

March 2015 copy for April 2015

Robert Banks, a barrister, writes *Banks on Sentence*. It is the second-largest selling criminal practitioner's text book and is used by judges for sentencing more than any other. The book is classified by the Ministry of Justice as a core judicial text book. The 2015 edition of the book and app will be available from 28 April 2015 and pre-orders on our website can be made. The app is for Apple iPads and Windows 8 devices and will cost £106 (incl. VAT). The print copy will cost £106 and there will be regular updates on www.banksr.com. There will also be a discount available when the print copy and app are purchased together. If you have access to a computer, you can follow Robert on [twitter](#): [@BanksonSentence](https://twitter.com/BanksonSentence) and you can receive his weekly sentencing alerter.

This month I would like to explain the main changes about sentencing and prison law in Criminal Justice and Courts Act 2015, which received royal assent on 12 February 2015. Virtually none of the provisions are in force yet. The provisions will be brought into force by a series of commencement orders. All the provisions will come into force on 13 April 2015, except where otherwise indicated.

New order for certain offenders of particular concern

Section 6 and Schedule 1 create a new sentencing order for those who either commit certain terrorist offences, or rape, or assault by penetration of a child aged under 13. A defendant subject to this order cannot be released until the Secretary of State has referred the case to the Parole Board and the Parole Board recommends release. In future, this order will create the same problems as IPP but they will be worse.

New offences

Section 26 creates an offence of corrupting or other improper exercise of police powers and privileges. The maximum sentence is 14 years.

Section 12 creates three new prison offences concerning prisoners who go missing. There are two offences of remaining unlawfully at large after recall and one of remaining unlawfully at large after temporary release. The maximum sentences are 2 years in the Crown Court and 6 months and/or a £5,000 fine in the Magistrates' Court.

Section 32 creates an offence of sending letters etc. with intent to cause distress or anxiety. Section 33 creates an offence of disclosing private sexual photographs and films with intent to cause distress. Both offences carry a maximum sentence of 2 years in the Crown Court or 6 months and/or a £5,000 fine at the Magistrates' Court.

Section 70 creates a series of offences for jurors conducting research or engaging in prohibited conduct or disclosing their deliberations. The maximum sentence is 2 years.

Section 29 creates two new offences for disqualified drivers. One is for causing death and the other is when causing serious injury. The first carries a 10-year maximum. The second carries a 4-year maximum in the Crown Court or 6 months and/or a £5,000 fine at the Magistrates' Court.

Sections 20-21 create two new offences of ill-treating etc. people in care. The first carries a maximum sentence of 5 years and the second is for corporate care providers. The maximum sentence is a fine. Interestingly, a local authority is protected from prosecution.

New starting points for certain murders

Section 27 increases the starting point for the murder of a police officer or a prison officer in the course of his or her duty. The 30-year starting point before the case may be referred to the Parole Board is changed to a whole life tariff, which means the defendant will not normally ever be released.

Minimum sentences

Section 28 creates new minimum sentences for repeat offences of possession of an offensive weapon and having a bladed article. The minimum sentences are 6 months for those aged 18 or over and 4 months for those aged 16 and 17. (No date for commencement set.)

Order for payment of court costs

Section 54 requires Magistrates' Courts, Crown Courts and the Court of Appeal to order the defendant to pay court costs when certain conditions in as yet unpublished regulations require it.

Young offenders

Section 38 creates 'secure training centres' and 'secure colleges' for young offenders. (In force 20 March 2015.)

Prison rules

Section 16 allows for the creation of new rules to extend the list of substances for which prisoners may be tested. It is anticipated that this is intended to combat the increased use of 'legal highs'.

Electronic monitoring

Section 7 provides for a new condition of electronic monitoring as a part of release from prison on licence. Section 8 creates the new role of 'recall adjudicator'.

Release after recall

Section 9 alters the test for release after recall to custody during a determinate sentence. The new test prevents automatic release in cases where it is felt that a licence condition is 'highly likely' to be breached. (No date for commencement has been set for either section 9 or 10.)

Section 9(3)(d) allows recall adjudicators to order release subject to a condition precedent being met first. This will be likely to be used to allow for future release to approved premises in cases where no hostel vacancies exist at the time of the review.

Section 10 allows the Secretary of State to change the test for release in the case of determinate sentence prisoners who have been recalled. This change is intended to extend to prisoners who were recalled prior to the test being changed. Section 11 creates minor changes in relation to release and recall for prisoners serving indeterminate sentences.

Extended sentences and release

After Criminal Justice and Courts Act 2015 s 4 is in force, for those sentenced on or after that date to extended sentences, discretionary release only occurs after the two-thirds point when the Parole Board orders it. If there is no Parole Board order, the prisoner must serve the full custodial term. The previous procedure continues to apply to those sentenced before that date.

The changes that are not included

There is no attempt to end the disgraceful imprisonment of those who have served their IPP tariff long ago. There is no attempt to codify the law. There is no attempt to deal with the disparity in release procedures. There is however more than a whiff of electioneering about Act.

Add something about book sales.

Asking Robert and Jason questions

All letters should be sent to Inside Time, marked for Robert Banks or Jason Elliott. Letters are then sent by Inside Time to David Wells of Wells Burcombe, who forwards them to Robert and Jason.

Please make sure your question concerns sentence, prison law or release and not conviction. Prison law and release are dealt with by Jason Elliott (PO Box 847, North Shields, NE29 1FJ). Unless you say you don't want your question and answer published in Inside Time, it will be assumed you have no objection to publication. It is usually not possible to determine whether a particular defendant has grounds of appeal without seeing all the paperwork. Analysing all the paperwork is not possible. The column is designed for simple questions and answers. Robert and Jason cannot in their answers in effect to do the work that should be done by solicitors and barristers who have the relevant case papers.

No one will have their identity revealed. Letters which: a) are without an address, b) cannot be read, or c) are sent direct to Robert, cannot be answered. If your solicitor wants to see previous questions and answers, they are at www.banksr.com.