

# CRIMINAL JUSTICE AND IMMIGRATION ACT 2008

---

## EXPLANATORY NOTES

### SUMMARY

#### **Part 2: Sentencing**

5. **Section 9** sets out the purposes of sentencing in relation to young offenders.
6. **Section 10** clarifies courts' sentencing powers to make it clear that a court is not required to impose a community sentence in cases where the offence is serious enough to justify such a sentence.
7. **Section 11** restricts the community order to imprisonable offences only. This will apply to offenders aged 18 and over only. At present, the community order is available as a sentence for any offence, provided the individual offending being dealt with is serious enough to warrant a community sentence.
8. **Section 12** amends section 158 of the Criminal Justice Act 2003 (the 2003 Act) so as to require that, in any case where a court is considering passing a custodial sentence in respect of a person under 18, the pre-sentence report must be in writing.
9. **Sections 13 to 18 and 25** and Schedule 5 constitute a package of reforms to the public protection legislation set out in Chapter 5 of Part 12 of the 2003 Act. They achieve the following:
  - Imposing a "seriousness threshold" on both indeterminate and extended sentences for public protection. The effect of the amendments is that such sentences may only be imposed where the offender would be required to serve at least two years in custody or (in the case of offenders over 18) where the offender has a previous conviction for one of a specified list of very serious offences.
  - Removing the rebuttable presumption of risk (requirement for judges to conclude that the offender is dangerous) where there is a previous conviction for violent or sexual crime.
  - Allowing courts greater discretion so that where all the conditions for an sentence of imprisonment for public protection are met (sexual/violent offence which carries penalty of 10 years or more; risk test; seriousness threshold passed) the court may impose a sentence of imprisonment for public protection, extended sentence or other sentence as it finds most appropriate in the case; where the conditions for an extended sentence but not a sentence of imprisonment for public protection are met (sexual/violent offence carrying penalty of less than 10 years; risk test; seriousness threshold passed) the court may impose an extended sentence or other sentence.
  - Changing the structure of extended sentences so that offenders are automatically released on licence halfway through the custodial period, rather than release between this point and the end of the custodial term being at the Parole Board's discretion as previously.

*These notes refer to the Criminal Justice and Immigration Act 2008 (c.4) which received Royal Assent on 8 May 2008*

10. **Section 19** makes some changes to the method by which courts determine the tariff (that is, the minimum time that a person must spend in custody) when they are imposing a discretionary life sentence in a particularly serious case. The result, in such cases, is that courts are empowered to increase the period which will have to be served in prison before the offender becomes eligible for consideration for parole.
11. **Section 20** ensures that courts can pass two or more consecutive intermittent custody or custody plus sentences. This section also amends the 2003 Act to clarify the position on imposing consecutive sentences on different occasions. If an offender has been released on licence after serving all the required custodial periods then a subsequent sentence may not be ordered to be served consecutively to the sentence from which he has been released.
12. **Sections 21 to 23** and Schedule 6 enable the sentencing court to direct that time spent on bail under an electronically monitored curfew should be credited against a custodial sentence in a similar way to the manner in which remands in custody are credited. A person will receive credit at the rate of a half a day for every day spent subject to a qualifying electronically monitored curfew (that is a curfew of 9 hours a day or more).
13. **Section 24** makes technical amendments to the provisions in the 2003 Act governing the period of time an offender must spend in custody before becoming eligible for the home detention curfew scheme.
14. **Section 26** applies to prisoners who committed offences before 4 April 2005 and whose release is governed by Part 2 of the Criminal Justice Act 1991 (the 1991 Act). It changes the early release provisions for certain long term prisoners (those serving sentences of 4 years and over for an offence other than a sexual or violent offence specified in Schedule 15 of the 2003 Act) by placing a duty on the Secretary of State to release them automatically on licence at the halfway point in their sentence on a licence that will remain in force until the end of their sentence. This duty also applies to those prisoners serving sentences for the equivalent armed services offences. This brings all such prisoners in line with those subject to the release provisions of the 2003 Act.
15. **Section 27** provides for the parole arrangements for foreign national prisoners liable to deportation sentenced under the 1991 Act to be brought into line with those applicable to other prisoners.
16. **Section 28** aligns the release arrangements for fine defaulters and those in contempt of court who are serving custodial penalties under the provisions of the 1991 Act and who are released early on compassionate grounds. The intention is that their release arrangements replicate those for similar offenders sentenced under the 2003 Act.
17. **Section 29** provides for non-dangerous offenders who are recalled to prison to be released again after a fixed period of 28 days (subject to certain exceptions). The role of the Parole Board is changed in such cases so that it no longer routinely reviews all recalls. It also provides for other offenders (except those serving extended sentences) to be released by the Secretary of State without referral to the Parole Board, if he considers that it is safe to do so. Prisoners serving extended sentences will, as now, be released only after a recommendation by the Parole Board.
18. **Section 30** removes the requirement for the Parole Board, at each hearing, to fix a date for the next one. Instead, the Secretary of State will refer cases to the Parole Board. He must refer each case at least every twelve months, and may do so before then if he sees fit. The Board may make a recommendation to the Secretary of State that a person's case be referred to it.
19. **Section 31** removes the rule that the Secretary of State may recall a life sentence prisoner only on the recommendation of the Parole Board (except in certain circumstances). Instead, the Secretary of State may recall such a person when he sees fit. This brings the arrangements for lifers into line with those for other prisoners released on licence.

*These notes refer to the Criminal Justice and Immigration Act 2008 (c.4) which received Royal Assent on 8 May 2008*

20. **Section 32** is intended to clarify the consequences of a recall for prisoners released on licence under the 1991 Act. The effect of this section is that the further release of such recalled prisoners will be governed by the 2003 Act rather than the 1991 Act. This means that the new procedures governing the further release of prisoners after recall (contained in the amendments made by sections 29 and 30 of this Act) will apply to all prisoners recalled under section 254 of the 2003 Act, regardless of whether their initial release was under the 1991 Act or 2003 Act. All recalled prisoners may be held in prison until the end of their sentence unless released again on licence under the new procedures. If re-released on licence will remain on licence, the licence will remain in force until their sentence expires.
21. **Sections 33 and 34** amend the criteria for the availability of the early removal scheme, under which offenders liable to be deported may be released from custody early. The sections also extend the scheme to other offenders if they show a settled intention of residing permanently outside the UK.
22. **Section 35** extends the circumstances in which a court may make a referral order in respect of a young offender. The changes remove the restriction on making a referral order where the offender has previously been bound over or discharged, allow a referral order to be made on second conviction (where a referral order has not previously been made) and allow a second referral order to be made in exceptional circumstances where this has been recommended by an appropriate officer. **Section 36** amends the Powers of Criminal Courts (Sentencing) Act 2000 (the 2000 Act) to provide a power for a court to revoke a referral order in the interests of justice on the recommendation of a youth offender panel. **Section 37** amends the 2000 Act to allow a court to extend the period of a referral order by up to 3 months (subject to the overall maximum of 12 months) where a youth offender panel has recommended this in the interests of justice.
23. **Section 38** empowers a court, when dealing with an offender for breach of a community order which did not originally contain an unpaid work requirement, to impose an unpaid work requirement requiring 20 hours or more such work to be performed.
24. **Section 39** and **Schedule 7** introduce youth default orders which will enable a court to impose an unpaid work requirement, curfew requirement or attendance centre requirement on a young offender in lieu of an unpaid fine.
25. **Section 40** amends the provisions in the 2003 Act in relation to adult fine defaulters to restrict those provisions to those over 18 years and provide for an attendance centre requirement to be imposed on young adult (those aged under 25) fine defaulters, with the duration of the requirement being linked to the amount of the unpaid fine.
26. **Section 41** affords the staff of Her Majesty's Courts Service (HMCS) access to benefit records held by the Department for Work and Pensions (DWP) for the purpose of fine enforcement.