



Criminal Justice and Immigration Act 2008

2008 CHAPTER 4

PART 2

SENTENCING

Release and recall of prisoners

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

(1) The Criminal Justice Act 2003 (c. 44) is amended as follows.

^{F1}(2)

(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”).

Changes to legislation: Criminal Justice and Immigration Act 2008, Cross Heading: Release and recall of prisoners is up to date with all changes known to be in force on or before 18 March 2019. 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) Subject to subsection (4), the court must direct that the credit period is to count as time served by the offender as part of the sentence.
- (3) The “credit period” is the number of days represented by half of the sum of—
 - (a) the day on which the offender's bail was first subject to conditions that, had they applied throughout the day in question, would have been relevant conditions, and
 - (b) the number of other days on which the offender's bail was subject to those conditions (excluding the last day on which it was so subject), rounded up to the nearest whole number.
- (4) Subsection (2) does not apply if and to the extent that—
 - (a) rules made by the Secretary of State so provide, or
 - (b) it is in the opinion of the court just in all the circumstances not to give a direction under that subsection.
- (5) Where as a result of paragraph (a) or (b) of subsection (4) the court does not give a direction under subsection (2), it may give a direction in accordance with either of those paragraphs to the effect that a period of days which is less than the credit period is to count as time served by the offender as part of the sentence.
- (6) Rules made under subsection (4)(a) may, in particular, make provision in relation to—
 - (a) sentences of imprisonment for consecutive terms;
 - (b) sentences of imprisonment for terms which are wholly or partly concurrent;
 - (c) periods during which a person granted bail subject to the relevant conditions is also subject to electronic monitoring required by an order made by a court or the Secretary of State.
- (7) In considering whether it is of the opinion mentioned in subsection (4)(b) the court must, in particular, take into account whether or not the offender has, at any time whilst on bail subject to the relevant conditions, broken either or both of them.
- (8) Where the court gives a direction under subsection (2) or (5) it shall state in open court—
 - (a) the number of days on which the offender was subject to the relevant conditions, and
 - (b) the number of days in relation to which the direction is given.
- (9) Subsection (10) applies where the court—
 - (a) does not give a direction under subsection (2) but gives a direction under subsection (5), or
 - (b) decides not to give a direction under this section.
- (10) The court shall state in open court—
 - (a) that its decision is in accordance with rules made under paragraph (a) of subsection (4), or
 - (b) that it is of the opinion mentioned in paragraph (b) of that subsection and what the circumstances are.

Changes to legislation: *Criminal Justice and Immigration Act 2008, Cross Heading: Release and recall of prisoners is up to date with all changes known to be in force on or before 18 March 2019. 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)*

(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.”

^{F2}(5)

(6) In section 242 (interpretation of sections 240 and 241), in the title and in subsection (1), after “sections 240” insert “ , 240A ”.

^{F3}(7)

Annotations:

Amendments (Textual)

- F1** S. 21(2) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 110(14)(a)**, 151(1) (with Sch. 15); S.I. 2012/2906, art. 2(d)
- F2** S. 21(5) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 110(14)(a)**, 151(1) (with Sch. 15); S.I. 2012/2906, art. 2(d)
- F3** S. 21(7) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 110(14)(a)**, 151(1) (with Sch. 15); S.I. 2012/2906, art. 2(d)

Commencement Information

- I1** S. 21(1)(3)-(7) in force at 3.11.2008 by [S.I. 2008/2712](#), art. 2, **Sch. para. 1**
- I2** S. 21(2) in force at 31.10.2009 by [S.I. 2009/2606](#), **art. 3(a)**

22 Credit for period of remand on bail: other cases

(1) The Criminal Justice Act 2003 (c. 44) is amended in accordance with subsections (2) and (3).

Changes to legislation: Criminal Justice and Immigration Act 2008, Cross Heading: Release and recall of prisoners is up to date with all changes known to be in force on or before 18 March 2019. 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)

^{F4}(2)

^{F4}(3)

- (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).”

Annotations:

Amendments (Textual)

F4 S. 22(2)(3) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 110(14)(b)**, 151(1) (with Sch. 15); S.I. 2012/2906, art. 2(d)

Commencement Information

I3 S. 22 in force at 3.11.2008 by [S.I. 2008/2712](#), art. 2, **Sch. para. 2**

^{F5}**23 Credit for period of remand on bail: transitional provisions**

Annotations:

Amendments (Textual)

F5 S. 23 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 110(14)(c)**, 151(1) (with Sch. 15); S.I. 2012/2906, art. 2(d)

Changes to legislation: *Criminal Justice and Immigration Act 2008, Cross Heading: Release and recall of prisoners is up to date with all changes known to be in force on or before 18 March 2019. 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)*

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.”

Annotations:

Commencement Information

I4 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.

Annotations:

Commencement Information

I5 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](#))

I6 S. 25 in force at 3.12.2012 in so far as not already in force by [2012 c. 10](#), [Sch. 16 para. 15\(1\)](#); [S.I. 2012/2096](#), art. 2(n)

^{F6}26 Release of certain long-term prisoners under Criminal Justice Act 1991

.....

Annotations:

Amendments (Textual)

F6 Ss. 26-28 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 16 para. 20\(a\)](#); [S.I. 2012/2906](#), art. 2(n)

^{F6}27 Application of section 35(1) of Criminal Justice Act 1991 to prisoners liable to removal from the UK

.....

Changes to legislation: Criminal Justice and Immigration Act 2008, Cross Heading: Release and recall of prisoners is up to date with all changes known to be in force on or before 18 March 2019. 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)

Annotations:

Amendments (Textual)

F6 Ss. 26-28 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 16 para. 20\(a\)](#); S.I. 2012/2906, art. 2(n)

F6 28 Release of fine defaulters and contemnors under Criminal Justice Act 1991

.....

Annotations:

Amendments (Textual)

F6 Ss. 26-28 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 16 para. 20\(a\)](#); S.I. 2012/2906, art. 2(n)

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 ”.

^{F7}(2)

^{F7}(3)

Annotations:

Amendments (Textual)

F7 S. 29(2)(3) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 114\(5\)](#), [151\(1\)](#) (with [Sch. 15](#)); S.I. 2012/2906, art. 2(d)

Commencement Information

I7 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](#))

I8 S. 29 in force at 31.10.2009 in so far as not already in force by [S.I. 2009/2606](#), [art. 3\(c\)](#)

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.

Changes to legislation: Criminal Justice and Immigration Act 2008, Cross Heading: Release and recall of prisoners is up to date with all changes known to be in force on or before 18 March 2019. 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)

(5) In consequence of the amendments made by section 29 and this section, the heading to section 256 becomes “ Review by the Board ”.

(6) After section 256 insert—

“256A Further review

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

Annotations:

Commencement Information

19 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 ”.

Changes to legislation: Criminal Justice and Immigration Act 2008, Cross Heading: Release and recall of prisoners is up to date with all changes known to be in force on or before 18 March 2019. 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)

Annotations:

Commencement Information

I10 S. 31 in force at 14.7.2008 by [S.I. 2008/1586](#), art. 2(1), [Sch. 1 para. 17](#)

^{F8}32 Release of prisoners recalled following release under Criminal Justice Act 1991

.....

Annotations:

Amendments (Textual)

F8 S. 32 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) (c. 10), s. 151(1), [Sch. 16 para. 20\(a\)](#); [S.I. 2012/2906](#), art. 2(n)

Changes to legislation:

Criminal Justice and Immigration Act 2008, Cross Heading: Release and recall of prisoners is up to date with all changes known to be in force on or before 18 March 2019. 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.

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 7 para. 5A and cross-heading inserted by [2008 c. 25 Sch. 1 para. 90\(3\)](#)