



# Criminal Justice and Courts Act 2015

## 2015 CHAPTER 2

### PART 1

#### CRIMINAL JUSTICE

##### *Release and recall of prisoners*

#### **7 Electronic monitoring following release on licence etc**

(1) Part 3 of the Criminal Justice and Court Services Act 2000 (dealing with offenders) is amended as follows.

(2) In section 62 (release on licence etc: conditions as to monitoring)—

(a) for subsection (2) substitute—

“(2) The conditions may include electronic monitoring conditions.

(2A) An electronic monitoring condition imposed under this section must include provision for making a person responsible for the monitoring.

(2B) A person may not be made responsible for the monitoring unless the person is of a description specified in an order made by the Secretary of State.”, and

(b) after subsection (5) insert—

“(5A) In this section “electronic monitoring condition” means a condition requiring the person to submit to either or both of the following—

(a) electronic monitoring of the person’s compliance with another condition of release, and

(b) electronic monitoring of the person’s whereabouts (other than for the purpose of monitoring compliance with another condition of release).”

(3) After section 62 insert—

**“62A Release on licence etc: compulsory electronic monitoring conditions**

- (1) The Secretary of State may by order provide that the power under section 62 to impose an electronic monitoring condition must be exercised.
- (2) An order under this section may—
  - (a) require an electronic monitoring condition to be included for so long as the person’s release is required to be, or may be, subject to conditions or for a shorter period;
  - (b) make provision generally or in relation to a case described in the order.
- (3) An order under this section may, in particular—
  - (a) make provision in relation to cases in which compliance with a condition imposed on a person’s release is monitored by a person specified or described in the order;
  - (b) make provision in relation to persons selected on the basis of criteria specified in the order or on a sampling basis;
  - (c) make provision by reference to whether a person specified in the order is satisfied of a matter.
- (4) An order under this section may not make provision about a case in which the sentence imposed on the person is—
  - (a) a detention and training order,
  - (b) a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (detention of offenders under 18 convicted of certain offences),
  - (c) a sentence of detention under section 209 of the Armed Forces Act 2006 (detention of offenders under 18 convicted of certain offences), or
  - (d) an order under section 211 of that Act.
- (5) In this section, “electronic monitoring condition” has the same meaning as in section 62.

**62B Data from electronic monitoring: code of practice**

- (1) The Secretary of State must issue a code of practice relating to the processing of data gathered in the course of monitoring persons under electronic monitoring conditions imposed under section 62.
- (2) A failure to observe a code issued under this section does not of itself make a person liable to any criminal or civil proceedings.”
- (4) Schedule 2 to this Act contains consequential provision.
- (5) The amendments made by this section and Schedule 2 apply in relation to a person who is released from prison on or after the day on which they come into force.

**8 Recall adjudicators**

- (1) After section 239 of the Criminal Justice Act 2003 insert—

### **“239A Recall adjudicators**

- (1) In this Chapter, “recall adjudicator” means a person for the time being appointed as such by the Secretary of State.
  - (2) The Secretary of State may appoint the Board or another person.
  - (3) The Secretary of State may, in particular, appoint a person—
    - (a) to carry out all or only some of the functions of a recall adjudicator;
    - (b) to carry out such functions only in relation to a specified area;
    - (c) to carry out such functions only in relation to a specified description of case.
  - (4) The Secretary of State may make rules with respect to the proceedings of recall adjudicators.
  - (5) The Secretary of State may appoint a recall adjudicator (referred to in this section as “the chief recall adjudicator”) to oversee the activities of recall adjudicators.
  - (6) The chief recall adjudicator may, in particular—
    - (a) issue guidance with respect to the carrying out of the functions of recall adjudicators, and
    - (b) make recommendations to the Secretary of State about the termination of appointments under this section.
  - (7) Before issuing guidance the chief recall adjudicator must consult the recall adjudicators and the Secretary of State.
  - (8) A recall adjudicator must carry out his or her functions in accordance with guidance issued from time to time by the chief recall adjudicator.
  - (9) The Secretary of State may make payments to a recall adjudicator.
  - (10) A person is not to be regarded as acting on behalf of the Crown, or as enjoying any status, immunity or privilege of the Crown, by virtue of an appointment under this section.”
- (2) The amendments of Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release etc of fixed-term prisoners) in section 9 of this Act confer functions on recall adjudicators in connection with the release of fixed-term prisoners following their recall.
  - (3) Schedule 3 to this Act contains further provision relating to recall adjudicators.

## **9 Test for release after recall: determinate sentences**

- (1) Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release etc of fixed-term prisoners) is amended as follows.
- (2) In section 255A (suitability for automatic release after recall), after subsection (4) insert—
  - “(4A) But a person is not suitable for automatic release if—

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- (a) it appears to the Secretary of State that the person is highly likely to breach a condition included in the person’s licence if released at the end of the automatic release period, and
  - (b) for that reason, the Secretary of State considers that it would not be appropriate to release the person at the end of that period.”
- (3) In section 255B (automatic release)—
  - (a) in subsection (2), at the end insert “(but see subsections (3) and (3A))”,
  - (b) after subsection (3), insert—
    - “(3A) The Secretary of State must not release P under subsection (2) if—
      - (a) it appears to the Secretary of State that, if released, P is highly likely to breach a condition included in P’s licence, and
      - (b) for that reason, the Secretary of State considers that it is not appropriate to release P under that subsection.”,
  - (c) in subsection (4)—
    - (i) for “that period” substitute “the period mentioned in subsection (1)(b)”, and
    - (ii) for “the Board” substitute “a recall adjudicator”,
  - (d) after subsection (4) insert—
    - “(4A) On a reference under subsection (4), the recall adjudicator must determine the reference by—
      - (a) directing P’s immediate release on licence under this Chapter,
      - (b) directing P’s release on licence under this Chapter as soon as conditions specified in the direction are met, or
      - (c) giving no direction as to P’s release,
 (but see subsections (4B) and (4C)).
    - (4B) The recall adjudicator must not give a direction under subsection (4A)(a) or (b) unless satisfied that it is not necessary for the protection of the public that P should remain in prison until the end of the period mentioned in subsection (1)(b).
    - (4C) The recall adjudicator must not give a direction under subsection (4A)(a) or (b) if—
      - (a) it appears to the recall adjudicator that, if released, P is highly likely to breach a condition included in P’s licence, and
      - (b) for that reason, the recall adjudicator considers that it is not appropriate to give the direction.”, and
  - (e) for subsection (5) substitute—
    - “(5) The Secretary of State must give effect to any direction under subsection (4A)(a) or (b).”
- (4) In section 255C (extended sentence prisoners and those not suitable for automatic release)—
  - (a) in subsection (2), at the end insert “(but see subsections (3) and (3A))”,
  - (b) after subsection (3), insert—
    - “(3A) The Secretary of State must not release P under subsection (2) if—

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- (a) it appears to the Secretary of State that, if released, P is highly likely to breach a condition included in P’s licence, and
    - (b) for that reason, the Secretary of State considers that it is not appropriate to release P under that subsection.”,
  - (c) in subsection (4), for “the Board” substitute “a recall adjudicator”,
  - (d) after subsection (4) insert—
    - “(4A) On a reference under subsection (4), the recall adjudicator must determine the reference by—
      - (a) directing P’s immediate release on licence under this Chapter,
      - (b) directing P’s release on licence under this Chapter as soon as conditions specified in the direction are met, or
      - (c) giving no direction as to P’s release,(but see subsections (4B) and (4C)).
    - (4B) The recall adjudicator must not give a direction under subsection (4A) (a) or (b) unless satisfied that it is not necessary for the protection of the public that P should remain in prison.
    - (4C) The recall adjudicator must not give a direction under subsection (4A) (a) or (b) if—
      - (a) it appears to the recall adjudicator that, if released, P is highly likely to breach a condition included in P’s licence, and
      - (b) for that reason, the recall adjudicator considers that it is not appropriate to give the direction.”, and
  - (e) for subsection (5) substitute—
    - “(5) The Secretary of State must give effect to any direction under subsection (4A)(a) or (b).”
- (5) Omit section 256 (powers of Board where it does not direct immediate release).
- (6) In section 256A (further review)—
  - (a) for subsection (1) substitute—
    - “(1) Where a case has been referred to a recall adjudicator under section 255C(4) or this section and the person has not been released, the Secretary of State must refer the person’s case back to a recall adjudicator no later than the review date.
    - (1A) In the case of a person serving one sentence of imprisonment, “the review date” is the first anniversary of the determination by the recall adjudicator on the reference mentioned in subsection (1).
    - (1B) In the case of a person serving more than one sentence of imprisonment, “the review date” is—
      - (a) the first anniversary of the determination by the recall adjudicator on the reference mentioned in subsection (1), or
      - (b) if later, the day on which the person has served—
        - (i) the requisite custodial period, and
        - (ii) if the sentences include a life sentence, the minimum term.”,
  - (b) in subsection (2)—

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- (i) for “that anniversary” substitute “the review date”, and
- (ii) for “the Board” substitute “a recall adjudicator”,
- (c) in subsection (3), for “The Board” substitute “A recall adjudicator”,
- (d) in subsection (4)—
  - (i) for “Board” substitute “recall adjudicator”, and
  - (ii) for paragraph (b) substitute—
    - “(b) directing the person’s release on licence under this Chapter as soon as conditions specified in the direction are met.”,
- (e) at the end of subsection (4) insert—
  - “(but see subsections (4A) and (4B)).”,
- (f) after subsection (4) insert—
  - “(4A) The recall adjudicator must not give a direction under subsection (4) (a) or (b) unless satisfied that it is not necessary for the protection of the public that the person should remain in prison.
  - (4B) The recall adjudicator must not give a direction under subsection (4) (a) or (b) if—
    - (a) it appears to the recall adjudicator that, if released, the person is highly likely to breach a condition included in the person’s licence, and
    - (b) for that reason, the recall adjudicator considers that it is not appropriate to give the direction.”, and
- (g) for subsection (5) substitute—
  - “(5) The Secretary of State must give effect to any direction under subsection (4)(a) or (b).
  - (6) In subsection (1B)(b)—
    - “life sentence” means a sentence mentioned in section 34(2) of the Crime (Sentences) Act 1997, and
    - “the minimum term” means the part of the sentence specified in the minimum term order (as defined by section 28 of that Act).”
- (7) In Schedule 20A (application of Chapter 6 of Part 12 to pre 4 April 2005 cases), omit paragraph 6(5) (certain determinations to be treated as determinations under section 256(1) of the Criminal Justice Act 2003).
- (8) The amendments made by this section apply to a person recalled before the day on which they come into force as well as to a person recalled on or after that day.

## **10 Power to change test for release after recall: determinate sentences**

- (1) In Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release etc of fixed-term prisoners), after section 256A insert—

### **“256AZA Power to change test for release following recall**

- (1) The Secretary of State may by order change—

- (a) the test to be applied by the Secretary of State in deciding under section 255A whether a person is suitable for automatic release;
  - (b) the tests to be applied by the Secretary of State in deciding whether to release a person under section 255B(2) or 255C(2);
  - (c) the tests to be applied by the recall adjudicator in deciding how to determine a reference under section 255B(4), 255C(4) or 256A(1) or (2).
- (2) An order under subsection (1) may, in particular—
- (a) apply to people recalled before the day on which it comes into force as well as to people recalled on or after that day;
  - (b) amend this Chapter.”
- (2) In section 330(5)(a) of that Act (orders subject to affirmative procedure) at the appropriate place insert—
- “section 256AZA,”.

## **11 Initial release and release after recall: life sentences**

- (1) In section 28(7)(c) of the Crime (Sentences) Act 1997 (duty to release certain life prisoners), for “one-half of that sentence” substitute “the requisite custodial period (as defined in section 268 of the Criminal Justice Act 2003)”.
- (2) In section 32 of the Crime (Sentences) Act 1997 (recall of life prisoners while on licence), after subsection (5) insert—
- “(5A) The Board must not give a direction unless satisfied that it is no longer necessary for the protection of the public that the life prisoner should remain in prison.”
- (3) In section 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (power to change test for release on licence of certain prisoners), in subsection (3), after paragraph (a) insert—
- “(aa) amend section 32 of the Crime (Sentences) Act 1997 (recall of IPP prisoners and others while on licence and further release),”.
- (4) The amendment made by subsection (1) applies to a person sentenced before the day on which it comes into force as well as to a person sentenced on or after that day.
- (5) The amendment made by subsection (2) applies in relation to a person recalled before the day on which it comes into force as well as in relation to a person recalled on or after that day.

## **12 Offence of remaining unlawfully at large after recall**

- (1) After section 32 of the Crime (Sentences) Act 1997 (recall of life prisoners) insert—
- “32ZA Offence of remaining unlawfully at large after recall**
- (1) A person recalled to prison under section 32 commits an offence if the person—
- (a) has been notified of the recall orally or in writing, and

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- (b) while unlawfully at large fails, without reasonable excuse, to take all necessary steps to return to prison as soon as possible.
  - (2) A person is to be treated for the purposes of subsection (1)(a) as having been notified of the recall if—
    - (a) written notice of the recall has been delivered to an appropriate address, and
    - (b) a period specified in the notice has elapsed.
  - (3) In subsection (2) “an appropriate address” means—
    - (a) an address at which, under the person’s licence, the person is permitted to reside or stay, or
    - (b) an address nominated, in accordance with the person’s licence, for the purposes of this section.
  - (4) A person is also to be treated for the purposes of subsection (1)(a) as having been notified of the recall if—
    - (a) the person’s licence requires the person to keep in touch in accordance with any instructions given by an officer of a provider of probation services,
    - (b) the person has failed to comply with such an instruction, and
    - (c) the person has not complied with such an instruction for at least 6 months.
  - (5) A person who is guilty of an offence under this section is liable—
    - (a) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine (or both);
    - (b) on summary conviction to imprisonment for a term not exceeding 12 months or a fine (or both).
  - (6) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, the reference in subsection (5)(b) to 12 months is to be read as a reference to 6 months.
  - (7) In relation to an offence committed before section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, the reference in subsection (5)(b) to a fine is to be read as a reference to a fine not exceeding the statutory maximum.”
- (2) After section 255 of the Criminal Justice Act 2003 (recall of prisoners) insert—

**“255ZA Offence of remaining unlawfully at large after recall**

- (1) A person recalled to prison under section 254 or 255 commits an offence if the person—
  - (a) has been notified of the recall orally or in writing, and
  - (b) while unlawfully at large fails, without reasonable excuse, to take all necessary steps to return to prison as soon as possible.
- (2) A person is to be treated for the purposes of subsection (1)(a) as having been notified of the recall if—
  - (a) written notice of the recall has been delivered to an appropriate address, and



- (b) a period specified in the notice has elapsed.
  - (3) In subsection (2) “an appropriate address” means—
    - (a) an address at which, under the person’s licence, the person is permitted to reside or stay, or
    - (b) an address nominated, in accordance with the person’s licence, for the purposes of this section.
  - (4) A person is also to be treated for the purposes of subsection (1)(a) as having been notified of the recall if—
    - (a) the person’s licence requires the person to keep in touch in accordance with any instructions given by an officer of a provider of probation services,
    - (b) the person has failed to comply with such an instruction, and
    - (c) the person has not complied with such an instruction for at least 6 months.
  - (5) A person who is guilty of an offence under this section is liable—
    - (a) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine (or both);
    - (b) on summary conviction to imprisonment for a term not exceeding 12 months or a fine (or both).
  - (6) In relation to an offence committed before section 154(1) comes into force, the reference in subsection (5)(b) to 12 months is to be read as a reference to 6 months.
  - (7) In relation to an offence committed before section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, the reference in subsection (5)(b) to a fine is to be read as a reference to a fine not exceeding the statutory maximum.”
- (3) Section 32ZA of the Crime (Sentences) Act 1997 and section 255ZA of the Criminal Justice Act 2003 apply in relation to a person recalled to prison before or after this section comes into force.

### **13 Offence of remaining unlawfully at large after temporary release**

- (1) Section 1 of the Prisoners (Return to Custody) Act 1995 (remaining at large after temporary release) is amended as follows.
- (2) For subsection (3) substitute—
  - “(3) A person guilty of an offence under this section is liable—
    - (a) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine (or both), and
    - (b) on summary conviction to imprisonment for a term not exceeding 12 months or a fine (or both).”
- (3) At the end insert—
  - “(7) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, the reference in subsection (3)(b) to 12 months is to be read as a reference to 6 months.

(8) In relation to an offence committed before section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, the reference in subsection (3)(b) to a fine is to be read as a reference to a fine not exceeding the statutory maximum.”

(4) The amendment made by subsection (2) does not apply where the period of temporary release expired, or the order of recall was made, before this section comes into force.

#### **14 Definition of “requisite custodial period”**

(1) Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release etc of fixed-term prisoners) is amended as follows.

(2) In section 268 (interpretation of Chapter), after subsection (1) insert—

“(1A) In this Chapter, “the requisite custodial period” means—

- (a) in relation to a person serving an extended sentence imposed under section 226A or 226B, the requisite custodial period for the purposes of section 246A;
- (b) in relation to a person serving an extended sentence imposed under section 227 or 228, the requisite custodial period for the purposes of section 247;
- (c) in relation to a person serving a sentence imposed under section 236A, the requisite custodial period for the purposes of section 244A;
- (d) in relation to any other fixed-term prisoner, the requisite custodial period for the purposes of section 243A or section 244 (as appropriate).”

(3) In section 247 (release on licence of prisoner serving extended sentence under section 227 or 228)—

- (a) in subsection (2)(a), for “one-half of the appropriate custodial term” substitute “the requisite custodial period”, and
- (b) for subsection (7) substitute—

“(7) In this section—

“the appropriate custodial term” means the period determined by the court as the appropriate custodial term under section 227 or 228;

“the requisite custodial period” means—

- (a) in relation to a person serving one sentence, one-half of the appropriate custodial term, and
- (b) in relation to a person serving two or more concurrent or consecutive sentences, the period determined under sections 263(2) and 264(2).”

(4) In section 260 (early removal of prisoners liable to removal from United Kingdom), omit subsection (7).

(5) In section 261 (re-entry into United Kingdom of offender removed from prison early)

- (a) in subsection (5), omit paragraph (a),
- (b) in subsection (5)(b)—

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- (i) omit “in any other case,” and
  - (ii) for “or 246A” substitute “, 246A or 247”, and
  - (c) in subsection (6), omit the definition of “requisite custodial period”.
- (6) In Schedule 20A (application of Chapter 6 of Part 12 to pre-4 April 2005 cases)—
- (a) omit paragraph 8(2) (modification of section 260), and
  - (b) after paragraph 8 insert—
    - “8A Section 268(1A) (definition of “the requisite custodial period”) has effect as if it provided that, in relation to a person serving an extended sentence under section 85 of the Sentencing Act, the requisite custodial period means one-half of the custodial term determined under that section (subject to sections 263 and 264).”
- (7) The amendments made by this section apply in relation to a person sentenced before the day on which they come into force as well as in relation to a person sentenced on or after that day.

## **15 Minor amendments and transitional cases**

- (1) In section 82A(3) of the Powers of Criminal Courts (Sentencing) Act 2000 (determination of tariffs for life sentences), for paragraph (b) substitute—
- “(b) the effect that the following would have if the court had sentenced the offender to a term of imprisonment—
    - (i) section 240ZA of the Criminal Justice Act 2003 (crediting periods of remand in custody);
    - (ii) section 246 of the Armed Forces Act 2006 (equivalent provision for service courts);
    - (iii) any direction which the court would have given under section 240A of the Criminal Justice Act 2003 (crediting periods of remand on bail subject to certain types of condition);”.
- (2) In section 97 of the Powers of Criminal Courts (Sentencing) Act 2000 (term of detention in a young offender institution)—
- (a) in subsection (2), omit “Subject to subsection (3) below,” and
  - (b) omit subsection (3) (power to pass sentence of less than 21 days for offence under section 65(6) of the Criminal Justice Act 1991).
- (3) In section 106(4) of the Powers of Criminal Courts (Sentencing) Act 2000 (persons subject concurrently to detention and training order and sentence of detention in young offender institution), for “Part II of the Criminal Justice Act 1991 (early release)” substitute “Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release, licences, supervision and recall)”.
- (4) In section 246(4) of the Criminal Justice Act 2003 (cases in which power to release before required to do so is not available), after paragraph (g) insert—
- “(ga) the prisoner has at any time been released on licence under section 34A of the Criminal Justice Act 1991 and has been recalled to prison under section 38A(1)(a) of that Act (and the revocation of the licence has not been cancelled under section 38A(3) of that Act);”.

- (5) In section 250 of the Criminal Justice Act 2003 (licence conditions), for subsection (5A) substitute—
- “(5A) Subsection (5B) applies to a licence granted, either on initial release or after recall to prison, to a prisoner serving an extended sentence imposed under section 226A or 226B, other than a sentence that meets the conditions in section 246A(2) (release without direction of the Board).
- (5B) The Secretary of State must not—
- (a) include a condition referred to in subsection (4)(b)(ii) in the licence, either on release or subsequently, or
  - (b) vary or cancel any such condition included in the licence, unless the Board directs the Secretary of State to do so.”
- (6) In section 260(2B) of the Criminal Justice Act 2003 (early removal from prison of extended sentence prisoners liable to removal from United Kingdom), for “section 246A” substitute “this Chapter”.
- (7) In Schedule 20A to the Criminal Justice Act 2003 (application of Chapter 6 of Part 12 to pre-4 April 2005 cases), in paragraph 4 (modification of section 246: power to release before required to do so)—
- (a) number the existing text as sub-paragraph (1),
  - (b) in that sub-paragraph, for “Section 246 applies as if, in subsection (4)” substitute “Section 246(4) applies as if—”,
  - (c) in that sub-paragraph, omit paragraph (c), and
  - (d) after that sub-paragraph insert—
- “(2) Section 246(6) applies as if, in the definition of “term of imprisonment”, the reference to section 227 or 228 included a reference to section 85 of the Sentencing Act.”
- (8) In Schedule 20B to the Criminal Justice Act 2003 (modifications of Chapter 6 of Part 12 in certain transitional cases), omit paragraph 3(2)(a) (application of Part 2 of the Schedule to an extended sentence under section 85 of the Powers of Criminal Courts (Sentencing) Act 2000).
- (9) In paragraph 34 of that Schedule (licence conditions in certain transitional cases)—
- (a) in sub-paragraph (1), at the end insert “and which was granted to a person serving—
    - (a) a 1967 Act sentence,
    - (b) a 1991 Act sentence, or
    - (c) a 2003 Act sentence which is an extended sentence imposed under section 227 or 228 before 14 July 2008.”, and  - (b) in sub-paragraph (6)(a), after “condition” insert “referred to in section 250(4)(b)(ii)”.
- (10) The amendments made by subsections (1), (3) and (4) apply in relation to a person sentenced before the day on which they come into force as well as in relation to a person sentenced on or after that day.