

OFFENDERS (DAY OF RELEASE FROM DETENTION) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Offenders (Day of Release from Detention) Bill as brought from the House of Commons on 6 March 2023 (HL Bill 113).

- These Explanatory Notes have been prepared by the Ministry of Justice, with the consent of Lord Bird, the Peer in Charge of the Bill, in order to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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These Explanatory Notes relate to the Offenders (Day of Release from Detention) Bill as brought from the Commons on 6 March 2023 (HL Bill 113)

Overview of the Bill

- 1 The purpose of the Bill is to provide the Secretary of State with a discretionary power to bring forward the release date of an offender by up to two eligible working days, where that release date falls on a Friday or the day preceding a bank/public holiday. In practice, this power will be delegated to the Governor (public prisons)/Director (private prisons)/appropriate officials in youth establishments, and guidance on eligibility criteria in order to target those in need will be set out in a policy framework.

Policy background

- 2 Currently, section 23(3) of the Criminal Justice Act 1961 (the 1961 Act) provides that detained offenders who would otherwise be released on weekends or bank/public holidays are to be released on the preceding day (i.e. a Friday, or the day before a bank/public holiday). This is in order for offenders to be able to access services and accommodation upon the day of their release, given that these would be closed on non-working days, and offenders would have to wait until the next working day to access them.
- 3 Accessing timely support on release can be particularly challenging on a Friday due to the number of different services, both wider government and third sector, that need to be accessed on release; the limited time before services close for the weekend; and the additional pressure on support services due to an increased number of releases (approximately a third of releases fall on a Friday, almost double that of any other day of the week). Failure to access this vital support can increase the risk of reoffending.
- 4 Adult offenders released on a Friday from sentences of less than 12 months had a slightly higher reoffending rate within 2 weeks of release (15%) compared to the average reoffending rate of those released on other days of the week (13.4%) (July 2016-September 2020).¹
- 5 From a public protection perspective, the proposed provisions will promote positive reintegration into society by ensuring those leaving custody can access the support services they need upon release. For example, adult offenders with stable accommodation on release from prison are almost 50% less likely to reoffend² and access to stable accommodation is important in helping offenders to access employment and training opportunities which may support their rehabilitation.³
- 6 Challenges are exacerbated for older offenders, those released from establishments located far from their home address and those with substance misuse or mental health needs, who face an increased risk of homelessness. These issues also exist for children, of whom 15% are held over 100 miles from their homes and 41% are held over 50 miles away.⁴ Qualitative reports suggest a disproportionate impact on cohorts with complex needs who may have greater support needs and vulnerability, greater distances to travel, or health / mobility issues which restricts their ability to attend multiple appointments in a short time.
- 7 For under-18s, being released on a Friday still means that a child may be going for at least two days without meaningful contact with support services at a time when they will be at their

¹ [Ministry of Justice ad-hoc statistical release](#) (2022). This analysis did not control for any other factors which could have impacted the results.

² [Accommodation and support for adult offenders in the community and on release from prison in England: An inspection by HM Inspectorate of Probation](#) (July 2020)

³ [Wilson, Wendy, Housing support for ex-offenders \(England and Wales\)](#) (17 October 2017)

⁴ [Youth Justice Statistics: 2020 to 2021 \(accessible version\) - GOV.UK \(www.gov.uk\)](#)

most vulnerable. This Bill will also ensure that the same provisions relating to public holiday and weekend releases that currently exist in respect of young offender institutions and secure training centres will also apply to secure children's homes and the recently created secure academies, ensuring consistency across the youth estate and, in respect of secure children's homes, correcting a historic omission.

- 8 This Bill would create a provision that allows the Secretary of State a discretionary power to avoid the release of an offender on a Friday or day preceding a Bank Holiday by bringing that release date forward by one or two working days.
- 9 This measure will take into account the personal circumstances of an offender to ensure that public protection is maintained. By removing the barriers that a Friday release can create, public protection can be maintained by ensuring prison leavers have a better chance to access the support they need to reintegrate into the community.

Legal background

Legislation mandating Friday releases

- 10 Section 23(3) of the Criminal Justice Act 1961 mandates that prisoners who would otherwise be released on Saturdays, Sundays, public holidays or bank holidays must be released on the closest preceding day that is neither a Saturday, a Sunday, a bank holiday, nor a public holiday (i.e. anyone who would otherwise be released on a Saturday, Sunday or Bank Holiday Monday is released on the preceding Friday, anyone who would otherwise be released over Easter weekend is released on the preceding Thursday, et cetera). However, a detained offender serving a term of five days or less who is due to be released on a Saturday will still be released on that day.
- 11 Section 23(4) of the Criminal Justice Act 1961 specifies that references in the rest of Section 23 to prisons and prisoners include references to young offender institutions, secure colleges, secure training centres and remand centres and to persons detained there. Therefore, Section 23(3) applies to persons detained in these institutions, but not to persons detained in secure children's homes and secure 16-19 academies, because they are not listed in Section 23(4). Regarding secure children's homes, this was an unintentional historic omission. Secure 16-19 academies are a new statutory creation, so it is necessary to update this legislation to include reference to them.

Legislation generally dealing with release

- 12 Chapter 6 of Part 12 of the Criminal Justice Act 2003 deals with the release of determinate sentence prisoners (and some youth detainees). Part 2 of the Crime (Sentencing) Act 1997 deals with the release of indeterminate sentence detainees.

Legislation dealing with bank holidays etc

- 13 The Banking and Financial Dealings Act 1971 sets out at Schedule 1(1) the bank holidays in England and Wales at the time it was passed, with new ones being added under the procedure in section 1(3). Section 4 states that in any enactment or instrument passed or made before this section came into force (such as the 1961 Act), any reference to a bank holiday under the Bank Holidays Act 1871 (such as in Section 23(3) of the 1961 Act) shall have effect as a reference to a bank holiday under the Banking and Financial Dealings Act 1971.

Territorial extent and application

- 14 Clauses 3(1) and 3(2) set out the extent of the provisions in the Bill. Clause 1 extends to England and Wales only. Clauses 2 and 3 extend to England, Wales, Scotland and Northern Ireland.
- 15 See Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Clause 1: Days on which offenders may be released from detention

- 16 Clause 1 sets out how Section 23 of the Criminal Justice Act 1961 will be amended.
- 17 Clause 1(2) makes it clear that the existing provision in subsection (3) will continue to have effect (as set out above), but that it will now be subject to the additional discretion to bring a prisoner's discharge further forwards, created by the new subsection (3B).
- 18 Clause 1(3) amends Section 23 by inserting new subsections (3B), (3C) and (3D) before subsection (4).
- 19 New subsection (3B) gives the Secretary of State a new discretion. This arises where a prisoner would otherwise be discharged on a working day immediately before a non-working day, either because their original scheduled date of discharge fell on such a day, or because the effect of the existing subsection 3 was to bring their date of discharge forwards from a non-working day to the next preceding working day. The discretion is to direct that such prisoners be instead discharged on a day referred to in subsection (3C).
- 20 Subsection (3C) sets out the days upon which the Secretary of State may direct that the prisoners for whom the discretion arises must be discharged. These days are the last eligible working day before the day on which the prisoner would otherwise be discharged; and the last eligible working day before that eligible working day.
- 21 Subsection (3D) defines the terms "eligible working day", "non-working day", "working day". A "non-working day" is defined as any Saturday or Sunday, as well as Christmas Day (25 December), Good Friday (the Friday preceding Easter Sunday, which is the first Sunday after the first full moon on or after 21 March), and any day that is a bank holiday under section 1 of the Banking and Financial Dealings Act 1971 in England and Wales. Permanent bank holidays under that provision currently include New Year's Day, Easter Monday (the day after Easter Sunday), the first Monday in May, the last Monday in May, the last Monday in August, 26 December (if it is not a Sunday) and 27 December (in a year in which 25 or 26 December is a Sunday). Bank holidays can also be moved or added under that provision by royal proclamation (for example, as took place in 2022 for the Queen's Platinum Jubilee). A "working day" is defined as a day that is not a non-working day. An "eligible working day" is defined as a working day that is not immediately followed by a non-working day.
- 22 Clause 1(4) inserts a new subsection (5) into Section 23. This specifies that the references in subsections (3), (3B) and (3C) to a prisoner also include references to a person detained in a secure children's home or in a secure 16-19 academy. Therefore, the existing subsection (3) and the new subsections (3B) and (3C) will apply to persons detained in these institutions, as well as to those detained in institutions already referred to in subsection (4). This corrects the historic omission of secure children's homes from subsection (4) (and therefore from the effect of subsection (3)), updates Section 23 to take account of the recent statutory creation of secure

16-19 academies, and therefore ensures that the same provisions as to the day of discharge apply consistently to all offenders across institutions.

Clause 2: Offenders detained under International Criminal Court Act 2001

- 23 This clause makes a consequential amendment to the International Criminal Court Act 2001, so that the new Section 23(3B) of the Criminal Justice Act 1961 is not applicable to persons detained pursuant to a sentence of the International Criminal Court.

Clause 3: Extent, commencement and short title

- 24 Clause 3(1) provides that Clause 1 extends to England and Wales only.
- 25 Clause 3(2) provides that Clause 2 and Clause 3 extends to England, Wales, Scotland and Northern Ireland.
- 26 Clause 3(3) makes provision for the Bill's coming into force. It provides that the provisions of the Bill will come into force on such day as the Secretary of State may by regulations appoint.
- 27 Clause 3(4) sets out the short title of the Bill, as the Offenders (Day of Release from Detention) Act 2022.

Example (1): Friday Release

If a prisoner was due to be released on a Friday, this is a working day immediately before a non-working day, so the discretion arises. The last eligible working day before the Friday is the Thursday, and the last eligible working day before the Thursday is the Wednesday. Therefore, the Secretary of State may direct that the prisoner must be discharged on either the Wednesday or the Thursday.

Example (2): Christmas Eve release

If the prisoner was due to be released on Christmas Eve (and that was a Tuesday), this is a working day immediately before a non-working day, so the discretion arises. The last eligible working day before the Tuesday is the Monday, and the last eligible working day before the Monday is the Thursday, because Sunday and Saturday are non-working days, and Friday is not an eligible working day, because it is immediately followed by a non-working day. Therefore, the Secretary of State may direct that the prisoner must be discharged on either the Monday or the preceding Thursday.

Commencement

- 28 Clause 3(3) sets out that the provisions in the Bill will be brought into force by means of regulations made by the Secretary of State.

Financial implications of the Bill

- 29 Although the Bill will provide a new power to the Secretary of State that will result in certain offenders being released from prison earlier than previously provided for in legislation, the Government has determined that any financial impact would be modest to negligible. This is because the movement of release dates for the eligible cohort of offenders will not impact the number of releases overall, and because an offender being under Probation/Youth Offending Team supervision for a limited number of additional days rather than in detention will not result in an additional cost. There may be one-off administrative costs associated with

updating existing working practices and providing staff training, which the Government expects to be modest and covered by existing resources within the Ministry of Justice and HM Prison and Probation Service as part of business-as-usual costs.

Parliamentary approval for financial costs or for charges imposed

- 30 As any additional expenditure arising from this Bill will be minimal, this Bill is not subject to a money resolution.

Compatibility with the European Convention on Human Rights

- 31 This is a Private Member's Bill and there is no requirement for a statement of compatibility with the European Convention on Human Rights (ECHR) in accordance with section 19(1)(a) of the Human Rights Act 1998.
- 32 The Ministry of Justice has, nevertheless, considered the question of compatibility and has concluded that the Bill is compatible with the European Convention on Human Rights.

Article 5

- 33 The Bill engages Article 5, because it affects detention, but it does not breach it because it does not affect the sentence imposed by the court in accordance with Article 5(1)(a), affecting the administration of the sentence only. In any event, it only allows for earlier release from detention.

Article 7

- 34 Article 7 does not apply as there is no retrospective increase of a penalty.

Related documents

- 35 The following documents are relevant to the Bill and can be read at the stated locations:
- Prisons Strategy White Paper: response to consultation questions (2022):
<https://www.gov.uk/government/publications/prisons-strategy-white-paper>
 - Prisons Strategy White Paper (2021):
<https://www.gov.uk/government/publications/prisons-strategy-white-paper>

Annex A – Territorial extent and application in the United Kingdom

- 36 The Bill extends and applies to England and Wales only.
- 37 A corresponding provision making changes to the dates of offenders' discharge would not be within the competence of the National Assembly for Wales.⁵

⁵ References in this Annex to a provision being within the legislative competence of the National Assembly for Wales are to the provision being within its competence for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

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