EXPLANATORY MEMORANDUM TO

THE CRIMINAL JUSTICE ACT 2003 (REQUISITE AND MINIMUM CUSTODIAL PERIODS) ORDER 2024

2024 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 The Rt Hon Shabana Mahmood MP, Lord Chancellor and Secretary of State at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

2.2 Matthew Gould, Deputy Director for Prison Demand and Release policy at the Ministry of Justice, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Chris Lowe at the Ministry of Justice, email: Christopher.lowe2@justice.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Statutory Instrument (SI) modifies the automatic release point for certain Standard Determinate Sentences (SDS), including Section 250 sentences under the Sentencing Act 2020, and Detention in a Young Offenders Institution (DYOI) sentences. A Standard Determinate Sentence is the most common type of custodial sentence issued by the courts. These sentences are available for most crimes. Section 250 sentences may be available where a person is aged under 18 for certain offences, although in the majority of cases their custodial sentence is long enough that they transfer to serve the remainder of their sentence in the adult prison estate. A DYOI sentence is available to courts when dealing with an offender who is aged at least 18 but under 21 when convicted and as such is an adult sentence that will only apply to those held in the adult estate.

4.2 For all such sentences, offenders serve a portion of their sentence in custody and the remainder on licence in the community. This SI will change the proportion of the sentence spent in custody for certain SDS; the overall sentence length will remain unchanged.

4.3 As a result, the automatic release point for eligible SDS changes from 50% to 40%. This means that offenders serving a sentence with a 50% release point that is eligible for this change will have the release point of that sentence reduced to 40%; where they are serving multiple consecutive or concurrent sentences then only the eligible sentences will have their release points reduced. Certain offences will be excluded

from this change and where an SDS is being served for one of those offences it will retain a 50% automatic release point. Offences that are excluded are:

a. an offence under the Sexual Offences Act 1956;
b. an offence in the Sexual Offences Act 2003 (including the offences listed in Schedule 3 to that Act);
c. a sexual offence listed in Schedule 15 to the Criminal Justice Act 2003;
d. a violent offence listed in Schedule 15 to the Criminal Justice Act 2003 where the sentence is 4 years or more;
e. stalking offences under the Protection from Harassment Act 1997;
f. controlling and coercive behaviour in an intimate or family relationship under the Serious Crime Act 2015;
g. non-fatal strangulation and suffocation under the Serious Crime Act 2015;
h. breach of a restraining order in the Sentencing Act 2020;
i. breach of a non-molestation order in the Family Law Act 1996;
j. breach of a Domestic Abuse Protection Order in the Domestic Abuse Act 2021
k. an offence under the National Security Act 2023;
l. an offence under the Official Secrets Act 1989;
m. an offence under the Official Secrets Act 1920;
n. an offence under the Official Secrets Act 1911;
o. additional terrorism-related offences and state threat related offences

4.4 Offenders who, at the point of commencement, have already been released from their sentence before the 50% automatic release point - for example, on Home Detention Curfew (HDC) or End of Custody Supervised Licence (ECSL) - and are no longer in custody will be excluded from the changes as will Foreign National Offenders who have been removed from prison before their automatic release date for the purposes of deportation under the Early Removal Scheme (ERS).

4.5 Offenders who are in custody at the point of commencement serving a sentence which is eligible for the change in automatic release point will have their release date recalculated. This may mean they will become immediately eligible for release if they are at or beyond the 40% point in their sentence when the change is commenced.

Where does the legislation extend to, and apply?

4.6 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.7 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

5.1 The release point for eligible sentences is being changed to 40%, to deal with acute capacity pressures across the prison estate and to ensure that there are always sufficient prison places to deliver the sentence of the courts.

5.2 This change is brought in the context of acute prison capacity pressure. Action must be taken to prevent running out of prison places which would cause criminal justice gridlock.

5.3 Certain serious sexual and violent offences (those with a maximum penalty of life, where the sentence is four years or more) for which an SDS is imposed are currently subject to a 67% release point; this will not be changed by this SI and will remain at 67%. Other types of sentences including Extended Determinate Sentences (EDS) and those given a Sentence for Offenders of Particular Concern (SOPCs) will also not be eligible.

5.4 The change will apply to male and female adult prisoners equally and will be applied to those currently serving an eligible SDS with a release point of 50% who have not yet reached that release point. Sentence recalculation will not apply to any offender who has passed the 50% automatic release point at date of commencement and who may, for example, have been recalled to prison after their initial release at the 50% point. Eligible prisoners released will serve to the end of their sentence on licence and be supervised by the Probation Service in the usual way, and be liable to recall to prison if they breach their conditions.

5.5 For decades, some SDS prisoners have been eligible for release before the 50% automatic release point on Home Detention Curfew (HDC). Prisoners could also be released before the midway point of their sentence under End of Custody Supervised Licence (ECSL). Some Foreign National Offenders are removed from prison before their automatic release date for the purposes of deportation under the ERS. The policy will exclude all such offenders who, at the point of commencement, have already been released from their sentence before the 50% automatic release point. The policy reasoning for excluding these cohorts is to ensure that staff completing recalculations do not have to complete these for many offenders that will not return to custody.

5.6 Certain offences have been excluded from this policy: sex offences irrespective of sentence length; serious violent offences with a sentence of four years or more; specified offences linked to domestic abuse irrespective of sentence length including stalking; and offences concerning national security. The reason for excluding these offences is to ensure those convicted of some of the most serious crimes are not released earlier under this change, in order to help protect the public from the most dangerous offenders.

What was the previous policy, how is this different?

5.7 The previous automatic release point for eligible sentences was at 50% of the sentence, which changes to 40% through this SI. Sentences currently subject to a 67% or 100% release from the custodial part of their sentence are not affected by this change.

6. Legislative and Legal Context

How has the law changed?

6.1 Chapter 6 of Part 12 of the Criminal Justice Act 2003 is concerned with the release of determinate (fixed-term) sentence prisoners on licence.

6.2 Under provisions in the 2003 Act, offenders serving determinate sentences are automatically released from custody, most at the half-way point of their sentence ("the requisite custodial period"), and serve the remainder of the sentence on licence in the community. Section 267 of the 2003 Act gives a power to modify the automatic

release point of certain determinate sentences. The power has been used before in the Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020.

6.3 The reference to one half in sections 243A, 244(3)(a)(**1**) (duty to release prisoners) and 264(6)(d)(**2**) (consecutive terms) of the Criminal Justice Act 2003 is to be read as a reference to 40 per cent except where the sentence is:

a. an offence under the Sexual Offences Act 1956;
b. an offence in the Sexual Offences Act 2003 (including the offences listed in Schedule 3 to that Act);
c. a sexual offence listed in Schedule 15 to the Criminal Justice Act 2003;
d. a violent offence listed in Schedule 15 to the Criminal Justice Act 2003 where the sentence is 4 years or more;
e. stalking offences under the Protection from Harassment Act 1997;
f. controlling and coercive behaviour in an intimate or family relationship under the Serious Crime Act 2015;
g. non-fatal strangulation and suffocation under the Serious Crime Act 2015;
h. breach of a restraining order in the Sentencing Act 2020;
i. breach of a non-molestation order in the Family Law Act 1996;
j. breach of a Domestic Abuse Protection Order in the Domestic Abuse Act 2021
k. an offence under the National Security Act 2023;
l. an offence under the Official Secrets Act 1989;
m. an offence under the Official Secrets Act 1920;
n. an offence under the Official Secrets Act 1911;
o. additional terrorism-related offences and state threat related offences;
p. where the prisoner has been released early under section 246 on home detention curfew, or under section 248 compassionate release powers (including those on ECSL), or removed under section 260 under the early removal scheme for the purposes of deportation, and are not back in custody again serving the custodial part of their sentence before the first commencement date.

Why was this approach taken to change the law?

6.4 This approach of changing the automatic release point for eligible SDS with a current release point of 50% to 40% is to provide a sustainable and manageable solution to current prison capacity pressures. It is critical that there are sufficient prison places to avoid criminal justice gridlock which would see the police no longer able to arrest criminals in the normal way.

(**1**) Section 244(3)(a) was amended by paragraphs 14 and 18 of Schedule 3 to the Offender Rehabilitation Act 2014 (c. 11) and paragraphs 5, 6(1) and 3(a) 12 21(1) and 3(a) of Schedule 14 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).
(**2**) Section 264(6) was substituted by paragraphs 14 and 23(1) and (2) of Schedule 1 to the Criminal Justice and Courts Act 2015 (c. 2).

7. Consultation

Summary of consultation outcome and methodology

7.1 Due to the urgent nature of this change it was not possible to undertake a detailed consultation, beyond internal consultations and planning discussions with a limited number of policy and operational staff across Government.

8. Applicable Guidance

8.1 Operational and policy guidance has been developed in advance of the SI commencement date and will be published on the Ministry of Justice intranet for prison and probation staff.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

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

Impact on businesses, charities and voluntary bodies

9.2 There is no significant impact on business, charities or voluntary bodies as a result of the change to the release date for eligible SDS prisoners.

9.3 The legislation does not directly impact small or micro businesses.

9.4 The impact on the public sector is as follows:

Impacted Groups

9.4.1 Prisons. This measure will provide critical space in the custodial estate to alleviate pressing capacity pressures. It is estimated that as a result of this policy change, there will be a reduction in demand for total prison places between 4,900 and 6,200 places (and for the male estate between 4,600 and 5,900 prison places). The SI will, however, require a significant amount of work by Offender Management Unit staff to recalculate new release dates for those prisoners who are eligible.

9.4.2 Probation. Releasing eligible prisoners at the new release point will increase workloads for the Probation Service. There is a package of measures to alleviate Probation pressures including limiting Post-Sentence Supervision to non-Multi-Agency Public Protection Arrangements (MAPPA) eligible offenders.

9.4.3 Where an individual has been sentenced to 12 months or more for a specified type of offence, the Probation Service Victim Contact Scheme may apply to victims. There may be an additional number of discretionary cases. Where this is the case, the standard victim contact engagement will be required to support release.

9.4.4 Accommodation Services. There could be significant short-term pressure on local accommodation services to facilitate the additional releases into the community. This includes Local Authority accommodation and other supported housing options available to the Probation Service

9.4.5 Police. The Police may have some increase in workload as there will be more people on licence that they are responsible for apprehending and returning to custody if licence conditions are breached and a recall is initiated, or if further offences are committed.

9.4.6 Other public bodies. The release of prisoners will also increase short term pressure on other public service providers including healthcare providers and the Department for Work and Pensions who provide welfare support to those eligible, including Universal Credit.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The impact of the changes will be monitored closely by the Ministry of Justice and His Majesty's Prison and Probation Service jointly and the Lord Chancellor has committed to reviewing this change in 18 months' time. Prison population and release figures are monitored and published as part of the Offender Management Statistics.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Secretary of State for Justice has made the following statement regarding Human Rights:

"In my view the provisions of the Criminal Justice Act 2003 (Requisite and Minimum Custodial Periods) Order 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").