

## **Sentencing and release provisions in relation to terrorism offences**

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1. The purpose of this note is set out (in slightly simplified form<sup>1</sup>) the current custodial sentencing and release provisions applicable to adult terrorist offenders, as at 7 February 2020. I am very grateful for the assistance I received in preparing this note from my colleague in chambers, Dr Lyndon Harris, Editor of Thomas' Sentencing Reference and Current Sentencing Practice.
2. This note is set out as follows:
  - a. Part I: Executive Summary
  - b. Part II: General
  - c. Part III: Standard Determinate Sentences
  - d. Part IV: Extended Determinate Sentences
  - e. Part V: Special custodial sentence for offenders of particular concern
  - f. Part VI: Life sentences
  - g. Annex A: 'Quick reference' table

### **Part I: Executive Summary**

3. Most offenders in custody are subject to standard determinate sentences (see Part III below) and will be automatically released at the half-way point of their sentences. The Parole Board has no role in their release. For the rest of their sentence they are automatically on licence with conditions (such as living at Approved Premises, or wearing an electronic tag), with the possibility of recall to prison to serve the rest of their sentence in custody. This was the case with Sudesh Amman who was sentenced to 3 years 4 months imprisonment.
4. It is not possible to add an additional period of licence. Accordingly, if the law changed so that determinate sentenced prisoners were not released until the end of their sentence, they would not be subject to licence conditions or recall.

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<sup>1</sup> For example, I have not addressed the position of concurrent or consecutive sentences.

5. The position is different for life prisoners or those who are specifically sentenced as dangerous offenders. Early release (and any release, in the case of life prisoners) depends upon a decision by the Parole Board. After release they are automatically subject to licence conditions for varying durations depending on the sentence, with the possibility of recall.

## **Part II: General**

6. The Criminal Justice Act 2003 (“CJA 2003”) is the main statute containing sentencing and release provisions for all offenders. The CJA 2003 has been amended on numerous occasions, and is supplemented by a number of other enactments, most notably the Powers of the Criminal Courts (Sentencing) Act 2000 (“PCC(S)A 2000”) and the Crime (Sentences) Act 1997.
7. Various statutory instruments, Prison Service Instructions and Prison Service Orders deal with the detail of licence conditions and recall to prison.

## **Part III: Standard Determinate Sentences**

8. A standard determinate sentence of imprisonment may be imposed if the offence is serious enough to pass what is known as the custody threshold (section 152(2) of the CJA 2003). The more serious the offence is, the longer the sentence (section 153(2)).
9. Release is governed by section 244 of the CJA 2003 and is automatic upon the expiry of half the sentence. With some minor exceptions, release is on licence until the expiry of the sentence, and this applies to all determinate sentences irrespective of their length. So, a person sentenced to 4 years imprisonment will be released after 2 years and be on licence for a further 2 years. A person on licence is subject to recall (section 254) which means he can be returned to prison to serve the rest of his sentence.
10. Additionally, but only for determinate sentences of less than 2 years there is an additional period of post-sentence supervision to which offenders are subject on expiry of their sentence (sections 256AA-256C). Such offenders are served with a notice which may for example require them to receive probation visits or reside at a particular address. Breach of post-sentence supervision may result in a summons being issued by a magistrates’ court and ultimately could result in being committed to prison for up to 14 days.

## **Part IV: Extended Determinate Sentences for dangerous offenders**

11. Unless a life sentence is imposed (see Part V, below), if a court considers that there is a significant risk of serious harm occasioned by the commission by the defendant of further offences specified in Part 3 of Schedule 15 to the CJA 2003 (basically, the main terrorism offences), then under section 226A an extended determinate sentence may be imposed where the offender has been convicted of a terrorism offence and either (a) the appropriate custodial sentence would be 4 years or more or (b) the defendant had already been convicted of an offence listed in Schedule 15B (basically, the most serious terrorist offences).
12. An extended determinate sentence comprises two parts: (1) the custodial sentence and (2) the extended licence period. The court imposes a custodial sentence in accordance with normal principles. The extended licence period is based on a necessity test and is for a maximum of eight years. An extended determinate sentence must not exceed the term that, at the time the offence was committed, was the maximum term permitted for the offence. In other words, if the maximum sentence is 15 years, the total of the custodial part and the extended licence part taken together must not exceed 15 years.
13. Under section 246A of the CJA 2003, release is automatic upon the expiry of the custodial term. Earlier release is possible after the expiry of two-thirds of the custodial term, when the offender is referred to the Parole Board, if the Parole Board decides to direct release.
14. The licence lasts until the expiry of the entire sentence and the offender is liable to recall (section 254).

#### **Part V: Special Custodial Sentence for Offenders of Particular Concern**

15. Special sentences are provided for “offenders of particular concern” under section 236A, where a life sentence, or extended determinate sentence is not passed. These apply to offenders convicted of the main terrorism offences (listed in Schedule 18A to the CJA 2003). Note that prior to the Counter-Terrorism and Border Security Act 2019 Schedule 18A did not include all terrorism offences, such as those committed by Sudesh Amman.
16. The special custodial sentence for offenders of particular concern comprises an “appropriate” custodial sentence and a further 12-month period of licence under section 236A.

17. Release from such a sentence is governed by section 244A. Release is automatic upon the expiry of the custodial term, but is subject to a direction for release by the Parole Board at or after the half-way period of that term. Where release is directed prior to the expiry of the custodial term, the balance of the custodial sentence is served on licence in addition to the one-year extended licence period.
18. The licence lasts until the expiry of the entire sentence and the offender is liable to recall (section 254).

**Part VI: Life sentences**

19. There are four types of life sentences which might apply to terrorists: mandatory life for murder (s.1(1) Murder (Abolition of Death Penalty Act 1965) as in *R. v Adebolajo* [2014] EWCA Crim 2779; [2015] 4 All E.R. 194; life for dangerous offenders (sections 224 to 229 CJA 2003); two-strikes life (section 224A, for example where a person convicted of one of the most serious terrorism offences had previously been convicted of causing grievous bodily harm with intent); and common law life.
20. Save in those rare cases where the court has ordered that the offender should never be released, release is dependent upon the Parole Board after the expiry of the minimum custodial term set by the Court.
21. Following release, a licence lasts for the rest of the offender’s life and the offender is liable to recall (section 254).

**Annex A**

22. The following table is provided as a ‘ready reckoner’.

	<b>Eligible for release</b>	<b>Entitlement to release</b>	<b>Licence</b>	<b>Extended licence</b>	<b>Post-sentence supervision</b>
Mandatory life	Expiry of minimum term (C(S)A 1997 s.28(7))	None	Upon release, for life  (C(S)A 1997s.31(1))	None	None
Dangerousness life	Expiry of minimum term (C(S)A 1997 s.28(7))	None	Upon release, for life  (C(S)A 1997s.31(1))	None	None

	<b>Eligible for release</b>	<b>Entitlement to release</b>	<b>Licence</b>	<b>Extended licence</b>	<b>Post-sentence supervision</b>
Two-strikes life	Expiry of minimum term (C(S)A 1997 s.28(7))	None	Upon release, for life  (C(S)A 1997s.31(1))	None	None
Common law life	Expiry of minimum term (C(S)A 1997 s.28(7))	None	Upon release, for life  (C(S)A 1997s.31(1))	None	None
Extended determinate sentence	Two-thirds of the custodial term  (CJA 2003 s.246A(4)-(6))	Expiry of custodial term  (CJA 2003 (s.246A(7))	Any period remaining between first release and expiry of custodial term  (CJA 2003 s.246A(5))	A period of up to 5 or 8 years but not less than 1 year  (CJA 2003 ss.226A(7A) and (8) and 226B(5A) and (6))	None
Offender of particular concern	One-half of the custodial term  (CJA 2003 s.244A(3))	Expiry of the custodial term  (CJA 2003 s.244A(5))	Any period remaining between first release and expiry of custodial term  (CJA 2003 s.244A(3))	A period of 12 months after the expiry of the custodial term.  (CJA 2003 s.236A(2)(b))	None
Standard determinate sentence		One-half of the custodial term.  (CJA 2003 s.244(1))	Any period remaining between first release and expiry of custodial term  (CJA 2003 s.244(1))	None	If under 2 years sentence, 12 months  (CJA 2003 s.256AA(4))

7 February 2020