



Criminal Justice and Immigration Act 2008

2008 CHAPTER 4

PART 2

SENTENCING

General sentencing provisions

PROSPECTIVE

9 Purposes etc. of sentencing: offenders under 18

^{F1}(1)

^{F1}(2)

(3) In section 44 of the Children and Young Persons Act 1933 (c. 12) (general considerations) after subsection (1) insert—

“(1A) Subsection (1) is to be read with paragraphs (a) and (c) of section 142A(2) of the Criminal Justice Act 2003 (which require a court dealing with an offender aged under 18 also to have regard to the principal aim of the youth justice system and the specified purposes of sentencing).

(1B) Accordingly, in determining in the case of an offender whether it should take steps as mentioned in subsection (1), the court shall also have regard to the matters mentioned in those paragraphs.”

(4) In section 42(1) of the Crime and Disorder Act 1998 (c. 37) (interpretation of Part 3 of Act), after the definition of “local authority” insert—

““offending” includes re-offending;”.

Status: Point in time view as at 03/11/2008. This version of this part contains provisions that are not valid for this point in time.

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Textual Amendments

- F1** S. 9(1)(2) repealed (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 28](#) (with ss. 413(4)(5), 416(7), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

Modifications etc. (not altering text)

- C1** S. 9 modified in part (1.12.2020 immediately before the consolidation date (see 2020 c. 9, ss. 3, 5(2)(3) and 2020 c. 17, ss. 2, 416)) by [Sentencing \(Pre-consolidation Amendments\) Act 2020 \(c. 9\)](#), [ss. 1, 5\(2\)\(3\)](#); [S.I. 2012/1236](#), reg. 2

10 Effect of restriction on imposing community sentences

In section 148 of the Criminal Justice Act 2003 (c. 44) (restrictions on imposing community sentences), after subsection (4) insert—

- “(5) The fact that by virtue of any provision of this section—
- (a) a community sentence may be passed in relation to an offence; or
 - (b) particular restrictions on liberty may be imposed by a community order or youth rehabilitation order,
- does not require a court to pass such a sentence or to impose those restrictions.”

Commencement Information

- II** [S. 10](#) in force at 14.7.2008 by [S.I. 2008/1586](#), art. 2(1), [Sch. 1 para. 1](#)

11 Restriction on power to make a community order

- (1) After section 150 of the Criminal Justice Act 2003 (community sentence not available where sentence fixed by law etc.) insert—

“150A Community order available only for offences punishable with imprisonment or for persistent offenders previously fined

- (1) The power to make a community order is only exercisable in respect of an offence if—
 - (a) the offence is punishable with imprisonment; or
 - (b) in any other case, section 151(2) confers power to make such an order.
- (2) For the purposes of this section and section 151 an offence triable either way that was tried summarily is to be regarded as punishable with imprisonment only if it is so punishable by the sentencing court (and for this purpose section 148(1) is to be disregarded).”
- (2) Section 151 of that Act (community order for persistent offender previously fined) is amended as follows.
- (3) Before subsection (1) insert—

“(A1) Subsection (2) provides for the making of a community order by the court in respect of an offence (“the current offence”) committed by a person to whom subsection (1) or (1A) applies.”

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- (4) In subsection (1)—
- (a) for “Subsection (2) applies where” substitute “This subsection applies to the offender if—
 - (za) the current offence is punishable with imprisonment;”;
 - (b) for paragraph (a) substitute—
 - “(a) the offender was aged 16 or over when he was convicted;”;
 - (c) in paragraph (b) for “he” substitute “ the offender ”.
- (5) After subsection (1) insert—
- “(1A) This subsection applies to the offender if—
- (a) the current offence is not punishable with imprisonment;
 - (b) the offender was aged 16 or over when he was convicted; and
 - (c) on three or more previous occasions the offender has, on conviction by a court in the United Kingdom of any offence committed by him after attaining the age of 16, had passed on him a sentence consisting only of a fine.”
- (6) In subsection (3)(a) after “(1)(b)” insert “ or (1A)(b) (as the case may be) ”.
- (7) In subsections (4), (5) and (6), for “subsection (1)(b)” insert “ subsections (1)(b) and (1A)(b) ”.
- (8) In section 166 of that Act (savings for powers to mitigate etc.), in subsection (1)(a), after “148” insert “ or 151(2) ”.

Commencement Information

I2 S. 11(1) in force at 14.7.2008 by S.I. 2008/1586, art. 2(1), **Sch. 1 para. 2** (with Sch. 2 para. 1)

12 Pre-sentence reports

In section 158 of the Criminal Justice Act 2003 (c. 44) (meaning of “pre-sentence report”), after subsection (1) insert—

- “(1A) Subject to any rules made under subsection (1)(b) and to subsection (1B), the court may accept a pre-sentence report given orally in open court.
- (1B) But a pre-sentence report that—
- (a) relates to an offender aged under 18, and
 - (b) is required to be obtained and considered before the court forms an opinion mentioned in section 156(3)(a),
- must be in writing.”

Commencement Information

I3 S. 12 in force at 14.7.2008 by S.I. 2008/1586, art. 2(1), **Sch. 1 para. 3**

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Custodial sentences

13 Sentences of imprisonment for public protection

(1) In section 225 of the Criminal Justice Act 2003 (life sentence or imprisonment for public protection), for subsection (3) substitute—

“(3) In a case not falling within subsection (2), the court may impose a sentence of imprisonment for public protection if the condition in subsection (3A) or the condition in subsection (3B) is met.

(3A) The condition in this subsection is that, at the time the offence was committed, the offender had been convicted of an offence specified in Schedule 15A.

(3B) The condition in this subsection is that the notional minimum term is at least two years.

(3C) The notional minimum term is the part of the sentence that the court would specify under section 82A(2) of the Sentencing Act (determination of tariff) if it imposed a sentence of imprisonment for public protection but was required to disregard the matter mentioned in section 82A(3)(b) of that Act (crediting periods of remand).”

(2) After Schedule 15 to that Act, insert the Schedule set out in Schedule 5 to this Act.

Commencement Information

I4 S. 13 in force at 14.7.2008 for specified purposes by [S.I. 2008/1586](#), art. 2(1), [Sch. 1 para. 4](#) (with [Sch. 2 para. 2](#))

14 Sentences of detention for public protection

In section 226 of the Criminal Justice Act 2003 (c. 44) (detention for life or detention for public protection), for subsection (3) substitute—

“(3) In a case not falling within subsection (2), the court may impose a sentence of detention for public protection if the notional minimum term is at least two years.

(3A) The notional minimum term is the part of the sentence that the court would specify under section 82A(2) of the Sentencing Act (determination of tariff) if it imposed a sentence of detention for public protection but was required to disregard the matter mentioned in section 82A(3)(b) of that Act (crediting periods of remand).”

Commencement Information

I5 S. 14 in force at 14.7.2008 by [S.I. 2008/1586](#), art. 2(1), [Sch. 1 para. 5](#) (with [Sch. 2 para. 2](#))

15 Extended sentences for certain violent or sexual offences: persons 18 or over

(1) Section 227 of the Criminal Justice Act 2003 (extended sentence for certain violent or sexual offences: persons 18 or over) is amended as follows.

Status: Point in time view as at 03/11/2008. This version of this part contains provisions that are not valid for this point in time.

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- (2) In subsection (1)—
- (a) in paragraph (a) the words “, other than a serious offence,” are omitted, and
 - (b) after paragraph (b) insert “, but
 - (c) the court is not required by section 225(2) to impose a sentence of imprisonment for life.”
- (3) In subsection (2) —
- (a) for “The court must” substitute “ The court may ”, and
 - (b) for the words from “that is to say” to the end substitute “ if the condition in subsection (2A) or the condition in subsection (2B) is met. ”
- (4) After subsection (2) insert—
- “(2A) The condition in this subsection is that, at the time the offence was committed, the offender had been convicted of an offence specified in Schedule 15A.
- (2B) The condition in this subsection is that, if the court were to impose an extended sentence of imprisonment, the term that it would specify as the appropriate custodial term would be at least 4 years.
- (2C) An extended sentence of imprisonment is a sentence of imprisonment the term of which is equal to the aggregate of—
- (a) the appropriate custodial term, and
 - (b) a further period (“the extension period”) for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by him of further specified offences.”

(5) In subsection (3) for “subsection (2)” substitute “ subsections (2B) and (2C) ”.

(6) After subsection (5) insert—

“(6) The Secretary of State may by order amend subsection (2B) so as to substitute a different period for the period for the time being specified in that subsection.”

Commencement Information

16 S. 15 in force at 14.7.2008 by [S.I. 2008/1586](#), art. 2(1), [Sch. 1 para. 6](#) (with [Sch. 2 para. 2](#))

16 Extended sentences for certain violent or sexual offences: persons under 18

- (1) Section 228 of the Criminal Justice Act 2003 (c. 44) (extended sentence for certain violent or sexual offences: persons under 18) is amended as follows.
- (2) In subsection (1)(b)(ii) the words from “or by section 226(3)” to the end are omitted.
- (3) In subsection (2) —
- (a) for “The court must” substitute “ The court may ”, and
 - (b) for the words from “, that is to say” to the end substitute “ if the condition in subsection (2A) is met. ”

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(4) After subsection (2) insert—

“(2A) The condition in this subsection is that, if the court were to impose an extended sentence of detention, the term that it would specify as the appropriate custodial term would be at least 4 years.

(2B) An extended sentence of detention is a sentence of detention the term of which is equal to the aggregate of—

- (a) the appropriate custodial term, and
- (b) a further period (“the extension period”) for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by him of further specified offences.”

(5) In subsection (3)—

- (a) for “subsection (2)” substitute “ subsections (2A) and (2B) ”, and
- (b) paragraph (a) is omitted.

(6) After subsection (6) insert—

“(7) The Secretary of State may by order amend subsection (2A) so as to substitute a different period for the period for the time being specified in that subsection.”

Commencement Information

I7 S. 16 in force at 14.7.2008 by [S.I. 2008/1586](#), art. 2(1), [Sch. 1 para. 7](#) (with [Sch. 2 para. 2](#))

17 The assessment of dangerousness

(1) Section 229 of the Criminal Justice Act 2003 (the assessment of dangerousness) is amended as follows.

(2) In subsection (2)—

- (a) the words from the beginning to “18” are omitted,
- (b) after paragraph (a) insert—
 - “(aa) may take into account all such information as is available to it about the nature and circumstances of any other offences of which the offender has been convicted by a court anywhere in the world,”, and
- (c) in paragraph (b) for “the offence” substitute “ any of the offences mentioned in paragraph (a) or (aa) ”.

(3) After subsection (2) insert—

“(2A) The reference in subsection (2)(aa) to a conviction by a court includes a reference to—

- (a) a finding of guilt in service disciplinary proceedings, and
- (b) a conviction of a service offence within the meaning of the Armed Forces Act 2006 (“conviction” here including anything that under section 376(1) and (2) of that Act is to be treated as a conviction).”

Status: Point in time view as at 03/11/2008. This version of this part contains provisions that are not valid for this point in time.

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- (4) Subsections (3) and (4) are omitted.
- (5) Schedules 16 and 17 to that Act are omitted.

Commencement Information

I8 S. 17 in force at 14.7.2008 by S.I. 2008/1586, art. 2(1), **Sch. 1 para. 8** (with Sch. 2 para. 2)

18 Further amendments relating to sentences for public protection

(1) In section 231 of the Criminal Justice Act 2003 (c. 44) (appeals where previous convictions set aside), for subsection (1) substitute—

- “(1) This section applies where—
- (a) a sentence has been imposed on any person under section 225(3) or 227(2),
 - (b) the condition in section 225(3A) or (as the case may be) 227(2A) was met but the condition in section 225(3B) or (as the case may be) 227(2B) was not, and
 - (c) any previous conviction of his without which the condition in section 225(3A) or (as the case may be) 227(2A) would not have been met has been subsequently set aside on appeal.”

(2) In section 232 of that Act (certificates for purposes of section 229)—

- (a) in the heading for “section 229” substitute “ sections 225 and 227 ”,
- (b) in paragraph (a)—
 - (i) for “the commencement of this section” substitute “ the commencement of Schedule 15A ”, and
 - (ii) for “a relevant offence” substitute “ an offence specified in that Schedule ”, and
- (c) for “section 229” substitute “ sections 225(3A) and 227(2A) ”.

(3) Section 234 of that Act (determination of day when offence committed) is omitted.

Commencement Information

I9 S. 18 in force at 14.7.2008 by S.I. 2008/1586, art. 2(1), **Sch. 1 para. 9** (with Sch. 2 para. 2)

PROSPECTIVE

F²19 Indeterminate sentences: determination of tariffs

Textual Amendments

F2 Ss. 17-20 repealed (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 28** (with ss. 413(4)(5), 416(7), Sch. 27); S.I. 2020/1236, reg. 2

Status: Point in time view as at 03/11/2008. This version of this part contains provisions that are not valid for this point in time.

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20 Consecutive terms of imprisonment

- (1) Part 12 of the Criminal Justice Act 2003 (c. 44) (sentencing) is amended as follows.
- (2) In section 181 (consecutive terms of imprisonment complying with section 181) after subsection (7) insert—
- “(7A) For the purposes of subsection (7)(a) the aggregate length of the terms of imprisonment is not to be regarded as being more than 65 weeks if the aggregate of all the custodial periods and the longest of the licence periods in relation to those terms is not more than 65 weeks.”
- (3) In section 264A (consecutive terms: intermittent custody)—
- (a) in subsection (3), omit the words from “and none” to the end;
- (b) in subsection (4)(b), for “the longest of the total” substitute “all the”; and
- (c) in subsection (5), for the definition of “total licence period” substitute—
- ““licence period” has the same meaning as in section 183(3);”.
- (4) In section 265 (restriction on consecutive sentences for released prisoners)—
- (a) in subsection (1), for “early under this Chapter” substitute “—
- (a) under this Chapter; or
- (b) under Part 2 of the Criminal Justice Act 1991.”; and
- (b) after that subsection insert—
- “(1A) Subsection (1) applies to a court sentencing a person to—
- (a) a term of imprisonment for an offence committed before 4 April 2005, or
- (b) a term of imprisonment of less than 12 months for an offence committed on or after that date,
- as it applies to the imposition of any other term of imprisonment.
- (1B) Where an intermittent custody order applies to the other sentence, the reference in subsection (1) to release under this Chapter does not include release by virtue of section 183(1)(b)(i) (periods of temporary release on licence before the custodial days specified under section 183(1)(a) have been served).”
- (5) Any saving by virtue of which section 84 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (restrictions on consecutive sentences for released prisoners) continues to apply in certain cases (despite the repeal of that section by the Criminal Justice Act 2003) shall cease to have effect.

Commencement Information

I10 S. 20 in force at 14.7.2008 by S.I. 2008/1586, art. 2(1), Sch. 1 para. 10

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.

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- (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.

Status: Point in time view as at 03/11/2008. This version of this part contains provisions that are not valid for this point in time.

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- (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 ”.

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- (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) ”.

Commencement Information

I11 S. 21(1)(3)-(7) in force at 3.11.2008 by [S.I. 2008/2712](#), art. 2, [Sch. para. 1](#)

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).”

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Commencement Information

I12 S. 22 in force at 3.11.2008 by [S.I. 2008/2712](#), art. 2, [Sch. para. 2](#)

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.

Commencement Information

I13 S. 23 in force at 3.11.2008 by [S.I. 2008/2712](#), art. 2, [Sch. para. 3](#)

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.”

Commencement Information

I14 S. 24 in force at 14.7.2008 by [S.I. 2008/1586](#), art. 2(1), [Sch. 1 para. 11](#)

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.

Commencement Information

I15 S. 25 in force at 14.7.2008 by [S.I. 2008/1586](#), art. 2(1), [Sch. 1 para. 12](#) (with savings in [Sch. 2 para. 2](#))

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.

Status: Point in time view as at 03/11/2008. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Criminal Justice and Immigration Act 2008, Part 2 is up to date with all changes known to be in force on or before 18 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(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

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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.”

Commencement Information

I16 S. 26 in force at 9.6.2008 for specified purposes by [S.I. 2008/1466](#), [art. 2\(a\)](#) (with [art. 3](#))

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).

Commencement Information

I17 S. 27 in force at 14.7.2008 by [S.I. 2008/1586](#), [art. 2\(1\)](#), [Sch. 1 para. 13](#)

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—

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- (a) in subsection (1) for “on licence” there shall be substituted “unconditionally”, and
 - (b) subsection (2) shall be omitted.”
- (5) Subsection (4) is omitted.

Commencement Information

I18 S. 28 in force at 14.7.2008 by [S.I. 2008/1586](#), art. 2(1), [Sch. 1 para. 14](#)

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;

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- (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

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- (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.

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- (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) ”.

Commencement Information

I19 S. 29 in force at 14.7.2008 for specified purposes by [S.I. 2008/1586](#), art. 2(1), [Sch. 1 para. 15](#) (with [Sch. 2 para. 3](#))

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.

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- (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.”

Commencement Information

I20 S. 30 in force at 14.7.2008 by [S.I. 2008/1586](#), art. 2(1), [Sch. 1 para. 16](#) (with [Sch. 2 para. 3](#))

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”.

Commencement Information

I21 S. 31 in force at 14.7.2008 by [S.I. 2008/1586](#), art. 2(1), [Sch. 1 para. 17](#)

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—

Status: Point in time view as at 03/11/2008. This version of this part contains provisions that are not valid for this point in time.

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“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
 - (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).”

Status: Point in time view as at 03/11/2008. This version of this part contains provisions that are not valid for this point in time.

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- (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.

Commencement Information

I22 S. 32 in force at 14.7.2008 by [S.I. 2008/1586](#), art. 2(1), [Sch. 1 para. 18](#)

Early removal of prisoners from the United Kingdom

33 Removal under Criminal Justice Act 1991

- (1) Part 2 of the Criminal Justice Act 1991 (early release of prisoners: offences before 4th April 2005 etc.) is amended as follows.
- (2) After section 46 insert—

“46ZA Persons eligible for removal from the United Kingdom

- (1) For the purposes of section 46A below, to be “eligible for removal from the United Kingdom” a person must show, to the satisfaction of the Secretary of State, that the condition in subsection (2) is met.
 - (2) The condition is that the person has the settled intention of residing permanently outside the United Kingdom if removed from prison under section 46A below.
 - (3) The person must not be one who is liable to removal from the United Kingdom.”
- (3) Section 46A (early removal of persons liable to removal from the United Kingdom) is amended as follows.

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- (4) In subsection (1) (the power of removal) after “is liable to” insert “, or eligible for,”.
- (5) Also in subsection (1), for “at any time after he has served the requisite period” substitute “at any time in the period—
 - (a) beginning when the person has served the requisite period (see subsection (5)), and
 - (b) ending when the person has served one-half of the term.”
- (6) Subsection (2) (cases where subsection (1) does not apply) ceases to have effect.
- (7) In subsection (3) (purpose of removal from prison etc.)—
 - (a) at the beginning of paragraph (a) insert “ if liable to removal from the United Kingdom, ”;
 - (b) for “and” at the end of that paragraph substitute—
 - “(aa) if eligible for removal from the United Kingdom, is so removed only for the purpose of enabling the prisoner to leave the United Kingdom in order to reside permanently outside the United Kingdom, and”;
 - (c) at the beginning of paragraph (b) insert “ in either case, ”.
- (8) In consequence of the amendments made by this section, the heading to section 46A becomes “ Early removal of persons liable to, or eligible for, removal from United Kingdom ”.

Commencement Information

I23 S. 33(1)(3)(5)(6) in force at 3.11.2008 by [S.I. 2008/2712](#), art. 2, [Sch. para. 4](#)

34 Removal under Criminal Justice Act 2003

- (1) In Part 12 of the Criminal Justice Act 2003 (c. 44) (sentencing) Chapter 6 (release on licence) is amended as follows.
- (2) After section 259 (persons liable to removal from the United Kingdom) insert—

“259A Persons eligible for removal from the United Kingdom

- (1) For the purposes of this Chapter, to be “eligible for removal from the United Kingdom” a person must show, to the satisfaction of the Secretary of State, that the condition in subsection (2) is met.
 - (2) The condition is that the person has the settled intention of residing permanently outside the United Kingdom if removed from prison under section 260.
 - (3) The person must not be one who is liable to removal from the United Kingdom.”
- (3) Section 260 (early removal of prisoners liable to removal from United Kingdom) is amended as follows.
 - (4) In subsection (1) (the power of removal)—
 - (a) for “subsections (2) and (3)” substitute “ subsection (2) ”, and

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- (b) after “is liable to” insert “, or eligible for, ”.
- (5) For subsection (2) (conditions relating to time) substitute—
 - “(2) Subsection (1) does not apply in relation to a prisoner unless he has served at least one-half of the requisite custodial period.”
- (6) Subsections (3) and (3A) (cases where subsection (1) does not apply) cease to have effect.
- (7) In subsection (4) (purpose of removal from prison etc.)—
 - (a) at the beginning of paragraph (a) insert “ if liable to removal from the United Kingdom, ”;
 - (b) for “and” at the end of that paragraph substitute—
 - “(aa) if eligible for removal from the United Kingdom, is so removed only for the purpose of enabling the prisoner to leave the United Kingdom in order to reside permanently outside the United Kingdom, and”;
 - (c) at the beginning of paragraph (b) insert “ in either case, ”.
- (8) In subsection (6) (order-making powers)—
 - (a) in paragraph (a) omit “or (3)(e)”,
 - (b) omit paragraph (b), and
 - (c) in paragraph (c) for “subsection (2)(b)(ii)” substitute “ subsection (2) ”.
- (9) For subsection (7) (meaning of “requisite custodial period”) substitute—
 - “(7) In this section “requisite custodial period”—
 - (a) in relation to a prisoner serving an extended sentence imposed under section 227 or 228, means one-half of the appropriate custodial term (determined by the court under that section);
 - (b) in any other case, has the meaning given by paragraph (a), (b) or (d) of section 244(3).”
- (10) In consequence of the amendments made by this section—
 - (a) the italic heading preceding section 259 becomes “ Persons liable to, or eligible for, removal from the United Kingdom ”, and
 - (b) the heading to section 260 becomes “ Early removal of persons liable to, or eligible for, removal from the United Kingdom ”.

Commencement Information

I24 S. 34(1)(3)(4)(a)(5)(6)(8)(9) in force at 3.11.2008 by S.I. 2008/2712, art. 2, Sch. para. 5

Status: Point in time view as at 03/11/2008. This version of this part contains provisions that are not valid for this point in time.

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VALID FROM 27/04/2009

Referral orders

35 Referral conditions

(1) Section 17 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (the referral conditions) is amended as follows.

(2) In subsection (1)—

- (a) after “section 16(2) above” insert “ and subsection (2) below ”,
- (b) insert “ and ” at the end of paragraph (a), and
- (c) omit paragraph (c).

(3) For subsections (1A) and (2) substitute—

“(2) For the purposes of section 16(3) above, the discretionary referral conditions are satisfied in relation to an offence if—

- (a) the compulsory referral conditions are not satisfied in relation to the offence;
- (b) the offender pleaded guilty—
 - (i) to the offence; or
 - (ii) if the offender is being dealt with by the court for the offence and any connected offence, to at least one of those offences; and
- (c) subsection (2A), (2B) or (2C) below is satisfied in relation to the offender.

(2A) This subsection is satisfied in relation to the offender if the offender has never been convicted by or before a court in the United Kingdom (“a UK court”) of any offence other than the offence and any connected offence.

(2B) This subsection is satisfied in relation to the offender if the offender has been dealt with by a UK court for any offence other than the offence and any connected offence on only one previous occasion, but was not referred to a youth offender panel under section 16 above on that occasion.

(2C) This subsection is satisfied in relation to the offender if—

- (a) the offender has been dealt with by a UK court for any offence other than the offence and any connected offence on one or more previous occasions, but has been referred to a youth offender panel under section 16 above on only one previous occasion;
- (b) an appropriate officer recommends to the court as suitable for the offender a referral to a youth offender panel under that section in respect of the offence; and
- (c) the court considers that there are exceptional circumstances which justify ordering the offender to be so referred.

(2D) In subsection (2C)(b) above “appropriate officer” means—

- (a) a member of a youth offending team;
- (b) an officer of a local probation board; or

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(c) an officer of a provider of probation services.”

(4) Omit subsection (5).

36 Power to revoke a referral order

(1) Part 3 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (mandatory and discretionary referral of young offenders) is amended as follows.

(2) After section 27 insert—

“Referrals back to court in the interests of justice

27A Revocation of referral order where offender making good progress etc.

(1) This section applies where, having regard to circumstances which have arisen since a youth offender contract took effect under section 23 above, it appears to the youth offender panel to be in the interests of justice for the referral order (or each of the referral orders) to be revoked.

(2) The panel may refer the offender back to the appropriate court requesting it—

(a) to exercise only the power conferred by sub-paragraph (2) of paragraph 5 of Schedule 1 to this Act to revoke the order (or each of the orders); or

(b) to exercise both—

(i) the power conferred by that sub-paragraph to revoke the order (or each of the orders); and

(ii) the power conferred by sub-paragraph (4) of that paragraph to deal with the offender for the offence in respect of which the revoked order was made.

(3) The circumstances in which the panel may make a referral under subsection (2) above include the offender's making good progress under the contract.

(4) Where—

(a) the panel makes a referral under subsection (2) above in relation to any offender and any youth offender contract, and

(b) the appropriate court decides not to exercise the power conferred by paragraph 5(2) of Schedule 1 to this Act in consequence of that referral,

the panel may not make a further referral under that subsection in relation to that offender and contract during the relevant period except with the consent of the appropriate court.

(5) In subsection (4) above “the relevant period” means the period of 3 months beginning with the date on which the appropriate court made the decision mentioned in paragraph (b) of that subsection.”

(3) In paragraph 1(1) of Schedule 1 (youth offender panels: further court proceedings), for “or 27(4)” substitute “, 27(4) or 27A(2) ”.

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37 Extension of period for which young offender contract has effect

- (1) Part 3 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (mandatory and discretionary referral of young offenders) is amended as follows.
- (2) After section 27A (as inserted by section 36 above) insert—

“27B Extension of period for which young offender contract has effect

- (1) This section applies where at any time—
 - (a) a youth offender contract has taken effect under section 23 above for a period which is less than twelve months;
 - (b) that period has not ended; and
 - (c) having regard to circumstances which have arisen since the contract took effect, it appears to the youth offender panel to be in the interests of justice for the length of that period to be extended.
- (2) The panel may refer the offender back to the appropriate court requesting it to extend the length of that period.
- (3) The requested period of extension must not exceed three months.”
- (3) In Schedule 1 (youth offender panels: further court proceedings), after Part 1 insert—

“PART 1ZA

REFERRAL BACK TO APPROPRIATE COURT: EXTENSION OF PERIOD FOR WHICH CONTRACT HAS EFFECT

Introductory

- 9ZB (1) This Part of this Schedule applies where a youth offender panel refers an offender back to the appropriate court under section 27B of this Act with a view to the court extending the period for which the offender's youth offender contract has effect.
- (2) For the purposes of this Part of this Schedule and that section the appropriate court is—
- (a) in the case of an offender aged under 18 at the time when (in pursuance of the referral back) the offender first appears before the court, a youth court acting in the local justice area in which it appears to the youth offender panel that the offender resides or will reside; and
 - (b) otherwise, a magistrates' court (other than a youth court) acting in that area.

Mode of referral back to court

- 9ZC The panel shall make the referral by sending a report to the appropriate court explaining why the offender is being referred back to it.

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Power of court

- 9ZD (1) If it appears to the appropriate court that it would be in the interests of justice to do so having regard to circumstances which have arisen since the contract took effect, the court may make an order extending the length of the period for which the contract has effect.
- (2) An order under sub-paragraph (1) above—
- (a) must not extend that period by more than three months; and
 - (b) must not so extend that period as to cause it to exceed twelve months.
- (3) In deciding whether to make an order under sub-paragraph (1) above, the court shall have regard to the extent of the offender's compliance with the terms of the contract.
- (4) The court may not make an order under sub-paragraph (1) above unless—
- (a) the offender is present before it; and
 - (b) the contract has effect at the time of the order.

Supplementary

- 9ZE The following paragraphs of Part 1 of this Schedule apply for the purposes of this Part of this Schedule as they apply for the purposes of that Part—
- (a) paragraph 3 (bringing the offender before the court);
 - (b) paragraph 4 (detention and remand of arrested offender); and
 - (c) paragraph 9ZA (power to adjourn hearing and remand offender)."

Enforcement of sentences

38 Imposition of unpaid work requirement for breach of community order

- (1) Part 2 of Schedule 8 to the Criminal Justice Act 2003 (c. 44) (breach of community order) is amended as follows.
- (2) In paragraph 9 (powers of magistrates' court) after sub-paragraph (3) insert—
- “(3A) Where—
- (a) the court is dealing with the offender under sub-paragraph (1)(a), and
 - (b) the community order does not contain an unpaid work requirement,
- section 199(2)(a) applies in relation to the inclusion of such a requirement as if for “40” there were substituted “ 20 ”.”
- (3) In paragraph 10 (powers of Crown Court) after sub-paragraph (3) insert—
- “(3A) Where—
- (a) the court is dealing with the offender under sub-paragraph (1)(a), and
 - (b) the community order does not contain an unpaid work requirement,

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section 199(2)(a) applies in relation to the inclusion of such a requirement as if for “40” there were substituted “ 20 ”.”

Commencement Information

I25 S. 38 in force at 14.7.2008 by S.I. 2008/1586, art. 2(1), Sch. 1 para. 19

PROSPECTIVE

39 Youth default orders

(1) Subsection (2) applies in any case where, in respect of a person aged under 18, a magistrates' court would, but for [^{F3}section 227 of the Sentencing Code] (restrictions on custodial sentences), have power to issue a warrant of commitment for default in paying a sum adjudged to be paid by a conviction (other than a sum ordered to be paid under section 6 of the Proceeds of Crime Act 2002 (c. 29)).

(2) The magistrates' court may, instead of proceeding under section 81 of the Magistrates' Courts Act 1980 (enforcement of fines imposed on young offender), order the person in default to comply with—

- (a) in the case of a person aged 16 or 17, an unpaid work requirement (see [^{F4}Part 3 of Schedule 6 to the Sentencing Code]),
- (b) an attendance centre requirement (see [^{F5}Part 5] of that Schedule), or
- (c) a curfew requirement (see [^{F6}Part 7] of that Schedule).

(3) In this section (and Schedule 7) “youth default order” means an order under subsection (2).

[^{F7}(4) A youth default order—

- (a) may, in addition to any other requirement that it imposes, impose an [^{F8}electronic compliance monitoring requirement] (see sections 173 and 174 of the Sentencing Code), and
- (b) must do so where, in the case of a youth rehabilitation order, such a requirement would be required by paragraph 19(3) of Schedule 6 to the Sentencing Code.]

(5) Where a magistrates' court has power to make a youth default order, it may, if it thinks it expedient to do so, postpone the making of the order until such time and on such conditions (if any) as it thinks just.

[^{F9}(6) The following provisions of the Sentencing Code have effect in relation to youth default orders as they have effect in relation to youth rehabilitation orders, but subject to the modifications contained in Schedule 7 to this Act—

- (a) sections 186(2), (10) and (11), 188, 190 to 192, 197, 198(3) to (5), [^{F10}198A,] 397(1), 400 and 403 to 405 (youth rehabilitation orders: responsible officer, interpretation and further provisions),
- (b) Parts 3, 5 [^{F11}and 7] of Schedule 6 (youth rehabilitation orders: requirements),
- [^{F12}(ba) Part 17 of that Schedule (electronic monitoring requirements), so far as it applies to electronic compliance monitoring requirements,]
- (c) Schedule 7 (breach, revocation or amendment of youth rehabilitation order),
- (d) Schedule 8 (transfer of youth rehabilitation orders to Northern Ireland), and

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- (e) paragraph 9 of Schedule 23 (power to amend limits).]
- (7) Where a youth default order has been made for default in paying any sum—
- (a) on payment of the whole sum to any person authorised to receive it, the order ceases to have effect, and
 - (b) on payment of a part of the sum to any such person, the total number of hours or days to which the order relates is to be taken to be reduced by a proportion corresponding to that which the part paid bears to the whole sum.
- (8) In calculating any reduction required by subsection (7)(b), any fraction of a day or hour is to be disregarded.

Textual Amendments

- F3** Words in s. 39(1) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 266(2)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2
- F4** Words in s. 39(2)(a) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 266(3)(a)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2
- F5** Words in s. 39(2)(b) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 266(3)(b)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2
- F6** Words in s. 39(2)(c) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 266(3)(c)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2
- F7** S. 39(4) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 266(4)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2
- F8** Words in s. 39(4)(a) substituted (28.4.2022 for specified purposes, 3.7.2023 in relation to specified areas until 3.1.2025) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), ss. 161, 208(4)(r), **Sch. 17 para. 2(2)**; S.I. 2023/705, regs. 2, 3, 4(1), Sch. (with reg. 4(2))
- F9** S. 39(6) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 266(5)** (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2
- F10** Word in s. 39(6)(a) inserted (28.4.2022 for specified purposes, 3.7.2023 in relation to specified areas until 3.1.2025) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), ss. 161, 208(4)(r), **Sch. 17 para. 2(3)(a)**; S.I. 2023/705, regs. 2, 3, 4(1), Sch. (with reg. 4(2))
- F11** Words in s. 39(6)(b) substituted (28.4.2022 for specified purposes, 3.7.2023 in relation to specified areas until 3.1.2025) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), ss. 161, 208(4)(r), **Sch. 17 para. 2(3)(b)**; S.I. 2023/705, regs. 2, 3, 4(1), Sch. (with reg. 4(2))
- F12** S. 39(6)(ba) inserted (28.4.2022 for specified purposes, 3.7.2023 in relation to specified areas until 3.1.2025) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), ss. 161, 208(4)(r), **Sch. 17 para. 2(3)(c)**; S.I. 2023/705, regs. 2, 3, 4(1), Sch. (with reg. 4(2))

40 Power to impose attendance centre requirement on fine defaulter

- (1) Section 300 of the Criminal Justice Act 2003 (c. 44) (power to impose unpaid work requirement or curfew requirement on fine defaulter) is amended as follows.
- (2) In the heading for “or curfew requirement” substitute “curfew requirement or attendance centre requirement”.
- (3) In subsection (2), at the end of paragraph (b) insert “, or
- (c) in a case where the person is aged under 25, an attendance centre requirement (as defined by section 214)”.

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Commencement Information

I26 S. 40 in force at 14.7.2008 by [S.I. 2008/1586](#), art. 2(1), [Sch. 1 para. 20](#)

41 Disclosure of information for enforcing fines

(1) Part 3 of Schedule 5 to the Courts Act 2003 (c. 39) (attachment of earnings orders and applications for benefit deductions) is amended as follows.

(2) After paragraph 9 insert—

9A “Disclosure of information in connection with application for benefit deductions

- (1) The designated officer for a magistrates' court may make an information request to the Secretary of State for the purpose of facilitating the making of a decision by the court as to whether it is practicable or appropriate to make an application for benefit deductions in respect of P.
- (2) An information request is a request for the disclosure of some or all of the following information—
 - (a) P's full name;
 - (b) P's address (or any of P's addresses);
 - (c) P's date of birth;
 - (d) P's national insurance number;
 - (e) P's benefit status.
- (3) On receiving an information request, the Secretary of State may disclose the information requested to—
 - (a) the officer who made the request, or
 - (b) a justices' clerk specified in the request.

9B Restrictions on disclosure

- (1) A person to whom information is disclosed under paragraph 9A(3), or this sub-paragraph, may disclose the information to any person to whom its disclosure is necessary or expedient in connection with facilitating the making of a decision by the court as to whether it is practicable or appropriate to make an application for benefit deductions in respect of P.
- (2) A person to whom such information is disclosed commits an offence if the person—
 - (a) discloses or uses the information, and
 - (b) the disclosure is not authorised by sub-paragraph (1) or (as the case may be) the use is not for the purpose of facilitating the making of such a decision as is mentioned in that sub-paragraph.
- (3) But it is not an offence under sub-paragraph (2)—
 - (a) to disclose any information in accordance with any enactment or order of a court or for the purposes of any proceedings before a court; or

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- (b) to disclose any information which has previously been lawfully disclosed to the public.
- (4) It is a defence for a person charged with an offence under sub-paragraph (2) to prove that the person reasonably believed that the disclosure or use was lawful.
- (5) A person guilty of an offence under sub-paragraph (2) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

9C Paragraphs 9A and 9B: supplementary

- (1) This paragraph applies for the purposes of paragraphs 9A and 9B.
- (2) “Benefit status”, in relation to P, means whether or not P is in receipt of any prescribed benefit or benefits and, if so (in the case of each benefit)—
 - (a) which benefit it is,
 - (b) where it is already subject to deductions under any enactment, the nature of the deductions concerned, and
 - (c) the amount received by P by way of the benefit, after allowing for any such deductions.
- (3) “Information” means information held in any form.
- (4) “Prescribed” means prescribed by regulations made by the Lord Chancellor.
- (5) Nothing in paragraph 9A or 9B authorises the making of a disclosure which contravenes the Data Protection Act 1998.”

Commencement Information

I27 S. 41 in force at 3.11.2008 by S.I. 2008/2712, art. 2, Sch. para. 6

Status:

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Changes to legislation:

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