



# Criminal Justice and Immigration Act 2008

## 2008 CHAPTER 4

### PART 2

#### SENTENCING

##### *Release and recall of prisoners*

#### **21 Credit for period of remand on bail: terms of imprisonment and detention**

- (1) The Criminal Justice Act 2003 (c. 44) is amended as follows.
- (2) In section 237 (meaning of “fixed term prisoner”), in subsection (1B), after “Armed Forces Act 2006)” insert “or section 240A”.
- (3) In the italic heading before section 240, after “custody” insert “*or on bail subject to certain types of condition*”.
- (4) After section 240 insert—

#### **“240A Crediting periods of remand on bail: terms of imprisonment and detention**

- (1) This section applies where—
  - (a) a court sentences an offender to imprisonment for a term in respect of an offence committed on or after 4th April 2005,
  - (b) the offender was remanded on bail by a court in course of or in connection with proceedings for the offence, or any related offence, after the coming into force of section 21 of the Criminal Justice and Immigration Act 2008, and
  - (c) the offender’s bail was subject to a qualifying curfew condition and an electronic monitoring condition (“the relevant conditions”).

- (2) Subject to subsection (4), the court must direct that the credit period is to count as time served by the offender as part of the sentence.
- (3) The “credit period” is the number of days represented by half of the sum of—
  - (a) the day on which the offender’s bail was first subject to conditions that, had they applied throughout the day in question, would have been relevant conditions, and
  - (b) the number of other days on which the offender’s bail was subject to those conditions (excluding the last day on which it was so subject), rounded up to the nearest whole number.
- (4) Subsection (2) does not apply if and to the extent that—
  - (a) rules made by the Secretary of State so provide, or
  - (b) it is in the opinion of the court just in all the circumstances not to give a direction under that subsection.
- (5) Where as a result of paragraph (a) or (b) of subsection (4) the court does not give a direction under subsection (2), it may give a direction in accordance with either of those paragraphs to the effect that a period of days which is less than the credit period is to count as time served by the offender as part of the sentence.
- (6) Rules made under subsection (4)(a) may, in particular, make provision in relation to—
  - (a) sentences of imprisonment for consecutive terms;
  - (b) sentences of imprisonment for terms which are wholly or partly concurrent;
  - (c) periods during which a person granted bail subject to the relevant conditions is also subject to electronic monitoring required by an order made by a court or the Secretary of State.
- (7) In considering whether it is of the opinion mentioned in subsection (4)(b) the court must, in particular, take into account whether or not the offender has, at any time whilst on bail subject to the relevant conditions, broken either or both of them.
- (8) Where the court gives a direction under subsection (2) or (5) it shall state in open court—
  - (a) the number of days on which the offender was subject to the relevant conditions, and
  - (b) the number of days in relation to which the direction is given.
- (9) Subsection (10) applies where the court—
  - (a) does not give a direction under subsection (2) but gives a direction under subsection (5), or
  - (b) decides not to give a direction under this section.
- (10) The court shall state in open court—
  - (a) that its decision is in accordance with rules made under paragraph (a) of subsection (4), or
  - (b) that it is of the opinion mentioned in paragraph (b) of that subsection and what the circumstances are.

(11) Subsections (7) to (10) of section 240 apply for the purposes of this section as they apply for the purposes of that section but as if—

- (a) in subsection (7)—
  - (i) the reference to a suspended sentence is to be read as including a reference to a sentence to which an order under section 118(1) of the Sentencing Act relates;
  - (ii) in paragraph (a) after “Schedule 12” there were inserted “or section 119(1)(a) or (b) of the Sentencing Act”; and
- (b) in subsection (8) the reference to subsection (3) of section 240 is to be read as a reference to subsection (2) of this section and, in paragraph (b), after “Chapter” there were inserted “or Part 2 of the Criminal Justice Act 1991”.

(12) In this section—

“electronic monitoring condition” means any electronic monitoring requirements imposed under section 3(6ZAA) of the Bail Act 1976 for the purpose of securing the electronic monitoring of a person’s compliance with a qualifying curfew condition;

“qualifying curfew condition” means a condition of bail which requires the person granted bail to remain at one or more specified places for a total of not less than 9 hours in any given day; and

“related offence” means an offence, other than the offence for which the sentence is imposed (“offence A”), with which the offender was charged and the charge for which was founded on the same facts or evidence as offence A.”

- (5) In section 241 (effect of direction under section 240 of that Act) after the words “section 240”, in each place where they occur (including in the title), insert “or 240A”.
- (6) In section 242 (interpretation of sections 240 and 241), in the title and in subsection (1), after “sections 240” insert “, 240A”.
- (7) In section 330 (Parliamentary procedure for subordinate legislation made under that Act), in subsection (5)(d), after “section 240(4)(a)” insert “or 240A(4)(a)”.

## **22 Credit for period of remand on bail: other cases**

- (1) The Criminal Justice Act 2003 (c. 44) is amended in accordance with subsections (2) and (3).
- (2) In section 246(4) (exceptions to power to release prisoner on licence before required to do so), in paragraph (i), after “section 240” insert “or 240A”.
- (3) In section 269(3) (part of mandatory life prisoner’s sentence to be specified for purposes of early release provisions), in paragraph (b), before “if” insert “or under section 240A (crediting periods of remand on bail spent subject to certain types of condition)”.
- (4) In paragraph 2 of Schedule 2 to the Criminal Appeal Act 1968 (c. 19) (sentence on conviction at retrial), in sub-paragraph (4), for the words from the beginning to “custody:” substitute “Sections 240 and 240A of the Criminal Justice Act 2003 (crediting of periods of remand in custody or on bail subject to certain types of condition:”.

- (5) In section 82A(3) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (part of discretionary life prisoner’s sentence to be specified for purposes of early release provisions), in paragraph (b), before “if” insert “or under section 240A of that Act of 2003 (crediting periods of remand on bail subject to certain types of condition)”.
- (6) In section 101 of that Act (detention and training orders: taking account of remand etc.)—
- (a) in subsection (8) for “in custody” substitute “—
    - (a) in custody, or
    - (b) on bail subject to a qualifying curfew condition and an electronic monitoring condition (within the meaning of section 240A of the Criminal Justice Act 2003),”; and
  - (b) in subsection (9) for “in custody” substitute “as mentioned in that subsection”.
- (7) In paragraph 2(1) of Schedule 7 to the International Criminal Court Act 2001 (c. 17) (provisions of law of England and Wales affecting length of sentence which are not applicable to ICC prisoners), for paragraph (d) substitute—
- “(d) sections 240 and 240A of the Criminal Justice Act 2003 (crediting of periods spent on remand in custody or on bail subject to certain types of condition: terms of imprisonment and detention).”

### **23 Credit for period of remand on bail: transitional provisions**

Schedule 6 (which, for the purposes of certain repealed provisions which continue to have effect in relation to persons convicted of certain offences, makes provision similar to that made by sections 21 and 22) has effect.

### **24 Minimum conditions for early release under section 246(1) of Criminal Justice Act 2003**

In section 246(2) of the Criminal Justice Act 2003 (c. 44) (minimum conditions for early release of fixed-term prisoner other than intermittent custody prisoner) for paragraph (b) substitute “and

- (b) he has served—
  - (i) at least 4 weeks of that period, and
  - (ii) at least one-half of that period.”

### **25 Release on licence under Criminal Justice Act 2003 of prisoners serving extended sentences**

- (1) Section 247 of the Criminal Justice Act 2003 (release on licence of prisoner serving extended sentence) is amended as follows.
- (2) In subsection (2)—
- (a) the word “and” at the end of paragraph (a) is omitted, and
  - (b) paragraph (b) is omitted.
- (3) Subsections (3), (4), (5) and (6) are omitted.

## 26 Release of certain long-term prisoners under Criminal Justice Act 1991

(1) Part 2 of the Criminal Justice Act 1991 (c. 53) (early release of prisoners: offences committed before 4th April 2005 etc.) is amended as follows.

(2) In section 33 (duty to release short-term and long-term prisoners), after subsection (1) insert—

“(1A) As soon as a long-term prisoner has served one-half of his sentence, it shall be the duty of the Secretary of State to release him on licence.

(1B) Subsection (1A) does not apply to a long-term prisoner if the offence or one of the offences in respect of which he is serving the sentence is specified in Schedule 15 to the Criminal Justice Act 2003 (specified violent offences and specified sexual offences).

(1C) The reference in subsection (1B) to an offence specified in Schedule 15 to the Criminal Justice Act 2003 includes a reference to—

- (a) an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 as respects which the corresponding civil offence (within the meaning of the Act in question) is an offence specified in that Schedule, and
- (b) an offence under section 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of England and Wales (within the meaning given by that section) is an offence specified in that Schedule.

(1D) Section 48 of the Armed Forces Act 2006 (attempts, conspiracy etc.) applies for the purposes of subsection (1C)(b) as if the reference in subsection (3)(b) of that section to any of the following provisions of that Act were a reference to subsection (1C)(b).”

(3) In that section, in subsection (2) after “a long-term prisoner” insert “to whom subsection (1A) does not apply”.

(4) In section 35 (power to release long-term prisoners etc.) after subsection (1) insert—

“(1A) Subsection (1) does not apply to a long-term prisoner to whom section 33(1A) applies.”

(5) In section 37 (duration and conditions of licences)—

- (a) in subsection (1), for “(1B) and (2)” substitute “(1B), (2) and (8)”, and
- (b) after subsection (7) insert—

“(8) This section does not apply in relation to a long-term prisoner to whom section 33(1A) applies (provision as to the duration and conditions of licences for such prisoners being made by section 37ZA).”

(6) After section 37 insert—

### “37ZA Duration and conditions of licences under section 33(1A) etc.

(1) Where a long-term prisoner is released on licence under section 33(1A), the licence shall (subject to any revocation under section 254 of the 2003 Act) remain in force for the remainder of the sentence.

- (2) Section 250(1), (4) and (8) of the 2003 Act apply in relation to a licence under section 33(1A) of this Act as they apply in relation to a licence under Chapter 6 of Part 12 of the 2003 Act in respect of a prisoner serving a sentence of imprisonment for a term of twelve months or more.
- (3) A person subject to a licence under section 33(1A) must comply with such conditions as may for the time being be specified in the licence.
- (4) The reference in section 254(1) of the 2003 Act to a person who has been released on licence under Chapter 6 of Part 12 of that Act includes a reference to a person released on licence under section 33(1A).
- (5) In this section, “the 2003 Act” means the Criminal Justice Act 2003.”

**27 Application of section 35(1) of Criminal Justice Act 1991 to prisoners liable to removal from the UK**

- (1) The following provisions of Part 2 of the Criminal Justice Act 1991 (c. 53) (which apply to persons sentenced for offences committed before 4th April 2005 etc.) cease to have effect—
  - (a) section 46(1) (which makes the early release power under section 35(1) exercisable in relation to long term prisoners liable to removal without a Parole Board recommendation), and
  - (b) in section 50(2), the words from “but nothing” to the end (which exclude prisoners liable to removal from the cases in which prisoners must be released if recommended for release by the Parole Board);
 and, accordingly, the Parole Board (Transfer of Functions) Order 1998 (S.I. 1998/3218) applies to prisoners liable to removal as it applies to other prisoners.
- (2) In this section “prisoners liable to removal” means prisoners liable to removal from the United Kingdom (within the meaning of section 46(3) of the Criminal Justice Act 1991).

**28 Release of fine defaulters and contemnors under Criminal Justice Act 1991**

- (1) Section 45 of the Criminal Justice Act 1991 (fine defaulters and contemnors: persons committed to prison before 4th April 2005) is amended as follows.
- (2) In subsection (2) after “(3)” insert “, (3A)”.
- (3) In subsection (3)—
  - (a) for “the following subsections” substitute “the following subsection”, and
  - (b) in the substituted text, subsection (2) is omitted.
- (4) After subsection (3) insert—
  - “(3A) In section 36 above—
    - (a) in subsection (1) for “on licence” there shall be substituted “unconditionally”, and
    - (b) subsection (2) shall be omitted.”
- (5) Subsection (4) is omitted.

## **29 Release of prisoners after recall**

- (1) In section 254 of the Criminal Justice Act 2003 (c. 44) (recall of prisoners while on licence)—
  - (a) subsections (3) to (5) cease to have effect;
  - (b) in subsection (7) for “subsections (2) to (6)” substitute “this section”.
- (2) After section 255 of that Act (recall of prisoners released early under section 246) insert—

### **“255A Further release after recall: introductory**

- (1) This section applies for the purpose of identifying which of sections 255B to 255D governs the further release of a person who has been recalled under section 254 (“the prisoner”).
- (2) The prisoner is eligible to be considered for automatic release unless—
  - (a) he is an extended sentence prisoner or a specified offence prisoner;
  - (b) in a case where paragraph (a) does not apply, he was recalled under section 254 before the normal entitlement date (having been released before that date under section 246 or 248); or
  - (c) in a case where neither of the preceding paragraphs applies, he has, during the same term of imprisonment, already been released under section 255B(1)(b) or (2) or section 255C(2).
- (3) If the prisoner is eligible to be considered for automatic release the Secretary of State must, on recalling him, consider whether he is suitable for automatic release.
- (4) For this purpose “automatic release” means release at the end of the period of 28 days beginning with the date on which the prisoner is returned to prison.
- (5) The person is suitable for automatic release only if the Secretary of State is satisfied that he will not present a risk of serious harm to members of the public if he is released at the end of that period.
- (6) The prisoner must be dealt with—
  - (a) in accordance with section 255B if he is eligible to be considered for automatic release and is suitable for automatic release;
  - (b) in accordance with section 255C if he is eligible to be considered for automatic release but was not considered to be suitable for it;
  - (c) in accordance with section 255C if he is a specified offence prisoner or if he is not eligible to be considered for automatic release by virtue of subsection (2)(b) or (c);
  - (d) in accordance with section 255D if he is an extended sentence prisoner.
- (7) The prisoner is an “extended sentence prisoner” if he is serving an extended sentence imposed under section 227 or 228 of this Act, section 58 of the Crime and Disorder Act 1998 or section 85 of the Powers of Criminal Courts (Sentencing) Act 2000.

- (8) The prisoner is a “specified offence prisoner” if (not being an extended sentence prisoner) he is serving a sentence imposed for a specified offence within the meaning of section 224.
- (9) The reference in subsection (8) to a specified offence (within the meaning of section 224) includes a reference to—
- (a) an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 as respects which the corresponding civil offence (within the meaning of the Act in question) is a specified offence, and
  - (b) an offence under section 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of England and Wales (within the meaning given by that section) is a specified offence.
- (10) Section 48 of the Armed Forces Act 2006 (attempts, conspiracy etc.) applies for the purposes of subsection (9)(b) as if the reference in subsection (3)(b) of that section to any of the following provisions of that Act were a reference to subsection (9)(b).
- (11) In subsection (2)(b) the “normal entitlement date” means the date on which the prisoner would (but for his earlier release) have been entitled to be released under section 244.
- (12) For the purposes of subsection (2)(c) terms of imprisonment which are consecutive and terms which are wholly or partly concurrent are to be treated as a single term if—
- (a) the sentences were passed on the same occasion, or
  - (b) where they were passed on different occasions, the prisoner has not been released under this Chapter at any time during the period beginning with the first and ending with the last of those occasions.
- (13) In subsection (5) “serious harm” means death or serious personal injury, whether physical or psychological.
- (14) In this section, “term of imprisonment” includes a determinate sentence of detention under section 91 of the Sentencing Act or under section 228 of this Act.

### **255B Automatic release**

- (1) A prisoner who is suitable for automatic release must—
- (a) on his return to prison, be informed that he will be released under this subsection, and
  - (b) at the end of the 28 day period mentioned in section 255A(4) (or such other period as is specified for the purposes of that subsection), be released by the Secretary of State on licence under this Chapter (unless he has already been released under subsection (2)).
- (2) The Secretary of State may, at any time after a prisoner who is suitable for automatic release is returned to prison, release him again on licence under this Chapter.
- (3) The Secretary of State must not release a person under subsection (2) unless the Secretary of State is satisfied that it is not necessary for the protection of



the public that he should remain in prison until the end of the period mentioned in subsection (1)(b).

- (4) If a prisoner who is suitable for automatic release makes representations under section 254(2) before the end of that period, the Secretary of State must refer his case to the Board on the making of those representations.
- (5) Where on a reference under subsection (4) relating to any person the Board recommends his immediate release on licence under this Chapter, the Secretary of State must give effect to the recommendation.
- (6) In the case of an intermittent custody prisoner who has not yet served in prison the number of custodial days specified in the intermittent custody order, any recommendation by the Board as to immediate release on licence is to be a recommendation as to his release on licence until the end of one of the licence periods specified by virtue of section 183(1)(b) in the intermittent custody order.

#### **255C Specified offence prisoners and those not suitable for automatic release**

- (1) This section applies to a prisoner who—
  - (a) is a specified offence prisoner,
  - (b) is not eligible to be considered for automatic release by virtue of section 255A(2)(b) or (c), or
  - (c) was eligible to be considered for automatic release but was not considered to be suitable for it.
- (2) The Secretary of State may, at any time after the person is returned to prison, release him again on licence under this Chapter.
- (3) The Secretary of State must not release a person under subsection (2) unless the Secretary of State is satisfied that it is not necessary for the protection of the public that he should remain in prison.
- (4) The Secretary of State must refer to the Board the case of any person to whom this section applies—
  - (a) if the person makes representations under section 254(2) before the end of the period of 28 days beginning with the date on which he is returned to prison, on the making of those representations, or
  - (b) if, at the end of that period, the person has not been released under subsection (2) and has not made such representations, at that time.
- (5) Where on a reference under subsection (4) relating to any person the Board recommends his immediate release on licence under this Chapter, the Secretary of State must give effect to the recommendation.
- (6) In the case of an intermittent custody prisoner who has not yet served in prison the number of custodial days specified in the intermittent custody order, any recommendation by the Board as to immediate release on licence is to be a recommendation as to his release on licence until the end of one of the licence periods specified by virtue of section 183(1)(b) in the intermittent custody order.

**255D Extended sentence prisoners**

- (1) The Secretary of State must refer to the Board the case of any extended sentence prisoner.
- (2) Where on a reference under subsection (1) relating to any person the Board recommends his immediate release on licence under this Chapter, the Secretary of State must give effect to the recommendation.”
- (3) In section 256 of that Act (further release after recall) in subsection (1) (powers of Board on a reference) for “section 254(3)” substitute “section 255B(4), 255C(4) or 255D(1)”.

**30 Further review and release of prisoners after recall**

- (1) Section 256 of the Criminal Justice Act 2003 (c. 44) (further release after recall) is amended as follows.
- (2) In subsection (1) for paragraph (b) substitute—
  - “(b) determine the reference by making no recommendation as to his release.”
- (3) In subsection (2) omit “or (b)”.
- (4) Subsections (3) and (5) cease to have effect.
- (5) In consequence of the amendments made by section 29 and this section, the heading to section 256 becomes “Review by the Board”.
- (6) After section 256 insert—

**“256A Further review**

- (1) The Secretary of State must, not later than the first anniversary of a determination by the Board under section 256(1) or subsection (4) below, refer the person’s case to the Board.
- (2) The Secretary of State may, at any time before that anniversary, refer the person’s case to the Board.
- (3) The Board may at any time recommend to the Secretary of State that a person’s case be referred under subsection (2).
- (4) On a reference under subsection (1) or (2), the Board must determine the reference by—
  - (a) recommending the person’s immediate release on licence under this Chapter,
  - (b) fixing a date for his release on licence, or
  - (c) making no recommendation as to his release.
- (5) The Secretary of State—
  - (a) where the Board makes a recommendation under subsection (4)(a) for the person’s immediate release on licence, must give effect to the recommendation; and

- (b) where the Board fixes a release date under subsection (4)(b), must release the person on licence on that date.”

### **31 Recall of life prisoners: abolition of requirement for recommendation by Parole Board**

- (1) Section 32 of the Crime (Sentences) Act 1997 (c. 43) (recall of life prisoners while on licence) is amended as follows.
- (2) For subsections (1) and (2) (power of Secretary of State to revoke licence) substitute—
  - “(1) The Secretary of State may, in the case of any life prisoner who has been released on licence under this Chapter, revoke his licence and recall him to prison.”
- (3) In subsection (3) (representations by prisoner) for “subsection (1) or (2) above” substitute “this section”.
- (4) In subsection (4) (reference to Parole Board by Secretary of State) for paragraphs (a) and (b) substitute “the case of a life prisoner recalled under this section”.

### **32 Release of prisoners recalled following release under Criminal Justice Act 1991**

- (1) Before section 51 of the Criminal Justice Act 1991 (c. 53) insert—

#### **“50A Prisoners recalled under section 254 of Criminal Justice Act 2003**

- (1) This section applies to a person who is—
  - (a) released on licence under any provision of this Part, and
  - (b) recalled to prison under section 254(1) of the 2003 Act (recall of prisoners while on licence).
- (2) Nothing in the following provisions of this Part (which authorise or require the Secretary of State to release prisoners) applies in relation to the person—
  - (a) section 33;
  - (b) section 33A;
  - (c) section 34A;
  - (d) section 35;
  - (e) section 43(4).
- (3) Sections 254(2) and (6) and 255A to 256A of the 2003 Act (which authorise release on licence etc) apply in relation to a person to whom this section applies with the modifications specified in subsection (4).
- (4) Section 255A applies as if—
  - (a) the reference in subsection (2)(b) to section 246 or 248 of the 2003 Act were a reference to section 34A or 36 of this Act,
  - (b) the reference in subsection (11) to section 244 of the 2003 Act were a reference to section 33(1), (1A) or (2) of this Act,
  - (c) subsection (12) were omitted (provision to the same effect being made by section 51(2) of this Act, as it applies by virtue of subsection (9) below), and

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*Status: This is the original version (as it was originally enacted).*

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- (d) subsection (14) provided that “term of imprisonment” included any sentence of detention mentioned in section 43(1) of this Act.
- (5) The provisions of Chapter 6 of Part 12 of the 2003 Act specified in subsection (6) apply in relation to—
  - (a) a licence under that Chapter granted to a person to whom this section applies, and
  - (b) a licence under section 36 of this Act granted to such a person.
- (6) The provisions of the 2003 Act specified in this subsection are—
  - (a) section 249 (duration of licence), as modified by subsection (7) below;
  - (b) section 250(1), (4) and (8) (licence conditions), as modified by subsection (8) below;
  - (c) section 252 (duty to comply with licence conditions).
- (7) Section 249 of the 2003 Act applies—
  - (a) as if the reference in subsection (1) to a fixed-term prisoner were a reference to a person to whom this section applies, and
  - (b) as if for subsection (3) there were substituted—
    - “(3) Subsection (1) has effect subject to section 51(2) to (2D) of the Criminal Justice Act 1991 (treatment of consecutive and concurrent terms etc.).”
- (8) Section 250(4) of the 2003 Act applies as if the reference to a prisoner serving a sentence mentioned in that subsection were a reference to a person to whom this section applies.
- (9) In relation to a person to whom this section applies, subsections (2) to (2D) of section 51 of this Act (treatment of consecutive and concurrent terms etc.) apply as if any reference in those subsections to this Part of this Act included the provisions of the 2003 Act mentioned in subsections (3) and (6).
- (10) Except as provided by subsections (7)(b) and (9), nothing in this Part applies in relation to the duration and conditions of—
  - (a) a licence under Chapter 6 of Part 12 of the 2003 Act granted to a person to whom this section applies, or
  - (b) a licence under section 36 of this Act granted to such a person.
- (11) In this section, “the 2003 Act” means the Criminal Justice Act 2003.”
- (2) The savings made by paragraph 19 of Schedule 2 to the Criminal Justice Act 2003 (Commencement No.8 and Transitional and Saving Provisions) Order 2005 ([S.I. 2005/950](#)) in respect of sections 249 and 250 of the Criminal Justice Act 2003 (c. 44) do not apply in relation to a licence granted under Chapter 6 of Part 12 of that Act, or under section 36 of the Criminal Justice Act 1991 (c. 53), to a person to whom section 50A of the Criminal Justice Act 1991 applies.