36 CRIME

36 Crime Updates

Summer 2022

CONTENTS

1. **Case note: *R v Magson* –** *Paul Prior*
2. **An extension to youth court powers by stealth? –** *Diana Wilson and Sebastian Walker*
3. **Case note: Gunshot Residue – *R v Olive (Micheala)* –** *Christopher Donnellan QC*
4. **Release after the Police, Crime, Sentencing and Courts Act 2022 –** *Sebastian Walker*

Welcome to the 36 Crime Criminal Updates: Summer 2022

Christopher Donnellan Q.C.

Head of 36 Crime

We are in the middle of troubled times within the Criminal Justice system. Cases are being delayed or adjourned for a variety of reasons including the covid pandemic rumbling on, the current action by the Criminal Bar, and, overall, a declining number of Counsel trying to cover an ever-increasing workload. However, as criminal justice rumbles on, and after a break since the last edition of our Newsletter late 2021, there are a number of developments in Criminal Law that we have selected to bring to your attention through this Summer edition.

Paul Prior has provided a case note on the recent decision of the Court of Appeal on the issue of self-defence and the "Householder defence". **Diana Wilson** and **Sebastian Walker** have identified an issue with the sentencing powers of the Youth Court dealing with terrorism cases that seems to have been overlooked by those drafting the legislation. In a further article **Sebastian Walker** provides a timely summary of the release provisions brought into force on 28th June by the new Police Crime Sentencing and Courts Act 2022. On recent cases I have added a short note on a case on the admissibility of very small quantities of gunshot residue.

We welcome to 36 Crime, **Preetika Mathur** on successful completion of her probationary tenancy.

Since the last edition we congratulate **Mary Loram Q.C**. on her appointment to the Circuit Bench.

Case Note: *R v Magson*

Paul Prior

Barrister

A recent Judgment handed down by the Court of Appeal discusses the *householder defence* in a domestic setting. In the case of R v Magson 2022 EWCA Crim 1064 , the Court considered an appeal against conviction involving the "*householder defence*" enacted by section 76(5A) and (8A) of the Criminal Justice and Immigration Act 2008.

On 5 March 2022 Magson was convicted of murder following a trial. She had previously been tried and convicted in 2016 but that conviction was overturned for unrelated reasons. She appealed against the 2022 conviction. The sole ground of appeal against her conviction was that the trial judge directed the jury on the elements of common law self-defence but failed to add the elements of the "householder defence".

Facts

Magson and her victim met in 2015. Their relationship was volatile. Magson lived in Leicester and her victim's brother lived a few doors away in the same road. The victim moved into her home at the start of their relationship.

On 26/3/16, they both went out but separately with friends. They met in a bar but the victim's behaviour was such that he was asked to leave. They both left the bar. Police spoke to the pair but having confirmed with Magson that she was content to go home with the victim, they were permitted to continue.

The Defendant kicked the victim during the taxi ride home. Once out of the taxi, and close to home, the victim pushed the appellant to the ground. The couple then walked home together hand in hand.

Law

The Court set out the common law test of self-defence, describing the two elements.

> *"The first is subjective: did the defendant believe, or may she have believed, that it was necessary to use force to defend herself from attack? The second part is objective: was the force used by the defendant reasonable in all the circumstances as she believed them to be?"*

The "householder defence" is directed at the second part of the test. Sections 76(5A) and (8A) of the 2008 Act provide a gloss on the second question:

“**76 Reasonable force for purposes of self-defence etc.**

…

(5A) In “a householder case”, the degree of force used by D is not to be regarded as having been reasonable in the circumstances as D believed them to be if it was grossly disproportionate in those circumstances.

…

(8A) For the purposes of this section “a householder case” is a case where—

(a) the defence concerned is the common law defence of self-defence,

(b) the force concerned is force used by D while in or partly in a building, or part of a building, that is a dwelling or is forces accommodation (or is both),

(c) D is not a trespasser at the time the force is used, and

(d) at that time D believed V to be in, or entering, the building or part as a trespasser.”

Basis of the appeal

In his sentencing remarks, the trial Judge found *inter alia* the following facts:

> *“Once back at [home] I am sure that you decided not to let James Knight enter your home, as a result of which he started to kick the front door, whilst you were heard shouting by one of the neighbours that you were not going to let him inside”.*

The judge’s sentencing remarks also indicated that he was not satisfied that it could necessarily be determined that the applicant had taken the knife to the front door and stabbed Mr Knight there, as opposed to elsewhere in the property (the difference being relevant to whether the appellant had brought the weapon to the scene for sentencing purposes).

The Defence submitted that the trial Judge’s findings indicated that the deceased was a trespasser, thus entitling the appellant to the householder defence direction. This had not been their case at trial, which was that the deceased had entered the property before accusing the Defendant of being unfaithful. The issue of trespass had not been raised during either trial. The Defence relied on the evidence from a neighbour that that the Defendant was stating that she was not prepared to allow the deceased into the house, and the evidence from the Defendant that she wanted the deceased out of the house.

The Defence relied on the case of *R v Cheeseman* [2019] EWCA Crim 149 [2019] 1 W.L.R. 3621, where the question arose whether the householder defence applied where the deceased had entered the appellant’s room in an army barracks with the appellant’s consent, but then became violent and refused to leave when asked, thereby potentially becoming a trespasser. This court emphasised that – as appears from the wording of section 76(8A)(d) itself – the question is not whether the victim was or became a trespasser as a matter of law, but whether the defendant believed him to be a trespasser.

The Crown submitted that the deceased was not a trespasser. The couple, despite arguments and violence on the way home, had attended the house together with the expectation that the deceased would spend the night there – this was admitted by the Defendant in evidence, who asserted that the deceased could sleep off his drink and drugs and she would go back out into the City.

The Crown pointed to the fact that each had used violence towards the other in the past, including that night.

The Court considered R (Collins v Secretary of State for Justice) [2016] EWHC 33 (Admin) [2016] 2 W.L.R. 1303 where Sir Brian Leveson P noted that if the degree of force used by a householder was disproportionate, he or she may or may not be regarded as having acted reasonably in the circumstances: the statutory provisions simply mean that force is not by law *automatically* unreasonable in householder cases simply because it is disproportionate, provided it is not grossly disproportionate: see paras [33] and [34]. That decision was approved in R v Ray [2017] EWCA Crim 1391 [2018] 2 W.L.R. 1148, describing the common law position as having been "slightly refined" by the statute in householder cases to the extent that even if the degree of force used was disproportionate, it might nevertheless be reasonable, depending on the circumstances of the case as the defendant believed them to be: para [26].

Decision

The Court considered that it was not part of the appellant's case that she believed the deceased to be a trespasser. She was not asked about her belief on that point in either trial. The Court noted that it was "*perhaps unsurprising"* in circumstances where the deceased had lived with her for months and had a key to the house. It was his home. The Court went on to state that there will be cases where the circumstances of events give rise to an inference that a householder believed an intruder to be a trespasser when using force in self-defence. Such cases would not require specific assertions in evidence, but would require an evidential basis for the defence to arise.

In the instant case, the Court considered the Defendant's belief that the deceased was a trespasser to be absent. They noted two highly experienced defence teams and Judges did not raise the matter. The Court continued:

> *"Critically, there was no evidence or suggestion that it was any part of the appellant's thinking that the deceased was a trespasser at the time of the stabbing. Absent that, there was no evidential basis on which the householder defence could arise."*

There was a safety valve in this matter. The Court considered that a householder direction could have made no difference to the outcome of this case:

> *"The appellant's evidence was that she picked up and used a knife while Mr Knight was throttling her against the kitchen sink. That was a description of a violent attack which threatened her life. If the jury had believed that the appellant's account was or may have been true then, realistically, they would have been bound to acquit her. The jury's verdict indicates that the Crown satisfied them that there was no truth in that account. Accordingly, the conviction was safe in any event."*

Mary Prior QC led Paul Prior, instructed by the CPS Appeals Unit

*Contact **Mary** – mprior@36crime.co.uk*

*Contact **Paul** – pprior@36crime.co.uk*

An extension to youth court powers by stealth?

Diana Wilson and Sebastian Walker

Barristers

Until recently, the perceived wisdom was that the maximum sentence the Youth Court could impose was a two-year custodial sentence.

The question this article considers is whether the Youth Court in fact has the power to impose a greater sentence, namely a sentence in excess of two years under section 252A of the Sentencing Act 2020.

This is not merely a question to be considered at the sentence stage as it impacts mode of trial i.e., whether the trial will be heard in the Youth Court or in the Crown Court. In some terrorism cases, it will be very much in the young person's interests for their case to be heard by a jury with the full assistance and resources available when a solicitor and an advocate are instructed in the Crown Court. In other cases (e.g. when a guilty plea is anticipated and certain important dates such as a 16th birthday are pending – which impact certain important life changing ancillary orders) it will be in the young persons' interests to resolve the matter as soon as possible and in the Youth Court if possible. This is therefore an important topic for those representing young people on terrorism charges to be alive to at or even before the first hearing.

Background

Section 252A of the Sentencing Act 2020 was introduced by section 22 of the Counter-Terrorism and Sentencing Act 2021. The section requires the imposition of a special sentence of detention for certain terrorist offenders under the age of 18. The sentence is comprised of a sentence of detention, and a further period of 1 year's extended licence. In this way the sentence functions similarly to the sentence for an offender of particular concern imposable on adult offenders under sections 265 and 278 of the 2020 Act.

S252A of the Sentencing Act 2000, so far as relevant, reads as follows:

> (1) Subsections (3) to (5) apply where—
>
> (a) a person aged under 18 is convicted of an offence listed in Part 1 of Schedule 13 (offences involving or connected with terrorism),
>
> (b) the offence was committed on or after the day on which section 22 of the Counter-Terrorism and Sentencing Act 2021 came into force,

(c) the court does not impose either of the following for the offence (or for an offence associated with it)—
   (i) a sentence of detention for life under section 250, or
   (ii) an extended sentence of detention under section 254, and

(d) the court would, apart from this section, impose a custodial sentence (see, in particular, section 230(2)).

(2) In determining for the purposes of subsection (1)(d) whether it would impose a custodial sentence, the court must disregard any restriction on its power to impose such a sentence by reference to the age of the offender.

(3) The court must impose a sentence of detention under this section.

(4) The term of the sentence must be equal to the aggregate of—

(a) the appropriate custodial term, and

(b) a further period of 1 year for which the offender is to be subject to a licence,

and must not exceed the maximum term of imprisonment with which the offence is punishable in the case of a person aged 21 or over.

(5) For the purposes of subsection (4), the "appropriate custodial term" is the term that, in the opinion of the court, ensures that the sentence is appropriate.
…"

The maximum sentence imposable under section 252A of the Sentencing Act 2020 is the maximum term of imprisonment with which the offence is punishable in the case of a person aged 21 or over.

Section 16A of the Sentencing Act 2020 provides, so far as relevant, as follows:

(1) This section applies where—

(a) on summary trial of an offence within section 252A(1)(a) (terrorism offences attracting special sentence for offenders of particular concern), a person is convicted of the offence,

(b) the person is aged under 18 at the time of conviction, and

(c) the court is of the opinion that—
   (i) the offence, or
   (ii) the combination of the offence and one or more offences associated with it,

was such that the Crown Court should have power to deal with the offender by imposing a sentence of detention under section 252A for a term of more than two years.

(2) The court may commit the offender in custody or on bail to the Crown Court for sentence in accordance with section 22(2).

Can then the youth court impose a sentence in excess of two years under section 252A?

This so far has been a theoretical question which has not yet been determined in any case. To the best of the authors knowledge no youth court has imposed a sentence in excess of two years under section 252A. The issue did, however, arise in a recent youth terrorism case in which one of the authors was instructed. It is therefore likely that sometime soon the matter will have to be litigated.

The limits of youth court sentencing

It is important to establish that sentencing legislation creates no explicit limit on the sentencing powers of the youth court. Section 224 of the Sentencing Act 2020 which creates the limit on custodial sentences imposable in the magistrates' court applies only to sentences of imprisonment or detention in a young offender institution.

Historically the reason that the youth court has been unable to impose a custodial sentence of more than two years' is that that is the maximum term of a detention and training order, and by virtue of section 249 of the Sentencing Act 2020, the youth court has no power to impose a determinate sentence of detention under section 250 of that Act (previously s.91 of the Powers of Criminal Courts (Sentencing) Act 2000, and historically known as a sentence of detention for "grave crimes") or an extended sentence of detention.

But it is clear from both the wording of section 16A and section 252A (which does not limit its availability to conviction on indictment) that sentences under that section are available to the Youth Court.

How then is the court to approach section 16A of the 2020 Act which provides that where the court is of the opinion the Crown Court should have power to deal with the offender by imposing a sentence of detention under section 252A for a term of more than two years, the court *may* commit the offender to that court.

First, the reference to a "sentence of detention under section 252A for a term of more than two years" must be a reference to a sentence of one year's detention and one year's licence (see section 252A(4) and the reasoning of the Court of Appeal in *R. v John* [2022] EWCA Crim 54 in relation to section 278(2) of the 2020 Act which is in materially identical terms).

Secondly, at least on its face section 16A confers a discretion on the court. This is in direct contrast to section 17 which provides that the court **must** commit the offender where it is of the opinion an extended sentence of detention would be available.

On one view then there is no limit on the power of the youth court to impose a sentence in excess of one years' detention and one year's licence under section 252A. In the absence of an explicit limit then it is open to the youth court to impose such a sentence.

The view of the authors is, however, that a better interpretation of the legislation is that the youth court should not impose a sentence under section 252A in excess of one years' detention and one year's licence.

It is argued that the broader legislative context evidences an intent to restrict the youth court's sentencing powers, and that regardless there are good policy reasons for the youth court to not impose sentences in excess of two years' such that even if the power is available (and such sentences not unlawful) the youth court should in all cases commit the matter for sentence.

The legislative context

Although in contrast to section 17 of the 2020 Act, section 16A provides a discretion it arguably does so because it is based on section 16 which similarly provides a discretion to commit for a sentence of detention under section 250 to be imposed. The use of may commit could be read (as it must be in the case of section 16) as providing the court with the choice to impose a lesser sentence, as opposed to suggesting that a sentence in excess of one year's detention and one year's licence is available to the youth court.

Some support for this view is also provided for by section 51A of the Crime and Disorder Act 1998, which deals with allocation for trial. Subsections (2) and (3) of that section provide that where "the offence is such as is mentioned in section 252A(1)(a) of the Sentencing Code and the court considers that if he is found guilty of the offence it ought to be possible to sentence him under that section to a term of detention of more than two years" the youth court shall send the child forthwith to the Crown Court for trial. There is in respect of allocation then no discretion, providing support for the view that the *intent* of section 16A was to limit the youth court's sentencing powers to sentences of two years or less.

The policy arguments

Clearly the ambiguity around the availability of a sentence in excess of two years under section 252A is in part because of unfortunate legislative drafting. It is notable that there was no reference to the issue of youth court sentencing powers in either the explanatory notes or the Parliamentary debate for the Counter-Terrorism and Sentencing Act 2021.

It is submitted that whether or not the effect of the legislation is that the youth court cannot impose such a sentence, there are good policy reasons for the youth court committing a case to the Crown Court for sentence wherever it would be minded to do so.

First, when such significant sentences are imposed, defendants should have the protection of appeal to the Court of Appeal as opposed to the Crown Court, and the protection of s.11(3) of the Criminal Appeals Act 1968 (which provides more significant sentences cannot be imposed on appeal).

Secondly, it allows for sentencing to be conducted by specialist Crown Court judges, more used to dealing with sentences of this nature and length.

Conclusion

So how can these ambiguities as to the youth court's powers be resolved? The most obvious way is that if this is determinative when deciding venue and if the defence wish the matter to go to the Crown Court then a judicial review of the allocation decision would be possible. If the matter is not challenged at that stage and a sentence under section 252A is imposed where the total including the one year extension exceeds two years then this could be challenged by way of a case stated or judicial review.

Due to the types of sentences that can be imposed for offences contrary to section 58 of the Terrorism Act 2000 and even some section 2 Terrorism Act 2006 offences this issue is certain to trouble the courts with some regularity and is best resolved sooner rather than later.

*Contact **Diana** – dwilson@36crime.co.uk*

*Contact **Sebastian** – swalker@36crime.co.uk*

Case Note:
Gunshot Residue – R v Olive (Micheala) [2022] EWCA Crim 1141

Christopher Donnellan QC
Barrister

Link to judgment: ***https://www.bailii.org/ew/cases/EWCA/Crim/2022/1141.html***

There has been a scientific debate about the evidential significance of very small quantities of particles of gunshot (GSR).

In general terms the amount of GSR identified on an item can vary from one to several hundred particles. Low levels may occasionally be found on people or objects with no apparent association with firearms, that is, by chance. However, the scientists agree that it would be very unusual to find higher levels on a person or object by chance. The reporting scientists use the following guide: 2 - 5 particles are "Low level" ; 6 - 15 particles are "Moderate level"; 16 - 50 particles "High level"; and more than 50 particles "Very High".

If a gunshot residue reporting scientist states that 2 particles are inconclusive, does that make the evidence inadmissible? The answer is no, not necessarily.

Background

In the case of R -v- George 2014 EWCA crim 2507 where two particles were found on a jacket which was said to belong to the defendant, the Court of Appeal stated (para 46) " *the fact that scientists have adopted a cautious approach to reporting low levels of residue…such that for that residue on its own, no evidential significance can be attached to it does not mean that the evidence is necessarily inadmissible or irrelevant.*"

In R v Gjikokaj [2014] EWCA Crim 386 a case involving two particles found in a hired car, the court observed at paragraph 35, "*The primary scientific opinion was admissible. It was admissible to show, in a case where the evidence was circumstantial that it was not open to the defendant to say that there was an absence of scientific evidence connecting him with the crime.*"

Recent consideration

In the recent case of R -v- Olive and others [2022] EWCA Crim 1141 (Judgment 10th August 2022). Two particles were found on a rear seat inside the defendant's Mokka car. The car, while locked and parked outside the defendant's house, had been contaminated by firearms officers attending the house to arrest one of her sons, and before it was seized and examined.

At trial the scientist had assessed that the finding of two particles was inconclusive, nevertheless the judge acceded to the prosecution submission, based on **Gjikokaj,** that the evidence was admissible and could be considered a component in the body of circumstantial evidence in the case. Nevertheless, a careful and fair direction was required to assist the jury with their task in assessing this piece of evidence.

In paragraph 48 of the decision in ***Olive*** the Court set out the prosecution submission and relevant facts

> *[48] … It remained the prosecution contention that notwithstanding that the GSR evidence was not on its own probative it could be aggregated with other circumstantial evidence and so support the conclusion that the type 2 particle was in the car as a result of a person or persons involved in the shooting being present in the car. The circumstantial evidence relied upon was:-*
>
> *(i) the evidence of the movements of a white car which corresponded with the Mokka on CCTV on a route from Waterworks Cottage to the scene and back,*
>
> *(ii) the ANPR evidence of the movements of the Mokka earlier in the day, as John Bowie put the team together, evidence that the mobile phones of the appellant and John Bowie were together as the Mokka was being driven.*
>
> *(iii) the eye witness evidence of Mr Wright at the scene*
>
> *(iv) the cartridge casing found in the alley*
>
> *(v) the evidence of the telephone conversation between John Bowie and Anthony Olive.*

The Court reviewed and followed the decision in ***Gjikokaj,*** concluding that the Judge's direction to the jury in ***Olive*** had not been flawed. He had adequately set out the limitations of the use of the evidence (at para 63) Thirlwall L.J. stated:

> *"In our view the judge made it clear to the jury that,*
>
> *i) if they thought the GSR may have got into the car by chance or contamination then the GSR evidence should be disregarded.*
>
> *ii) That the GSR on its own it proved nothing because it was at such a low level.*
>
> *iii) Whether it could be added to the case against the defendants depended on their view of the other evidence. The evidence which connected the car with the shooting is set out at paragraph 48 above. The jury had enough evidence upon which they could be sure that the Mokka was used in the shooting to which they were entitled to add the GSR. Whether or not they did so is unknown. Either way the admission of the evidence does not undermine the safety of the appellant's conviction."*

It is clear that to permit evidence of so few particles to be adduced in a circumstantial case there are two essential requirements: first, that it is not the sole piece of evidence in the case, so that there must be other evidence of which the gunshot residue findings are just a part; and second, that the direction to the jury has to be clear as to the limitations of the use to which they can put such evidence.

Christopher Donnellan QC appeared for the Crown.

*Contact **Christopher** – cdonnellan@36crime.co.uk*

Release after the Police, Crime, Sentencing and Courts Act 2022

Sebastian Walker

Barrister

The Police, Crime, Sentencing and Courts Act 2022 enacted a number of changes to sentencing legislation, a number of which came into force on 28 June 2022. Many of those changes, will apply only to a very small number of cases (such as the introduction of required life sentences for the unlawful act manslaughter of emergency workers) or will affect only the detail of orders (such as the changes to the extension of driving disqualification or the increase in the maximum curfew as part of a community order or suspended sentence order).

For most cases, the most significant changes brought into force on 28 June 2022 are likely to be the substantial changes to release effected by the 2022 Act. It will be important that practitioners are able to advise clients properly as to the current sentencing regime and the likely impact of any custodial sentence imposed upon them.

Offenders under 18 being sentenced on or after 28 June 2022

For those under 18 at conviction the 2022 Act effects the following material changes to release regimes in relation to any offender sentenced on or after 28 June 2022 (no matter when the offence was committed, or the offender convicted):

- Time on remand is now credited automatically in respect of detention and training orders by virtue of amendments to s.240ZA of the Criminal Justice Act 2003: para. 1 and 2 of Sch.16 to the 2022 Act.
- Where a sentence of detention is for 7 years or more, the offender will be required to serve two-thirds of the custodial term before becoming entitled to release if it is imposed for one of the following offences:
  - An offence listed in paras. 1 (manslaughter), 4 (soliciting murder); or 6 (wounding with intent to cause grievous bodily harm) (or para.64 (ancillary offences), so far as it relates to an offence listed in one of those paragraphs), or para.65 (inchoate offences in relation to murder) of Schedule 15 to the CJA 2003.
  - An offence listed in Part 2 of Sch.15 with a maximum sentence of life imprisonment: s.244ZA of the CJA 2003.

Offenders over 18 being sentenced on or after 28 June 2022

For those aged 18 or over at conviction the 2022 Act effects the following material changes to release

regimes in relation to any offender sentenced on or after 28 June 2022 (no matter when the offence was committed, or the offender convicted):

- The Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020 (SI 2020/158) is consolidated into new s.244ZA of the CJA 2003. The result is that any offender receiving a sentence of seven years' imprisonment or detention in a young offender institution for an offence specified in Part 1 or 2 of Schedule 15 to the CJA 2003 with a maximum sentence of life imprisonment, will continue to only become entitled to release after serving two-thirds of their sentence. In this respect the change is one of substance only, but practitioners should not fall into the mistake of believing the 2020 order has simply been revoked.
- Where a sentence of imprisonment or detention in a young offender institution is for four years or more, but for less than seven years, the offender will be required to serve two-thirds of the custodial term before becoming entitled to release if it is imposed for one of the following offences:
    - An offence listed in paras. 1 (manslaughter), 4 (soliciting murder); or 6 (wounding with intent to cause grievous bodily harm) (or para.64 (ancillary offences), so far as it relates to an offence listed in one of those paragraphs), or para.65 (inchoate offences in relation to murder) of Schedule 15 to the CJA 2003.
    - An offence listed in Part 2 of Sch.15 with a maximum sentence of life imprisonment: s.244ZA of the CJA 2003.
- The release regime for sentences for offenders of particular concern is amended so that in all cases sentenced on or after 28 June 2022 said offenders only become eligible for release after having served two-thirds of their custodial term (bringing these sentences into line with extended sentences): s.244A of the CJA 2003.

Offenders serving determinate sentences – whenever sentenced

However, the most substantial change introduced by the 2022 Act, and the one practitioners will need to be particularly cognisant of when advising offenders is the introduction of a new power under s.244ZB of the Criminal Justice Act 2003 for the Secretary of State to refer "high-risk offenders" to the Parole Board in place of automatic release.

Section 244ZB applies to any prisoner who would otherwise be entitled to automatic release (whether upon having served half their sentence or two-thirds of it), and who would be aged 18 or over when they become entitled to release.

Under s.244ZB if the Secretary of State believes on reasonable grounds that the prisoner would, if released, pose a significant risk to members of the public of serious harm occasioned by the commission of any of the following offences—

(a) murder;

(b) specified offences, within the meaning of section 306 of the Sentencing Code;

the Secretary of State may refer the prisoner's case to the Parole Board. A referral removes the right to automatic release before the expiry of the whole of the custodial term. Instead, the prisoner will only become eligible for release subject to Parole Board approval at the point at which they would otherwise be entitled to release (i.e having served half or two-third of their sentence). The Parole Board will only direct release where it is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined: s.244ZC of the CJA 2003.

It is notable that there is no requirement that the offender have been convicted of any specified offence for this power to be exercised, albeit the risk must arise from the possible future commission of such offences. This power is therefore exercisable where no extended sentence would be available for the offence (whether because the offence is not listed, or the custodial term is for less than four years).

In this respect it is a material and notable change to release, providing the Secretary of State a significant discretion. How this discretion will be used remains in part to be seen. A policy framework has been published by the MOJ and HMPSS entitled "Power to Detain Dangerous Prisoners Serving a Standard Determinate Sentence Policy Framework".

The framework provides that "it has been determined that referral to the Parole Board should only occur in particular cases (shaped, in part, by the risk assessment processes which prisoners are subject to whilst in the prison estate)." Moreover, at present, "Prisoners will only currently be considered for referral where the reasonable grounds are based on new or additional information not available at the time of sentencing. Existing information, in particular information, which was before the sentencing Court, will not be deemed sufficient."

The framework indicates that at present only prisoners assessed as being "very high risk of serious harm" on OASys and identified for management at MAPPA level 3 will be considered eligible suggesting that at present the power will be exercised only rarely.

That may well provide some comfort to prisoners, but whether that remains the policy moving forward will be a matter for the Secretary of State.

*Contact **Sebastian** – swalker@36crime.co.uk*

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- William Harbage QC
- Christopher Donnellan QC
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- Preetika Mathur
- Catherine Rose
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- Arthur Kendrick
- Sarah McIntyre
- Beheshteh Engineer
- Tom Parker
- Sebastian Walker

Contact our clerks on

020 7421 8007

Michelle Simpson
Jack Curtis
Elliot Styles
Daisy Jolly
Nathan Warren
Jess Tolliday

Email: clerks@36crime.co.uk
Secure: clerks@36crime.co.uk.cjsm.net

Website: https://36group.co.uk/crime

Address: The 36 Group, 4 Field Court, Gray's Inn, London, WC1R 5EF

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With thanks to the 36 Crime Update

Editorial Team:

Christopher Donnellan QC

Michelle Simpson

Tom Parker