted of terrorism or terrorism connected offences, or who pose a terrorist risk, or those who have been convicted of the national security offences listed in the schedule to the Order. Such offenders will continue to be considered suitable for automatic release only if the Secretary of State is satisfied that the person will not present a risk of serious harm to members of the public if released at the end of their fixed term recall.

4.3 The Order also amends the circumstances in which the Secretary of State can move an offender from fixed term recall into a standard recall. Where a fixed term recall is mandated for an offender, the Order provides that the Secretary of State may determine that they are not suitable for automatic release where further information is received that the offender has been charged with a further offence, that they are a terrorist offender or pose a terrorist risk, or that on release at the end of the automatic release period they would be manage at level 2 or 3 under MAPPA.

4.4 The Order staggers commencement for those who, on 2 September 2025, are being detained following a recall, and will not commence for those who have been refused release by the Parole Board until at least 56 days has elapsed since the date of that decision. The Order will not apply to those recalled and in custody before commencement who are already serving a fixed term recall.

Where does the legislation extend to, and apply?

4.5 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.6 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

5.1 Recall is a measure that is available to His Majesty's Prison and Probation Service to bring an offender managed in the community, following release from prison, back to custody. This measure is used when offenders released from custody on licence breach their licence conditions or their risk is otherwise elevated such that they can no longer be managed safely in the community. When recalled, determinate sentence offenders either serve a fixed term recall, where they are released automatically after a fixed period in custody; or a standard recall, after which release may be directed only by the Parole Board or the Secretary of State. Under a standard recall an offender may be held in custody on recall to the end of their sentence.

5.2 In April 2024, the previous government introduced the Criminal Justice Act 2003 (Suitability for Fixed Term Recall) Order 2024, which, with some exceptions, mandated 14-day fixed term recalls for offenders over the age of 18 serving a determinate sentence of less than 12 months.

5.3 Recall continues to be a significant driver of prison demand, and this measure is needed to address this issue and avoid critical capacity being reached while long-term reforms are delivered.

5.4 This Order would mandate a 28-day fixed term recall (14 days for those serving a sentence of under 12 months), in cases where probation determines that recall is necessary, for offenders serving sentences of under 4 years, excluding:

5.5 Offenders managed under MAPPA levels 2 and 3. This includes higher risk offenders who need to be managed through formal multi-agency collaboration.

5.6 Offenders who have been convicted of terrorism or terrorism connected offences, as well as those who pose a terrorist risk.

5.7 Offenders who have been convicted of the national security offences listed in the Schedule to the Order.

5.8 Offenders who have been recalled on account of being charged with an offence.

5.9 Offenders under the age of 18 at point of recall. Offenders under 18 years old almost always serve Detention and Training Orders and if they breach the conditions of these orders they will return to court for a decision regarding recall – it is not a Secretary of State discretion. Children who could be affected by this order would be those who are sentenced under Section 250 of the Sentencing Code (youths convicted of certain serious offences) and receive a custodial sentence of under four years, however, it is very rare for such short sentences to be given for s250 offences and is likely only to

happen where there have been significant mitigations (e.g. significant learning disabilities). Given these are very rare cases, we consider it would be in the youth offender population's best interest to retain all options for recall in order to respond appropriately to the individual child's risk and consider what length of recall would best support the child's rehabilitation. Custody is regarded as the last resort for children, which means that children in youth custody have generally committed a serious offence and are generally high risk. This Order will apply to those recalled and in custody at the date of commencement, as well as to those recalled after commencement. However, it will not apply to those recalled and in custody before commencement who are already serving a fixed term recall. Commencement has been staggered in respect of prisoners detained as at 2 September 2025 pursuant to a recall. Where the Parole Board has made a decision in respect of such a prisoner that they should not be released, the change will not commence for them until at least 56 days have elapsed since the date of the decision.

5.10 This delivery of this Order will be managed by the local prison and probation services, so that they can be safely managed in the community. They can be recalled again if it is deemed necessary.

5.11 It was decided to apply the current mandation of fixed term recall, which only applies to those serving as sentence of under 12 months, to a wider group of offenders - those serving a sentence of under 4 years. However, in doing so we decided to provide some further safeguards, so on top of the exclusion of its application to those under 18, those managed under MAPPA levels 2 and 3 and those who have been recalled having been charged with an offence. We decided to also exclude those convicted of national security or terrorism offences as well as terrorist connected offences or those that pose a terrorist risk, and to delay the release of those refused release by the Parole Board.

5.12 Sections 255A to 255C of the 2003 Act provide for the release of determinate sentence prisoners after recall. There are two different release from recall schemes under these provisions. Under section 255B recalled prisoners are automatically released after 28 days imprisonment (14 days for sentences under 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) sets out the test for suitability for automatic release.

5.13 Sections 255A to 255C of the 2003 Act were originally inserted into the Act by the Criminal Justice and Immigration Act 2008 ("the 2008 Act") and then replaced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The 2008 Act first introduced the concept of a fixed term recall and the test as to which recall was appropriate. Prior to the 2008 Act all recalled offenders were liable to be detained until the end of sentence.

6. Legislative and Legal Context

How has the law changed?

6.1 The power to amend the test under section 256AZB was inserted by the Police, Crime, Sentencing and Courts Act 2022 and was last used in April 2024.

6.2 The current test under section 255A(4) is that fixed term recall only applies either if the offender is 18 or over, serving a sentence of under 12 months and is not managed

under MAPPA levels 2 or 3 or recalled for a serious further offence, or if the Secretary of State is satisfied that the person will not present a risk of serious harm to members of the public if released at the end of the automatic release period.

6.3 This instrument amends that test so that offenders must be given a fixed term recall if they are 18 or over at the point of recall, serving a sentence of under 4 years, not managed at level 2 or 3 under MAPPA and have not been recalled due to being charged with an offence. Those who have been convicted of terrorism or terrorism connected offences, or who pose a terrorist risk, or have been convicted of a national security offence listed in the Schedule to the Order are also excluded. Offenders who do not automatically qualify for automatic release will be considered under the current test, which remains unchanged.

Why was this approach taken to change the law?

6.4 The power was enacted to allow for such a change to be made by affirmative SI. Changing the test for fixed term recall can only be achieved through legislation. We considered whether we could achieve a similar behavioural change without legislation but concluded that it would not be possible to do so.

7. Consultation

Summary of consultation outcome and methodology

7.1 No consultation exercise has been conducted.

8. Applicable Guidance

8.1 Updates to operational guidance is being drafted and will be provided to prison and probation staff as is usual process.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 An Impact Assessment has been prepared and will be published alongside the Statutory Instrument.

Impact on businesses, charities and voluntary bodies

9.2 The impact on business, charities or voluntary bodies would mean an increase in support necessary from charity and voluntary organisations to support those in the community, who would otherwise be in custody. The probation service will continue to work closely with local partners, including the charity and voluntary organisations working with offenders in the community to manage the impact of this Instrument.

9.3 The legislation does not impact small or micro businesses.

9.4 The impact on the public sector would be an increased workload for the probation service. Although this will reduce the burden on the prison estate, probation officers will be managing additional offenders within the community. A more detailed assessment of the impact is set out in the Impact Assessment but we estimate this measure will create around 1,400 extra prison places.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is through recorded recalls and probation reporting. The numbers of prisoners recalled quarterly offender management statistics will be published on gov.uk.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 Rt Hon Shabana Mahmood MP, Lord Chancellor and Secretary of State at the Ministry of Justice has made the following statement regarding Human Rights.

"In my view the provisions of the Criminal Justice Act 2003 (Suitability for Fixed Term Recall) Order 2025 are compatible with the Convention rights".

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").