



## BRIEFING PAPER

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# Release from prison in England and Wales

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## Summary

When a person in England and Wales is given a sentence of imprisonment for a period of time they will not usually spend all of that time in prison. The law allows for prisoners to be released on licence to serve the last part of their sentence in the community.

Depending on the type of prison sentence the person is given, they can be:

- released from prison automatically at the halfway point of their sentence;
- released at the two thirds point of their sentence if the Parole Board decides it is no longer necessary to keep them in prison for the protection of the public; or
- released after the end of the minimum term of a life sentence if the Parole Board decides it is no longer necessary to keep them in prison for the protection of the public.

A person released on licence will be supervised by probation staff and must comply with certain conditions. If they breach the conditions of their licence they can be returned (recalled) to prison to serve part, or all, of the remainder of their sentence in prison.

The law on the point at which a prisoner can be released and whether the Parole Board is involved has changed over the years.

Various reasons have been put forward for having systems of releasing prisoners into the community before the end of their term of imprisonment. These include pragmatic reasons such as reducing overcrowding in prisons. Release part way through a sentence can also serve a rehabilitative purpose, allowing for supervision of prisoners in the community.

In both the October and December 2019 Queen's Speeches the Government set out plans for a Sentencing Bill, which would increase the automatic release point for certain serious violent or sexual offenders from the halfway point to the two-thirds point. The Government has said it will publish a white paper before introducing the Sentencing Bill.

The Government laid a draft order in October 2019 which provides that prisoners would be released automatically at the two thirds point of their sentence if they had been:

- convicted of a relevant violent or sexual offence for which the maximum penalty is life; and
- sentenced to a standard determinate sentence of seven years or more.

The Government has explained it is seeking to make this change now, by statutory instrument, ahead of wider reforms in a sentencing bill because not to do so would mean "continuing with a system which fails properly to ensure that serious offenders serve sentences that reflect the gravity of their crime".

The Government says this change would provide greater assurance to victims and the public that sentences will reflect the severity of their crime. Critics of the proposed change argue it will not meet these aims.

A debate on the draft order in the Lords raised questions regarding the impact on prison overcrowding and conditions. Concerns were also raised about a lack of public consultation and how the measure would fit with other Government policies on sentencing. It was noted that under the proposals, individuals would spend less time under probation supervision.

The draft order will be debated in the Commons on 28 January 2020.

# 1. The current law

The point at which a prisoner becomes eligible for release from prison depends on the type of custodial sentence they have been given, the length of the sentence and when it was imposed.<sup>1</sup> The law is very complex and the information below provides only a brief summary of the position in England and Wales.

## 1.1 Determinate sentences

The most common type of prison sentence is a determinate sentence which has a fixed length.

Prisoners who are serving a standard determinate sentence are automatically released from prison at the halfway point of the sentence, taking into account time spent on remand and the prisoner's eligibility for [Home Detention Curfew](#).<sup>2</sup>

The current legislation is [section 244](#) of the *Criminal Justice Act 2003*, as amended.

### Earlier legislation on automatic release

Provision for automatic release at the half way point was introduced by [section 33](#) of the *Criminal Justice Act 1991* and was for prisoners serving a term of less than four years. Prisoners serving four years or more could apply for parole at the halfway point and were automatically released once they had served two-thirds of their sentence. Prisoners serving a term of more than 12 months were released on conditional licence until the three-quarters point of their sentence.<sup>3</sup>

All prisoners released automatically at the halfway point will be subject to a conditional licence upon release which will be in place until the end of the sentence. Prior to the *Offender Rehabilitation Act 2014*, release from sentences of less than 12 months was unconditional at the half-way point

The offender will be subject to probation supervision whilst on a licence, which will require them to be of good behaviour and comply with the supervision requirements and whatever other specific conditions might be required in the particular case, e.g. contact and exclusion zone conditions.<sup>4</sup>

Offenders who breach the conditions of their licence can be returned (recalled) to prison.<sup>5</sup>

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<sup>1</sup> This briefing deals with adult prisoners

<sup>2</sup> There are some exceptions where the sentence was imposed prior to 3 December 2012

<sup>3</sup> Wasik, M, *Criminal Justice Act 1991: Part 3: Arrangements for early release*, Criminal Law Review 1992, April, 252-261

<sup>4</sup> For details see [Prison Service Instruction 12/2015: Licence conditions, licences and licence and supervision notices](#)

<sup>5</sup> Detailed operational instructions on recall are set out in [HM Prison and Probation Service, Recall, Review and Re-Release of Recalled Prisoners Policy Framework](#), 1 April 2019

For offences committed on or after 1 February 2015, the *Offender Rehabilitation Act 2014* provides that prisoners sentenced to less than two years will additionally be subject to post sentence supervision so that the licence and supervision periods will together make up 12 months.

Detailed operational instructions to the prison service are set out in Prison Service Instruction (PSI) 03/2015 [Sentence calculation - determinate sentenced prisoners](#).

## Extended determinate sentences

An extended determinate sentence consists of a custodial period and an extended period of licence.<sup>6</sup> Extended determinate sentences were created by the *Legal Aid, Sentencing and Punishment of Offenders Act 2012*.<sup>7</sup>

A judge can impose an extended determinate sentence where:

- A person is convicted of a specified offence,<sup>8</sup>
- The court considers that there is a significant risk to members of the public of serious harm from further specified offences committed by the offender (this is known as the dangerousness test);
- The court is not required to impose a life sentence; **and**
- Either:
  - At the time the offence was committed the offender had been convicted of an offence listed in [Schedule 15B](#) of the *Criminal Justice Act 2003*,<sup>9</sup> **or**
  - If the court were to impose an extended sentence the term that it would specify as the appropriate custodial term would be at least 4 years.

Prisoners serving an extended determinate sentence imposed on or after 13 April 2015 will be released on licence at the two thirds point of the custodial period, subject to the Parole Board being satisfied that their detention is not necessary for the protection of the public.<sup>10</sup> If the prisoner is not released by the Parole Board during the final third of the custodial period he or she will be released at the end of the custodial period.<sup>11</sup>

Once released, a person serving an extended determinate sentence will remain on licence for the remainder (if any) of the custodial period plus the period of extended licence. The extended period can be up to 5 years for a specified violent offence and 8 years for a specified sexual

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<sup>6</sup> Section 226A *Criminal Justice Act 2003*

<sup>7</sup> Section 124

<sup>8</sup> "Specified offence" means an offence specified as a specified violent or sexual offence under [Schedule 15 of the Criminal Justice Act 2003](#) (Parts 1, 2 and 3)

<sup>9</sup> Schedule 15B of the *Criminal Justice Act 2003* was inserted by the *Legal Aid, Sentencing and Punishment of Offenders Act 2012*

<sup>10</sup> The Library briefing [The Parole System of England and Wales](#) provides information on the Parole Board

<sup>11</sup> Provisions in the *Criminal Justice and Courts Act 2015* ended automatic release at the two thirds point of the custodial period for all extended determinate sentences

offence or terrorism offence. The length of the extended period is decided by the sentencing judge.

Whilst on licence the individual will be subject to probation supervision which will require them to be of good behaviour and comply with the supervision requirements and whatever other specific conditions might be required in the particular case, e.g. contact and exclusion zone conditions. Offenders who breach the conditions of their licence can be returned (recalled) to prison.<sup>12</sup>

### **Extended determinate sentences imposed before 13 April 2015**

Where an extended determinate sentence was imposed on or after 3 December 2012 and before 13 April 2015:

- If the custodial period was less than 10 years **and** the sentence was not imposed in respect of an offence in Schedule 15B to the *Criminal Justice Act 2003*, release is automatic at the two-thirds point of the custodial period.
- If the custodial period was less than 10 years, **but** the sentence was imposed in respect of an offence in Schedule 15B, **or** the custodial period was 10 years or more, release is at the discretion of the Parole Board at the two-thirds point of the custodial period. If parole is not granted, automatic release will be once the custodial period has been served in full.

### **Extended Sentences for Public Protection**

Other kinds of extended sentences were imposed prior to 2012 and different release provisions are in place for these. The Extended Sentence for Public Protection (EPP) was created by the *Criminal Justice Act 2003*.

Where an EPP was imposed before 14 July 2008 release is at the discretion of the Parole Board at the halfway point of the custodial period. If the prisoner is not released by the Parole Board, release is automatic at the end of the custodial period.

Where an EPP was imposed after 14 July 2008 release is automatic at the halfway point of the custodial period.<sup>13</sup>

The Prison Reform Trust Advice and Information Service has published an [Extended sentences information sheet](#), October 2017 which sets out further details on EPPs and information about earlier extended sentences.

### **Special sentence for offenders of particular concern**

A sentence for offenders of particular concern (SOPC) consists of the appropriate custodial term, determined by the court, and a further period of one year for which the offender is subject to a licence.<sup>14</sup> A SOPC will be imposed where an adult is convicted of an offence in a list

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<sup>12</sup> Detailed operational instructions on recall are set out in [HM Prison and Probation Service, Recall, Review and Re-Release of Recalled Prisoners Policy Framework](#), 1 April 2019

<sup>13</sup> The change to automatic release at the halfway point for EPPs imposed after 14 July 2008 was made by section 25 of the *Criminal Justice and Immigration Act 2008*

<sup>14</sup> Section 236A of the *Criminal Justice Act 2003*, inserted by the *Criminal Justice and Courts Act 2015*

of particular offences (including rape of a child under 13 and certain offences with a terrorist connection)<sup>15</sup> and the court does not impose a sentence of life imprisonment or an extended sentence.

Prisoners serving a SOPC will be released on licence at the half way point if the Parole Board is satisfied that their detention is not necessary for the protection of the public. If the Parole Board decides that continued detention is necessary for the protection of the public, the case will be reviewed after a further two years. If the prisoner is not released on parole during the term of the sentence, he or she will be released automatically at the end of the full custodial term.<sup>16</sup> They will then be subject to the one year period of licence.

## 1.2 Indeterminate sentences

Where a person is given an indeterminate sentence, e.g. a life sentence, a judge must specify the minimum term (sometimes called the tariff) the person must spend in prison before becoming eligible to apply to the Parole Board for release.

Prisoners with life sentences are eligible for release on life licence at the end of the minimum term. Release is subject to a Parole Board recommendation which is binding on the Secretary of State.<sup>17</sup> The Parole Board will only direct release if it is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.<sup>18</sup>

Indeterminate Sentences for Public Protection (IPPs) were available for prisoners convicted before 3 December 2012.<sup>19</sup> Prisoners serving an IPP are eligible for release on a life licence, again subject to a binding Parole Board recommendation.

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<sup>15</sup> Schedule 18A *Criminal Justice Act 2003*

<sup>16</sup> Section 244A of the *Criminal Justice Act 2003*

<sup>17</sup> Section 28 *Crime (Sentences) Act 1997*

<sup>18</sup> For details see Parole Board, Guidance, [How we make our decisions](#)

<sup>19</sup> For details see Library briefing, [Sentences of Imprisonment for Public Protection](#)



## 2. Government proposals to change the law

A review of sentencing policy was announced by the Prime Minister in August 2019.<sup>20</sup> A press release said it would include consideration of sentencing for the most serious violent and sexual offenders and the rules governing when and how these offenders are released. The Justice Secretary said in October 2019 that the review was an internal document and it would not be published.<sup>21</sup>

In October 2019 the Government announced that it intended to change the automatic release date for certain prisoners from the half-way point to the two-thirds point of their sentence. A Ministry of Justice press release said that the change would provide greater assurance to victims and the public that sentences will reflect the severity of their crime.<sup>22</sup>

### 2.1 The Sentencing Bill

The October 2019 Queen's Speech included a Sentencing Bill, which the Government said would change the automatic release point from halfway to the two-thirds point for adult offenders serving sentences of **four** years or more for serious violent or sexual offences.<sup>23</sup> A Sentencing Bill was also included in the December 2019 Queen's Speech. The background briefing from the Government said the bill would change the automatic release point to halfway for "adult offenders sentenced for serious violent or sexual offences" with no reference to the length of sentence.<sup>24</sup> The Government has said it will publish a white paper before introducing the bill. No timescale has been given.

### 2.2 The Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2019

The Government laid a draft statutory instrument before Parliament on 14 October 2019: [The Release of Prisoners \(Alteration of Relevant Proportion of Sentence\) Order 2019](#).<sup>25</sup>

The order provides that prisoners would be released automatically at the two thirds point of their sentence if they had been:

<sup>20</sup> Gov.uk, press release, [PM launches sentencing review to look at most dangerous and prolific offenders](#), 12 August 2019

<sup>21</sup> Justice Committee, [Oral evidence: The work of the Lord Chancellor](#), 16 October 2019, Q8

<sup>22</sup> Ministry of Justice, press release, [Violent and sexual offenders to spend longer behind bars](#), 1 October 2019

<sup>23</sup> Gov.uk, [The Queen's Speech and associated background briefing](#), 14 October 2019

<sup>24</sup> Gov.uk, [Queen's Speech December 2019 - background briefing notes](#), 19 December 2019

<sup>25</sup> A second draft order, the [Criminal Justice and Courts Act 2015 \(Consequential Amendment\) Regulations Order 2019](#), was also laid. It is described by the Ministry of Justice as a technical instrument to ensure the changes can apply to those serving consecutive sentences. For details see the draft [Explanatory Memorandum](#).



- convicted of a relevant violent or sexual offence<sup>26</sup> for which the maximum penalty is life; **and**
- sentenced to a standard determinate sentence of **seven** years or more.

Offences which would be covered by this change include rape, manslaughter and causing grievous bodily harm with intent.

These provisions would apply to offenders convicted on or after 1 April 2020 who were aged 18 or over at the time the sentence for the relevant violent or sexual offence was imposed.

Lord Keen has said the Government is seeking to make this change now, by statutory instrument, ahead of wider reforms in a sentencing bill because not to do so would mean “continuing with a system which fails properly to ensure that serious offenders serve sentences that reflect the gravity of their crime”.<sup>27</sup>

The Government has published a [draft explanatory memorandum](#) and an [impact assessment](#).

The impact assessment states that in 2018 around 1,450 sentences were imposed that were determinate sentence of 7 years or more for sexual or violent offences carrying a maximum of life imprisonment.<sup>28</sup>

It states that victims and the wider public will be protected from these serious offenders for longer under the changes, but notes that a later release date and reduced licence period could disrupt offenders’ and family relationships and reduce opportunities for rehabilitation in the community.

### Justice Secretary’s evidence to Justice Committee

The Justice Secretary, Robert Buckland, was asked about the impact of this policy on prisons when he gave evidence to the Justice Committee in October 2019. He said the Ministry of Justice estimated that by March 2030 the changes provided for in the draft order would result in an additional 2,000 people being in the prison system.<sup>29</sup>

The impact assessment estimates that this increase will incur an annual running cost of around £70m with an estimated construction cost of around £440m.

The Justice Secretary stated an intention to make further changes in the future so that prisoners convicted of a relevant violent or sexual offence or which the maximum penalty is life, who are sentenced to **four** years or more are released at the two thirds rather than halfway point.<sup>30</sup>

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<sup>26</sup> Defined as being offences listed in Part 1 or 2 of Schedule 15 of the *Criminal Justice Act 2003*

<sup>27</sup> [HL Deb 22 January 2019 c1117](#)

<sup>28</sup> The Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2019 [Impact Assessment](#), 10 October 2019, p6

<sup>29</sup> Justice Committee, [Oral evidence: The work of the Lord Chancellor](#), 16 October 2019, Q16

<sup>30</sup> Justice Committee, [Oral evidence: The work of the Lord Chancellor](#), 16 October 2019, Q13-15

## House of Lords Secondary Legislation Scrutiny Committee

The draft order was [considered by the House of Lords Secondary Legislation Scrutiny Committee](#) who drew it to the special attention of the Lords on the ground that it gave rise to issues of public policy likely to be of interest to the House. The Committee said that the House of Lords might wish to seek reassurance from the Minister that adequate resources will be available in good time to meet this expanded remit, both in relation to prison accommodation and prison service staff. The Committee also said the House of Lords may wish to ask the Minister for further information on the effect of the change on prisoners.

## Debate in the Lords

The motions to approve the draft statutory instrument tabled in the Commons and the Lords in October 2019 lapsed when Parliament was dissolved for the 2019 election. A new motion to approve was tabled in the Lords on 7 January 2020 and there was a [debate on 22 January 2020](#).

Lord Keen, speaking for the Government said that the measures proposed aimed to improve public confidence by making sure that serious offenders would serve longer in prison. He noted that some would suggest that the whole of a sentence should be served in prison, but said that it was crucial that when someone is given a custodial sentence they spend part of that sentence under supervision in the community. He said:

The licence period has long been an integral part of the sentence, and it should remain so. It provides assurance to victims through the imposition of conditions to protect them such as non-contact conditions and exclusion zones, through supervision by the probation service and through the power to recall that offender to prison if they breach their conditions. It is also an important period for rehabilitation, giving the offender the chance to address their offending behaviour and undertake activities that can help to prevent them reoffending. So, a licence period must remain.<sup>31</sup>

Lord Keen referred to the distinction between the release arrangements for long-term and short-term prisoners that had been in place under the *Criminal Justice Act 1991* but was removed by the *Criminal Justice Act 2003*. He said this order was the first step in restoring that distinction and would:

...correct what the Government consider to be an anomaly in the current sentencing and release framework.<sup>32</sup>

Lord Keen compared the position of a person found to be dangerous and given an extended determinate sentence with someone who was not considered by the court to be dangerous and was given a standard determinate sentence for the same offence. The person given an extended sentence would be eligible for release by the Parole Board at the two thirds point and could serve the whole of the custodial period

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<sup>31</sup> [HL Deb 22 January 2019 c1115](#)

<sup>32</sup> c1116

in prison if the Parole Board deemed it necessary to protect the public. The person given a standard determinate sentence would be released at the half way point. He said:

This measure will bring the two sentencing regimes closer into line, so that the offender could be released only after six years, ensuring that offenders committing these grave offences serve time in prison that truly reflects the severity of their crime.<sup>33</sup>

The Government has chosen to start with sentences of seven years or more, Lord Keen said, in order to:

...strike a balance between catching those at the more serious end of the scale and allowing time for the change to embed sustainably.<sup>34</sup>

Lord Keen gave the assurances, called for by the House of Lords Secondary Legislation Scrutiny Committee, that the Government would act to ensure that the additional demands on HM Prison and Probation Service would be met.

Lord Beecham, speaking for Labour, noted that England and Wales has a high number of prisoners relative to the population and that sentence length have increased substantially in recent years.<sup>35</sup> He said the proposal for a “draconian increase” in the length of sentences was likely to increase substantially the problems faced by the prison service and by prisoners. He referred to a concern from the Prison Reform Trust that the people affected by the changes would spend a shorter period under the supervision of the probation service after release.

Whilst supporting the principle of the changes, Viscount Hailsham expressed concern that the longer a person stays in prison the more difficult it is for them to be reabsorbed into the community and, more particularly, to get a job.<sup>36</sup>

Lord Marks said that the proposal lacked any genuine evidence base. He said the core justification for the proposal - that the prisoners concerned had been given a lengthy sentence to reflect the seriousness of their offence and, because they are the most serious types of offence, they should therefore serve a greater proportion of their sentence in custody - counts the seriousness of the offence twice over:

... once when the judge passes sentence for the serious offence, and again when increasing by a third the proportion of the sentence to be spent in custody. Put simply, you get more time for committing the serious offence—and then even more time for precisely the same reason.<sup>37</sup>

He said that the prison population should be reduced in order to improve rehabilitation. He also raised concerns about overcrowding, understaffing and a lack of adequate education, vocational training, meaningful work and sport or leisure activities.

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<sup>33</sup> c1116

<sup>34</sup> c1116

<sup>35</sup> c1117

<sup>36</sup> c1119

<sup>37</sup> c1120

Lord Ramsbottom noted that the order followed an internal Ministry of Justice review rather than a public consultation which, he said, might have been expected on an issue with such major implications. He asked the Government, as the Secondary Legislation Scrutiny Committee had suggested, how the proposals in the order fit together with other recently announced measures.<sup>38</sup> He urged the Government to defer until the issue could be properly examined.

Lord Garnier queried why the impact assessment produced had set out only two policy options, including a “do nothing” option. He commented that more important than whether a prisoner spends half or two thirds of their sentence in prison is the question of what is done with prisoners whilst they are in prison.<sup>39</sup> Lord Garnier also questioned why the Government wished to align the release provisions for those sentenced to a standard determinate sentence of seven years or more with those who had received extended determinate sentences.

Lord Judge expressed alarm that the process of a more wholesale investigation of whether sentencing levels and dates for release are appropriate was to be started with secondary legislation.<sup>40</sup>

Responding at the end of the debate Lord Keen repeated that the changes were to restore the position to what it was prior to 2003. On the risk of an overcrowded population he noted the Government’s announcements regarding spending on the prison estate.<sup>41</sup>

The motion was agreed.

### Comment on the proposals

The Prison Reform Trust published an analysis of the Government’s Impact Assessment for the draft order.<sup>42</sup>

The Trust’s analysis says that the order will not meet the Government’s stated policy objectives: to better protect the public and provide greater public confidence in sentencing and the administration of justice.

On public protection, the Trust says:

At best, the proposal can only postpone the harm caused by offending following release. But it may in fact serve to increase the likelihood of further offending. Under this proposal, the people affected will spend a shorter period under the supervision of the probation service following release, and subject to multi agency public protection arrangements. As the assessment acknowledges, incarceration also degrades the protective factors known to reduce re-offending.

On public confidence, the Trust says that the changes proposed in the order would add complexity and increase public confusion which is likely caused by an overly complex system and a failure on the part of government and all its agencies to explain its operation.

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<sup>38</sup> c1121

<sup>39</sup> c1123

<sup>40</sup> c1125

<sup>41</sup> For details see Library briefing, [The Prison estate](#)

<sup>42</sup> [Prison Reform Trust analysis of the Government’s Impact Assessment for the House of Lords debate on 22 January 2020](#)

The Trust criticises the impact assessment's reference to [research led by Professor Ben Crewe](#) as evidence that a longer period in custody may have a beneficial impact on the sentence's rehabilitative impact:

This is a wilful misinterpretation of that research, which describes the extensive and long-lasting negative impacts of prolonged incarceration both during and after the custodial period. The implication that a longer period in custody may actually be of benefit to the prisoner is disingenuous at best. What the evidence shows, and what a chronic pattern of self-harm and violence within prisons demonstrates on the ground, is the immense harm that punishment through imprisonment causes and against which the perceived benefits of using it more need to be compared.

The Prison Reform Trust was also critical of the process by which this change is being implemented, noting that there is to be a Sentencing Bill in this Parliament preceded by a white paper. The Trust says:

...no justification is given in the impact assessment for the urgency with which it is being carried through in isolation from other sentencing proposals.

Frances Crook, Chief Executive of the Howard League for Penal Reform, said there was no evidence that longer prison sentences would prevent crime:

There is no evidence that the prospect of spending longer in prison will deter anyone from committing a crime in the first place, nor will longer sentences make anyone less likely to reoffend on release.

Rather than reducing crime, these reforms risk doing the exact opposite - by making prisons more violent as resentful prisoners spend longer in them, and by making people more truculent to reintegrate after additional years inside.<sup>43</sup>

## 2.3 The Counter Terrorism Bill

The Government has also announced that a Counter-Terrorism Bill is to be introduced which will provide for "dangerous terrorist offenders who receive extended determinate sentences to serve the whole time behind bars".<sup>44</sup>

The Government said in the December 2019 Queen's Speech that it would legislate to:

- remove the possibility of any early release from custody for dangerous terrorist offenders who receive an Extended Determinate Sentence (EDS) and
- move the earliest point for discretionary release by the Parole Board from half-way to two thirds for terrorist offenders who are not deemed "dangerous" and therefore do not receive an EDS.

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<sup>43</sup> [Boris Johnson's plan to keep violent and sexual offenders in prison for longer 'will increase violence'](#), *The Independent*, 22 January 2020

<sup>44</sup> Gov.uk press release, [Tougher sentencing and monitoring in government overhaul of terrorism response](#), 21 January 2020

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