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## CHANGES TO RELEASE PROVISIONS – POLICE, CRIME, SENTENCING AND COURTS ACT 2022

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### Overview

1. The following changes to release regimes affect any offender **sentenced on or after 28 June 2022** (regardless of when the offence was committed or when the offender was convicted) unless it is stated otherwise.

Release Provisions PCSCA 2022		
Section	Who does it affect?	What effect does it have?
S130	Offenders who are sentenced to: a) at least 7 years' imprisonment or YOI for a specified violent or sexual offence (part 1 or 2 of schedule 15 CJA 2003 for which life is available for offenders over 21); b) at least 4 years' imprisonment or YOI (18+ years old) for an offence listed in s.130(3)(7) (above); OR c) at least 7 years' detention for an offence listed in s.130(3)(7)	Automatic release will be after 2/3rds of the custodial term
S131	Offenders of Particular Concern defined by s278 of the Sentencing Act 2020 (various terrorist offences/serious child sex offences)	Release will be <b>considered</b> by the Parole Board after 2/3rds of the custodial term
S132	High-risk offenders (those sentenced for specified offences listed in Schedule 18 of the Sentencing Act 2020)	Provides a bar to automatic release on Secretary of State's application to the parole board

### **Section 130: Offenders over 18 years olds being sentenced on or after 28 June 2022**

#### 7 years triggers 2/3rds automatic release

2. On 1 April 2020, the *Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020* came into force. The main effect of this Order was on the early release provisions for offenders convicted of certain violent or sexual offences, and who were sentenced to a fixed term custodial sentence on/after 1 April 2020 of at least 7 years.

3. Those who received such a sentence were required to serve two-thirds of their sentence in custody. Before 1 April 2020, they would have automatically been released at the half-way point.
4. This 2020 Order has now been enshrined into primary legislation. Any offender receiving a sentence of 7 years' imprisonment or detention in a YOI for an offence specified in Pt 1 or 2 of Sch.15 to the CJA 2003 with a maximum sentence of life imprisonment, will continue to become entitled to release only after serving two-thirds of their sentence.

4 years triggers 2/3rds automatic release

5. Where a sentence of imprisonment or detention in a YOI is for 4 years or more, but for less than 7 years, the offender will be required to serve two-thirds of the custodial term before becoming entitled to release if it is imposed for one of the following offences:
  - i. an offence listed in paras 1 (manslaughter), 4 (soliciting murder); or 6 (wounding with intent to cause grievous bodily harm) (or para.64 (ancillary offences), so far as it relates to an offence listed in one of those paragraphs), or para.65 (inchoate offences in relation to murder) of Sch.15 to the CJA 2003.
  - ii. An offence listed in Pt 2 of Sch.15 with a maximum sentence of life imprisonment: s.244ZA of the CJA 2003.
6. S130 does not apply to prisoners who have been recalled.
7. The following is the wording from the Crown Court Compendium Part II (2022) when CJA 2003 s.244ZA (which is the subsection that is inserted by S130 PCSCA) applies:

*You will serve up to two-thirds of your five-year sentence in custody. You will serve the remainder on licence. You must keep to the terms of your licence and commit no further offence or you will be liable to be recalled and you may then serve the rest of your sentence in custody.<sup>1</sup>*

8. After serving two-thirds of their sentence, the prisoner will be automatically released. They do not have to receive Parole Board approval.

### **S130: Offenders under 18 being sentenced on or after 28 June 2022**

9. Time on remand is now credited automatically for DTOs by virtue of amendments to s.240ZA of the Criminal Justice Act 2003: para.1 and 2 of Sch.16 to the 2022 Act. The court does not have to manually adjust the length of that order.
10. Where a sentence of detention is imposed for 7 years or more, the offender will be required to serve two-thirds of the custodial term before becoming entitled to release if it is imposed for one of the following offences:
  - i. An offence listed in paras 1 (manslaughter), 4 (soliciting murder); or 6 (wounding with intent to cause grievous bodily harm) (or para.64 (ancillary offences i.e. inchoate offences), so far as it relates to an offence listed in one of those paragraphs), or para.65 (inchoate offences in relation to murder) of Sch.15 to the CJA 2003.
  - ii. An offence listed in Pt 2 of Sch.15 with a maximum sentence of life imprisonment: s.244ZA of the CJA 2003.

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<sup>1</sup> 5-11

## **Practical Implications of S130**

### *Pleas*

11. In light of these changes, in some cases, credit for a guilty plea will now make even more of a difference to whether a defendant serves half or two-thirds of his sentence in prison.
12. It is also important that the offence to which a defendant pleads is thoroughly explored, as a plea to a specified violent or sexual offence could mean release after serving two-thirds of the determinate term rather than half. Therefore, it will most likely be favourable to see if a plea to a non-listed offence would be acceptable.

### *Sentence Structure*

13. It is important to bear in mind the following when a defendant is being sentenced for more than one offence.
14. It is only when the sentence on the specified offence is 4 years or more (in relation to offenders 18 or over at sentence being sentenced for manslaughter, soliciting murder, causing GBH with intent and inchoate murder offences, or a listed sexual offence with a maximum sentence of life imprisonment) or 7 years or more (in relation to offenders being sentenced for listed violent or sexual offences in Sch.15 to the Criminal Justice Act 2003) that release is after serving two-thirds of the custodial term (rather than half).<sup>2</sup>
15. For example, if on a plea you received a sentence of 3.5yrs because you've got excellent counsel for a s.18 and then a further 12mths consecutively for possession of

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<sup>2</sup> This is applying the decision in R v AB [2021] EWCA Crim 692; [2022] 1 Cr. App. R. (S.) 13 made in relations to SI 2020/158

an offensive weapon for example, you would be released automatically at the halfway point.

**S131: Increase in requisite custodial period for certain other offenders of 'Particular Concern'**

16. Offences of particular concern are those falling into s278 of the Sentencing Act 2020 (ie. various terrorist offences and the two most serious child sex offences of rape of a child under 13 and assault of a child under 13 by penetration, including inchoate offences and an abolished offence i.e. previous iterations of the current offences e.g. intercourse with a girl under 13 s.5 SOA 1956 ).
17. When someone receives a Sentence for Offenders of Particular Concern (SOPC), the PCSCA states that they can only be released, at the earliest, after having served two-thirds of their custodial term.
18. Following that point, they can then be released at the discretion of a Parole Board. Before the PCSCA, they could have been referred to the Parole Board at the halfway point.
19. The prisoner can be released if the Parole Board thinks that it is not necessary for the protection of the public that the offender continue to be confined.
20. There is a specific provision for automatic release once the prisoner has completed their full sentence, which does not require approval of the Parole Board.
21. It is also of note that for those sentenced to offences which trigger this provision, the total sentence must be equal to the aggregate of the appropriate custodial term and a further period of 1 year for which the offender is to be subject to a licence.
22. For example, an offender is sentenced for rape of a child to 9 years, he can apply to the parole board for release at 6yrs but could serve the full 9 years if the parole board

do not direct release. In court however, the sentence expressed would be expressed as a sentence of 10 years; 9 years as the appropriate custodial term and a further 1 year licence). I don't know why they have to overcomplicate things but there it is.

23. This is a similar sentence structure to the dangerousness provisions, but in essence it means that there will be an additional fixed 1 year licence period over and above the normal licence period.

### **S132: Power to refer high-risk offenders to the Parole Board in place of automatic release**

24. S132 provides a bar to automatic release at the end of sentences for specified offences. It applies to an offender sentenced to a standard determinate sentence (SDS) for a specified offence, [definition of a specified offence below] who would automatically be released at the 1/2 or 2/3rds stage of his sentence. The provision allows for the Secretary of State for Justice to apply to the parole board to block that automatic release. The offender must be 18 years or more at the date at which the automatic release is due.

25. The definition of a specified offence for the purposes of this part can be found in section 306 SA 2020 which provides that a 'specified offence' is a violent, sexual or terrorism offence listed in Schedule 18 of the Sentencing Act 2020. This includes a wide range of indictable offences: Part 1 lists violent offences, Part 2 sexual, and Part 3 terrorist.

26. Essentially, if the Secretary of State for Justice has reasonable grounds to believe that the prisoner would, if released, pose a significant risk to members of the public of serious harm occasioned by the commission of murder or specified offences within the meaning of section 306 of the Sentencing Code, then he can refer the case to the Parole Board in order to prevent release.

27. There is no power to detain the person beyond the limit of the SDS however so this is not a substitute for the rightly maligned IPP regime.

28. The procedure relating to SSJ's notice is laid out in the Act.
29. Once this application is made, the Parole Board must only direct release if it is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.
30. Rather troublingly, the upshot is that once that application is made, the burden is on the offender to demonstrate that he or she does not pose a continuing risk, rather than on the Secretary of State to show that the offender poses such a risk.
31. The flaws of this provision are self-evident and just the latest in a growing trend of extended periods of incarceration at significant cost, in often unsanitary and overly restrictive underfunded regimes.
32. Rehabilitation seems to be a completely foreign concept. The answer, apparently, is simply to build new 'super-prisons'....

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**01.03.23**