Draft Order laid before Parliament under section 330(5) of the Criminal Justice Act 2003, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2024 No.

CRIMINAL LAW, ENGLAND AND WALES

The Criminal Justice Act 2003 (Requisite and Minimum Custodial Periods) Order 2024

Made - - - - ***

Coming into force in accordance with article 1(2)

The Secretary of State makes the following Order in exercise of the powers conferred by sections 267 and 330(3) and (4) of the Criminal Justice Act 2003(**a**).

In accordance with section 330(5) of that Act a draft of this instrument has been laid before, and approved by resolution of, each House of Parliament.

Citation, commencement and extent

1.—(1) This Order may be cited as the Criminal Justice Act 2003 (Requisite and Minimum Custodial Periods) Order 2024.

(2) The Order comes into force on—

(a) 10th September 2024 for the purposes of determining the requisite custodial period or minimum custodial period in relation to—

(i) a sentence imposed on or after that date, or

(ii) a relevant sentence imposed before that date;

(b) 22nd October 2024 for the purposes of determining the requisite custodial period or minimum custodial period in relation to a sentence which—

(i) was imposed before 10th September 2024, and

(ii) is not a relevant sentence.

(3) This Order extends to England and Wales only.

Interpretation

2.—(1) In this Order "the 2003 Act" means the Criminal Justice Act 2003.

(2) A sentence is a "relevant sentence" for the purposes of this Order if—

(a) in a case where it is one of two or more consecutive sentences, the terms of those sentences are in aggregate less than 5 years,

(**a**) 2003 c. 44. Section 267 of the Criminal Justice Act 2003 was amended by paragraphs 5 and 15 of Schedule 14 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and S.I. 2020/157.

(b) in a case where it is one of two or more sentences which are wholly or partly concurrent, the term of each of those sentences is less than 5 years, or

(c) in any other case, the term of the sentence is less than 5 years.

Modification of sections 243A, 244 and 264 of the Criminal Justice Act 2003

3.—(1) Subject to paragraphs (4) to (6), in section 243A of the 2003 Act (duty to release certain prisoners serving less than 12 months) the reference in subsection (3)(a) to one-half of the sentence is to be read as a reference to 40 per cent of the sentence.

(2) Subject to paragraphs (4) to (6), in section 244 of the 2003 Act (duty to release certain prisoners not subject to special provision for release) the reference in subsection (3)(a) to one-half of the sentence is to be read as a reference to 40 per cent of the sentence.

(3) Subject to paragraphs (4) to (6), in section 264 of the 2003 Act (consecutive terms) the reference in subsection (6)(d) to one-half of the sentence is to be read as a reference to 40 per cent of the sentence.

(4) Paragraph (1), (2) or (3) does not apply in relation to a sentence within article 1(2)(a)(ii) if the person serving the sentence was not in custody or detention pursuant to the sentence on 10th September 2024—

(a) having been released under section 246 (power to release on licence) or 248 (power to release on compassionate grounds) of the 2003 Act, or

(b) having been removed from prison under section 260 of that Act (early removal of prisoners liable to removal from UK).

(5) Paragraph (1), (2) or (3) does not apply in relation to a sentence within article 1(2)(b) if the person serving the sentence was not in custody or detention pursuant to the sentence on 22nd October 2024—

(a) having been released under section 246 or 248 of the 2003 Act, or

(b) having been removed from prison under section 260 of that Act.

(6) Paragraph (1), (2) or (3) does not apply in relation to a sentence if it is—

(a) a sentence for an offence listed in the Schedule to this Order, or

(b) a sentence of 4 years or more for an offence listed in Part 1 of Schedule 15(**a**) to the 2003 Act.

(7) The reference in paragraph (6)(a) to an offence ("offence A") includes—

(a) an offence of attempting to commit offence A;

(b) an offence of conspiracy to commit offence A;

(c) an offence of incitement to commit offence A;

(d) an offence under Part 2 of the Serious Crime Act 2007 in relation to which offence A is the offence (or one of the offences) which the person subject to the sentence intended or believed would be committed;

(e) an offence of aiding, abetting, counselling or procuring the commission of offence A.

(8) A reference in paragraph (6) or (7)(a) to (e) to an offence ("offence B") includes—

(**a**) Paragraph 22A was inserted by, and paragraphs 64 and 65 were substituted by, section 2(1) to (4) of the Criminal Justice and Courts Act 2015 (c. 2). Paragraph 48A was inserted by paragraph 11 of Schedule 6 to the 2015 Act. Paragraph 57 was amended by paragraph 147(a) and (b) of Schedule 9 to the Protection of Freedoms Act 2012 (c. 9). Paragraphs 59A to 59D, 60A to 60C and 63B to 63F were inserted by section 138(1) to (4) of the Coroners and Justice Act 2009 (c. 25). Paragraphs 59A to 59D, 60A to 60C and 63B to 63F were repealed by paragraph 9(1) and (2) of the Counter-Terrorism and Border Security Act 2019 (c. 3). Paragraphs 60A and 60B were inserted by section 147(1)(a) of the Police, Crime, Sentencing and Courts Act 2022 (c. 32). Paragraph 63A was inserted by paragraph 64 of Schedule 10 to the Domestic Violence, Crime and Victims Act 2004 (c. 28) and amended by paragraph 6 of the Schedule to the Domestic Violence, Crime and Victims (Amendment) Act 2012 (c. 4). Paragraphs 63FA was inserted by paragraph 7 of Schedule 2 to the Domestic Abuse Act 2021 (c. 17). Paragraphs 63G and 63H were inserted by section 6(1) and (2) of the Modern Slavery Act 2015 (c. 30). Paragraphs 63I to 63M were inserted by paragraph 25 of Schedule 12 to the Space Industry Act 2018 (c. 5).

(a) an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 as respects which the corresponding civil offence (within the meaning given by the section in question) is offence B, and

(b) an offence under section 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of England and Wales (within the meaning given by that section) is offence B,

and section 48 of that Act (attempts etc. outside England and Wales) applies for the purposes of paragraph (b) as if the reference in subsection (3)(b) to any of the following provisions of that Act were a reference to that paragraph.

Application of provisions about release after recall to certain persons within article 3(4) or (5)

4.—(1) This article applies to a person ("P") in relation to whom any of paragraphs (1), (2) and (3) of article 3 would have applied but for the application of paragraph (4) or (5) of that article to P as a result of P's release under section 246 of the 2003 Act.

(2) The fact that any of paragraphs (1), (2) and (3) of article 3 would have applied in relation to P but for P's release is to be disregarded in determining—

(a) for the purposes of section 255A(10) of the 2003 Act (further release after recall), the requisite custodial period which P would have served under section 243A or 244 of that Act but for P's earlier release, and

(b) for the purposes of section 255B(6) or 255C(6) of the 2003 Act (curfew condition), the date on which P would (but for P's earlier release) have served the requisite custodial period for the purposes of section 243A or 244 of that Act.

Name
Date Ministry of Justice

SCHEDULE

Article 3(6)(a)

Excluded offences

Sexual offences

1. An offence under the Sexual Offences Act 1956(**a**).

2. An offence under section 128 of the Mental Health Act 1959(**b**) (sexual intercourse with patients).

3. An offence under section 1 of the Indecency with Children Act 1960(**c**) (indecent conduct towards young child).

4. An offence under section 4 of the Sexual Offences Act 1967(**d**) (procuring others to commit homosexual acts).

5. An offence under section 5 of that Act (living on earnings of male prostitution).

(**a**) 1956 c. 69.
(**b**) 1959 c. 72.
(**c**) 1960 c. 33.
(**d**) 1967 c. 60.

6. An offence under section 9 of the Theft Act 1968(**a**) of burglary with intent to commit rape.

7. An offence under section 54 of the Criminal Law Act 1977(**b**) (inciting girl under 16 to have incestuous sexual intercourse).

8. An offence under section 1 of the Protection of Children Act 1978(**c**) (indecent photographs of children).

9. An offence under section 170 of the Customs and Excise Management Act 1979(**d**) (penalty for fraudulent evasion of duty etc.) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876(**e**) (indecent or obscene articles).

10. An offence under section 160 of the Criminal Justice Act 1988(**f**) (possession of indecent photograph of a child).

11. An offence under section 3 of the Sexual Offences (Amendment) Act 2000(**g**) (abuse of position of trust).

12. An offence under the Sexual Offences Act 2003(**h**).

13. An offence under section 63 of the Criminal Justice and Immigration Act 2008(**i**) (possession of extreme pornographic images).

14. An offence under section 62 of the Coroners and Justice Act 2009(**j**) (possession of prohibited images of children).

15. An offence under section 69 of the Serious Crime Act 2015(**k**) (possession of paedophile manual).

16. An offence under section 2 of the Modern Slavery Act 2015(**l**) (human trafficking) committed with a view to exploitation that consists of or includes behaviour within section 3(3) of that Act (sexual exploitation).

Domestic abuse etc

17. An offence under section 42A of the Family Law Act 1996(**m**) (breaching non-molestation order).

18. An offence under section 2A of the Protection from Harassment Act 1997(**n**) (stalking).

19. An offence under section 4A(**o**) of that Act (stalking involving fear of violence or serious alarm or distress).

(**a**) 1968 c. 60. Section 9 was amended by section 26(2) of the Criminal Justice Act 1991 (c. 53) and paragraph 17 of Schedule 6 to the Sexual Offences Act 2003 (c. 42).
(**b**) 1977 c. 45.
(**c**) 1978 c. 37. Section 1 was amended by the Extradition Act 1989 (c. 33), S.I. 1995/127 and paragraph 24 of Schedule 6 to the Sexual Offences Act 2003 (c. 42).
(**d**) 1979 c. 2.
(**e**) 1876 c. 36. Section 42 was amended by Part 1 of Schedule 12 to the Customs and Excise Act 1952 (c. 44).
(**f**) 1988 c. 33. Section 160 was amended by S.I. 1995/127, S.I. 1995.1957, S.I. 2000/3302 and paragraph 24 of Schedule 26 to the Criminal Justice and Immigration Act 2008 (c. 4).
(**g**) 2000 c. 44. Section 3 was amended by paragraph 62 of Schedule 28 to the Civil Partnerships Act 2004 (c. 33).
(**h**) 2003 c. 42.
(**i**) 2008 c. 4. Section 63 was amended by section 37(2) of the Criminal Justice and Courts Act 2015 (c. 2) and section 50(2) of the Justice Act (Northern Ireland) 2016 (c. 21).
(**j**) 2009 c. 25.
(**k**) 2015 c. 9. Section 69 was amended by S.I. 2016/244 and S.I. 2023/149.
(**l**) 2015 c. 30.
(**m**) 1996 c. 27. Section 42A inserted by section 1 of the Domestic Violence, Crime and Victims Act 2004 (c. 28) and amended by S.I. 2023/149.
(**n**) 1997 c. 40. Section 2A inserted by section 111(1) of the Protection of Freedoms Act 2012 (c. 9).
(**o**) Section 4A inserted by section 111(1) of the Protection of Freedoms Act 2012 (c. 9) and amended by section 175(1)(b) of the Policing and Crime Act 2017 (c. 3), S.I. 2022/500 and S.I. 2023/149.

20. An offence under section 29 of the Crime and Disorder Act 1998(**a**) (racially or religiously aggravated assaults), where the offence that was racially or religiously aggravated was an offence under section 75A of the Serious Crime Act 2015(**b**) (strangulation or suffocation).

21. An offence under section 32(**c**) of the Crime and Disorder Act 1998 (racially or religiously aggravated harassment), where the offence that was racially or religiously aggravated was an offence under section 2A or 4A of the Protection from Harassment Act 1997.

22. An offence under section 75A of the Serious Crime Act 2015 (strangulation or suffocation).

23. An offence under section 76(**d**) of that Act (controlling or coercive behaviour in an intimate or family relationship).

24. An offence under section 363 of the Sentencing Code(**e**) (breaching restraining order).

25. An offence under section 39 of the Domestic Abuse Act 2021(**f**) (breach of domestic abuse protection order).

National security

26. An offence under the Official Secrets Act 1911(**g**).

27. An offence under the Official Secrets Act 1920(**h**).

28. An offence under the Official Secrets Act 1989(**i**).

29. An offence under section 13 of the Terrorism Act 2000(**j**) (uniform and publication of images).

30. An offence under section 21D(**k**) of that Act (tipping off: regulated sector).

31. An offence under section 36 of that Act (failure to comply with an order, prohibition or restriction).

32. An offence under section 51(2) of that Act (failure to move a vehicle when required to do so).

33. An offence under section 116 of that Act (failure to stop a vehicle when required to do so).

34. An offence under section 120B(**l**) of that Act (offences in relation to counter-terrorism financial investigators).

35. An offence under paragraph 3(**m**) of Schedule 5 to that Act (wilfully obstructing a search of a cordoned area).

36. An offence under paragraph 14 of Schedule 5 to that Act (making a false or misleading statement).

(**a**) 1998 c. 37. Section 29 was amended by paragraph 4(3) of Schedule 2 to the Domestic Abuse Act 2021 (c.17) and section 39(5) and (6) of the Anti-Terrorism, Crime and Security Act 2001 (c. 24).
(**b**) 2015 c. 9. Section 75A was inserted by section 70(1) of the Domestic Abuse Act 2001 (c. 17) and amended by S.I. 2022/500 and S.I. 2023/149.
(**c**) Section 32 was amended by paragraph 48 of Schedule 10 to the Domestic Violence, Crime and Victims Act 2003 (c. 28), Schedule 8 of the Police Reform Act 2002 (c. 30), paragraph 144(2) of Schedule 9 to the Protection of Freedoms Act 2012 (c. 9), section 175(2) of the Policing and Crime Act 2017 (c. 3) and section 39(5) and (6) of the Anti-Terrorism, Crime and Security Act 2001 (c. 24).
(**d**) Section 76 was amended by section 68 of the Domestic Abuse Act 2021 (c. 17) and S.I. 2023/149.
(**e**) 2020 c. 6.
(**f**) 2021 c. 17. Section 39 was amended by S.I. 2022/500 and S.I. 2023/149.
(**g**) 1911 c. 28.
(**h**) 1920 c. 75.
(**i**) 1989 c. 6.
(**j**) 2000 c. 11. Section 13 was amended by section 2 of, and paragraph 36 to, Schedule 4 of the Counter-Terrorism and Border Security Act 2019 (c. 11).
(**k**) Inserted by S.I. 2007/3398 and amended by paragraph 75 of Schedule 8 to the Crime and Courts Act 2013 (c. 22).
(**l**) Inserted by section 42(1) of the Criminal Finances Act 2017 (c. 22).
(**m**) As amended by paragraph 2(2) of Schedule 17 to the National Security Act 2023 (c. 32).

37. An offence under paragraph 15(**a**) of Schedule 5 to that Act (wilfully obstructing an urgent search).

38. An offence under paragraph 16 of Schedule 5 to that Act (failure to comply with an urgent explanation notice: England and Wales and Northern Ireland).

39. An offence under paragraph 32 of Schedule 5 to that Act (failure to comply with an urgent explanation notice: Scotland).

40. An offence under paragraph 11 of Schedule 5A(**b**) to that Act (failure to comply with disclosure order or making false or misleading statement in purported compliance: England and Wales and Northern Ireland).

41. An offence under paragraph 21 of Schedule 5A to that Act (failure to comply with disclosure order or making false or misleading statement in purported compliance: Scotland).

42. An offence under paragraph 1(3)(**c**) of Schedule 6 to that Act (failure to comply with requirement to provide financial information).

43. An offence under paragraph 18(**d**) of Schedule 7 to that Act (port and border control duties: failure to comply etc).

44. An offence under paragraph 15 of Schedule 5 to the Counter-Terrorism Act 2008(**e**) (breach of foreign travel restriction order).

45. An offence under paragraph 30(**f**) of Schedule 7 to that Act (failure to comply with a requirement imposed by direction).

46. An offence under paragraph 30A(**g**) of Schedule 7 to that Act (relevant person circumventing requirements).

47. An offence under paragraph 31(**h**) of Schedule 7 to that Act (offences in connection with licences).

48. An offence under paragraph 15 of Schedule 1 to the Counter-Terrorism and Security Act 2015(**i**) (failure to hand over documents or hindering a search).

49. An offence under paragraph 23 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019(**j**) (failure to comply with a duty imposed under Schedule 3 or obstructing a search).

50. An offence in relation to which the foreign power condition has been determined to have been met in relation to the conduct that constituted the offence under section 69A of the Sentencing Act 2020(**k**) (offences where foreign power condition met: including as applied by section 238(7) of the Armed Forces Act 2006).

51. An offence under the National Security Act 2023(**l**).

52. An offence to which section 16 of that Act applies where the foreign power condition (within the meaning of that Act) was met in relation to the conduct of the person which constituted the offence (foreign interference in elections).

(**a**) As amended by paragraph 2(3) of Schedule 17 to the National Security Act 2023 (c. 32).
(**b**) Schedule 5A was inserted by paragraph 3 of Schedule 2 to the Criminal Finances Act 2017 (c. 22). Paragraph 11 was amended by S.I. 2022/500 and S.I. 2023/149.
(**c**) As amended by S.I. 2001/4019 and section 41(4) of the Criminal Finances Act 2017 (c. 22).
(**d**) As amended by S.I. 2011/1938.
(**e**) 2008 c. 28. Paragraph 15 of Schedule 5 was amended by S.I. 2023/149.
(**f**) As amended by section 145(5) and (6) of the Policing and Crime Act 2017 (c. 3), S.I. 2022/500 and S.I. 2023/149.
(**g**) As inserted and amended by section 145(7) and (8) of the Policing and Crime Act 2017 (c. 3), and as amended by S.I. 2022/500 and S.I. 2023/149.
(**h**) As amended by section 145(9) of the Policing and Crime Act 2017 (c. 3), S.I. 2022/500 and S.I. 2023/149.
(**i**) 2015 c. 6.
(**j**) 2019 c. 3.
(**k**) 2020 c. 17. Section 69A inserted by section 19(2) of the National Security Act 2023 (c. 32).
(**l**) 2023 c. 32.

53. An offence in relation to which the foreign power condition has been determined to have been met in relation to the conduct that constituted the offence under section 20 of that Act (offences where foreign power condition met: Northern Ireland).

54. An offence proved to have been aggravated by reason of the foreign power condition being met in relation to the conduct that constituted the offence under section 21 of that Act (aggravating factor where foreign power condition met: Scotland).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies the application of sections 243A, 244 and 264 of the Criminal Justice Act 2003 ("the 2003 Act").

The Secretary of State is required to release on licence prisoners serving fixed-term sentences once they have served the requisite custodial period, which is set by sections 243A(3) and 244(3) of the 2003 Act. Section 264 sets out the rules that apply to the calculation of the requisite custodial period where a prisoner is serving consecutive sentences.

Article 3(1), (2) and (3) of the Order modifies the application of sections 243A, 244(3)(a) and 264(6)(d) of the 2003 Act so that applicable prisoners are released from a sentence of imprisonment when they have served 40 per cent of an applicable sentence as opposed to the current 50 per cent.

The Order applies to prisoners who have not passed the current release point under sections 243A and 244 at the point of commencement, so will apply to existing prisoners serving qualifying sentences as well as any new sentences imposed after commencement. Unless the sentence is imposed after the first commencement date, the coming into force of this order under article 1(2) is staggered by sentence length. Article 1(2) read with the interpretation of "relevant sentence" in article 2(2) provides for the first commencement date on the 10th September 2024 to apply to sentences of less than 5 years. Where prisoners are serving concurrent sentences then all sentences will need to be less than 5 years for commencement to apply. Consecutive sentences are treated as one sentence and the overall length of all the consecutive sentences added together will need to be less than 5 years for the first commencement date to apply.

The second commencement date on 22nd October 2024 applies to prisoners with sentences of 5 years or more which were imposed before the first commencement date.

Article 3(4) and (5) excludes prisoners where they have been released under section 246 (early release on home detention curfew) or 248 (compassionate release) and those removed under section 260 (early removal scheme) from the ambit of the Order on the relevant commencement date, unless such prisoners are back in custody before commencement having been recalled and not re-released, or returned and not re-removed.

Article 3(6) excludes sentences for certain sexual, violent, domestic abuse, terrorism and national security offences from the change.

Article 3(7) provides that all inchoate offences of those that come under article 3(6) (including those listed in the Schedule) are also excluded.

Whilst the release provisions under Chapter 6 of Part 12 of the 2003 Act apply in relation to a sentence of imprisonment passed by a service court, article 3(8) is added in respect of the list of excluded offences in article 3(6) so there is parity with service offences.

Article 4 ensures that for those recalled from home detention curfew the calculation of whether they have served the requisite custodial period for the purposes of re-release after recall is as modified by this Order, only in relation to those to whom the modification applied.

A full Impact Assessment has been prepared for this instrument and will be published on the legislation.gov.uk website.

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