

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 3: Sentencing and punishment of offenders

Chapter 4: Release on licence etc

Further release after recall

Section 114: Further release after recall

557. **Section 114** replaces section 255A to 255D of the 1991 Act, which provide for the release of prisoners after recall, with new sections 255A to 255C. There are two different recall schemes under these provisions. Under section 255B prisoners, if not released executively or by the Parole Board within 28 days, are released at the completion of 28 days detention. Under section 255C prisoners are subject to detention to the end of their sentence unless released executively or by the Parole Board. Section 255A identifies which scheme will apply to a prisoner and sets out the criteria for suitability for automatic release. Recalled prisoners serving extended sentences and those not suitable for automatic release will be dealt with under section 255C.
558. The changes made by the substituted provisions are as follows:
- The combination of the previous section 255C and 255D allows for the executive release of recalled extended sentence prisoners.
 - The re-writing of section 255B removes previous restrictions on automatic release for certain categories of prisoner so that such prisoners may be considered for automatic release if they are assessed as sufficiently low risk and suitable.
 - New sections 255B(6) and (7) and 255C(6) and (7) prevent prisoners recalled during their HDC period from being re-released prior to their automatic release date unless satisfactory arrangements for further HDC electronic monitoring can be put in place. These are prisoners who have been released on HDC under section 246 and recalled under section 254.
 - New section 255B(8) and (9) allows for the Secretary of State, on receipt of new information, to alter the basis of the recall, so that an offender originally intended for automatic release will be dealt with under the standard release provision (section 255C).
559. The amendment to section 244(1) of the 1991 Act by *subsection (2)* of section 115 makes it clear that for those serving a sentence of 12 months or more a recall under section 254 can override the automatic release date at the half-way point of the sentence. This means where the 28-day automatic recall period ends after the duty to release at the half-way point under section 244, the full 28 days can be served before release.

These notes refer to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) which received Royal Assent on 1 May 2012

Similarly, the duty to release at the half-way point will not apply if the Parole Board has not directed release under section 255C.