



Terrorist Offenders (Restriction of Early Release) Bill **HL Bill 99 of 2019–21**

On 24 February 2020, the second reading and remaining stages of the [Terrorist Offenders \(Restriction of Early Release\) Bill](#) are scheduled to take place in the House of Lords.

Summary

The purpose of the bill, as described by the UK Government, is to ensure that terrorist offenders are not automatically released on licence before the end of their custodial term without the Parole Board's prior agreement. Recent terrorist attacks in the UK, including the Streatham attack on 2 February 2020 and the Fishmongers' Hall attack on 30 November 2019, were committed by individuals who had previously been convicted of terrorist offences and had been released from prison automatically at the half-way point.

The bill would mean that anyone who receives a standard determinate sentence for certain terrorist offences would spend a minimum of two-thirds of their custodial term in prison before being referred to the Parole Board for consideration. A standard determinate sentence requires a person to serve the first half of the sentence in prison and the second half on licence. For offences committed after 1 February 2015, offenders sentenced to less than two years will also be subject to post sentence supervision. The bill would also apply retrospectively to those who are already in prison and serving a custodial sentence.

The Government believes that legislation is “urgently” needed to safeguard the public before further terrorist offenders are released. The next such prisoners are scheduled for automatic release at the end of February 2020. The Government intends to expedite the parliamentary progress of the bill to make it law before their release.

The Government introduced the bill in the House of Commons on 11 February 2020. During the bill's second reading, MPs raised several issues. These included the bill's compliance with article 7 of the European Convention on Human Rights, the fast-tracking of the bill through the parliamentary process, and implications for resources. Some have argued that the bill may be subject to legal challenges in court.

The bill completed all stages in the House of Commons on 12 February 2020. It passed with no amendments following its third reading.

Claire Brader | 19 February 2020

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I. Government Policy

The purpose of the bill, as described by the Government, is to ensure that terrorist offenders are not automatically released on licence before the end of their custodial term without the Parole Board's prior agreement.¹ The bill would mean that anyone who receives a standard determinate sentence for certain terrorist offences will spend a minimum of two-thirds of their custodial term in prison before being referred to the Parole Board for consideration.² The bill would also apply retrospectively. Anyone currently serving a sentence affected by the bill would see their automatic half-way release halted.³

This follows recent attacks in the UK by offenders convicted of terrorist offences. Incidents include the Streatham attack on 2 February 2020 and the London Bridge attack at Fishmongers' Hall on 30 November 2019. The individuals responsible for both incidents had previously been convicted of terrorist offences and had been released from prison automatically at the half-way point.⁴

On the day following the Streatham attack, Justice Secretary Robert Buckland said in the House of Commons:

Yesterday's appalling incident makes the case plainly for immediate action. We cannot have the situation, as we saw tragically in yesterday's case, where an offender—a known risk to innocent members of the public—is released early by automatic process of law without any oversight by the Parole Board.⁵

The Government believes that legislation is needed “urgently” to ensure safeguards are introduced before further terrorist offenders are released from prison.⁶ The next prisoners due for automatic release are scheduled to be released at the end of February 2020.⁷ The Government therefore intends to expedite the parliamentary progress of the bill.⁸ The House of Lords agreed to set aside its usual recommended intervals between bill stages to take all stages of this bill on 24 February 2020.⁹

The Government has said that the bill follows recent action by ministers to “strengthen” the response to terrorism.¹⁰ The Government also plans to introduce a new Counter Terrorism Sentencing Bill in the coming months.¹¹

¹ [Explanatory Notes](#), p 2.

² Ministry of Justice, '[End to Automatic Early Release of Terrorists](#)', 11 February 2020.

³ *ibid.*

⁴ Daniel De Simone, '[Sudesh Amman: Who Was the Streatham Attacker?](#)', BBC News, 3 February 2020; and BBC News, '[London Bridge: What We Know About the Attack](#)', 3 December 2019.

⁵ [HC Hansard, 3 February 2020, cols 55–6.](#)

⁶ [Explanatory Notes](#), p 3.

⁷ BBC News, '[How Many People Are In Prison For Terror Offences?](#)', 6 February 2020.

⁸ [Explanatory Notes](#), p 2.

⁹ [HL Hansard, 13 February 2020, col 2348.](#)

¹⁰ Ministry of Justice, '[End to Automatic Early Release of Terrorists](#)', 11 February 2020.

¹¹ House of Commons Library, '[Counter-Terrorism \(Sentencing and Release Bill\) 2019–20](#)', 2 January 2020.

2. Legal Background

In England and Wales, prisoners must be released under the provisions contained in the Criminal Justice Act 2003 and the legacy release provisions of the Criminal Justice Act 1991 (which are restated in schedule 20B of the 2003 Act). In Scotland, the Prisoners and Criminal Proceedings (Scotland) Act 1993 details how prisoners must be released.

There are various sentences that the court can give to terrorist offenders. The most common type of sentence is a determinate sentence. In England and Wales, this sees a court set a fixed length for the prison sentence.¹² Prisoners who receive determinate sentences are entitled to be automatically released on licence once they have served half of their sentence.¹³ Offenders on licence can be recalled to prison if they breach the conditions of their licence.¹⁴ Other terrorist offenders can receive a 'sentence for offenders of particular concern' (SOPC).¹⁵ This allows prisoners to be considered for release by the Parole Board once half of the custodial element of their sentence has been served. For anyone assessed as 'dangerous', an extended determinate sentence can be given. This means that a prisoner would either be entitled to automatic release on licence at the two-thirds point of their custodial sentence or be entitled to apply to the Parole Board at that point.¹⁶

In Scotland, determinate sentences are split into 'short term' sentences (less than four years) and 'long term sentences' (four years or more).¹⁷ Those given short term sentences are automatically released after serving half of the time in prison. Those with long term sentences can serve all but the final six months of the sentence in prison, unless otherwise released on the Parole Board for Scotland's recommendation.¹⁸

In Scotland, an extended sentence combines a period in prison with a further set time of supervision in the community (the extension part).¹⁹ An offender would serve the full prison part of the sentence, unless the Parole Board for Scotland recommends early release. When released, they are on licence until the end of the extension part of the sentence.²⁰

3. Bill Provisions

The bill consists of ten clauses and two schedules.

Clauses 1 and 2: Restrictions of Early Release in England and Wales

Clause 1 would amend the eligibility for release on licence of terrorist prisoners in England and Wales. It would do this by inserting a new section 247A into the Criminal Justice Act 2003. The new

¹² Sentencing Council, '[Determinate Prison Sentences](#)', accessed 10 February 2020.

¹³ [Explanatory Notes](#), p 2.

¹⁴ Sentencing Council, '[Determinate Prison Sentences](#)', accessed 10 February 2020.

¹⁵ [Explanatory Notes](#), p 2.

¹⁶ Sentencing Council, '[Extended Sentences](#)', accessed 12 February 2020.

¹⁷ Sentencing Council Scotland, '[Prison Sentences](#)', accessed 18 February 2020.

¹⁸ *ibid.*

¹⁹ *ibid.*

²⁰ *ibid.*

section 247A(1) would apply the new release provision to relevant terrorist offenders serving a fixed term sentence who had not been released on licence. Applicable fixed term sentences include:

- standard determinate sentences;
- sentences for offenders of particular concern (SOPC);
- extended determinate sentences (EDS) imposed before 13 April 2015;
- extended public protection sentences (EPP); and
- discretionary conditional release sentences, which applied under the Criminal Justice Act 1991.²¹

The new section 247A would apply to sentences passed both before and after it comes into force. The changes would not apply to terrorist offenders who had already been released.

Clause 1 would place a duty on the secretary of state to refer relevant terrorist prisoners to the Parole Board and release on licence, as soon as the requisite custodial period had been served and the Parole Board had directed release of the prisoner. Relevant terrorist offenders would be eligible for release at the two-thirds point of their sentence.²² In the case of an extended sentence or SOPC this would be the two-thirds point of the custodial element of their sentence.²³

New section 247A(6) and (7) would apply to adult and youth offenders serving an extended determinate sentence, an extended sentence for public protection or a SOPC, placing a duty on the secretary of state to release these offenders on licence at the end of their custodial term, if discretionary release was not directed by the Parole Board before that point.²⁴

New section 247A(8) would provide the definitions of the relevant periods. Section 247A(9) would provide for relevant offenders who had already begun their parole review process before commencement of this bill and bring them into scope of the provisions for subsequent referrals to the Parole Board. Section 247A(10) would mean that the secretary of state still had a duty to release anyone whose release had already been directed by the Parole Board before the section comes into force.

Clause 1 would also insert the new schedule 19ZA into the 2003 Act. The schedule would list the terrorist offences and terrorist connection offences that the new provisions would apply to.

Clause 2 relates to the disapplication of existing release provisions in England and Wales. The Government has said that the clause would make changes to existing legislation to ensure that other provisions would function as they should where they rely on reference to the release provisions in chapter 6 of part 12 of the 2003 Act.²⁵

²¹ House of Commons Library, [Terrorist Offenders \(Restriction of Early Release\) Bill 2019–2020](#), 11 February 2020, p 30.

²² *ibid*, p 31.

²³ *ibid*.

²⁴ [Explanatory Notes](#), p 8.

²⁵ *ibid*.

Clauses 3 and 4: Restrictions of Early Release in Scotland

Clause 3 would amend the Criminal Proceedings (Scotland) Act 1993 by inserting a new section 1AB. Scottish ministers would be under a duty to refer offenders who had committed a specified terrorist offence listed under a new schedule 1A, and had not been released on licence, to the Parole Board from the two-thirds point of their sentence (or no later than two years following a referral if they have been previously referred).

Clause 3 would insert a new schedule 1A in the Prisoners and Criminal Proceedings (Scotland) Act 1993. It would provide a list of terrorist offences that would carry the restricted eligibility for release on licence in Scotland. The schedule is split into two parts and mirrors the offences listed for England and Wales.

Clause 4 would amend provisions in the Criminal Proceedings (Scotland) Act 1993 to disapply various existing release provisions in Scottish law to terrorist prisoners who will be released under section 1AB.

Clause 5: Licence Conditions

Clause 5 sets out the licence conditions for terrorist prisoners in England and Wales. It would insert a new subsection 5BA into section 250(5B) of the Criminal Justice Act 2003 (licence conditions). The new subsection would allow the secretary of state to set licence conditions when the automatic release point is reached at the end of the custodial term of either a SOPC or extended sentence in England and Wales.

Clauses 6 to 9: Consequential and Transitional Provisions

Clause 6 sets out the consequential amendments for transitional cases in England and Wales.²⁶ It would amend transitional provisions in schedule 20B of the Criminal Justice Act 2003. Schedule 20B preserves applicable release provisions for those sentences that have been repealed, but still apply to prisoners serving their sentences. Paragraphs 5 and 6 of schedule 20B currently give the Parole Board discretion to release prisoners at the half-way point and provide automatic release at the two-thirds point of a sentence. Clause 6 would mean that this would not apply to terrorist prisoners who will be released under the new section 247A. Existing licensing arrangements would be preserved for prisoners who were previously subject to release under paragraphs 5 and 6 but who will now be released under section 247A. Clause 6 would ensure that a full extended licence period will be served by any prisoners serving an extended sentence under section 85 of the Powers of the Criminal Courts (Sentencing) Act 2000 who are released under the new section 247A after serving three-quarters of their custodial term.

Clause 7 sets out other consequential amendments in England and Wales. This includes excluding terrorist prisoners who are subject to the new section 247A from post-sentence supervision regimes

²⁶ In this context, 'transitional cases' relate to cases that are impacted by the transitional provisions in schedule 20B of the Criminal Justice Act 2003. Transitional provisions provide details of how the transition from the old law to the new is intended to work.

and early removal schemes for foreign national offenders.²⁷ The clause would also add the new section 247A into section 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The effect of this would be to allow all parole release test provisions to be altered by secondary legislation.

Clause 8 provides transitional provisions for terrorist prisoners who received a supervised release order under section 209 of the Criminal Procedure (Scotland) Act 1995.

Clause 9 would make consequential amendments for Scotland by amending section 11 of the Prisoners and Criminal Proceedings (Scotland) Act 1993.

Clause 10: Final Provisions

Clause 10 provides the extent, commencement, transitional provisions and short title. The following clauses will extend to England and Wales only:

- clause 1 (and schedule 1); and
- clauses 2, 5, 6 and 7.

The following clauses will extend to Scotland only:

- clause 3 (and schedule 2); and
- clauses 4, 8, and 9.

Clause 10 extends to England, Wales and Scotland. The Act will come into force on the day which it is passed and will be known as the ‘Terrorist Offenders (Restriction of Early Release) Act 2020’.

4. Bill’s Progress through the House of Commons

The Government introduced the bill in the House of Commons on 11 February 2020. The bill completed its House of Commons stages on 12 February 2020.

During the second reading debate, the Lord Chancellor and Secretary of State for Justice, Robert Buckland, set out the Government’s arguments in favour of the bill. Mr Buckland described the Streatham and Fishmongers’ Hall attacks as a “stark” reminder of the risks of automatic release before a full prison sentence has been served.²⁸ He said that further action was needed to protect the public and advocated that offenders who were known to be of risk should no longer be released without Parole Board oversight.²⁹

²⁷ A post-sentence supervision regime provides a second supervision period to assist in rehabilitation of the offender following on from the offender completing their licence period.

²⁸ [HC Hansard, 12 February 2020, cols 863–4.](#)

²⁹ *ibid*, cols 872–3.

The bill sets out new release arrangements for prisoners serving a sentence for relevant terrorist offences or offences with a terrorist connection.³⁰ Mr Buckland said that there would be a small number of low-level offences, such as failure to comply with a police cordon, excluded from the bill's remit.³¹

During the bill's second reading, MPs' debated (1) the bill's compliance with article 7 of the European Convention on Human Rights (ECHR), (2) fast-tracking of the bill, and (3) resource implications.

Compliance with Article 7 of the European Convention on Human Rights

Since the bill's announcement, there has been discussion as to whether its retrospective application would be compliant with article 7 of the ECHR. Article 7 states, amongst other things, that no one shall have a heavier penalty imposed upon them than the one that was applicable at the time a criminal offence was committed.³² The Government believes that both domestic and ECHR case law support the stance that article 7 is not engaged where the penalty imposed by a court is not altered.³³ Mr Buckland stated that the bill would only impact release arrangements that are "part of the administration of a sentence" and not the penalty itself.³⁴

Sir Desmond Swayne (Conservative MP for New Forest West) asked the Government if it would consider derogation from the ECHR, if the measures in the bill made their way to the European Court of Human Rights (ECtHR) and "lost".³⁵ Mr Buckland responded that the Government did not "anticipate" litigation in domestic courts or the ECtHR, but re-emphasised that, in his view, the bill did not breach article 7.³⁶ In response, the Shadow Minister for the Home Office, Nick Thomas-Symonds, stated that the opposition "firmly believe" that terrorism could be tackled whilst the UK remained a signatory to the ECHR.³⁷ He said that leaving the ECHR could send a "terrible signal" to the rest of the world.³⁸

Fast-tracked Legislation

Following the announcement of the bill's expedited timetable, Mr Buckland acknowledged that this was "out of the ordinary" but said it was "vital" to prevent any further terrorist offenders being released under current arrangements.³⁹ In response, Mr Thomas-Symonds concurred, saying:

If this bill is not passed and rushed through its stages over the next couple of weeks, terrorist prisoners will be on our streets, without any assessment of risk or dangerousness by the Parole Board. That does not leave the House in the easiest of positions, but it is the reality of the

³⁰ [HC Hansard, 12 February 2020, cols 872–3.](#)

³¹ *ibid.*

³² European Court of Human Rights, [Guide on Article 7 of the European Convention on Human Rights](#), 31 December 2019, p 5.

³³ [Explanatory Notes](#), p 12; and [HC Hansard, 12 February 2020, cols 870–1.](#)

³⁴ [HC Hansard, 12 February 2020, cols 870–1.](#)

³⁵ *ibid.*, cols 864–5.

³⁶ *ibid.*

³⁷ *ibid.*, cols 873–4.

³⁸ *ibid.*

³⁹ *ibid.*, cols 872–3.

situation before us.⁴⁰

However, Mr Thomas-Symonds said that early release was not a new concept and believed it could have been dealt with by “a Government who took a more strategic approach”.⁴¹

Yvette Cooper (Labour MP for Normanton, Pontefract and Castleford and chair of the House of Commons Home Affairs Committee) also commented on the expedited timetable, saying it was “not ideal” to “rush through” legislation in this way.⁴² Ms Cooper spoke of earlier “warnings” that the Government had been given on the early release of terrorist offenders. This included the evidence given by the assistant commissioner for specialist operations in the Metropolitan Police, Neil Basu, to the House of Commons Home Affairs Committee in October 2018.⁴³ Ms Cooper quoted from Mr Basu’s evidence, saying:

The point that some of our radicalisers are getting short sentences, coming out early, and being able to continue is a problem, as is not having sufficient resources in place to use desistance or disengagement programmes.⁴⁴

Ms Cooper said there needed to be a “strategic reaction” that recognises “the underlying issues [...]”.⁴⁵

Resource Implications

MPs raised the potential implications for criminal justice resources during the bill’s second reading.

Seema Malhotra (Labour/Co-op MP for Feltham and Heston) said that resources available to police and probation services were “critical” to the success of the bill.⁴⁶ Ms Malhotra sought confirmation from the Government that it was committed to ensuring the required resources would be in place. In response, Mr Buckland said that Ms Malhotra was “right to ask about resources” and reminded MPs about the previously announced £90 million for counter-terrorism activity, which was in addition to the £900 million overall package for support for counter-terrorism.⁴⁷ He also stated that there would be a “doubling” in the number of specialist probation officers and the introduction of “more expert psychiatric and imam involvement”.⁴⁸

Nick Thomas-Symonds, the Shadow Minister for the Home Office, said that there needed to be a focus and investment on effective de-radicalisation programmes in prisons to make the bill “workable”.⁴⁹ He advised that the Government should provide external scrutiny and assessment of

⁴⁰ [HC Hansard, 12 February 2020, cols 873–4.](#)

⁴¹ *ibid.*

⁴² *ibid.*, cols 889–90.

⁴³ House of Commons Home Affairs Committee, [Oral Evidence: Counter-terrorism, HC 750](#), 24 October 2018, Q94.

⁴⁴ [HC Hansard, 12 February 2020, cols 889–90.](#)

⁴⁵ *ibid.*

⁴⁶ *ibid.*, cols 866–7.

⁴⁷ *ibid.*

⁴⁸ *ibid.*

⁴⁹ *ibid.*, cols 873–4.

deradicalisation programmes across prison estates to ensure that a regular assessment is undertaken.⁵⁰ Mr Thomas-Symonds also highlighted the need for additional resources to tackle extremism in prisons.⁵¹

He said he supported the bill, but thought it would not deal with the “broader and deeper problems”. On behalf of the opposition, he hoped that the bill would pass without division and the Government would invest in expertise to tackle counter-terrorism in UK prisons.⁵²

Committee Stage

During the committee stage, MPs proposed six amendments and three new clauses. These included Sir William Cash’s (Conservative MP for Stone) amendments to insert references to “notwithstanding the Human Rights Act 1998” into clause 1 of the bill.⁵³ The Human Rights Act 1998 allows UK nationals to rely on ECHR rights before UK courts. The purpose of the amendment, as described by Sir William, was to ensure that the bill met the rule established by Willes J in *Phillips v Eyre* ((1870) LR 6 QB 1). This case stated that courts will allow retrospective force to new laws affecting rights if, by way of express words or necessary implication, it appears that this was the intention of the legislature.⁵⁴

Of the three new clauses, Labour proposed two and Liberal Democrats one.⁵⁵ Labour’s clauses aimed to (1) require the appointment of an independent reviewer of the prison deradicalisation programme, and (2) require an independent review of the sentencing and supervision regime surrounding terrorist prisoners.⁵⁶ This second clause was not chosen for debate by the chair. The Liberal Democrats’ clause aimed to require the secretary of state to arrange an independent review of the impact of the bill after one year of the Act being in force.⁵⁷

Following the committee stage, one clause was withdrawn after debate. The rest were debated in a group of amendments but not put to a vote.⁵⁸ Therefore no divisions were held, and the bill was passed in its original form on third reading.

5. Reaction

Following the announcement of the bill, human rights group Liberty described it as “knee-jerk” legislation that could “chip away at our civil liberties”.⁵⁹ Liberty’s policy and campaigns officer Rosalind

⁵⁰ [HC Hansard, 12 February 2020, cols 877–9.](#)

⁵¹ *ibid.*

⁵² *ibid.*, cols 878–9.

⁵³ House of Commons, [Committee of the Whole House: Terrorist Offenders \(Restriction of Early Release\) Bill 2019–21](#), 12 February 2020.

⁵⁴ *ibid.*

⁵⁵ House of Commons, [Committee of the Whole House: Terrorist Offenders \(Restriction of Early Release Bill 2019–21: Tabled Amendments](#), 12 February 2020.

⁵⁶ *ibid.*

⁵⁷ *ibid.*

⁵⁸ House of Commons, [Committee of the Whole House: Supplement to the Votes and Proceedings](#), 12 February 2020.

⁵⁹ Liberty, [‘Liberty Responds to Emergency Counter-Terror Legislation’](#), 12 February 2020.

Comyn said that evidence-based counter-terrorism measures were needed and should be “designed with the freedom and safety of our communities at their heart”.⁶⁰

Others, such as a former independent reviewer of terrorism legislation, have suggested that the bill could be subject to legal challenges in court. Lord Carlile of Berriew (Crossbench), who held the post between 2001 and 2011, said:

The decision to lengthen the sentences of people who have already been sentenced and therefore expected to be serving half the sentence may be in breach of the law.⁶¹

Raj Chada, partner and head of criminal defence at law firm Hodge Jones & Allen, has also said that the retrospective application could be contrary to article 7 of the ECHR.⁶² He said:

You cannot create a new offence after an act has been committed, and you cannot impose a higher penalty than that [which] would have been imposed at the time that the offence was committed. [...] So, no punishment can be retroactive.⁶³

Lord Anderson of Ipswich (Crossbench and former independent reviewer of terrorism legislation (2011 to 2017)) disagreed. He thought that the legislation may not be subjected to legal challenge “so long as they do not change the total sentence”.⁶⁴

⁶⁰ Liberty, [‘Liberty Responds to Emergency Counter-Terror Legislation’](#), 12 February 2020.

⁶¹ The Week, [‘Fact Check: Five Key Questions About Terrorism Prison Sentences in the UK’](#), 4 February 2020.

⁶² Alan McGuinness, [‘Government Begins Bid to Rush Through Emergency Terror Legislation in Wake of Streatham Attack’](#), Sky News, 11 February 2020.

⁶³ *ibid.*

⁶⁴ Kate Proctor and Dan Sabbagh, [‘UK May Bypass Human Rights Convention to Rush Through Terror Laws’](#), *Guardian*, 4 February 2020.

6. Further Reading

- House of Commons Library, [Terrorist Offenders \(Restriction of Early Release\) Bill 2019–2020](#), 11 February 2020

This House of Commons Library briefing provides an overview of the bill's provisions and related policies. The paper was drafted in preparation for the House of Commons second reading debate, which took place on 12 February 2020.

- Bingham Centre for the Rule of Law, [Terrorist Offenders \(Restriction of Early Release\) Bill: A Rule of Law Analysis](#), 12 February 2020

This report sets out the Bingham Centre's rule of law analysis of the bill. Its purpose was to inform the House of Commons debates during the bill stages on 12 February 2020.