

# LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY

#### **Part 3: Sentencing and punishment of offenders**

#### *Chapter 4: Release on licence etc*

#### **Calculation of days to be served**

#### *Section 108: Crediting of periods of remand in custody*

535. **Section 108** replaces section 240 of the 1991 Act with a new section 240ZA, dealing with the crediting of time spent on remand in custody against any subsequent sentence of imprisonment or detention. Under section 240 the court directs the amount of remand time to be counted towards a prisoner's sentence. The insertion of section 240ZA provides for such time, instead, to be calculated and applied administratively. All time that meets the criteria of the provision will be counted to reduce a subsequent sentence. There is no longer discretion to disapply any such time.
536. *Subsection (4)* of new section 240ZA prevents time spent on remand from counting if the prisoner is also serving another sentence or is otherwise detained in connection with another matter (*subsection (10)* lists the types of detention which count for this purpose).
537. *Subsection (5)* of new section 240ZA prevents the same remand time counting several times against two or more sentences (whether or not they are served consecutively or concurrently).
538. *Subsection (6)* of new section 240ZA prevents remand time shortening any recall under section 255B where the maximum length of the recall is 28 days. (The possibility of a 28 day fixed recall period was introduced by the 2008 Act which provides that lower risk prisoners who are suitable for such a recall must be released automatically at the end of that period.)
539. *Subsection (9)* of new section 240ZA makes it clear that consecutive and concurrent sentences, where a prisoner has not been released between serving such sentences, are counted as one sentence for the purposes of deducting remand time. Together with *subsection (5)* of new section 240ZA, this prevents the same remand time counting several times against the overall sentence envelope created by the consecutive or concurrent sentences.

#### *Section 109: Crediting of periods of remand on bail*

540. **Section 109** amends section 240A of the 1991 Act which gives the court power to direct that time spent remanded on bail subject to electronic monitoring ("tagged bail") counts towards any subsequent sentence imposed, provided that that sentence is imposed for

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the same offence for which the defendant was remanded or a related offence. Two days successfully completed on tagged bail count as one day of the sentence. The new provisions set out how the time to be credited has to be calculated.

541. *Subsection (3)* inserts new subsections (3) to (3B) into section 240A. These set out the stages of the calculation. Under Step 1 the first day is counted even if the electronic monitor is not put in place until late that day. However, the last day is not counted if the offender spends the last part of that day in custody: that day will count towards the sentence served.
542. Step 2 prevents credit for tagged bail counting towards a subsequent sentence where during such time on bail the offender was also subject to an electronically monitored curfew requirement in connection with any other sentence (which includes being released on HDC) or temporarily released from prison in relation to another sentence.
543. Under Step 3 days where the offender breached the conditions of the release on bail are not to be counted.
544. Step 4 provides that each day spent on tagged bail effectively counts as half a day against the sentence. If such a calculation results in a number of days that include a half day, that half day can be counted as a whole day under Step 5.
545. New subsection (3A) prevents the same remand time counting several times against two or more sentences (whether or not they are to be served consecutively or concurrently).
546. New subsection (3B) prevents remand time shortening any recall under section 255B where the maximum length of the recall is 28 days (that is, where a prisoner receives the type of ‘fixed term recall’ introduced by the 2008 Act which provides for automatic release at the end of that 28 day period).

***Section 110 and Schedule 13: Amendments consequential on sections 108 and 109***

547. **Section 110** makes amendments consequential on sections 108 and 109, mainly amending the references to the repealed section 240 of the 1991 Act so as refer to section 240ZA instead.
548. *Subsection (8)* amends section 243 of the 1991 Act in relation to persons extradited to the United Kingdom. For those persons who qualify under section 243 of the 1991 Act, the changes provide for all days remanded in custody in another jurisdiction while awaiting extradition to the United Kingdom to be counted against a subsequent sentence imposed.
549. *Subsection (13)* gives effect to Schedule 13, Part 1 of which replicates in the Armed Forces Act 2006 the effect of the provisions in section 108 for the crediting of remand time towards a subsequent sentence. This ensures the same provisions are applied in respect of sentences imposed under Armed Forces legislation. Part 2 of Schedule 13 makes consequential amendments to other Acts.

**Release**

***Section 111 and Schedule 14: Prisoners serving less than 12 months***

550. **Section 111** provides for prisoners serving sentences of less than 12 months to be released unconditionally at the half way point. It does so by inserting a new section 243A into the 1991 Act. This replicates the corresponding provision in the Criminal Justice Act 1991 (“the 1991 Act”). In effect, it replaces the provisions for release of those serving sentences of less than 12 months (section 181: custody plus) originally provided for in the 1991 Act.

551. **Section 111** introduces Schedule 14 which makes consequential amendments in relation to the new section 243A to ensure that the new provision works with the existing release and recall scheme in Chapter 6 of Part 12 of the 1991 Act.
552. **Paragraph 14** of the Schedule provides that consecutive sentences which add up to 12 months or more are to be treated as a single sentence of 12 months or more. This means that where a sentence of less than 12 months is served consecutively with another sentence and either (i) the other sentence is 12 months or more, or (ii) the two sentences add up to 12 months or more, then release for the sentence of less than 12 months would be on licence for the remainder of the sentence. However, where consecutive sentences add up to less than 12 months, release will be unconditional.
553. Sentences of less than 12 months were previously all dealt with under the the 1991 Act (by virtue of transitional provisions, this remained the case even after the 1991 Act was brought into force). **Paragraph 17** of the Schedule removes those transitional provisions, so that from the commencement of Chapter 4 such sentences are dealt with under the 1991 Act.

### ***Section 112: Restrictions on early release subject to curfew***

554. **Section 112** amends section 246 of the 1991 Act which provides for early release on HDC, which includes electronic monitoring. The amendments exclude a number of categories of prisoner from the HDC scheme. They will prevent anyone serving a sentence of four years or more from being eligible for the scheme. They also make ineligible those previously released and recalled under the scheme for breach of licence conditions (during a previous or current sentence). Also excluded will be those previously returned to prison under section 116 of the PCC(S)A 2000 for committing a further offence before the expiry of a previous sentence. These changes bring the 1991 Act scheme in line with the scheme under the 1991 Act, so that the statutory provisions for HDC will be the same for all prisoners.
555. **Subsection (5)** inserts a new subsection (4ZA) into section 246 of the 1991 Act. This deals with concurrent and consecutive sentences for the purpose of determining whether an offender is serving a term of 4 years or more.

### **Further release after recall**

#### ***Section 113: Cancellation of revocation of licence***

556. **Section 113** amends section 254 of the 1991 Act to provide that when prisoners have been recalled erroneously (for example, as a result of incorrect information about the breach), a licence revocation may be cancelled. This will apply even after the Parole Board have considered the recall and made a decision on release.

#### ***Section 114: Further release after recall***

557. **Section 114** replaces section 255A to 255D of the 1991 Act, which provide for the release of prisoners after recall, with new sections 255A to 255C. There are two different recall schemes under these provisions. Under section 255B prisoners, if not released executively or by the Parole Board within 28 days, are released at the completion of 28 days detention. Under section 255C prisoners are subject to detention to the end of their sentence unless released executively or by the Parole Board. Section 255A identifies which scheme will apply to a prisoner and sets out the criteria for suitability for automatic release. Recalled prisoners serving extended sentences and those not suitable for automatic release will be dealt with under section 255C.
558. The changes made by the substituted provisions are as follows:
- The combination of the previous section 255C and 255D allows for the executive release of recalled extended sentence prisoners.

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- The re-writing of section 255B removes previous restrictions on automatic release for certain categories of prisoner so that such prisoners may be considered for automatic release if they are assessed as sufficiently low risk and suitable.
- New sections 255B(6) and (7) and 255C(6) and (7) prevent prisoners recalled during their HDC period from being re-released prior to their automatic release date unless satisfactory arrangements for further HDC electronic monitoring can be put in place. These are prisoners who have been released on HDC under section 246 and recalled under section 254.
- New section 255B(8) and (9) allows for the Secretary of State, on receipt of new information, to alter the basis of the recall, so that an offender originally intended for automatic release will be dealt with under the standard release provision (section 255C).

559. The amendment to section 244(1) of the 1991 Act by *subsection (2)* of section 115 makes it clear that for those serving a sentence of 12 months or more a recall under section 254 can override the automatic release date at the half-way point of the sentence. This means where the 28-day automatic recall period ends after the duty to release at the half-way point under section 244, the full 28 days can be served before release. Similarly, the duty to release at the half-way point will not apply if the Parole Board has not directed release under section 255C.

## **Other provisions about release**

### ***Section 115: Supervision of young offenders after release***

560. **Section 115** amends the 1991 Act to include a provision – section 256B – for the supervision of young adult prisoners released from a sentence of Detention in a Young Offenders’ Institution (“DYOI”) – available for 18 to 20 year olds. This will ensure that prisoners released from a DYOI sentence of less than 12 months will receive 3 months’ supervision. This provision recasts a similar provision in section 65 of the 1991 Act, which was repealed by the 1991 Act. Such supervision can include specific requirements relating to drug testing and electronic monitoring.
561. It also inserts a new section 256C into the 1991 Act to provide for what is to happen if the offender breaches the terms of the supervision. It gives the court powers to summons the offender, issue a warrant of arrest and impose a penalty for the breach.

### ***Section 116: Miscellaneous amendments relating to release and recall***

562. **Section 116** makes amendments to the 1991 Act.
563. *Subsection (2)* removes the duty of the Secretary of State to consult the Parole Board before releasing extended sentence prisoners on compassionate grounds. This brings such release of extended sentence prisoners into line with that of all other determinate sentence prisoners.
564. *Subsections (5) to (7)* amend sections 260 and 261 of the 1991 Act; these amendments are consequential on the fact that extended sentence prisoners can be removed from prison in order to be removed from the United Kingdom.
565. *Subsection (8)* corrects a drafting error in section 263(2) of the 1991 Act, which should refer to “section 246” rather than “section 244”.
566. *Subsection (9)* clarifies the previous drafting and practice under the 1991 Act in relation to the duration of the licence period for prisoners released from concurrent sentences. Release cannot take place until the latest release point of all the sentences and is on a licence expiring on the latest end date of all the sentences. No change of policy is being made.

### ***Section 117: Replacement of transitory provisions***

567. **Section 117** amends a number of provisions of Chapter 6 of Part 12 of the 1991 Act so that the release provisions of that Chapter apply to sentences of Detention in a Young Offender Institution. This section revokes the 1991 Act (Sentencing) (Transitory Provisions) Order 2005 which had the same effect.

### ***Section 118: Repeal of uncommenced provisions***

568. **Section 118** removes various provisions which have not been commenced. One of these is a section of the 1991 Act. Some of them are amendments of that Act or Part 2 of the 1991 Act (which also relates to release and recall).

## **Life sentence prisoners**

### ***Section 119: Removal of prisoners from the United Kingdom***

569. **Section 119** inserts two new sections into the Crime (Sentences) Act 1997 to provide a power for the Secretary of State to remove from the UK foreign national prisoners who are serving indeterminate sentences once they have served the minimum term (“tariff”) set by the court. The Secretary of State may remove such a prisoner whether or not the Parole Board has directed the prisoner’s release. Provision is also made for prisoners who are removed under this power and subsequently return to the UK to be detained in pursuance of their sentence.
570. New section 32A sets out the criteria for removal and the powers of the Secretary of State to remove a prisoner. This provision applies to those who are removed from prison (whether before initial release or after recall at any time). Subsection (4) allows for release by the Parole Board or compassionate release to apply to the prisoner up until the actual removal from the UK. Subsection (5) imports the definition for a person liable to removal from section 259 of the 1991 Act as it applies for determinate sentence prisoners.
571. New section 32B applies where, after removal, the offender returns. If not initially released by the Parole Board before removal then the offender will be treated as if he had not previously been released. If the Parole Board directed release prior to the removal then the offender will be treated as if recalled for breach of licence. Where the sentence is a life sentence, this will apply at any time until death. Where the sentence is an indeterminate sentence for public protection, then it will apply at any time until the licence ceases to have effect under section 31A.

## **Application and transitional provision**

### ***Section 120: Application and transitional etc provision***

572. **Section 120** gives effect to Schedule 15 (see below).

### ***Schedule 15: Application of sections 109 to 120 and transitional and transitory provision***

573. **Schedule 15** contains provision for the application and commencement of the release and recall sections. This provision sets out whether the commencement of the section affects those being sentenced, those recalled or those yet to be initially released after sentence.
574. **Paragraph 4** of Schedule 15 makes it clear that the changes to eligibility for early release on HDC will not affect those who are already released on the scheme prior to the commencement of the changes to section 246 of the 1991 Act.

**Section 121: Simplification of existing transitional provisions**

575. *Subsection (1)* applies the release and recall provisions of Chapter 6 of Part 12 of the 1991 Act to all prisoners regardless of the date of offence or the date of sentence.
576. *Subsection (2)* provides that provisions relating to the release of fine defaulters and contemnors under Chapter 6 of Part 12 of the 1991 Act will apply to all prisoners regardless of the date of committal.
577. *Subsection (3)* has the effect of repealing fully the release and recall provisions of the 1991 Act and the transitional and savings provisions under Part 2 of Schedule 2 to the 1991 Act (Commencement No 8. and Transitional and Saving Provisions) Order 2005 which saved the relevant release and recall provisions of the 1991 Act. Any 1991 Act provisions needing to be retained for those prisoners in custody at the time of commencement are restated in Schedule 20B of the 1991 Act, which is inserted by Schedule 16 (see below).
578. *Subsection (4)* repeals section 86 of the PCC(S)A 2000, which provides in certain cases for a prisoner's licence to extend to the end of his sentence. Such provision is no longer required for any new releases because section 249 of the 1991 Act will apply; this makes the same provision.
579. *Subsections (5) and (6)* give effect to the Schedules which in effect preserve the provisions which determine the release point and licence length for offenders who were sentenced before 4 April 2005, where the release and licence periods differ from those in Chapter 6 of Part 12 of the 1991 Act.