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

D R A F T S T A T U T O R Y I N S T R U M E N T S

2024 No.

CRIMINAL LAW, ENGLAND AND WALES

The Home Detention Curfew and Requisite and Minimum Custodial Periods (Amendment) 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 246(5)(a), 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 Home Detention Curfew and Requisite and Minimum Custodial Periods (Amendment) Order 2024.

(2) This Order comes into force on 16th December 2024 except for article 2 which comes into force on 3rd June 2025.

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

Amendment to section 246 of the Criminal Justice Act 2003

2. In section 246(1)(a)(**b**) of the Criminal Justice Act 2003, for "180" substitute "365".

Amendments to the Criminal Justice Act 2003 (Requisite and Minimum Custodial Periods) Order 2024

3.—(1) The Criminal Justice Act 2003 (Requisite and Minimum Custodial Periods) Order 2024(**c**) is amended as follows.

(2) In article 3—

(**a**) 2003 c. 44. Section 246(5)(a) was amended by paragraphs 12 and 23(1) and (5)(a) of Schedule 10 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) ("LASPO"). Section 267 was amended by paragraphs 5 and 15 of Schedule 14 to the LASPO and S.I. 2020/157.

(**b**) Section 246 was amended by paragraph 221 of Schedule 16 to the Armed Forces Act 2006 (c. 52), section 24 of the Criminal Justice and Immigration Act 2008 (c. 4), paragraph 7 of Schedule 1 to the Criminal Justice and Courts Act 2015 (c. 2), paragraph 224 of Schedule 24 to the Sentencing Act 2020 (c. 17), sections 110(9) and 112 of, and paragraph 23 of Schedule 10, paragraph 7 of Schedule 14 and paragraph 5 of Schedule 20, to the LASPO, section 132(5) of the Police, Crime, Sentencing and Courts Act 2022 (c. 32), section 68 of the Victims and Prisoners Act 2024 (c. 21) and 2023/390.

(**c**) S.I. 2024/844.

(a) after paragraph (7) insert—

"(7A) References in paragraph (7)(a) to (e) to offence A do not include the offence of murder.";

(b) in paragraph (8), for "(7)(a) to (e)" substitute ", (7)(a) to (e) or (7A)".

(3) In the Schedule—

(a) after paragraph 14 insert—

"**14A.** An offence under section 33 of the Criminal Justice and Courts Act 2015(**a**) (disclosing, or threatening to disclose, private sexual photographs and films with intent to cause distress).";

(b) after paragraph 16 insert—

"**16A.** An offence under section 354 of the Sentencing Code(**b**) (breach of a sexual harm prevention order).";

(c) after paragraph 19 insert—

"**19A.** An offence under section 5(**c**) of that Act (restraining orders on conviction).

19B. An offence under section 5A(**d**) of that Act (restraining orders on acquittal).";

(d) after paragraph 23 insert—

"**23A.** An offence under section 8 of the Stalking Protection Act 2019(**e**) (breaching a stalking protection order etc.).";

(e) after paragraph 54 insert—

"*Violent Offences*

55. Murder.".

Application of Article 3

4.—(1) The amendments made by article 3 apply in relation to a sentence imposed before, on or after 16th December 2024, subject as follows.

(2) Where the person serving the sentence was not in custody or detention pursuant to the sentence on 16th December 2024 having been released under Chapter 6 of Part 12 of the Criminal Justice Act 2003, the amendments made by article 3 apply for the purposes of determining the requisite custodial period in relation to the sentence only if the person—

(a) was released under section 246 (power to release prisoners on licence before being required to do so) of the Criminal Justice Act 2003, or section 248(**f**) (power to release prisoners on compassionate grounds) of that Act, and

(b) is recalled to prison under section 254(1)(**g**) or 255(1)(**h**) of that Act before the end of the period which was the requisite custodial period in relation to the sentence when the person was released.

(**a**) 2015 c. 2. Section 33 was repealed by section 190 of the Online Safety Act 2023 (c. 50).
(**b**) 2020 c. 17. Section 354 was amended by section 175(1), (6) and (7) of the Police, Crime, Sentencing and Courts Act 2022 (c. 32).
(**c**) Section 5 was repealed by Schedule 28 of the Sentencing Act 2020 (c. 17).
(**d**) Section 5A was inserted by section 12(5) of the Domestic Violence, Crime and Victims Act 2004 (c. 28) and amended by paragraph 144 of Schedule 24 to the Sentencing Act 2020 (c. 17).
(**e**) 2019 c. 9. Section 8 was amended by paragraph 298 of Schedule 24 to the Sentencing Act 2020 (c. 17), S.I. 2022/500 and S.I. 2023/149.
(**f**) Section 248 was amended by section 116(2) of the LASPO.
(**g**) Section 254 was amended by section 29(1) of, and Part 2 of Schedule 28, to the Criminal Justice and Immigration Act 2008 (c. 4) and section 113(1) of the LASPO.
(**h**) Section 255(1) was amended by section 113(2) of the LASPO and section 9(1) and (3) of the Offender Rehabilitation Act 2014 (c. 11).

(3) The reference in paragraph (2)(b) to recall to prison is to recall to prison before, on or after 16th December 2024.

(4) Where the person serving the sentence was not in custody or detention pursuant to the sentence on 16th December 2024 having been removed from prison under section 260(**a**) (early removal of prisoners liable to, or eligible for, removal from the United Kingdom) of the Criminal Justice Act 2003, the amendments made by article 3 apply for the purposes of determining the requisite custodial period in relation to the sentence only if the person is returned to prison before the end of the period which was the requisite custodial period in relation to the sentence when the person was removed.

(5) The reference in paragraph (4) to return to prison is to return to prison on or after 16th December 2024.

Name
Secretary of State for Justice
Ministry of Justice

Date

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends section 246 of the Criminal Justice Act 2003 ("the 2003 Act") and the Criminal Justice Act 2003 (Requisite and Minimum Custodial Periods) Order 2024 ("the 2024 Order").

Article 2 amends the eligibility period for Home Detention Curfew. Section 246 of the 2003 Act gives the Secretary of State a discretionary power to release certain prisoners on Home Detention Curfew, which is a release on licence where they are subject to an electronically monitored curfew in the community in accordance with sections 250(5) and 253 of the 2003 Act. Where a requisite custodial period is at least 6 weeks long and half of that period has been served, section 246(1)(a) of the 2003 Act provides that the release can be up to 180 days earlier. Article 2 of this Order amends section 246(1)(a) of the 2003 Act so that prisoners serving fixed-term sentences can be released at any time up to 365 days before they have served their requisite custodial period.

The Secretary of State is required to release 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. The 2024 Order modifies the application of sections 243A, 244, and 264 of the 2003 Act so that release from sentences of certain offences is at 40% instead of 50%. Article 3 amends the 2024 Order to add a further six offences to the list of offences excluded from that change. This 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.

Article 4 excludes prisoners from the amendments to the 2024 Order where they have been released under sections 246 (power to release prisoners on licence before required to do so), 248 (power to release prisoners on compassionate grounds) or removed under section 260 (early removal of prisoners liable to, or eligible for, removal from the United Kingdom) of the 2003 Act

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(**a**) Section 260 was amended by section 31(1),(3), (6) and (9) of and Part 2 of Schedule 28 to the Criminal Justice and Immigration Act 2008 (c. 4), paragraphs (1) and 6 of Schedule 17 to the LASPO, section 14(1) and (4) of the Criminal Justice and Courts Act 2015 (c. 2), section 7(2) and (5) of the Terrorist Offenders (Restriction of Early Release) Act 2020 (c. 3), section 47(1) to (8) of the Nationality and Borders Act 2022 (c. 36) and S.I. 2023/1368.

from the ambit of the 2024 Order on the relevant commencement date, unless such prisoners are recalled before, on, or after the commencement date.

A full Impact Assessment has not been produced for articles 3 and 4 of this instrument as no significant impact on the private, voluntary or public sectors is foreseen, however a full Impact Assessment has been prepared for article 2 and will be published on the legislation.gov.uk website.

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