

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT CRIMINAL JUSTICE ACT 2003  
(SUITABILITY FOR FIXED TERM RECALL)  
ORDER 2024

*Monday 11 March 2024*

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**The Committee consisted of the following Members:**

*Chair:* MARK PRITCHARD

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| † Argar, Edward ( <i>Minister of State, Ministry of Justice</i> )    | † Mills, Nigel ( <i>Amber Valley</i> ) (Con)                     |
| † Cadbury, Ruth ( <i>Brentford and Isleworth</i> ) (Lab)             | † Quince, Will ( <i>Colchester</i> ) (Con)                       |
| † Crouch, Tracey ( <i>Chatham and Aylesford</i> ) (Con)              | † Simmonds, David ( <i>Ruislip, Northwood and Pinner</i> ) (Con) |
| † Ellis, Sir Michael ( <i>Northampton North</i> ) (Con)              | † Smith, Julian ( <i>Skipton and Ripon</i> ) (Con)               |
| Gardiner, Barry ( <i>Brent North</i> ) (Lab)                         | † Strathern, Alistair ( <i>Mid Bedfordshire</i> ) (Lab)          |
| † Gibb, Nick ( <i>Bognor Regis and Littlehampton</i> ) (Con)         | † Timms, Sir Stephen ( <i>East Ham</i> ) (Lab)                   |
| † Jones, Gerald ( <i>Merthyr Tydfil and Rhymney</i> ) (Lab)          | † Vara, Shailesh ( <i>North West Cambridgeshire</i> ) (Con)      |
| † Mann, Scott ( <i>Lord Commissioner of His Majesty's Treasury</i> ) | Yasin, Mohammad ( <i>Bedford</i> ) (Lab)                         |
| Mearns, Ian ( <i>Gateshead</i> ) (Lab)                               | Bethan Harding, <i>Committee Clerk</i>                           |
|  | † <b>attended the Committee</b>                                  |

## First Delegated Legislation Committee

Monday 11 March 2024

[Mark Pritchard *in the Chair*]

### Draft Criminal Justice Act 2003 (Suitability for Fixed Term Recall) Order 2024

6 pm

**The Minister of State, Ministry of Justice (Edward Argar):** I beg to move,

That the Committee has considered the draft Criminal Justice Act 2003 (Suitability for Fixed Term Recall) Order 2024.

In October 2023, my right hon. and learned Friend the Lord Chancellor made a statement on prison capacity and, in that context, set out that the Government would review the use of recall to ensure that the system was working effectively and to consider how best to strike the appropriate balance between safely managing any risk posed by offenders and not having people in prison on recall for longer than necessary for that objective. This statutory instrument reflects that.

This Government stand on our record. We have increased sentences for causing death by dangerous driving, for causing or allowing the death of a child, and for assaulting emergency workers. We have ended automatic release for the worst offenders; now, serious sexual and violent criminals serve at least two thirds of their sentence in custody and the most dangerous spend the entirety of their sentence behind bars. We are ensuring that life means life. For the most disgusting and depraved killers, we are changing the law, to make whole-life orders the default sentence. As the Lord Chancellor announced in an oral statement to the House on 16 October, we are changing the law so that rapists and those convicted of equivalent sexual offences spend every day of the custodial part of their sentence in prison, where they cannot be a danger to the public.

This Government are increasing sentences for the worst offenders, while at the same time ensuring that short prison sentences do not ruin the redeemable. We are building the modern prison places needed to turn offenders' lives around for good, which helps to bring down crime in the longer term and means that fewer victims are created. We are also taking action to ensure that we have enough prison places in the future to continue upholding our duty to protect the public.

Recall—the focus of this SI—is a preventive measure available to the probation service to bring back to custody an offender managed on licence in the community following their release from prison. In the period from 2017 to 2023, the number of people in prison on recall rose by 85% and the average time an offender spent in custody following recall increased by about half. That is due to a number of different factors, including increased numbers of released offenders serving longer determinate sentences, changes to offender behaviour and more offenders being recalled on a standard—that is, indefinite—rather than a fixed-term basis and subsequently spending longer back in custody while waiting for a release decision from the Parole Board, if not the Secretary of State.

Probation officers can recall offenders for a range of reasons, including procedural reasons, and these could suggest that their risk while on licence had increased. Examples include failing to keep in touch, missing their curfew, being under the influence of alcohol if licence conditions prohibit that, and failing to reside at their agreed residence.

When recalled, offenders can be issued with a fixed-term recall of 14 days if they are serving a sentence of under 12 months, or of 28 days if they are serving a sentence of over 12 months, after which they are released automatically. Alternatively, offenders can be issued with a standard recall, which means that they are liable to remain in custody until the end of their sentence, unless they are subsequently cleared to be released sooner by the Secretary of State or the Parole Board.

For those serving short sentences, the reality is that there is often too little time for these reviews to take place before the end of their sentence and, as a result, offenders may be held in custody for longer than is actually necessary to protect the public and are then released at the end of their sentence without any licence conditions or the support crucial for rehabilitation and successful resettlement in the community. The period of release prior to the automatic sentence end can be crucial for managing and understanding risk and for achieving reintegration through the conditions of a licence.

Let me be clear: the draft instrument before us today is not a measure that means that prisoners will be released before they have served the part of their custodial sentence required by law. It is a largely technical measure to address recent changes of practice that we have seen in the recall system. It will help to rebalance the application of fixed term and standard recall and in doing so help restore a degree of proportionality in recall decisions and, crucially, give greater clarity and guidance to probation staff.

Since 2017 we have seen a 20 percentage point reduction in the use of fixed-term recall in the wider recall population, and a 27 percentage point reduction in the use of fixed-term recalls in the fewer than 12 months cohort. Given the rises in time spent on recall and the overall recall population, it is right that through this statutory instrument we offer greater clarity to probation practitioners on how we expect fixed-term recall to be used and to provide the legislative backing to give them certainty around the change.

The fixed-term recall order will apply to lower-level offenders who are aged 18 or over serving custodial sentences of fewer than 12 months and who are assessed as requiring recall.

**Shailesh Vara** (North West Cambridgeshire) (Con): The Minister speaks of lower-level crimes and earlier spoke of some very serious crimes. At what point will there be a threshold to determine what is lower level and what is more serious? Will there be guidance for the officials who decide which crime is lower level, and how will that decision be made?

**Edward Argar:** I am grateful to my right hon. Friend for that key point. I will conclude the remarks I was making and then address it.

The cohort of offenders that I have referred to will now be recalled to custody for a fixed period of 14 days and will then be re-released into the community—again, with licence conditions to mitigate risk. They will remain

eligible for re-recall by probation at any time should their risk become unmanageable or concerning in the community.

To my right hon. Friend's point, the order will not apply to higher-risk offenders who are managed under multi-agency public protection arrangements at levels 2 or 3, or who have been charged with a serious further offence under schedule 18 of the Sentencing Act 2020. The sorts of crimes listed under schedule 18 include—these are under the Offences against the Person Act 1861—threats to kill, malicious wounding, abandoning children and causing bodily injury by explosives. There is a whole range, but that gives my right hon. Friend their tenor and they are already listed in the schedule.

In such circumstances the offender will be eligible for a longer recall period and, if appropriate, will be remanded in custody. It is important to remember that this order applies only to those who have received a custodial sentence of fewer than 12 months, which also acts as a filter. Those who have committed the most serious crimes, such as violent and sexual crimes, will almost certainly—not always, but mostly—have received a much tougher custodial sentence reflecting the severity of their crime and thereby excluding themselves from consideration in these measures.

In conclusion, I want to express our deep gratitude for the efforts of all those working in the criminal justice system, including prisons, probation and the police. They deserve huge credit for their enormous commitment and professionalism. This draft instrument is a measure to address the recent changes of practice in the recall system, which is reflected in the fixed-term recall approach introduced in 2008. It will help rebalance the application of fixed term and standard recall and enable the system to work effectively, ensuring that we do not have people in prison on recall for longer than necessary, and it will allow probation to apply the licence conditions to manage risk in the community. This is a proportionate and reasonable measure. I commend it to the Committee.

6.8 pm

**Ruth Cadbury** (Brentford and Isleworth) (Lab): It is a pleasure to serve under you for the first time, Mr Pritchard.

This important SI will reduce from 28 to 14 days the time that an individual on a fixed recall must spend in prison. On its surface, this initiative may help address the overcrowding crisis in our prisons. Once again, however, the Government are rushing into yet another change that will put more pressure on our already overstretched probation services—which are a fundamental part of the criminal justice system—without giving them any extra support. Halving from 28 to 14 days the time that that already overstretched service, probation officers and charities will have to prepare each offender on release means that there will be less time to sort where that prisoner will stay, what they will do with their time, what income they will have, whether there will be any restrictions on where they can go, and whether an ankle monitor will need to be fitted.

Frontline probation workers are already under huge pressure, and this feels like yet another rushed change to the early release policy. We should remember that we are here today because of the prisons crisis that successive Conservative Ministers have caused.

**Shailesh Vara:** The hon. Lady is making an important point on the work levels of probation officers. However, does she agree that it is better that low-level offenders are not kept in prison unnecessarily for long periods, associating with more hardened criminals from whom they may pick up habits that would be to their detriment when they are released? It is better that they are outside if, all matters considered, they are of a low level. That is notwithstanding the pressures on the probation service; I recognise that problem, but it is one to be dealt with.

**Ruth Cadbury:** I agree with the principle that the right hon. Member mentions. However, we are talking about people who have been recalled—those who have been in prison, released and then recalled for some reason. It is a small part of the serious problem of the high level of reoffending, which we do not have time to go into today. We need to address the reoffending rate, but that is for a different debate.

I have a lot of respect for the Minister, but I believe that we have had a dozen Prison Ministers in the last decade. We have had more Ministers than new prisons. The prisons that we have are in a dreadful state: they have sewage in cells, urine on walls and, in the case of HMP Dartmoor, radioactive radon gas seeping in, which has resulted in the closure of more than 150 cells.

This SI is part of the Government's prompt response to the prisons crisis. As the right hon. Member for North West Cambridgeshire has said, it is shifting the pressure from prisons on to, as I have said, the overstretched probation service. Probation staff are overworked and undervalued, and we know that there are huge vacancies and problems with staff retention. The Minister will no doubt respond by saying that 2,000 new probation officers have been recruited, but we know that 19% of the new starters left within the first year.

Cases that require experience are being left to probation officers with too little of it and who have been in post only a few months, sometimes with tragic consequences. Many officers leave because they are stressed. Nearly 50,000 work days were lost in 2022 because of stress among probation staff.

Some of those being released early have committed offences relating to domestic abuse. I know that there are some exceptions in the SI, but will there be enough time to ensure that victims are informed before their release? As I have said, cutting from 28 to 14 days means that a lot will have to be done. Will there be time for that key element to be addressed on behalf of the victims?

Additionally, I have heard from probation officers that we are back to offenders being released early on a Friday afternoon, which is contrary to Ministry of Justice policy stating, quite rightly, that release must take place early in the week. We know that those Friday releases make it extremely difficult for probation staff and the charities that support the work to ensure that adequate housing and other support are in place as soon as the prisoner comes out of the gates. Can the Minister confirm that the MOJ still has a policy of no Friday releases from prison, and why is that not being fully implemented? Why am I hearing from probation officers that they are dealing with Friday releases?

One of the core functions of the probation service is public protection. We have seen warning after warning—there have been too many damning cases, whether it was

[*Ruth Cadbury*]

Damien Bendall, Jordan McSweeney or Joshua Jacques. Our probation service is at breaking point, and the public are the ones at risk from that. The Government have pointed to the Sentencing Bill as a way out of the crisis, but I am taking this opportunity to ask the Minister to confirm on the record when the Sentencing Bill will be returning. Can he confirm that Committee stage will be happening and, if so, when? Will he confirm that the Bill will not get pulled?

We have all read the latest account of blue on blue in *The Times* today, which suggested that No. 10 are dragging their feet because they are worried about their Back Benchers. I remind the Minister that we are in this Committee today because we do not have enough prisons or enough prison places—and that is because the Government have failed to stand up to their own Back Benchers with the new prison proposals.

This crisis is not victimless. The capacity crisis in prisons is also hitting victims of crime. As the reoffending rate continues to rise, prisoners are not getting the access they need to the classes, training or sessions that help to reduce their reoffending, improve their behaviour, treat their addiction or anger management and so on. This measure is not going to reduce reoffending if there has not been time to put together the elements of an essential support package once through the prison gate.

I also remind the Minister that the Government have acknowledged that the changes they are introducing to address the prison overcrowding crisis are putting huge pressures on our probation service but we have not seen any policy changes since October around probation. We have heard warm words, but we have seen no action.

Frontline probation officers are having to work on their days off and in their holidays in a frantic bid to keep the public safe, but they are being set up to fail. The Ministry of Justice and Ministers seem to be trying to pretend that there is no crisis and seem to be allergic to releasing information on these various schemes that are releasing prisoners early. Probation officers frankly do not have faith in the Government after 14 years of failure, and this SI is yet another admission of failure.

6.16 pm

**Edward Argar:** I am grateful to my right hon. Friend the Member for North West Cambridgeshire and to the shadow Minister, the hon. Member for Brentford and Isleworth, for their contributions. She and I may gently, hopefully politely, tussle with one another, whether in Committee or in the House, but she knows that I have a lot of respect for her. I want to put on the record at the outset my gratitude to the staff of the probation service, as the hon. Lady did.

I am afraid, however, that I have to correct the premise on which she built a large part of her speech. It is already the case that recall is 14 days for sentences under 12 months. This SI is not halving it from 28 days—that applies only to sentences of over 12 months. It is already 14 days for sentences under 12 months. Of course, that comes from the ability to have fixed-term recalls that was put in place by the Labour Government in 2008. Having standard and fixed-term recalls is a sensible measure, actually, and in a sense I welcome what they did then, but this is about making that work.

The hon. Member for Brentford and Isleworth talked about what would happen and whether it would put undue pressure on probation staff, which could see people released without sufficient time for their risk or licence conditions to be considered. I would make the point that these people would already be automatically released at this point. What we are talking about is what happens subsequently, should they breach any of the conditions on their licence.

The hon. Lady also raised broader points about the probation service, such as its capacity and how it is working. She and I are united in our respect and gratitude to the probation service for what they do; I do not think there will be any dispute between us on that. Where there may be a dispute, however, is in highlighting what we have done to address the workload of the probation service. In fact, we have had 4,000 new trainee probation officers going through the system since April 2020, who are being trained up and coming into the workforce, so we are supporting the service with staff. We are investing in community payback and in the probation service, with an extra £155 million. Of course, we are doubling the number of GPS tags that are being put in place. Alongside that, as the hon. Lady would expect, I am also looking at the workload of probation officers to see whether it contributes to rehabilitation and public protection. Those are hugely important tasks, and I want officers to be able to focus on those and their statutory obligations. I am also looking at the workload as a whole, and whether officers are doing things that do not contribute to those outcomes and that, therefore, they might not need to be doing.

On prison building, again, I would say to the hon. Lady that we have built two new prisons, with a third one being built, and I would very gently point to the track record of the last Labour Government, who promised three Titan prisons, providing 7,500 places. Did they build them? I am afraid they did not. The difference is that this is a Government who are actually getting on with building new prisons and, of course, providing new prison places—not just by building new prisons, but through rapid deployment cells and new house blocks on existing sites.

The hon. Lady talked about the Sentencing Bill and tried to tempt me to stray into territory that is, perhaps more properly, that of the Leader of the House or the Government Chief Whip. All I will say is that having known a number of Government Chief Whips well over the years, I am pleased that that is their job and not mine. I would not presume to respond on something that is more properly a matter for them.

I believe that what we are doing here is right. It is proportionate, and it is a sensible and pragmatic measure. The hon. Lady mentioned reoffending rates. Again, I have to say, in 2011-2012, rates were 31.3%; in 2021-2022, they were down to 25.2%. Reoffending rates are coming down, rather than going up. We are clear that there is always more to do, and that is why this Government have set out a clear programme to increase the capacity of our prisons and ensure that capacity pressures are addressed. This measure puts in place a pragmatic step to ensure we restore a degree of proportionality to the difference between fixed term and standard recall.

*Question put and agreed to.*

6.22 pm

*Committee rose.*



