

insideinformation – fact sheet

Recall

Information courtesy of Matthew Bellusci of Petherbridge Bassra Solicitors Bradford

The power to recall you to prison arises when your licence is revoked. The recall decision is made by the Casework Section and the NOMS Public Protection Unit, usually following a request from the offenders Probation officer. When a recommendation for recall has been given there is legal power to arrest and return an offender to prison.

There are 3 types of recall

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. Offenders will be eligible for fixed term recall unless you are serving an extended sentence, serving a sentence imposed for a sexual or violent offence under s15 Criminal Justice Act 2003 or if an offender has been recalled before including a breach of Home Detention Curfew or if the same licence has been breached before. If you are suitable you will be released after 28 days only if there is no identifiable risk of serious harm based on the current OASys assessment. High or very high will be deemed unsuitable for Fixed Term release.

Standard Recall

Standard recall cases are appropriate for offenders that are not eligible for Fixed Term recall.

Emergency Recall

Emergency Recall is the same procedure as standard cases however, there is an identifiable risk of serious and or a risk of re offending is imminent and the risk is unmanageable.

Once recalled prisoner's return to prison, The Release and Recall section at the Ministry of Justice prepare a recall dossier. The dossier consists of a report from Probation of the reasons for recall. The dossier should be provided to the recalled prisoner upon its arrival at the prison. Once the dossier has been disclosed the offender can submit written representations submitting re release. It is advised to instruct a Solicitor to prepare the representations. They should be submitted to the Recall section. Probation should include a report, which should include a recommendation whether the offender should be released or remain in custody, if a recommendation for release is provided than an adequate risk management plan will be needed for the Parole Board to recommend release.

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 properly recalled. Even if they think you were correctly recalled it should release you if they are satisfied that you pose an acceptable risk to the public and that adequate risk management arrangements are in place.

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 Secretary of State for Justice 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.

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If an offender is dissatisfied with the outcome, you can ask the Parole Board to reconsider your continued detention. You can ask the Board for an Oral Hearing or another paper review.

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 a hearing is necessary or instruct the assistance of a Prison Law specialist. If an Oral Hearing is granted, it will go in to the listings team, who will arrange a hearing. There is no timescale for when a hearing should be listed. However, resource issues at the Parole Board can cause excessive delay. If the delay is excessive, then in order to obtain a hearing Solicitors may have to issue Judicial Review Proceedings, however, presently there needs to be special circumstances and a likelihood of release for permission of Judicial Review to granted due to a recent judgment, in *Rota (Betteridge) v Parole Board* [2009] However, each case will need to be considered as all cases are different.

At an Oral Hearing the same release test applies, in that the Parole Board must be satisfied that there is no risk of reoffending or risk to the public. The Board will have the same decisions available to them as set out above.

When will I be released following recall, if the Parole Board does not recommend release?

This is dependant upon when the sentence for the index offence was imposed. If you were sentenced before 4 April 2005, you will fall under the Criminal Justice Act 1991.

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 of that Act if you are recalled after 14 July 2008, you will fall under the Criminal Justice Act 2003 and you could remain in prison until your Sentence Expiry Date or on licence until that time if released by the Parole Board.

If you were sentenced after 4 April 2005, you fall under the Criminal Justice Act 2003 as amended by the Criminal Justice and Immigration Act 2008 and you will be subject to the terms of the release provisions of that act.

For further information, offenders should consider PSO 6000 chapter 7 and also consider PSI 48/2007.

IMPORTANT NOTICE

Information is given on a strictly 'without-liability' basis, and should be considered for use as guidance only. If you propose taking further action based upon this information you are strongly advised to take further and more specific legal advice before doing so.

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