

The Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020

Equality Statement

Purpose of this Document

1. This equality analysis has been undertaken to assist the Secretary of State in deciding whether to amend the proportion of the sentence that is served in custody by offenders given a standard determinate sentence of 7 or more years' imprisonment, as set out in the Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020. It supports the Secretary of State in fulfilling his duty under the Public Sector Equality Duty (PSED) by having due regard to the equality impact of implementing the Order.
2. This document assesses the potential equalities benefits and risks that have been identified. It considers the justification for the change and any necessary mitigating actions which have been proposed to reduce the likelihood of the risks and includes an assessment of any equalities benefits.

Policy Summary

3. Currently, section 244(3) of the Criminal Justice Act 2003 ("the 2003 Act") provides that all offenders serving standard determinate sentences ("SDS") are automatically released from custody at the half-way point of their sentence and serve the remaining half of the sentence on licence in the community. This policy will change the automatic release point from half-way to two-thirds of the custodial period for offenders who are:
 - a. convicted of a specified offence listed in parts 1 and 2 of Schedule 15 of the 2003 Act for which the maximum penalty is life; and
 - b. given a standard determinate sentence of 7 years or more.
4. The objective of this change is to ensure the most serious violent and sexual offenders given a long SDS spend two-thirds of their sentence in custody. It brings their point of release into line with that for those serving extended determinate sentences ("EDS"). The EDS is for serious offenders deemed dangerous by the court and their release from the two-thirds points is at the discretion of the Parole Board. However, those not deemed dangerous can still be convicted of very serious offences – the very same offences for which an EDS is available - and removing this disparity in the more serious cases seeks to better protect the public and improve confidence in the administration of justice.
5. This policy will only apply to adults given an SDS for the offences noted above from the date the Order comes into effect. It does not apply retrospectively – i.e. to those already serving such a sentence on that date.

Ministry of Justice and the Public Sector Equality Duty

6. Section 149 of the Equality Act 2010 ("the EA") requires Ministers and the Department, when exercising their functions, to have 'due regard' to the need to:

- a. Eliminate discrimination, harassment, victimisation and any other conduct prohibited by the EA;
- b. Advance equality of opportunity between individuals (those who share a relevant protected characteristic and those who do not); and
- c. Foster good relations between individuals (those who share a relevant protected characteristic and those who do not).

7. The 'due regard' duty relates to the nine protected characteristics specified in the EA:

- Race (ethnicity)
- Sexual Orientation
- Marriage/Civil Partnership
- Gender (sex)
- Religion or Belief
- Gender Reassignment
- Disability
- Age
- Pregnancy/Maternity

Sources of Information

8. The main source of information used for this analysis is data on CJS outcomes (specifically sentencing) by age, sex and ethnicity in the annual *Criminal Justice Statistics Quarterly*¹, which is published every May.

9. We have also consulted:

*Race and the Criminal Justice System 2016*²

*Women and the Criminal Justice System 2017*³

*Her Majesty's Prison and Probation Service (HMPPS) Offender Equalities 2017/18*⁴;

*Homicide in England and Wales ending March 2018*⁵

*Sexual Assault in England and Wales ending March 2017*⁶; and

*The Nature of Violent Crime in England and Wales, ending March 2018*⁷ and

Data

10. Detailed data about sentenced prisoners in the cohort affected is only available for three of the nine protected characteristics - age, sex and ethnicity. We have used this data for our analysis. Although there is data available on those serving sentences of imprisonment by other protected characteristics (for example Her Majesty's Prison and Probation Service (HMPPS) Offender Equalities 2017/18) this does not allow us to compare the cohort of prisoners who will be affected by this change as we cannot match offenders by these

¹ <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2018>

² <https://www.gov.uk/government/statistics/race-and-the-criminal-justice-system-2016>

³ <https://www.gov.uk/government/statistics/women-and-the-criminal-justice-system-2017>

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/760093/hmpps-offender-equalities-2017-18.pdf

⁵ <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/homicideinenglandandwales/yearendingmarch2018>

⁶ <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesinenglandandwales/yearendingmarch2017>

⁷ <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/thenatureofviolentcrimeinenglandandwales/yearendingmarch2018>

characteristics to sentence length. It is not therefore possible reliably to assess the extent to which the change will affect people with the other six characteristics.

Affected Groups

Offenders

11. The proposed change will have a direct impact on those offenders who are:

- a. convicted of a specified offence listed in Schedule 15 (parts 1 and 2) of the 2003 Act for which the maximum penalty is life; and
- b. given an SDS of 7 years or more.

These offenders will spend 17% more of their sentence in custody, with the equivalent reduction in the time spent under probation supervision on licence in the community. In our view, the shorter period of probation supervision should not affect rehabilitation adversely as the period of supervision will remain at least two years and offenders can begin their rehabilitation towards the end of the custodial period. The change will also affect the offenders' families including spouses and civil partners as well as children, but data on the impact on marriage/civil partnership is unavailable.

12. The data at Annex A below indicates the number and proportion of people (by sex, age and ethnicity) who were sentenced to an SDS in 2018⁸. For the purposes of this analysis, we have compared the group affected by the policy change, i.e. those convicted of a relevant offence and receiving a sentence of imprisonment of 7 or more years, with those not affected, i.e. those convicted of such an offence but receiving a sentence of under 7 years or those convicted of other offences.

13. The data suggests that some characteristics may be overrepresented in the offender population affected by this change. Specifically:

i. Sex

14. In relation to this policy change, males appear to be overrepresented. Of the 76,602 offenders given standard determinate sentences⁹, 1,467 fell into the group affected by the policy. Of these, 1,419 were male and 48 were female. Whilst 91% of the unaffected group were male, this rose to 97% for the affected group.

ii. Ethnicity

15. In respect of this policy change, all ethnic minority groups appear to be overrepresented, particularly Black and Asian people. White offenders are less likely to be affected: excluding those who did not report their ethnicity, the proportion of White people in the unaffected group was 80%, falling to 65% in the affected group. Black and Asian offenders

⁸ Data on sentencing volumes is published by the Ministry of Justice (Criminal Justice System Statistics Quarterly: December 2018; <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2018>). The figures reported in Annex A are calculated from the same underlying data as these published statistics but use a bespoke breakdown of the data that is not available via the published data tools.

⁹ Including all adults sentenced to standard determinate sentences and 18-20 year olds recorded as being sentenced to "Young Offender Institutions" in the published data tools.

are most likely to be affected by the policy. Black offenders made up 10% of the unaffected group, but 18% of the affected group. Asian people made up 6% of the unaffected group, rising to 11% of the affected group.

iii. Age

16. There are different sentencing regimes in place for adults and children and this change will not affect children as the policy will only apply to adult sentences. This reflects the different purpose and focus of the youth justice system which is more on reparation and rehabilitation than on punishment.
17. People aged 18-24 and those aged 50 and over appear to be overrepresented although the effect is greater for the older cohort. Of the 1,467 people in the affected group, 350 were aged 18-24, 877 were aged 25-49, 240 were aged 50 or more. The proportion of 18-20 years old in the unaffected group was 7% rising to 9% in the affected group, for 21-24 years the proportion rose from 13% to 15%, for age groups between 25 and 49 the proportion stayed the same or fell, for those ages 50 to 59 it rose from 6% to 9% and for those aged 60 or more it rose from 2% to 7%. The change will have a greater impact on older prisoners, because they are overrepresented in the group of offenders affected by the change at the point of sentence but also as the pool of older offenders grows as a result of the change.

Victims

18. The change will also affect the victims, and the families of the victims, of these offenders in particular, and the public in general, in that they will feel protected for longer from the risks presented by the offender and will be more likely to consider that the punishment better reflects the harm they have suffered. It will also increase the confidence of victims and the public in the administration of justice.
19. We are not able to identify by protected characteristics the victims of the specific cohort of offenders affected by this change. The available data consulted shows that, relative to the general population, victims of homicide are more likely to be male and men are also more likely to be victims of violence (apart from domestic violence)¹⁰ and robbery¹¹. Victims of almost all types of sexual assault are more likely to be female¹². The Mixed ethnic group was the most likely to be a victim of personal crime whilst the rate of homicide (the number of victims per million people) was 4 times higher for Black victims (32 homicide victims per million people) compared with White victims¹³.

¹⁰<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/thenatureofviolentcrimeinenglandandwales/yearendingmarch2018#which-groups-of-people-are-most-likely-to-be-victims-of-violent-crime>

¹¹<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/overviewofrobberyandthefromtheperson/2017-07-20#which-groups-in-society-are-most-likely-to-be-victims>

¹²<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesinenglandandwales/yearendingmarch2017>

¹³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/669094/statistics_on_race_and_the_criminal_justice_system_2016_v2.pdf

Advancing Equality of Opportunity

20. We have had regard to this aspect of the equality duty but do not consider that this change will affect the advancement of equality of opportunity, although there will be positive impacts for victims which may affect certain groups more.

Eliminating Unlawful Discrimination

Direct Discrimination

21. Direct discrimination occurs when a policy would result in people being treated less favourably because of a protected characteristic. Our assessment is that this change is not directly discriminatory within the meaning of the 2010 Act, as it applies in the same way to all individuals regardless of their protected characteristics. It is the nature of the offence and the seriousness of their offending, reflected in the sentence they receive, that determines whether the change applies. No offender will be treated less favourably in relation to any protected characteristic.

Indirect Discrimination

22. Indirect discrimination occurs when a policy applies equally to all individuals but would put those sharing a protected characteristic at a particular disadvantage compared to those who do not. Our initial assessment is that the change is not indirectly discriminatory within the meaning of the EA as explained below.
23. By virtue of the overrepresentation of these groups in the affected cohort of offenders, we acknowledge that any adverse impacts arising from this change will be more likely to affect male, minority ethnic and older prisoners.
24. We do not, however, consider that these overrepresentations will likely result in any particular disadvantage for offenders with protected characteristics. Our assessment is that extending the proportion of the sentence that must be served in custody for the specified cohort of offenders is a proportionate means of achieving the legitimate aims of ensuring such offenders are imprisoned for a period that better reflects the harm they have done, better protects the public and victims, and improves confidence in the administration of justice. Overall, therefore, we do not consider that the policy change is likely to result in any unlawful indirect discrimination.
25. There are measures already in place which will help offenders who will spend longer in prison without further measures being required. Longer periods in custody will affect family engagement, although in some cases the additional time can help in terms of working with offenders on strengthening relationships with families or significant others. Following the 2017 publication of Lord Farmer's review into the importance of family ties for male prisoners, £5.5 million has been devolved to Governors of all public-sector prisons to deliver family engagement services and we are investing £7 million in a new in-cell telephony system to allow more frequent family contact.
26. In 2018, HMPPS issued a specialist Model for Operational Delivery (MOD) for older prisoners, which was developed in recognition of the sizeable and growing proportion of older prisoners in the prison estate. It provides guidance for how services and interventions may be tailored to enable all older prisoners to maintain their physical and mental wellbeing, and their independence. In addition, prisons are required to agree and sign off

a Memorandum of Understanding (MoU) with their local authority partners, which sets out how services will work locally together to deliver social care. As of July 2019, approximately 90% are in place, either signed or in draft waiting for signature. This work has ensured that HMPPS and local authorities have engaged to ensure they have the capability and capacity to deliver social care as defined in the Care Act 2014 at a local level, which will particularly benefit older prisoners.

Discrimination arising from disability and duty to make reasonable adjustments

27. In so far as this change extends to disabled offenders, we believe that the policy is proportionate, having regard to its aim. It would not be reasonable to make an adjustment for disabled offenders so that they are out of scope of the proposals, but it remains important to make reasonable adjustments for disabled offenders to ensure appropriate support is given. We do not consider that any adjustments are required for disabled people over and above the ones already in place in prisons.

Harassment and victimisation

28. We do not consider there to be a risk of harassment or victimisation within the meaning of the EA a result of this change.

Fostering Good Relations

29. Our assessment is that extending the automatic release points to two-thirds of the overall sentence length for more serious offenders is unlikely to impact on fostering good relations between groups with different protected characteristics.

Continuing Analysis

30. The equality duty is an ongoing duty and we will use existing sentencing outcomes and other available evidence of how the new sentencing works to inform how the policy is working overall for all offenders including those with protected characteristics who are currently overrepresented in the impacted pool.

Annex A

The Ministry of Justice publishes data on sentencing through quarterly criminal justice system statistics publications¹⁴. The following data are based on a bespoke breakdown of the same underlying data that the published figures are based on, but that is not available using the published data tools.

76,602 adult offenders were recorded as receiving a standard determinate sentence¹⁵ in 2018. The following tables indicate the number and proportion of offenders (by the protected characters described) who would be affected by the new policy, compared to those who would be unaffected¹⁶.

Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

Data are given on a principal offence basis. When a defendant has been found guilty of two or more offences it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe.

Data are given on a principal disposal basis - i.e. reporting the most severe sentence for the principal offence.

Table A – Adults (18 years or older) sentenced to Standard Determinate Sentences (SDS) and Young Offender Institutions (YOI) in 2018, in all courts, by sex and whether they are affected of unaffected by this policy.

	SDS/YOI		Proportion*	
	Unaffected	Affected	Unaffected	Affected
Total	75,135	1,467	100%	100%
Male	68,186	1,419	91%	97%
Female	6,379	48	9%	3%
N/K	570	-	-	-

*excluding N/K

¹⁴ <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2018>

¹⁵ Or 'Young Offender Institution' for those 18-20 years old

¹⁶ 'Affected' includes only standard determinate sentence of 7 or more years for a specified offence listed in parts 1 and 2 of Schedule 15 of the 2003 Act for which the maximum penalty is life. 'Unaffected' includes standard determinate sentences of under 7 years, or for 7 or more years but for offences not in scope of this policy.

Table B – Adults (18 years or older) sentenced to Standard Determinate Sentences (SDS) and Young Offender Institutions (YOI) in 2018, in all courts, by ethnicity and whether they are affected or unaffected by this policy.

	SDS/YOI		Proportion*	
	Unaffected	Affected	Unaffected	Affected
Total	75,135	1,467	100%	100%
White	37,831	776	80%	65%
Black	4,737	220	10%	18%
Asian	2,903	127	6%	11%
Mixed	1,445	48	3%	4%
Chinese/Other	636	25	1%	2%
Not Stated**	13,909	271	-	-
N/K	13,674	-	-	-

*excluding not stated and N/K

**declined to state

Table C – Adults (18 years or older) sentenced to Standard Determinate Sentences (SDS) and Young Offender Institutions (YOI) in 2018, in all courts, by age and whether they are affected or unaffected by this policy.

	SDS/YOI		Proportion*	
	Unaffected	Affected	Unaffected	Affected
Total	75,135	1,467	100%	100%
18-20	5,366	128	7%	9%
21-24	9,659	222	13%	15%
25-29	14,342	273	19%	19%
30-39	26,241	388	35%	26%
40-49	13,062	216	17%	15%
50-59	4,838	138	6%	9%
60+	1,622	102	2%	7%
N/K	5	-	-	-

*excluding N/K