

The Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2019 - An Update

As of 1st of April 2020, the Government's election pledge of delaying the release point of serious sexual and violent offenders came into force by way of the Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2019. The provisions of the Order have the effect of modifying the application of s237(1) of the Criminal Justice Act 2003 in respect of certain sentences of imprisonment.

The relevant articles of the instrument are articles 2 and 3, which read:

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.

4. In section 264 of the 2003 Act (consecutive terms), the reference to one-half in subsection (6)(d) is 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.

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. A full list of those offences can be found here. <http://www.legislation.gov.uk/ukpga/2003/44/schedule/15> (NB it does not apply to the Specified Terrorism Offences in Part 3 of the Schedule).

This means that, having received a sentence of imprisonment over 7 years in length, Defendants will serve two-thirds of their sentence in custody before release on licence instead of the usual half. The prison is obligated to release them on licence at the two-thirds point, as they would be at the conclusion of half of any other fixed-term sentence of imprisonment.

The new provisions raise two particular points worth noting. The first is that sentences of less than seven years will not attract the modified application. Therefore, the difference in time served in custody by an offender who received a sentence of 6 and a half years for a s18 assault (3 years 3 months) and one who received a sentence of 7 and a half years (5 years) is stark.

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Secondly, the provisions relate to individual sentences. If an offender was sentenced to 9 years imprisonment for an offence of kidnapping (a relevant violent offence), as well as a sentence of 5 years imprisonment for a s18 wounding (also a relevant violent offence) which was made consecutive, the provisions would only apply to the kidnapping sentence. Therefore, the offender would serve a total of 8 and a half years in custody, comprised of 6 years for the kidnapping and 2 and a half years for the s18.

The provisions do not apply:

To offenders who are under the age of 18 when they are sentenced

To offenders who are sentenced before 1st April 2020

To offenders who are sentenced under s236A of the CJA 2003 as an offender of particular concern

The provisions apply to all relevant sentences passed after April 1st 2020. This means that a plea entered on March 15th but sentenced on April 15th would be sentenced in accordance with these provisions.

This new approach in sentencing needs to be taken into account by defendants and practitioners alike. Clients, of course, should be made aware if there is a risk that their sentence may fall within the provisions. It may well be the case that *Goodyear* indications are sought from judges with these provisions in mind going forward.

The full text of the Order can be found here: <https://www.legislation.gov.uk/ukdsi/2019/9780111190524>

Callum Church

St Ives Chambers

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