



BRIEFING PAPER

Number 07437, 29 December 2015

Categorisation of prisoners in the UK

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Summary

The relevant prison rules for England and Wales, Scotland and Northern Ireland provide for prisoners to be assigned a security category or supervision level.

This briefing offers a short guide to prisoner categorisation in each jurisdiction.

Categorisation of prisoners in England and Wales centres around an assessment of risk and particularly the risk (and potential consequences) of escape. Categorisation in Scotland and Northern Ireland works in a broadly similar way.

At one end of the scale for adult male prisoners in England and Wales, Category A is for prisoners whose escape would be highly dangerous to the public or the police or the security of the State and for whom the aim must be to make escape impossible. At the other end of the scale, Category D is for those prisoners who present a low risk, can reasonably be trusted in open conditions and for whom open conditions are appropriate.

Although instructions to prison governors in England and Wales state very plainly that prisoners should not be recategorised simply to enable them to be moved to where there are spaces within the prison estate, the Prison Officers' Association has been alleging for some time that the recategorisation process is flawed, with unsuitable prisoners being sent to open conditions. This briefing also describes that controversy.

Another controversial issue has been the removal of legal aid from many areas of prison law in England and Wales, as part of ongoing reforms to legal aid. Legal aid is no longer available for challenges to recategorisation decisions, although is available for judicial review. It has been argued that this both leads to poorer quality decisions and makes it more difficult for prisoners to challenge those decisions.

Further briefings about prisons are available on [Parliament's topic page for prisons](#).

Further briefings about legal aid are available on [Parliament's topic page for legal aid](#).

1. England and Wales

Rule 7 of the Prison Rules for England and Wales allows for the classification of prisoners.¹

1.1 Adult male prisoners

For adult male prisoners, there are four security categories:

- Category A - Prisoners whose escape would be highly dangerous to the public or the police or the security of the State and for whom the aim must be to make escape impossible.
- Category B - Prisoners for whom the very highest conditions of security are not necessary but for whom escape must be made very difficult.
- Category C - Prisoners who cannot be trusted in open conditions but who do not have the resources and will to make a determined escape attempt.
- Category D - Prisoners who present a low risk; can reasonably be trusted in open conditions and for whom open conditions are appropriate.

Category A is divided into 3 sub-groups - potential, provisional and confirmed.² Category A prisoners' escape risk is assessed at one of three levels – standard, high and exceptional.³

Policy and practice on the categorisation and recategorisation of adult male prisoners is set out in [Prison Service Instruction \(PSI\) 40/2011](#).⁴ This PSI describes the purpose and principles of categorisation. One of these principles is that prisoners must be assigned to the lowest security category consistent with managing their needs in terms of security and control and must meet all the criteria of the category for which they are being assessed.⁵

One consequence for the prisoner of the categorisation decision is that that (together with other factors such as length of sentence) will determine the type of prison to which he can be allocated. The [Prisoners' Information Book](#), published jointly by the Ministry of Justice (MoJ) and Prison Reform Trust in 2008, suggests some other consequences of the prisoner's security categorisation:

There is a very brief summary of the categorisation process for prisoners on the gov.uk website under [Prison Life](#).

The Offenders' Families Helpline also provides [information on prisoner categories](#) in England and Wales and Scotland.

¹ *The Prison Rules 1999*, SI 1999/728 (as consolidated January 2010)

² PSI 5/2013, [The Identification, Initial Categorisation And Management Of Potential And Provisional Category A: Restricted Status Prisoners](#), 13 March 2013: para 2.4

³ PSI 5/2013, [The Identification, Initial Categorisation And Management Of Potential And Provisional Category A: Restricted Status Prisoners](#), 13 March 2013: para 2.8

⁴ PSI 40/2011, [Categorisation and Recategorisation Of Adult Male Prisoners](#), 1 September 2011

⁵ PSI 40/2011, [Categorisation and Recategorisation Of Adult Male Prisoners](#), 1 September 2011: para 3.1

What is your security category?

- Your security category is about what type of prisoner you are.
- Prison staff will look at things like whether you might harm others, or try to escape from prison, and how dangerous you would be if you did escape.
- Prison staff will decide which security category you should be in and then tell you.
- If you are in a high security category (like A or B) you will have less freedom in prison to do things than other prisoners. Prison staff will do more to check on you and to stop you escaping.
- Young offenders have different security categories to adult prisoners.⁶

1.2 Controversy surrounding recategorisation

Except for prisoners serving sentences of less than 12 months, those already allocated to Category D, and indeterminate sentence prisoners, there should be a regular review of categorisation. There is some provision for categorisation reviews outside the normal cycle.⁷

Much of the recent controversy has centred on whether, with a rising prison population and resultant pressures on the prison estate, adult male prisoners are being inappropriately placed in lower security categories, so that they may be sent to open prisons, where the pressure on the estate is less acute.

Many areas of prison law were taken out of scope for legal aid by changes introduced by regulations in December 2013. Thus, another area of controversy has been whether the unavailability of legal aid has made it more difficult for prisoners to challenge categorisation decisions.

Which prisoners are allocated to open prisons?

Category D prisoners are those who “can be reasonably trusted in open conditions”.

The Secretary of State has wide discretion to determine where prisoners should be held and whether or not they should be transferred to other prisons. Under section 12 of the *Prison Act 1952*, prisoners “may be lawfully confined in any prison”, and may be transferred to any other prison at the direction of the Secretary of State.

Prisons minister Andrew Selous, answering a PQ in December 2015, emphasised that progression to Category D is not automatic and public protection remains paramount:

Progression to open prisons is never automatic, and prisoners must generally be within two years of release before they can be considered for allocation. Public protection is paramount, only

In recent years, there has been some controversy about the categorisation and recategorisation process for adult male prisoners.

It has been claimed that the struggle to keep pace with rising prisoner numbers has led to some prisoners being inappropriately placed in lower security categories and reallocated to open prisons, which are not under such pressure. It has also been suggested that the unavailability of legal aid makes it more difficult for prisoners to challenge recategorisation decisions.

⁶ MoJ and Prison Reform Trust, *Prisoners' Information Book*, 2008: page 51

⁷ PSI 40/2011, *Categorisation and Recategorisation Of Adult Male Prisoners*, 1 September 2011: paras 5.5 and 5.9

those prisoners who are assessed as low risk of escape/abscond and low risk of causing harm to the public are transferred to an open prison.⁸

How are prisoners recategorised to Category D?

The recategorisation process starts from an assessment of risk; it looks for evidence of change since the last review in the risks a prisoner presents. It also aims to ensure that he continues to be held in the most appropriate security conditions:⁹

Recategorisation to a lower security category is not an automatic progression or right but must be based on clear evidence of reduction in previously identified risk levels to a level that is manageable in an establishment of the lower category.¹⁰

The PSI draws attention to factors that are particularly relevant when considering recategorisation to Category D:

In reviewing a prisoner's security category it is essential to look at the reasons why, at his last review, the prisoner was placed in the current security category. Only then is it possible to determine whether, and to what extent, circumstances may have changed to warrant a change in category. It is also important to consider the particular characteristics of the estate for which the prisoner is being assessed, taking account of physical security, supervision levels and regime availability. This is particularly important when considering whether to recategorise a prisoner to Category D. *Because of the particular characteristics of the open estate, recategorisation to Category D must be based on the prisoner's proven trustworthiness and manageable risks.*

Two years is considered to be the maximum time a prisoner should spend in open conditions. However, assessment of a prisoner's individual risks and needs may support earlier recategorisation to D. Such cases must have the reasons for their categorisation fully documented and confirmed in writing by the Governing Governor.¹¹

Have prisoners wrongly been recategorised to Category D?

Recategorisation to Category D has for several years proved a controversial issue. The PSI states very plainly that prisoners should not be recategorised simply to enable them to be moved to where there are spaces within the prison estate:

A prisoner's security category must never be adjusted to achieve a better match with available spaces within the estate.¹²

Nevertheless, the Prison Officers' Association (POA) has been alleging for some time that the recategorisation process is flawed, with unsuitable prisoners being sent to open conditions. Some of these concerns predate the issue of the latest PSI on categorisation and recategorisation in September 2011, but concerns remain.

⁸ [PO 19527, 17 December 2015](#)

⁹ PSI 40/2011, [Categorisation and Recategorisation Of Adult Male Prisoners](#), 1 September 2011: para 5.1

¹⁰ PSI 40/2011, [Categorisation and Recategorisation Of Adult Male Prisoners](#), 1 September 2011: para 5.3

¹¹ *Ibid.*: paras 5.3-4

¹² *Ibid.*: para 3.1.1

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In October 2006, press reports (based on a leaked memo) claimed that the then Home Secretary, John Reid's plans to move more prisoners into open conditions, to ease overcrowding in the prison estate, had been recognised by officials as increasing the risk of escape and absconding.¹³ In a statement to the Commons, John Reid described his plans for "maximum flexibility" to enable transfers to open conditions.¹⁴ Moreover (he argued) those prisoners who went to an open prison under this initiative would represent a lower risk than prisoners who had gone already, as they would be prisoners serving short sentences for non-violent and non-sexual crimes.¹⁵

In 2007, the National Association of Probation Officers and the POA drew attention to what they considered to be the inappropriate downgrading of prisoners which (they alleged) was being done to fill spaces in the open prison estate.¹⁶ At the POA's annual conference in May 2010, Pete McParlin of the POA's national executive committee (NEC) described open prisons as "a lottery".¹⁷ The issue of inappropriate recategorisation was raised again in a conference motion tabled by the NEC.¹⁸

The POA reiterated these concerns in 2014, when it argued that pressure on the system created by cost-saving measures had made prisons less secure and had enabled two prisoners to abscond:

Cost-saving measures have jeopardised the security of the prison service, according to the chairman of the Prison Officers Association.

(...)

Mr McParlin claimed that overcrowding had caused unsuitable prisoners to be moved to open prisons, 20 prisons had been closed and prison staff numbers had been reduced by 6,000 since 2010.¹⁹

The POA again voiced their concerns in 2015, after another prisoner absconded from an open prison:

Glyn Travis, a spokesman for the Prison Officers Association (POA), said the union has repeatedly raised concerns with the Ministry of Justice about dangerous inmates being moved to open prisons.

He said:

"Anyone who's in an open prison shouldn't be considered a risk to the public, they shouldn't be there if they are."

"We believe that prisoners who still pose a risk to the public are being sent to the open prison estate too early and therefore when

¹³ Will Woodward, "[Reid prepares for emergency measures to ease pressure on prisons as only 125 places remain](#)", *Guardian* online, 9 October 2006

¹⁴ [HC Deb 9 October 2006: c33](#)

¹⁵ [HC Deb 9 October 2006: c43](#)

¹⁶ Ben Fenton, "[Killers in open prisons to ease overcrowding](#)", *Daily Telegraph* online, 1 January 2007

¹⁷ POA, [71st Annual Conference 11 – 14 May 2010 Verbatim Report](#): page 30

¹⁸ *Ibid.* pages 181-2

¹⁹ "[Cost-saving claim over prisoner security - Prison Officers Association](#)", *BBC News* online, 19 May 2014

they abscond the police immediately alert the public that this person is a danger."

"Our concern is not the number of prisoners absconding, this is going down, but the type of prisoner absconding."²⁰

How can prisoners challenge recategorisation decisions?

Prisoners who have concerns about their categorisation might begin by making a complaint at the prison. The Prison Service's requests and complaints system is set out in Prison Service Order 2500 [Prisoners' Requests and Complaints Procedure](#).²¹ The [Prisoners' Information Book](#) offers advice to prisoners on the procedure and other avenues for raising concerns about various aspects of prison life, such as (where the complaint has not been resolved locally) a complaint to the Prisons and Probation Ombudsman (PPO).²²

The [Criminal Legal Aid \(General\) \(Amendment\) Regulations 2013](#) came into effect on 2 December 2013.²³ They set out to restrict the scope of criminal legal aid in prison law matters. The [Explanatory Notes](#) to the regulations speak of bearing down on the cost of legal aid and focussing on priorities:

The changes to the scope of criminal legal aid for prison law are intended to focus public resources on cases that are of sufficient priority to justify the use of public money. Alternative means of redress such as the prisoner complaints system should be the first port of call for issues removed from scope. The amendments aim to target limited public resources at the cases that really justify it, in order to ensure that the public can have confidence in the scheme.²⁴

In prison law matters, legal aid is now available only where there is an immediate impact on liberty, such as in sentence calculation. It is not available for recategorisation, although is available for judicial review. A paper for the Howard League for Penal Reform summarises the recent history of legal aid for prison law matters and the controversy surrounding the regulations:

In relation to the prison law proposals specifically, the Lord Chancellor was called to appear before the Joint Committee on Human Rights (JCHR) and the Justice Select Committee (JSC) to answer concerns, and Lord Pannick laid a motion of regret – the debate for which involved 15 MPs opposing the cuts, before the motion was withdrawn so as not to divide the House. The regulations were also opposed by Her Majesty's Inspector of Prisons, the Parole Board and the PPO.²⁵

The paper also argues that, although legal aid is available for judicial review, its availability at an earlier stage might improve the quality of the decision-making process and prevent mistakes:

Prisoners may challenge decisions about their treatment in prison through the requests and complaints system. They may also bring challenges at law, but legal aid is not available for matters of recategorisation.

²⁰ "[Warning from prison staff union after violent criminal absconds from jail](#)", *ITV News* online, 25 August 2015

²¹ 21 February 2002

²² MoJ and Prison Reform Trust, [Prisoners' Information Book](#), 2008: pages 110-117

²³ SI 2790/2013

²⁴ MoJ, *Explanatory Memorandum To The Criminal Legal Aid (General) (Amendment) Regulations 2013: 2013 No. 2790*: para 7.4

²⁵ Kushal Sood, [The role of the prison lawyer in balancing the scales of justice](#), Howard League What is Justice? Working Papers 11/2014: page 8

Governors under pressure will inevitably make mistakes, whether in favour of the prisoner or not. It is of note that in *Manning*²⁶ the prisoner was only legally aided for the judicial review and not for the initial negotiations with the Governor. Legal aid provision for the latter could have avoided the mistake being made altogether, and even where it had not, it would have conveyed the Claimant's point of view, with the benefit of a full and expert analysis of prison records. In other words, solicitors' categorisation representations assist both decision-makers and prisoners. This argument survives any conclusions that categorisation decisions do not comprise an assessment of civil rights, as discussed above.²⁷

1.3 Women prisoners

For women prisoners, the instruction setting out policy towards categorisation and recategorisation is [PSI 39/2011](#). Again, there are four security categories but they are not the same as those used for male prisoners:

2.1 Women prisoners may be held in one of four security categories

- Category A

Prisoners whose escape would be highly dangerous to the public or the police or the security of the state and for whom the aim must be to make escape impossible.

- Restricted Status

Any female, young person or young adult prisoner convicted or on remand whose escape would present a serious risk to the public and who are required to be held in designated secure accommodation

- Closed Conditions

Prisoners for whom the very highest conditions of security are not necessary but who present too high a risk for open conditions or for whom open conditions are not appropriate.

- Open conditions

Prisoners who present a low risk; can reasonably be trusted in open conditions and for whom open conditions are appropriate.²⁸

It is very rare for a woman prisoner to meet the criteria for category A, and so the highest security category in day to day use is usually *restricted status*. Separate procedural security arrangements apply to restricted status prisoners.²⁹

²⁶ *Manning, R (on the application of) v Secretary of State for Justice* [2013] EWHC 1821. Mr Manning was a prisoner who was approved for transfer to Category D conditions. That decision was revoked when the prison governor became aware that he had overlooked an outstanding confiscation order.

²⁷ Kushal Sood, *The role of the prison lawyer in balancing the scales of justice*, Howard League What is Justice? Working Papers 11/2014: page 13

²⁸ PSI 39/2011, [Categorisation And Recategorisation Of Women Prisoners](#). 1 September 2011

²⁹ PSI 8/2013, [National Security Framework: Category A Function: The Review of Security Category – Category A / Restricted Status Prisoners](#), 23 July 2014 (revised): para 2.9

1.4 Young male prisoners

For young male prisoners, the instruction setting out policy towards categorisation and recategorisation is [PSI 41/2011](#).³⁰ The four security categories used are those used for women prisoners.

³⁰ PSI 41/2011, [Categorisation And Recategorisation Of Young Adult Male Prisoners](#), 1 September 2011

2. Scotland

Rule 14 of the [Scottish Prison and Young Offenders Institution Rules 2011](#) allows the Governor to categorise prisoners.³¹ Rule 17 says that every prisoner must be assigned a supervision level. These are:

- High Supervision: A prisoner for whom all activities and movements require to be authorised, supervised and monitored by an officer.
- Medium Supervision: A prisoner for whom activities and movements are subject to limited supervision and restrictions.
- Low Supervision: A prisoner for whom activities and movements are subject to minimum supervision and restrictions, and who may be given the opportunity to participate in supervised or unsupervised activities in the community.

Rule 21 provides that, when there has been a review of the prisoner's supervision level, the prison governor must provide the prisoner with written notification of a proposed assignment to a different supervision level in certain circumstances, including where the prisoner is assigned a higher supervision level than previously or where certain long term prisoners or lifers are assigned any supervision level other than low supervision. The [Scottish Prison Rules \(Supervision Levels\) Order 2011](#) make provision for representations under Rule 21.

Information about prisons in Scotland is provided on the [Scottish Prison Service](#) website.

³¹ [The Prisons and Young Offenders Institutions \(Scotland\) Rules 2011](#), Scottish Statutory Instruments, SI 2011/331

3. Northern Ireland

Rule 9 of the [prison and young offenders centre rules for Northern Ireland](#) allows for prisoners to be classified, in accordance with directions from the Department of Justice.³²

Information about [prisons in Northern Ireland](#) is provided on the NI Direct website.

Information about the security categories used in Northern Ireland can be found in the [response to a freedom of information request](#) in March last year:

- **Category A** Prisoners whose escape would be highly dangerous to the public or the police or the security of the state, no matter how unlikely that escape might be, and for whom the aim of NIPS must be to make escape impossible.
- **Category B** Prisoners for whom the very highest conditions of security are not necessary, but for who escape must be made very difficult.
- **Category C** Prisoners who cannot be trusted in open conditions, but who do not have the resources or the will to make a determined escape attempt.
- **Category D** Prisoners who can be reasonably trusted in open conditions.
- **Category U** All remand, awaiting trial or awaiting sentence prisoners/inmates will be placed in Category U (Unclassified). The only exception is those remand prisoners/inmates identified as Category A. All remand prisoners will be reviewed if and when sentenced and allocated to the appropriate Category A-D above.³³

³² [Prison and Young Offenders Centres Rules \(Northern Ireland\) 1995](#). Statutory Rules of Northern Ireland 1995/8

³³ FOI Case No.14:62, 26 March 2014

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