



# Counter-Terrorism and Sentencing Act 2021

## 2021 CHAPTER 11

### PART 2

#### RELEASE OF TERRORIST OFFENDERS

##### *Removal or restriction of early release for terrorist prisoners*

#### **27 Removal of early release for dangerous terrorist prisoners: England and Wales**

- (1) The Criminal Justice Act 2003 is amended as follows.
- (2) In section 247A (restricted eligibility for release on licence of terrorist prisoners) (as amended by Schedule 13)—
  - (a) in subsection (2), for paragraph (a) substitute—
    - “(a) it is specified in Part 1 or 2 of Schedule 19ZA (terrorism offences punishable with imprisonment for life or for more than two years),”;
  - (b) after subsection (2) insert—
    - “(2A) Subsections (3) to (5) apply unless the terrorist prisoner’s sentence was imposed—
      - (a) under section 226A or 226B or under section 254, 266, 268A, 279 or 282A of the Sentencing Code (extended sentence or serious terrorism sentence for dangerous offenders),
      - (b) on or after the day on which section 27 of the Counter-Terrorism and Sentencing Act 2021 comes into force, and
      - (c) in respect of an offence that—
        - (i) is specified in Part 1 of Schedule 19ZA (terrorism offences punishable with imprisonment for life),

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- (ii) is a service offence as respects which the corresponding civil offence is so specified,
- (iii) is specified in Part 3 of that Schedule (other offences punishable with imprisonment for life) and was determined to have a terrorist connection, or
- (iv) is a service offence as respects which the corresponding civil offence is so specified, and was determined to have a terrorist connection.”

(3) For Schedule 19ZA substitute the Schedule set out in Schedule 9 to this Act.

## **28 Removal of early release for dangerous terrorist prisoners: Scotland**

- (1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 is amended as follows.
- (2) In section 1AB (restricted eligibility for release on licence of terrorist prisoners) (as amended by Schedule 13)—
- (a) in subsection (2), for paragraph (a) substitute—
    - “(a) it is specified in Part 1 or 2 of Schedule 1A (terrorism offences punishable with imprisonment for life or for more than two years),”;
  - (b) after subsection (2) insert—
    - “(2A) Subsections (3) to (5) apply unless the terrorist prisoner's sentence was imposed—
      - (a) under section 205ZA or 210A of the 1995 Act (serious terrorism sentence or extended sentence for dangerous offenders),
      - (b) on or after the day on which section 28 of the Counter-Terrorism and Sentencing Act 2021 comes into force, and
      - (c) in respect of an offence that—
        - (i) is specified in Part 1 of Schedule 1A (terrorism offences punishable with imprisonment for life),
        - (ii) is a service offence as respects which the corresponding civil offence is so specified,
        - (iii) is specified in Part 3 of that Schedule (other offences punishable with imprisonment for life) and was determined to have a terrorist connection, or
        - (iv) is a service offence as respects which the corresponding civil offence is so specified, and was determined to have a terrorist connection.”
- (3) For Schedule 1A substitute the Schedule set out in Schedule 10 to this Act.

## **29 Further provision about release of terrorist prisoners: Scotland**

After section 26 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 insert—

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*“Terrorism sentences*

**26ZA Terrorism sentences**

- (1) This section applies to a person (other than a life prisoner) (a “terrorist prisoner”) who is serving a terrorism sentence.
- (2) A terrorism sentence is—
  - (a) a sentence of imprisonment imposed under section 205ZA of the 1995 Act (serious terrorism sentence),
  - (b) a sentence of imprisonment imposed under section 205ZC of that Act (terrorism sentence with fixed licence period), or
  - (c) an extended sentence imposed under section 210A of that Act in respect of a terrorism offence.
- (3) Subject to the provisions of this section, this Part, except sections 1AB, 1A and 1B, applies in relation to a terrorism sentence as if any reference to a sentence or term of imprisonment were a reference to the appropriate custodial term of a terrorism sentence.
- (4) Where a terrorist prisoner is released on licence under this Part the licence remains in force until the end of the extension period (but subject to section 17).
- (5) Where, apart from this subsection, a terrorist prisoner would be released unconditionally at the end of the appropriate custodial term—
  - (a) the prisoner must be released on licence, and
  - (b) the licence remains in force until the end of the extension period (but subject to section 17).
- (6) The extension period is to be taken to begin—
  - (a) for the purposes of subsection (4), on the day following the date on which, had there been no extension period, the prisoner would have ceased to be on licence in respect of the appropriate custodial term;
  - (b) for the purposes of subsection (5), on the day on which, apart from that subsection, the prisoner would have been released unconditionally at the end of the appropriate custodial term.
- (7) Where a terrorist prisoner is subject to two or more terrorism sentences, the extension period which is taken to begin in accordance with subsection (6) is the aggregate of the extension period of each of those sentences.
- (8) Subsection (7) is subject to—
  - (a) sections 1A(1)(c) and 1B(11), and
  - (b) in the case of a terrorism sentence imposed under section 205ZA of the 1995 Act, subsection (10) of that section and any direction by the court imposing the sentence.
- (9) For the purposes of sections 12(3) and 17(1), the question of whether a terrorist prisoner is a long-term or short-term prisoner is to be determined by reference to the terrorism sentence.
- (10) In the application of this Part to a terrorism sentence—

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- (a) references in sections 1A(1)(c) and 16(1)(a) to the date on which a prisoner would have served the prisoner's sentence in full are to be read as if they were references to the date on which the terrorism sentence as originally imposed by the court would expire, and
- (b) the reference in section 17(5) to a prisoner being liable to be detained in pursuance of the prisoner's sentence is to be read as if it were a reference to the prisoner being liable to be detained until the expiry of the extension period.

(11) For the purposes of this section—

“appropriate custodial term”, in relation to a terrorism sentence imposed on a terrorist prisoner, means—

- (a) the term determined as such by the court that imposes the sentence on the prisoner under section 205ZA or, as the case may be, section 205ZC of the 1995 Act, or
- (b) the term determined as the custodial term by the court that imposes the extended sentence on the prisoner under section 210A of that Act;

“extension period” means—

- (a) in relation to a sentence of imprisonment imposed on a terrorist prisoner under section 205ZA of the 1995 Act, the period specified as such under that section by the court that imposes the sentence on the prisoner;
- (b) in relation to a sentence of imprisonment imposed on a terrorist prisoner under section 205ZC of that Act, the period of 1 year specified as such under that section by the court that imposes the sentence on the prisoner;
- (c) in relation to an extended sentence imposed on a terrorist prisoner under section 210A of that Act in respect of a terrorism offence, the period specified as such under that section by the court that imposes the sentence on the prisoner.”

### **30 Restricted eligibility for early release of terrorist prisoners: Northern Ireland**

- (1) In the Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)), after Article 20 insert—

*“Terrorist prisoners*

#### **20A Restricted eligibility for release on licence of terrorist prisoners**

- (1) This Article applies to a fixed-term prisoner (a “terrorist prisoner”) who—
- (a) is serving a sentence imposed (whether before or after the commencement date) in respect of an offence within paragraph (2); and
  - (b) has not been released on licence before the commencement date.
- (2) An offence is within this paragraph (whenever it was committed) if—
- (a) it is specified in Part 2, 4, 5 or 7 of Schedule 2A (terrorism offences punishable with imprisonment for life or more than two years);

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- (b) it is a service offence as respects which the corresponding civil offence is so specified; or
  - (c) it was determined to have a terrorist connection.
- (3) The Department of Justice shall release the terrorist prisoner on licence under this Article as soon as—
  - (a) the prisoner has served the relevant part of the sentence; and
  - (b) the Parole Commissioners have directed the release of the prisoner under this Article.
- (4) The Parole Commissioners shall not give a direction under paragraph (3) with respect to the terrorist prisoner unless—
  - (a) the Department of Justice has referred the prisoner's case to them; and
  - (b) they are satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.
- (5) The terrorist prisoner may require the Department of Justice to refer the prisoner's case to the Parole Commissioners at any time—
  - (a) after the prisoner has served the relevant part of the sentence; and
  - (b) where there has been a previous reference of the prisoner's case to the Parole Commissioners, after the expiration of the period of 2 years beginning with the disposal of that reference or such shorter period as the Parole Commissioners may on the disposal of that reference determine;

and in this paragraph “previous reference” means a reference under paragraph (4) or Article 28(4).
- (6) Where the Parole Commissioners do not direct the prisoner's release under paragraph (3)(b), the Department of Justice shall refer the case to them again not later than the expiration of the period of 2 years beginning with the disposal of that reference.
- (7) In determining for the purpose of this Article whether a terrorist prisoner has served the relevant part of a sentence, no account shall be taken of any time during which the prisoner was unlawfully at large, unless the Department of Justice otherwise directs.
- (8) If the terrorist prisoner is serving a serious terrorism sentence, an extended custodial sentence or an Article 15A terrorism sentence, the Department of Justice shall release the terrorist prisoner on licence under this Article as soon as the prisoner has served the appropriate custodial term unless the prisoner has previously been recalled under Article 28.
- (9) For the purposes of this Article—
  - “appropriate custodial term”, in relation to a serious terrorism sentence, an extended custodial sentence or an Article 15A terrorism sentence, means the term determined as such by the court under Article 13A, 14 or 15A;
  - “commencement date” means the date on which section 30 of the Counter-Terrorism and Sentencing Act 2021 comes into force;
  - “relevant part of the sentence” means—
    - (a) in relation to an extended custodial sentence or an Article 15A terrorism sentence, two-thirds of the appropriate custodial term;

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(b) in relation to any other sentence, two-thirds of the term of the sentence.

(10) For the purposes of this Article, a reference of a terrorist prisoner's case to the Parole Commissioners under Article 18 that was disposed of—

- (a) before the commencement date; and
- (b) at a time when the prisoner had served two-thirds of the appropriate custodial term,

is to be treated as if it was made (and disposed of) under this Article.”

(2) The amendment made by subsection (1) does not affect any duty of the Department of Justice under Chapter 4 of Part 2 of the Criminal Justice (Northern Ireland) Order 2008 to release a person whose release has been directed by the Parole Commissioners before this section comes into force.

### **31 Removal of early release for dangerous terrorist prisoners: Northern Ireland**

In Article 20A of the Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)) (as inserted by section 30) (eligibility for release on licence of terrorist prisoners), after paragraph (2) insert—

“(2A) Paragraphs (3) to (7) apply unless the terrorist prisoner's sentence—

- (a) is a serious terrorism sentence or an extended custodial sentence;
- (b) was imposed after the commencement of section 31 of the Counter-Terrorism and Sentencing Act 2021; and
- (c) was imposed in respect of an offence that—
  - (i) is specified in Part 2 or 5 of Schedule 2A (terrorism offences punishable with imprisonment for life);
  - (ii) is a service offence as respects which the corresponding civil offence is so specified;
  - (iii) is specified in Part 3 or 6 of that Schedule (other offences punishable with life imprisonment) and was determined to have a terrorist connection; or
  - (iv) is a service offence as respects which the corresponding civil offence is so specified and was determined to have a terrorist connection.”

#### *Polygraph conditions in licences for release*

### **32 Polygraph licence conditions for terrorist offenders: England and Wales**

(1) The Offender Management Act 2007 is amended as follows.

(2) In section 28 (application of polygraph condition)—

- (a) in subsection (2), before “who” insert “ or a relevant terrorist offence ”;
- (b) after subsection (4) insert—

“(4A) In this section “relevant terrorist offence” means—

- (a) an offence that is specified in Part 1 or 2 of Schedule 19ZA to the Criminal Justice Act 2003 (terrorism offences carrying restricted eligibility for release on licence),

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- (b) a service offence as respects which the corresponding civil offence is so specified, or
- (c) an offence that was determined to have a terrorist connection.

(4B) In subsection (4A)—

- (a) in paragraph (b), “service offence” and “corresponding civil offence” have the same meaning as in the Counter-Terrorism Act 2008 (see section 95 of that Act);
- (b) paragraph (c) is to be read in accordance with section 247A(7A) of the Criminal Justice Act 2003 (meaning of offences determined to have a terrorist connection).”

(3) In section 29 (effect of polygraph condition), after subsection (7) insert—

“(7A) Rules under subsection (6) may make—

- (a) different provision for different purposes or different areas;
- (b) incidental, supplemental, consequential, saving or transitional provision.”

#### *Repatriated terrorist prisoners*

### **33 Release on licence of terrorist prisoners repatriated to the United Kingdom**

Schedule 11 provides for the application of certain provision made by this Part and the Terrorist Offenders (Restriction of Early Release) Act 2020 to terrorist prisoners who are repatriated, or responsibility for whom is transferred, to the United Kingdom.

**Changes to legislation:**

There are currently no known outstanding effects for the Counter-Terrorism and Sentencing Act 2021, PART 2.