



# Criminal Justice and Immigration Act 2008

## 2008 CHAPTER 4

### PART 2

#### SENTENCING

##### *General sentencing provisions*

PROSPECTIVE

#### **9 Purposes etc. of sentencing: offenders under 18**

(1) After section 142 of the Criminal Justice Act 2003 (c. 44) insert—

##### **“142A Purposes etc. of sentencing: offenders under 18**

- (1) This section applies where a court is dealing with an offender aged under 18 in respect of an offence.
- (2) The court must have regard to—
  - (a) the principal aim of the youth justice system (which is to prevent offending (or re-offending) by persons aged under 18: see section 37(1) of the Crime and Disorder Act 1998),
  - (b) in accordance with section 44 of the Children and Young Persons Act 1933, the welfare of the offender, and
  - (c) the purposes of sentencing mentioned in subsection (3) (so far as it is not required to do so by paragraph (a)).
- (3) Those purposes of sentencing are—
  - (a) the punishment of offenders,
  - (b) the reform and rehabilitation of offenders,

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- (c) the protection of the public, and
  - (d) the making of reparation by offenders to persons affected by their offences.
- (4) This section does not apply—
- (a) to an offence the sentence for which is fixed by law,
  - (b) to an offence the sentence for which falls to be imposed under—
    - (i) section 51A(2) of the Firearms Act 1968 (minimum sentence for certain firearms offences),
    - (ii) section 29(6) of the Violent Crime Reduction Act 2006 (minimum sentences in certain cases of using someone to mind a weapon), or
    - (iii) section 226(2) of this Act (detention for life for certain dangerous offenders), or
  - (c) in relation to the making under Part 3 of the Mental Health Act 1983 of a hospital order (with or without a restriction order), an interim hospital order, a hospital direction or a limitation direction.”
- (2) In section 142 of the Criminal Justice Act 2003 (purposes of sentencing in relation to offenders aged 18 or over at the time of conviction)—
- (a) in the heading, at the end insert “ : offenders aged 18 or over ”, and
  - (b) in subsection (2)(a) omit “at the time of conviction”.
- (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;”.

## 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.”

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#### Annotations:

#### 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—
- the offence is punishable with imprisonment; or
  - 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.”
- (4) In subsection (1)—
- for “Subsection (2) applies where” substitute “This subsection applies to the offender if—
    - the current offence is punishable with imprisonment;”;  - for paragraph (a) substitute—
    - “(a) the offender was aged 16 or over when he was convicted;”;  - in paragraph (b) for “he” substitute “the offender”.
- (5) After subsection (1) insert—
- “(1A) This subsection applies to the offender if—
- the current offence is not punishable with imprisonment;
  - the offender was aged 16 or over when he was convicted; and
  - 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 [F1 (1A)(c) ] (as the case may be) ”.

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- (7) In subsections (4), (5) and (6), for “subsection (1)(b)” insert “ subsections (1)(b) and [F2 (1A)(c) ] ”.
- (8) In section 166 of that Act (savings for powers to mitigate etc.), in subsection (1)(a), after “148” insert “ or 151(2) ”.

**Annotations:**

**Amendments (Textual)**

- F1** Word in s. 11(6) substituted (12.11.2009) by [Coroners and Justice Act 2009 \(c. 25\)](#), s. 182(1)(h), [Sch. 21 para. 98\(2\)](#) (with s. 180)
- F2** Word in s. 11(7) substituted (12.11.2009) by [Coroners and Justice Act 2009 \(c. 25\)](#), s. 182(1)(h), [Sch. 21 para. 98\(2\)](#) (with s. 180)

**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.”

**Annotations:**

**Commencement Information**

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

### *Custodial sentences*

## <sup>F3</sup>13 Sentences of imprisonment for public protection

**Annotations:**

**Amendments (Textual)**

- F3** S. 13 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 21 para. 35\(b\)\(i\)](#); [S.I. 2012/2906](#), art. 2(s)

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#### **F<sup>4</sup>14 Sentences of detention for public protection**

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##### **Annotations:**

##### **Amendments (Textual)**

- F4** S. 14 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) (c. 10), s. 151(1), [Sch. 21 para. 35\(b\)\(i\)](#); S.I. 2012/2906, art. 2(s)

#### **F<sup>5</sup>15 Extended sentences for certain violent or sexual offences: persons 18 or over**

.....

##### **Annotations:**

##### **Amendments (Textual)**

- F5** S. 15 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) (c. 10), s. 151(1), [Sch. 21 para. 35\(b\)\(i\)](#); S.I. 2012/2906, art. 2(s)

#### **F<sup>6</sup>16 Extended sentences for certain violent or sexual offences: persons under 18**

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##### **Annotations:**

##### **Amendments (Textual)**

- F6** S. 16 omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) (c. 10), s. 151(1), [Sch. 21 para. 35\(b\)\(i\)](#); S.I. 2012/2906, art. 2(s)

### **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

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- (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).”

(4) Subsections (3) and (4) are omitted.

(5) Schedules 16 and 17 to that Act are omitted.

**Annotations:**

**Commencement Information**

**I4** 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.”

<sup>F7</sup>(2) .....

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

**Annotations:**

**Amendments (Textual)**

**F7** S. 18(2) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 21 para. 35(b)(i)**; S.I. 2012/2906, art. 2(s)

**Commencement Information**

**I5** 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

**19 Indeterminate sentences: determination of tariffs**

- (1) Section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (determination of tariffs in cases where the sentence is not fixed by law) is amended as follows.

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- (2) In subsection (3) (determination of the appropriate part of the sentence) at the end insert— “ In Case A or Case B below, this subsection has effect subject to, and in accordance with, subsection (3C) below. ”
- (3) After subsection (3) insert—
- “(3A) Case A is where the offender was aged 18 or over when he committed the offence and the court is of the opinion that the seriousness of the offence, or of the combination of the offence and one or more other offences associated with it,—
- (a) is exceptional (but not such that the court proposes to make an order under subsection (4) below), and
- (b) would not be adequately reflected by the period which the court would otherwise specify under subsection (2) above.
- (3B) Case B is where the court is of the opinion that the period which it would otherwise specify under subsection (2) above would have little or no effect on time spent in custody, taking into account all the circumstances of the particular offender.
- (3C) In Case A or Case B above, in deciding the effect which the comparison required by subsection (3)(c) above is to have on reducing the period which the court determines for the purposes of subsection (3)(a) (and before giving effect to subsection (3)(b) above), the court may, instead of reducing that period by one-half,—
- (a) in Case A above, reduce it by such lesser amount (including nil) as the court may consider appropriate according to the seriousness of the offence, or
- (b) in Case B above, reduce it by such lesser amount (but not by less than one-third) as the court may consider appropriate in the circumstances.”
- (4) In subsection (4A) (no order to be made under subsection (4) in the case of certain sentences) after “No order under subsection (4) above may be made” insert “ , and Case A above does not apply, ”.

## 20 Consecutive terms of imprisonment

(1) Part 12 of the Criminal Justice Act 2003 (c. 44) (sentencing) is amended as follows.

<sup>F8</sup>(2) .....

(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

<sup>F9</sup>(b) .....

(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

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prisoners) continues to apply in certain cases (despite the repeal of that section by the Criminal Justice Act 2003) shall cease to have effect.

**Annotations:**

**Amendments (Textual)**

**F8** S. 20(2)(3) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 10 para. 42](#); S.I. 2012/2906, art. 2(h)

**F9** S. 20(4)(b) 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)

**Commencement Information**

**I6** 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.

<sup>F10</sup>(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”).

(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—



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- (a) rules made by the Secretary of State so provide, or
  - (b) it is in the opinion of the court just in all the circumstances not to give a direction under that subsection.
- (5) Where as a result of paragraph (a) or (b) of subsection (4) the court does not give a direction under subsection (2), it may give a direction in accordance with either of those paragraphs to the effect that a period of days which is less than the credit period is to count as time served by the offender as part of the sentence.
- (6) Rules made under subsection (4)(a) may, in particular, make provision in relation to—
  - (a) sentences of imprisonment for consecutive terms;
  - (b) sentences of imprisonment for terms which are wholly or partly concurrent;
  - (c) periods during which a person granted bail subject to the relevant conditions is also subject to electronic monitoring required by an order made by a court or the Secretary of State.
- (7) In considering whether it is of the opinion mentioned in subsection (4)(b) the court must, in particular, take into account whether or not the offender has, at any time whilst on bail subject to the relevant conditions, broken either or both of them.
- (8) Where the court gives a direction under subsection (2) or (5) it shall state in open court—
  - (a) the number of days on which the offender was subject to the relevant conditions, and
  - (b) the number of days in relation to which the direction is given.
- (9) Subsection (10) applies where the court—
  - (a) does not give a direction under subsection (2) but gives a direction under subsection (5), or
  - (b) decides not to give a direction under this section.
- (10) The court shall state in open court—
  - (a) that its decision is in accordance with rules made under paragraph (a) of subsection (4), or
  - (b) that it is of the opinion mentioned in paragraph (b) of that subsection and what the circumstances are.
- (11) Subsections (7) to (10) of section 240 apply for the purposes of this section as they apply for the purposes of that section but as if—
  - (a) in subsection (7)—
    - (i) the reference to a suspended sentence is to be read as including a reference to a sentence to which an order under section 118(1) of the Sentencing Act relates;
    - (ii) in paragraph (a) after “Schedule 12” there were inserted “ or section 119(1)(a) or (b) of the Sentencing Act ”; and
  - (b) in subsection (8) the reference to subsection (3) of section 240 is to be read as a reference to subsection (2) of this section and, in paragraph (b), after “Chapter” there were inserted “ or Part 2 of the Criminal Justice Act 1991 ”.

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(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.”

<sup>F11</sup>(5) .....

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

<sup>F12</sup>(7) .....

**Annotations:**

**Amendments (Textual)**

**F10** 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)

**F11** 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)

**F12** 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**

**I7** S. 21(1)(3)-(7) in force at 3.11.2008 by [S.I. 2008/2712](#), art. 2, [Sch. para. 1](#)

**I8** 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).

<sup>F13</sup>(2) .....

(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) ”.

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(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)**

**F13** 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**

**I9** S. 22 in force at 3.11.2008 by [S.I. 2008/2712](#), [art. 2](#), [Sch. para. 2](#)

**F14** **23 Credit for period of remand on bail: transitional provisions**

**Annotations:**

**Amendments (Textual)**

**F14** 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\(d\)](#)

**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.”

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**I10** 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**

**I11** 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](#))

**I12** 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)

**<sup>F15</sup>26 Release of certain long-term prisoners under Criminal Justice Act 1991**

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**Annotations:**

**Amendments (Textual)**

**F15** 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)

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

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**Annotations:**

**Amendments (Textual)**

**F15** 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)

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

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**Annotations:**

**Amendments (Textual)**

**F15** 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 ”.

<sup>F16</sup>(2) .....

(3) .....

**Annotations:**

**Amendments (Textual)**

**F16** 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**

**I13** 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](#))

**I14** 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.

(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.

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Criminal Justice and Immigration Act 2008. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (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**

**I15** 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”.

**Annotations:**

**Commencement Information**

**I16** S. 31 in force at 14.7.2008 by [S.I. 2008/1586](#), art. 2(1), [Sch. 1 para. 17](#)

**<sup>F17</sup>32 Release of prisoners recalled following release under Criminal Justice Act 1991**

.....

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Criminal Justice and Immigration Act 2008. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

**Annotations:**

**Amendments (Textual)**

- F17** 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)

*Early removal of prisoners from the United Kingdom*

**33 Removal under Criminal Justice Act 1991**

- F18**(1) . . . . .
- F19**(2) . . . . .
- (3) . . . . .
- (4) . . . . .
- (5) . . . . .
- (6) . . . . .
- (7) . . . . .
- (8) . . . . .

**Annotations:**

**Amendments (Textual)**

- F18** S. 33(1)(3)(5)(6) 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)
- F19** S. 33(2)(4)(7)(8) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 118\(4\)\(a\)](#), 151(1) (with [Sch. 15](#)); S.I. 2012/2906, art. 2(d)

**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.

**F20**(2) . . . . .

- (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

**F21**(b) . . . . .

- (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.”

*Status: This version of this part contains provisions that are prospective.*

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(6) Subsections (3) and (3A) (cases where subsection (1) does not apply) cease to have effect.

<sup>F22</sup>(7) .....

(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).”

<sup>F23</sup>(10) .....

#### Annotations:

##### Amendments (Textual)

- F20** S. 34(2) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 118\(4\)\(b\)](#), [151\(1\)](#) (with [Sch. 15](#)); [S.I. 2012/2906](#), art. 2(d)
- F21** S. 34(4)(b) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 118\(4\)\(b\)](#), [151\(1\)](#) (with [Sch. 15](#)); [S.I. 2012/2906](#), art. 2(d)
- F22** S. 34(7) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 118\(4\)\(b\)](#), [151\(1\)](#) (with [Sch. 15](#)); [S.I. 2012/2906](#), art. 2(d)
- F23** S. 34(10) omitted (3.12.2012) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 118\(4\)\(b\)](#), [151\(1\)](#) (with [Sch. 15](#)); [S.I. 2012/2906](#), art. 2(d)

##### Commencement Information

- I17** 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](#)

### *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—



*Status:* This version of this part contains provisions that are prospective.

*Changes to legislation:* There are outstanding changes not yet made by the legislation.gov.uk editorial team to Criminal Justice and Immigration Act 2008. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (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
  - (c) an officer of a provider of probation services.”
- (4) Omit subsection (5).

**Annotations:**

**Commencement Information**

**I18** S. 35 in force at 27.4.2009 by S.I. 2009/860, art. 2(2)(a)

**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—

*Status: This version of this part contains provisions that are prospective.*

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*“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) ”.

**Annotations:**

**Commencement Information**

**I19** S. 36 in force at 27.4.2009 by S.I. 2009/860, art. 2(2)(b)

**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.

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(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**

- 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.
- 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.
- 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

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- (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.
- 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).”

**Annotations:**

**Commencement Information**

**I20** S. 37 in force at 27.4.2009 by S.I. 2009/860, art. 2(2)(c)

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

**Annotations:**

**Commencement Information**

**I21** S. 38 in force at 14.7.2008 by S.I. 2008/1586, art. 2(1), Sch. 1 para. 19

*Status: This version of this part contains provisions that are prospective.*

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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 section 89 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (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 paragraph 10 of Schedule 1),
  - (b) an attendance centre requirement (see paragraph 12 of that Schedule), or
  - (c) a curfew requirement (see paragraph 14 of that Schedule).
- (3) In this section (and Schedule 7) “youth default order” means an order under subsection (2).
- (4) Section 1(2) and paragraph 2 of Schedule 1 (power or requirement to impose electronic monitoring requirement) have effect in relation to a youth default order as they have effect in relation to a youth rehabilitation order.
- (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.
- (6) The following provisions 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—
  - (a) sections 4, 5 and 7,
  - (b) paragraphs 1, 10, 12, 14, 26, 27, 29, 33 and 34 of Schedule 1 (youth rehabilitation orders: further provisions),
  - (c) Schedule 2 (breach, revocation or amendment of youth rehabilitation orders), and
  - (d) Schedule 3 (transfer of youth rehabilitation orders to Northern Ireland).
- (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.

*Status: This version of this part contains provisions that are prospective.*

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#### **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)”.

#### **Annotations:**

#### **Commencement Information**

**I22** 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.

*Status: This version of this part contains provisions that are prospective.*

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- (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
  - (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.”

#### Annotations:

#### Commencement Information

I23 S. 41 in force at 3.11.2008 by S.I. 2008/2712, art. 2, Sch. para. 6

**Status:**

This version of this part contains provisions that are prospective.

**Changes to legislation:**

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**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):

- s. 88(3)(b) inserted by [2016 c. 21 \(N.I.\) Sch. 2 para. 6\(1\)\(b\)](#)
- s. 88(6ZA) inserted by [2016 c. 21 \(N.I.\) Sch. 2 para. 6\(3\)](#)
- Sch. 7 para. 5A and cross-heading inserted by [2008 c. 25 Sch. 1 para. 90\(3\)](#)