



## **Release of Prisoners**

### **(Alteration of Relevant Proportion of Sentence) Order 2019**

#### **(and current release provisions)**

08<sup>th</sup> June 2020 – Presented by Colin Buckle

- Release provisions determine when a prisoner *will* be released or *might* be released from a sentence of imprisonment.

#### **Section 237 Criminal Justice Act 2003 – Fixed Term Prisoners**

This section defines the meaning of a ‘fixed term’ prisoner. A fixed term prisoner is a person serving a ‘determinate’ sentence. This includes section 91 sentences for those under the age of 18.

#### Note:

Fixed term prisoners include those serving a few weeks or many years. If the sentence is fixed in its term and is unaffected by other release provisions, the prisoner is subject to release either by way of section 244 or 243A of the Criminal Justice Act 2003.

#### **Section 244 Criminal Justice Act 2003 - Duty to Release Prisoners - Conditional**

This section provides the standard release provision where a sentence imposed is one of 12 months or more. Section 244 requires the Secretary of State to release a prisoner at the point that he or she has served the ‘requisite custodial period’. Subsection 3(a) of section 244 defines the ‘requisite custodial period’ as being one-half of the sentence imposed. The prisoner is then subject to licence conditions.

### **Section 243A Criminal Justice Act 2003 - Duty to Release Prisoners - Unconditional**

Section 243A must be read in conjunction with section 111 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which inserted amendments into section 243A.

Section 243A provides the standard release provision where a sentence imposed is one of less than 12 months. Section 243A provides for 'unconditional' release. Section 243A 244 requires the Secretary of State to release a prisoner at the point that he or she has served the 'requisite custodial period'. The 'requisite custodial period' is being one-half of the sentence imposed. The prisoner is then subject to unconditional release.

#### Note:

There might be circumstances where the Court imposes a sentence of less than 12 months imprisonment and the prisoner is released unconditionally but is then subject to ancillary orders such as a restraining order or sexual harm prevention order.

### **Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2019**

This section is in force for all sentences imposed on or after the 01<sup>st</sup> April 2020, irrespective of the date of the offence. The new regime does not apply to persons under the age of 18 at the time of sentence.

The 'alteration' relates to sections 244 and section 264 of the Criminal Justice Act 2003. *The critical point to note is that the standard release at 'one-half' has been replaced with 'two-thirds' where the sentence is 7 years or more for a qualifying violent or sexual offence.*

#### **Reference in section 244 of the 2003 Act**

3. In section 244 of the 2003 Act (duty to release prisoners), the reference to one-half in subsection (3)(a) is to be read, in relation to a prisoner sentenced to a term of imprisonment of 7 years or more for a relevant violent or sexual offence, as a reference to two-thirds.

### **What Constitutes a Violent or Sexual Offence for the Purposes of the Alteration?**

A “relevant violent or sexual offence”, is defined as one found within Part 1 or Part 2 of Schedule 15 of the Criminal Justice Act 2003.

<http://www.legislation.gov.uk/ukpga/2003/44/schedule/15>

(Note - it does not apply to the Specified Terrorism Offences in Part 3 of the Schedule).

*An example of the alteration and increase:*

D receives 6 years and 10 months for robbery – the fact that the sentence is under 7 years disqualifies it from the new provisions – the defendant serves half and so will be released at 3 years and 5 months.

However, an additional 2 months – taking the sentence to 7 years means that the alteration applies – the defendant will now serve 4 years and 8 months – a significant increase prior to release. Although the Judge only added 60 days – the time to be served prior to release has increased by 15 months!

#### **Reference in section 264 of the 2003 Act – Consecutive Sentences**

4. In section 264 of the 2003 Act (consecutive terms), the reference to one-half in subsection (6)(d) is now to be read, in relation to a sentence to a term of imprisonment of 7 years or more for a relevant violent or sexual offence, as a reference to two-thirds.

This section / alteration relates to consecutive sentences dealt with by section 264 (6)(d) of the Criminal Justice Act 2003. The previous provision under the Criminal Justice Act 2003 was that a prisoner, serving a standard determinate sentence, would be released after one-half of the total term imposed where there are two (or more) consecutive sentences.

E.g – the prisoner receives 9 years for robbery and 5 years for an offence of wounding with intent, committed on the same day. The sentences are ordered to run consecutively.

Under the Criminal Justice Act 2003 - subsection (6)(d) (the old law) – the total sentence is 14 years imprisonment and the defendant is entitled to be released after a period of one-half – 7 years to serve.

Under the Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2019, the robbery is a qualifying offence due to the fact that the sentence is one of 9 years. Robbery is found within schedule 15 and so is a qualifying ‘violent offence’. The defendant will now be released having served ‘two-thirds’ of the robbery but only ‘one-half of the sentence for wounding with intent.

The sentence of 9 years for robbery now requires the defendant to serve two thirds – i.e 6 years, under the new alteration to release. The defendant will then serve one half of the wounding offence.

The total sentence, after 01st April 2020 is 6 years plus 2 ½ years which totals 8 ½ years imprisonment prior to release.

Under the old law, the sentence to be served prior to release would have been 7 years. The alteration adds a further 18 months.

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### **When does the Alteration as of the 01<sup>st</sup> April 2020 Not Apply?**

- When the sentence is under 7 years
- When the offence is not in schedule 15
- When *separate release provisions apply*
- When the defendant is under the age of 18 at the time of sentence.

### **Separate Release Provisions**

#### **Extended Sentences – Imposed After the 13<sup>th</sup> April 2015**

Following the completion of two-thirds of the sentence – the offender will become ‘eligible’ for release and referred to the parole board. Release is then conditional and is a matter for the parole board.

Note:

The important difference between the ‘alteration’ of sentence after the 01<sup>st</sup> April 2020 is that at the conclusion of two-thirds of the altered sentence – the offender is released automatically. Where an extended sentence is imposed, the offender becomes ‘eligible’ for release but might not be released.

As a side note, if the parole board refuses to release the offender who then serves the full custodial element of the sentence, release is automatic.

#### **Extended Sentences – Imposed Prior to the 13<sup>th</sup> April 2015**

The same provision applies as above where the sentence is one of 10 years imprisonment or more, *or* the offence is found in schedule 15B of the Criminal Justice Act 2003. In this case, the offender will be ‘eligible’ for release at the two-thirds point, the decision will be taken by the parole board.

However, if the sentence was less than 10 years *and* is not in schedule B, the release at two thirds is automatic.

The ‘alteration’ of sentence after the 01<sup>st</sup> April 2020 does not apply where an extended sentence has been passed. The extended release provisions take precedence over the alteration sentence.

### **Offenders of Particular Concern**

The release provisions under section 236A of the Criminal Justice Act 2003 (offenders of particular concern) take precedence over the 'alteration' of sentence provisions. A defendant qualifies under section 236A if:

- a. A person is convicted of an offence listed in schedule 18A of the Criminal Justice Act 2003.
- b. The person was aged 18 or over when the offence was committed.
- c. The Court does not impose an extended sentence or imprisonment for life.

#### Example:

A person aged 18 or more is convicted of an offence contrary to section 5 of the Sexual Offences Act 2003 (rape of a child under 13). They then qualify as an 'offender of particular concern'.

The release provisions under section 236A are that the offender must be referred to the parole board at the half way point of the custodial element of the sentence. The parole board might then release the offender but might refuse.

If the parole board refuses to release the offender, the offender does not need to be referred until the second anniversary of the first referral (although the second referral could be considered prior to that date).

If the offender is not released and completes the full custodial element of the sentence, they will then be released automatically.

If the offender is a person aged 18 or more is convicted of an offence that is not within schedule 18A (rape for example) and the sentence is 6 years and 11 months, this will be a determinate sentence and release will be automatic at the half-way point.

If the offender is a person aged 18 or more and is convicted of an offence that is *not* within schedule 18A (rape for example) and the sentence is 7 years, the alteration provisions apply and this will mean automatic release after two-thirds have been completed.

### **A Note in Respect of Goodyear Applications**

On many occasions, we ask for a Goodyear in the hope the Judge will say “maximum 18 months” and then we know that we can mitigate towards a suspended sentence. Sometimes, we are simply looking for the Judge to say “if your lad pleads now, I will read the PSR and I will consider whether the sentence can be suspended”.

With these new provisions, if a Judge were to give an indication of ‘6 years and 11 months’, we should be thinking about whether this has become more attractive in particular circumstances. Running it to trial and getting 7 years would mean the new provisions apply. The difference between 6 years and 11 months and 7 years is considerable in respect of the time to be served.

18 St John Street  
Manchester M3 4EA  
DX: 728854 Manchester 4

Tel: 0161 278 1800  
Fax: 0161 278 8220  
Email: [crime@18sjs.com](mailto:crime@18sjs.com)

[www.18sjs.com](http://www.18sjs.com)