



# Legal Aid, Sentencing and Punishment of Offenders Act 2012

## 2012 CHAPTER 10

### PART 3

#### SENTENCING AND PUNISHMENT OF OFFENDERS

### CHAPTER 5

#### DANGEROUS OFFENDERS

#### 128 Power to change test for release on licence of certain prisoners

- (1) The Secretary of State may by order provide that, following a referral by the Secretary of State of the case of a discretionary release prisoner, the Parole Board—
- (a) must direct the prisoner's release if it is satisfied that conditions specified in the order are met, or
  - (b) must do so unless it is satisfied that conditions specified in the order are met.
- (2) “Discretionary release prisoner” means—
- (a) an IPP prisoner,
  - (b) an extended sentence prisoner,
  - <sup>[F1]</sup>(bza) a prisoner whose case has been referred to the Parole Board under section 244ZB of the Criminal Justice Act 2003 (power to refer to Parole Board in place of automatic release),]
  - <sup>[F2]</sup>(ba) a section 236A prisoner,]
  - <sup>[F3]</sup>(bb) a terrorist prisoner,][<sup>[F4]</sup>eligible for discretionary release] or
  - (c) a person [<sup>[F5]</sup>, other than a terrorist prisoner,][<sup>[F6]</sup>eligible for discretionary release] to whom paragraph 4, 15, 24 or 27 of Schedule 20B to the Criminal Justice Act 2003 (determinate sentence prisoners subject to transitional provisions) applies.

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*Changes to legislation: Legal Aid, Sentencing and Punishment of Offenders Act 2012, Section 128 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (3) An order under this section may—
- (a) amend section 28 of the Crime (Sentences) Act 1997 (duty to release IPP prisoners and others),
  - [<sup>F7</sup>(aa) amend section 32 of the Crime (Sentences) Act 1997 (recall of IPP prisoners and others while on licence and further release),]
  - [<sup>F8</sup>(aaa) amend section 244ZC of the Criminal Justice Act 2003 (proceedings following reference under section 244ZB of that Act),]
  - [<sup>F9</sup>(ab) amend section 244A of the Criminal Justice Act 2003 (release on licence of section 236A prisoners),]
  - (b) amend section 246A of the Criminal Justice Act 2003 (release on licence of extended sentence prisoners),
  - [<sup>F10</sup>(ba) amend section 247A of the Criminal Justice Act 2003 (restricted eligibility for release on licence of terrorist prisoners);]
  - (c) amend paragraph 6, 15, 25 or 28 of Schedule 20B to the Criminal Justice Act 2003 (release on licence of determinate sentence prisoners subject to transitional provisions),
  - (d) make provision in relation to any person whose case is disposed of by the Parole Board on or after the day on which the regulations come into force (even if the Secretary of State referred that person's case to the Board before that day),
  - (e) make different provision in relation to each of the categories of discretionary release prisoner mentioned in subsection (2), and
  - (f) include consequential provision.

(4) An order under this section is to be made by statutory instrument.

(5) A statutory instrument containing an order under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(6) In this section—

“extended sentence prisoner” means a prisoner [<sup>F11</sup>, other than [<sup>F12</sup>one to whom section 247A of the Criminal Justice Act 2003 applies],] who is serving a sentence under section 226A or 226B of the Criminal Justice Act 2003 [<sup>F13</sup>or section 254, 266 or 279 of the Sentencing Code] (including one imposed as a result of section 219A or 221A of the Armed Forces Act 2006);

“IPP prisoner” means a prisoner who is serving one or more of the following sentences and is not serving any other life sentence—

- (a) a sentence of imprisonment for public protection or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (including one imposed as a result of section 219 of the Armed Forces Act 2006);
- (b) a sentence of detention for public protection under section 226 of the Criminal Justice Act 2003 (including one imposed as a result of section 221 of the Armed Forces Act 2006);

“life sentence” has the same meaning as in section 34 of the Crime (Sentences) Act 1997;

[<sup>F14</sup>“section 236A prisoner” means a prisoner [<sup>F11</sup>, other than [<sup>F12</sup>one to whom section 247A of the Criminal Justice Act 2003 applies],] who is serving a sentence under section 236A of the Criminal Justice Act 2003 [<sup>F15</sup>or

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section 265 or 278 of the Sentencing Code] (including one imposed as a result of section 224A of the Armed Forces Act 2006);]

[<sup>F16</sup>“terrorist prisoner [<sup>F17</sup>eligible for discretionary release]” means a prisoner to whom section 247A [<sup>F18</sup>(3) to (5)] of the Criminal Justice Act 2003 applies (or would apply but for the prisoner’s release on licence).]

#### Textual Amendments

- F1** S. 128(2)(bza) inserted (28.4.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 132(12)(a), 208(4)(p)**
- F2** S. 128(2)(ba) inserted (13.4.2015) by Criminal Justice and Courts Act 2015 (c. 2), s. 95(1), **Sch. 1 para. 25(2)**; S.I. 2015/778, art. 3, Sch. 1 para. 72
- F3** S. 128(2)(bb) inserted (26.2.2020) by Terrorist Offenders (Restriction of Early Release) Act 2020 (c. 3), **ss. 7(9)(a)(i), 10(4)**
- F4** Words in s. 128(2)(bb) inserted (29.6.2021) by Counter-Terrorism and Sentencing Act 2021 (c. 11), s. 50(2)(v), **Sch. 13 para. 46(a)**
- F5** Words in s. 128(2)(c) inserted (26.2.2020) by Terrorist Offenders (Restriction of Early Release) Act 2020 (c. 3), **ss. 7(9)(a)(ii), 10(4)**
- F6** Words in s. 128(2)(c) inserted (29.6.2021) by Counter-Terrorism and Sentencing Act 2021 (c. 11), s. 50(2)(v), **Sch. 13 para. 46(a)**
- F7** S. 128(3)(aa) inserted (29.6.2022) by Criminal Justice and Courts Act 2015 (c. 2), **ss. 11(3), 95(1)**; S.I. 2022/716, art. 2
- F8** S. 128(3)(aaa) inserted (28.4.2022) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), **ss. 132(12)(b), 208(4)(p)**
- F9** S. 128(3)(ab) inserted (13.4.2015) by Criminal Justice and Courts Act 2015 (c. 2), s. 95(1), **Sch. 1 para. 25(3)**; S.I. 2015/778, art. 3, Sch. 1 para. 72
- F10** S. 128(3)(ba) inserted (26.2.2020) by Terrorist Offenders (Restriction of Early Release) Act 2020 (c. 3), **ss. 7(9)(b), 10(4)**
- F11** Words in s. 128(6) inserted (26.2.2020) by Terrorist Offenders (Restriction of Early Release) Act 2020 (c. 3), **ss. 7(9)(c)(i), 10(4)**
- F12** Words in s. 128(6) substituted (29.6.2021) by Counter-Terrorism and Sentencing Act 2021 (c. 11), s. 50(2)(v), **Sch. 13 para. 46(b)(i)**
- F13** Words in s. 128(6) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 288(2)** (with Sch. 27); S.I. 2020/1236, reg. 2
- F14** Words in s. 128(6) inserted (13.4.2015) by Criminal Justice and Courts Act 2015 (c. 2), s. 95(1), **Sch. 1 para. 25(4)**; S.I. 2015/778, art. 3, Sch. 1 para. 72
- F15** Words in s. 128(6) inserted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 288(3)** (with Sch. 27); S.I. 2020/1236, reg. 2
- F16** Words in s. 128(6) inserted (26.2.2020) by Terrorist Offenders (Restriction of Early Release) Act 2020 (c. 3), **ss. 7(9)(c)(ii), 10(4)**
- F17** Words in s. 128(6) inserted (29.6.2021) by Counter-Terrorism and Sentencing Act 2021 (c. 11), s. 50(2)(v), **Sch. 13 para. 46(b)(ii)(a)**
- F18** Words in s. 128(6) inserted (29.6.2021) by Counter-Terrorism and Sentencing Act 2021 (c. 11), s. 50(2)(v), **Sch. 13 para. 46(b)(ii)(b)**

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing S.I. 2016/286, art. 4(1) by [S.I. 2017/225 art. 2](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act applied (with modifications) by [S.I. 2018/1125 reg. 8](#) (This amendment not applied to legislation.gov.uk. S.I. 2018/1125, reg. 8 omitted (31.12.2020) by virtue of Private International Law (Implementation of Agreements) Act 2020 (c. 24), s. 4(3), Sch. 5 para. 4(4))

**Whole provisions yet to be inserted into this Act (including any effects on those provisions):**

- s. 9(3)(4) inserted by [2022 c. 36 s. 25\(2\)](#)
- s. 9A inserted by [2023 c. 32 s. 89\(3\)](#)
- s. 9B inserted by [2023 c. 32 s. 90](#)
- s. 10(3A)-(3E) inserted by [2022 c. 36 s. 67](#)
- Sch. 1 Pt. 1 para. 31ZA and cross-heading inserted by [2022 c. 36 s. 25\(1\)](#)
- Sch. 1 Pt. 1 para. 31B and cross-heading inserted by [2022 c. 36 s. 57\(2\)](#)
- Sch. 1 Pt. 1 para. 19(1A)(1B) and heading inserted by [2022 c. 36 s. 66\(2\)\(a\)](#)
- Sch. 1 Pt. 1 para. 19(2A) inserted by [2022 c. 36 s. 66\(2\)\(b\)](#)
- Sch. 1 Pt. 1 para. 19(8A) and heading inserted by [2022 c. 36 s. 66\(2\)\(c\)](#)
- Sch. 1 Pt. 1 para. 25(1A) and heading inserted by [2022 c. 36 s. 66\(3\)\(a\)](#)
- Sch. 1 Pt. 1 para. 26(1A) and heading inserted by [2022 c. 36 s. 66\(3\)\(a\)](#)
- Sch. 1 Pt. 1 para. 27(1A) and heading inserted by [2022 c. 36 s. 66\(3\)\(a\)](#)
- Sch. 1 Pt. 1 para. 27A(1A) and heading inserted by [2022 c. 36 s. 66\(3\)\(a\)](#)
- Sch. 1 Pt. 1 para. 25(3)(4) and heading inserted by [2022 c. 36 s. 66\(3\)\(b\)](#)
- Sch. 1 Pt. 1 para. 26(3)(4) and heading inserted by [2022 c. 36 s. 66\(3\)\(b\)](#)
- Sch. 1 Pt. 1 para. 27(3)(4) and heading inserted by [2022 c. 36 s. 66\(3\)\(b\)](#)
- Sch. 1 Pt. 1 para. 27A(3)(4) and heading inserted by [2022 c. 36 s. 66\(3\)\(b\)](#)
- Sch. 1 Pt. 1 para. 30(1A) and heading inserted by [2022 c. 36 s. 66\(4\)\(a\)](#)
- Sch. 1 Pt. 1 para. 30(2A) inserted by [2022 c. 36 s. 66\(4\)\(b\)](#)
- Sch. 1 Pt. 1 para. 30(3A) and heading inserted by [2022 c. 36 s. 66\(4\)\(c\)](#)
- Sch. 1 Pt. 1 para. 31A(2A) and heading inserted by [2022 c. 36 s. 66\(5\)\(a\)](#)
- Sch. 1 Pt. 1 para. 31A(3A)(3B) and heading inserted by [2022 c. 36 s. 66\(5\)\(b\)](#)
- Sch. 1 Pt. 1 para. 19(6A) inserted by [2023 c. 37 s. 56\(2\)\(a\)](#)
- Sch. 1 Pt. 1 para. 31C inserted by [2023 c. 37 s. 56\(3\)](#)
- Sch. 1 Pt. 1 para. 27A(1) inserted by [S.I. 2017/617 reg. 3\(4\)](#) (This amendment comes into force on the commencement of paragraph 1 of Schedule 10 to the Immigration Act 2016 (c. 19))
- Sch. 1 Pt. 1 para. 11(1A) inserted by [S.I. 2023/150 art. 4\(3\)\(a\)](#)
- Sch. 1 Pt. 1 para. 11(3A) inserted by [S.I. 2023/150 art. 4\(3\)\(b\)](#)
- Sch. 1 Pt. 1 para. 2(1)(b) omitted by [2018 anaw 2 Sch. 1 para. 21\(2\)\(a\)\(ii\)](#)
- Sch. 1 Pt. 1 para. 45(2) omitted by [2023 c. 32 s. 91\(2\)](#)
- Sch. 1 Pt. 1 para. 45(3) substituted by [2023 c. 32 s. 91\(3\)](#)
- Sch. 1 Pt. 1 para. 26(1) substituted by [S.I. 2017/617 reg. 3\(2\)\(b\)](#) (This amendment comes into force on the commencement of paragraph 1 of Schedule 10 to the Immigration Act 2016 (c. 19))

- Sch. 1 Pt. 1 para. 27(1) substituted by [S.I. 2017/617 reg. 3\(3\)\(b\)](#) (This amendment comes into force on the commencement of paragraph 1 of Schedule 10 to the Immigration Act 2016 (c. 19))
- Sch. 1 Pt. 1 para. 19(10) words inserted by [2023 c. 37 s. 56\(2\)\(b\)](#)
- Sch. 1 Pt. 1 para. 31(1)(a) words inserted by [S.I. 2023/147 art. 2\(2\)\(a\)](#)
- Sch. 1 Pt. 1 para. 31(1)(a) words inserted by [S.I. 2023/147 art. 2\(2\)\(b\)](#)
- Sch. 1 Pt. 1 para. 31(1)(a) words omitted by [2016 c. 19 Sch. 11 para. 2\(1\)](#)
- Sch. 1 Pt. 1 para. 45(4) words omitted by [2023 c. 32 s. 91\(4\)](#)
- Sch. 1 Pt. 1 para. 26 heading words substituted by [S.I. 2017/617 reg. 3\(2\)\(a\)](#) (This amendment comes into force on the commencement of paragraph 1 of Schedule 10 to the Immigration Act 2016 (c. 19))
- Sch. 1 Pt. 1 para. 27 heading words substituted by [S.I. 2017/617 reg. 3\(3\)\(a\)](#) (This amendment comes into force on the commencement of paragraph 1 of Schedule 10 to the Immigration Act 2016 (c. 19))
- Sch. 1 Pt. 3 para. 16A inserted by [2023 c. 37 s. 56\(4\)](#)
- Sch. 1 Pt. 3 para. 11(b) and word inserted by [S.I. 2017/617 reg. 3\(6\)\(b\)](#) (This amendment comes into force on the commencement of paragraph 1 of Schedule 10 to the Immigration Act 2016 (c. 19))
- Sch. 1 Pt. 3 para. 8(b) omitted by [S.I. 2017/617 reg. 3\(5\)](#) (This amendment comes into force on the commencement of paragraph 1 of Schedule 10 to the Immigration Act 2016 (c. 19))
- Sch. 1 Pt. 3 para. 11(a) and word omitted by [S.I. 2017/617 reg. 3\(6\)\(a\)](#) (This amendment comes into force on the commencement of paragraph 1 of Schedule 10 to the Immigration Act 2016 (c. 19))
- Sch. 1 Pt. 4 para. 8 inserted by [2022 c. 36 s. 66\(6\)](#)