

CRIMINAL JUSTICE ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 12 - Sentencing

Chapter 6: Release of Prisoners on Licence

Section 237: Meaning of “fixed-term prisoner”

567. This section is an interpretation provision. In particular it defines “fixed-term prisoner” for the purposes of this Chapter.

Section 238: Power of the court to recommend licence conditions for certain prisoner

568. This section gives the court the power to recommend, when passing a custodial sentence of 12 months or more, particular conditions that in its view should be included in the licence to which the offender is subject on release. It also places a duty upon the Secretary of State, when setting the conditions of the licence, to have regard to any recommendations which the court may have made.

Section 239: The Parole Board

569. This section re-enacts section 32 of the Criminal Justice Act 1991. Its effect is to continue in being, and make provision for the constitution of, the Parole Board. The statutory duty of the Parole Board as set out in *subsection (2)* is to advise the Secretary of State on the release and recall of prisoners. In undertaking this function the Board must consider any evidence which the Secretary of State puts before it and any other evidence which it obtains (see *subsection (3)*). *Subsections (5) and (6)* give the Secretary of State the power to make rules concerning the proceedings of the Board and to give directions to the Board with regard to protecting the public and preventing further offences being committed. *Subsection (7)* introduces Schedule 19.

Section 240: Crediting of periods of remand in custody: terms of imprisonment and detention

570. This Section re-enacts with amendments section 87 of the Powers of Criminal Courts (Sentencing) Act 2000, which makes provision for the crediting of time spent on remand (and which is not yet in force). It allows for time spent in custody on remand to count as time served by the offender as part of his sentence (see *subsection (3)*). These provisions are only relevant where a custodial sentence is passed and the remand was in connection with the same offence, or a related offence. When crediting periods of remand in custody the Court is required by *subsection (5)* to state in open court the number of days spent on remand in connection with the offence and the number of days which count towards time served under the sentence as a result of this. *Subsection (4)* allows the court not to give a direction should this be in the interests of justice in a particular case. Where the court does not exercise its full powers in relation to the

crediting of time spent on remand, *subsection (6)* requires that it must state a reason for this decision.

Section 241: Effect of direction under section 240 on release on licence

571. *Section 241* ensures that time spent on remand counts towards time served under the sentence for the purpose of calculating whether or not an offender has served a particular proportion or period of his sentence. The application of these provisions to a sentence of intermittent custody is dealt with in *subsection (2)*.

Section 242: Interpretation of sections 240 and 241

572. This section defines the sentences to which the crediting of remand time applies, and provides definitions of the term ‘remanded in custody’ used within sections 240 and 241. Time spent in police detention will not count as time spent on remand for the purposes of section 240. This is because there is a qualitative difference between time spent on remand and time spent in police custody, the former being preventative and imposed by the courts whereas the latter is an unavoidable feature of the investigation of crime.

Section 243: Persons extradited to the United Kingdom

573. This section re-enacts (with some modification) section 47 of the Criminal Justice Act 1991. *Subsection (2)* ensures that in the case of an extradited prisoner (as defined by *subsections (1)*), days spent in custody awaiting extradition may subsequently be subtracted from any custodial sentence passed by the court.

Section 244: Duty to release prisoners

574. The release provisions for all prisoners (excluding those subject to a life sentence or one of the new sentences for dangerous offenders under Chapter 5) are dealt with in this section. All prisoners must spend a “requisite custodial period” in custody before the Secretary of State is required to release them on licence. This requisite period is calculated according to the particular sentence as described in *subsection (3)*. For all prisoners serving a sentence of twelve months or more (excluding dangerous offenders and life sentence prisoners) the Secretary of State is required to release them on licence at the halfway point of their sentence. For prisoners serving a sentence of less than twelve months, release will be at the end of the specified ‘custodial period’. For those serving a sentence of intermittent custody release will take place at the end of each custodial period as defined by *section 183*. These provisions are subject to the arrangements for prisoners who have been returned to custody following a period of being unlawfully at large, as provided in section 245.

Section 245: Restrictions on operation of section 244(1) in relation to intermittent custody Prisoners

575. *Subsections (1) and (2)* provide that an offender who has been returned to custody following a period unlawfully at large does not have to be released under section 244(1). He can be held while an application is made to the court to alter the pattern of intermittence under paragraph 6(1)(b) of Schedule 10. The Secretary of State has to make such an application within 72 hours, or release the offender to continue serving his sentence on an intermittent basis. If while being held, the offender’s custodial days expire, he is to be released under *subsection (1)(b)*. *Subsection (3)* provides that an intermittent custody prisoner who has been recalled to prison does not fall to be released for his next licence period under section 244.

Section 246: Power to release prisoners on licence before required to do so

576. This section relates to home detention curfew (HDC). The Crime and Disorder Act 1998 amended the Criminal Justice Act 1991 so that certain categories of prisoner, after

being risk assessed, could spend the last part of their custodial sentence on HDC. HDC operates as a transitional phase immediately after leaving prison. Under the existing law in section 34A of the Criminal Justice Act 1991, an offender can be released up to 135 days early if he is assessed as suitable for HDC by the Prison Service. A curfew is imposed and the offender is monitored electronically to ensure he keeps to the terms of the curfew. If he violates the curfew or any standard condition of his licence (such as being of good behaviour) he is recalled to prison. HDC came into operation in 1999. Since that time there have been over 80,000 participants (around 3500 at any one time). The successful completion rate of HDC is 90%. The curfew condition is dealt with in section 253.

577. *Subsection (1)* maintains the maximum period available for HDC at 135 days. *Subsection (6)* also gives the Secretary of State the power to amend by order the period available for HDC. Not all prisoners are eligible for release under the HDC scheme. Those ineligible include prisoners serving one of the sentences applicable to dangerous offenders, and prisoners who are liable to deportation. Also, prisoners who have less than 14 days to serve of their required custodial period following sentence (e.g. due to remand time being deducted from the required custodial period) are not eligible for HDC. Ineligible categories are specified in *subsection (4)*. *Subsections (1), (2) and (3)* have the effect of providing for the period spent on HDC to be tapered according to the length of sentence. *Subsection (1)(b)* provides for prisoners serving a sentence of intermittent custody. As with normal prison sentences, on intermittent custody the offender will spend a number of days on HDC equal to the days he would have spent in custody had he not received HDC.

Section 247: Release on licence of prisoner serving extended sentence under section 227 or 228

578. This section sets out the release provisions for the extended sentences covered in sections 227 and 228. *Subsection (2)* provides that once an offender has served one half of the “appropriate custodial term”, then subject to the recommendation of the Parole Board the prisoner may be released on licence. Once the prisoner has served the full ‘appropriate custodial term’ he must be released and will then remain on licence until he has served his full extended supervision period.

Section 248: Power to release prisoners on compassionate grounds

579. This section re-enacts section 36 of the Criminal Justice Act 1991, and sets out the procedure for releasing fixed-term prisoners on compassionate grounds. The Secretary of State may only release prisoners on these grounds if exceptional circumstances exist (for example where the prisoner is suffering from a terminal illness). In such cases *subsection (2)* requires the Parole Board is to be consulted prior to release wherever possible.

Section 249: Duration of licence

580. *Subsection (1)* provides that, after release, all prisoners serving determinate sentences remain on licence following release for the remainder of the sentence. Particular provision is made in *subsection (2)* for intermittent custody, reflecting the fact that the offender must return to prison at the end of each intermittent licence period before being subject to final release. In either case, the provisions as to the duration of licence are subject to the fact that the offender may be recalled into custody in the event of breach of a licence condition.

Section 250: Licence conditions

581. This section makes provision in relation to the conditions which may be attached to a licence following a prisoner’s release. All licences must include “the standard conditions” as defined insofar as they are compatible with the other licence conditions.

An example of a “standard condition” that could be prescribed is a requirement that the offender be of good behaviour. Other than the standard conditions, the content of the licence will vary according to the sentence being served. For prisoners serving one or more sentences of less than twelve months the conditions of the licence are set by the court at the point of sentence (see [section 189](#)). These conditions apply in conjunction with the standard conditions and with any condition prescribed for this purpose by the Secretary of State for the purpose of public protection (see [subsection \(2\)\(b\)\(ii\)](#)). [Subsection \(3\)](#) provides that court-ordered licence conditions apply where a prisoner is released on licence for compassionate reasons or on Home Detention Curfew. For prisoners serving one or more sentence of more than 12 months the conditions of the licence are set by Prison and Probation Service prior to the prisoners’ release. In this case, [subsection \(4\)](#) provides that the standard conditions will apply, together with any other condition prescribed for this purpose by the Secretary of State and specified in the licence. Conditions as to electronic monitoring and drug testing may also be applied under section 62 or 64 of the Criminal Justice and Court Services Act 2000. [Subsection \(5\)](#) ensures every Home Detention Curfew licence has a curfew condition. [Subsection \(6\)](#) provides that if a court-ordered licence in a sentence of less than 12 months has a curfew condition, it is not to operate at the same time as an HDC curfew. [Subsection \(7\)](#) applies the arrangements on consecutive and concurrent terms to the section. [Subsection \(8\)](#) requires the Secretary of State to have regard to several factors including the protection of the public and the prevention of re-offending when creating standard conditions.

Section 251: Licence conditions on re-release of prisoner serving sentence of less than 12 months

582. If an offender serving a sentence of less than 12 months is recalled to prison, it is likely that his court-ordered licence conditions will be disrupted. This section provides that after recall, the Secretary of State has the power to re-set licence conditions upon the re-release of the offender. These must include standard conditions and may include drug testing or electronic monitoring, or conditions prescribed by the Secretary of State in an order. In other words, following recall, licence conditions in a sentence of less than 12 months will be imposed as they are for sentences of 12 months or more.

Section 252: Duty to comply with licence conditions

583. This section requires the offender to comply with any conditions attached to their licence.

Section 253: Curfew condition to be included in licence under section 246

584. [Subsection \(1\)](#) defines the curfew condition to be attached to early release on Home Detention Curfew (HDC), as provided in [section 246](#). The curfew condition specifies periods during which the offender must remain in a specified place, and includes a requirement that the curfew is electronically monitored. Under [subsection \(2\)](#) the curfew condition can specify more than one place and/or more than one period. There are time limits; except for the first and last days, a curfew cannot last for less than 9 hours in any one day. Under [subsection \(3\)](#) the curfew condition is to last until the date the offender would have been released from prison if he had not received early release. [Subsection \(4\)](#) provides for the curfew condition in sentences of intermittent custody. [Subsections \(5\) and \(6\)](#) set out administrative arrangements for the provision of electronic monitoring.

Section 254: Recall of prisoners while on licence

585. [Subsection \(1\)](#) enables the Secretary of State to revoke the licence of an offender and recall him to prison. Under [subsection \(2\)](#) a person recalled has to be informed of the reasons for his recall and can make written representations about it. [Subsection \(3\)](#) provides for the Parole Board to consider all recalls. Under [subsection \(4\)](#), if the Board

decides that the person should be released, the Secretary of State must release him. *Subsection (5)* provides that if the Parole Board immediately re-releases an intermittent custody prisoner who has been recalled he is to continue his sentence on an intermittent basis. *Subsection (6)* provides that if a person on licence is recalled he can be detained and if at large he will be treated as unlawfully at large. *Subsection (7)* provides that this section does not apply to offenders recalled from Home Detention Curfew, who are dealt with in [Section 255](#).

Section 255: Recall of prisoners released under s.246

586. *Subsection (1)* enables the Secretary of State to revoke the licence of an offender on Home Detention Curfew and recall him to prison if he has failed to comply with a licence condition or if his whereabouts can no longer be electronically monitored. Under *subsection (2)* if a person on HDC has his licence revoked, he must be informed of the reason when he returns to prison, and he is able to make written representations about the revocation. *Subsection (3)* enables the Secretary of State to cancel a revocation of an HDC licence after considering such representations. Under *subsection (4)* such a cancellation has the effect that the licence is taken not to have been revoked. *Subsection (5)* provides that an offender whose HDC licence is revoked may be detained, is to be considered unlawfully at large, and is subject to arrest.

Section 256: Further release after recall

587. When an offender has been recalled to prison, arrangements are made with a view to his further release. Under *subsection (1)* the Parole Board must either set a date for future release or set a date for it to review the offender's case. Under *subsection (2)*, the date fixed must be within one calendar year. *Subsection (3)* provides that a future date need not be fixed if the offender was due for release within 12 months. Under *subsection (4)* if the Board decides upon a future release date the offender must be released on that date. *Subsection (5)* provides that at a review the Board can either recommend immediate release or fix a date for future release or for future review.

Section 257: Additional days for disciplinary offences

588. This Section re-enacts section 42 of the Criminal Justice Act 1991, which enables rules under the Prison Act 1952 to provide for additional days to be added to prisoners' sentences if they are found to be guilty of disciplinary offences whilst in custody.

Section 258: Early release of fine defaulters and contemnors

589. This Section re-enacts, with appropriate modifications, section 45 of the Criminal Justice Act 1991 (as amended), which sets out the release provisions for persons committed to custody in default of payment of a fine or for contempt of court, which are not sentences of imprisonment and therefore are not covered by the normal release provisions.

590. *Subsection (2)* provides for unconditional release at the half-way point of the term. This would cover those serving terms of both under and over 12 months. *Subsection (3)* makes provision for offenders who are also serving a sentence of imprisonment. *Subsection (4)* provides a power to release these persons unconditionally on compassionate grounds.

Section 259: Persons liable to removal from the United Kingdom

591. [Section 259](#) is an interpretative provision, defining what 'persons liable to removal from the United Kingdom' for the purposes of Chapter 6 of Part 12 of the Act.

Section 260: Early removal of prisoners liable to removal from United Kingdom

592. Under the Criminal Justice Act 1991 any short-term foreign national prisoners (those serving a sentence of less than 4 years) who are liable to removal from the UK are automatically released from prison and liable to be removed from the UK at the half-way point in their sentence. They are statutorily excluded from early release under the Home Detention Curfew scheme (section 34A(e) of the 1991 Act as amended by the Crime and Disorder Act 1998).
593. Long-term foreign national prisoners (those serving a determinate sentence of 4 years or more) are considered for early release at the halfway point of their sentence (their Parole Eligibility Date). The decision whether to release is based upon a careful risk assessment. Those who are not considered an acceptable risk for release on parole remain in custody until their automatic release date at the two-thirds point of sentence.
594. Both short and long term foreign national prisoners released from prison are liable to be detained under immigration law until they are finally removed from the UK.
595. *Section 260* introduces a new scheme for early removal from prison for foreign national prisoners liable to removal as defined in section 259. Eligible prisoners may be removed from prison up to 135 days earlier than their normal release date.
596. *Subsections (1) and (2)* set out the minimum requisite custodial period to which the scheme will apply and the period of time to be served before removal from prison will be possible.
597. Certain prisoners will be excluded from the scheme. These statutory exclusions are set out in *subsection (3)*.
598. *Subsections (4) and (5)* will ensure that prisoners remain liable to be detained in pursuance of their sentences whilst remaining in the UK so that if, for example, the prisoner makes an application for asylum, after being removed under the scheme, the prisoner will be returned to prison to continue to serve the sentence until the normal release date, at which point the prisoner will become subject to immigration law.
599. *Subsection (6)* gives the Secretary of State the power to amend by order the eligibility requirements of the minimum sentence and custodial period to be served for early removal under the scheme

Section 261: Re-entry into United Kingdom of offender removed from prison early

600. *Section 261* sets out the provisions for dealing with a prisoner who returns to the UK following early removal under section 261. Prisoners who return before their sentences expire will be liable to be detained in pursuance of their sentence for a period equal to the outstanding custodial period to be served or until the sentence expiry date, whichever is the earlier.

Section 262: Prisoners liable to removal from United Kingdom: modifications of Criminal Justice Act 1991

601. *Section 262* introduces Schedule 20, which makes provision for a similar scheme to apply under the 1991 Act prior to the commencement of the Act.

Section 263: Concurrent terms

602. This section deals with release in the case of an offender serving two or more terms of imprisonment at the same time (concurrently). In such cases the offender must serve the longest custodial period of the sentences which have been passed before being released on licence. He will then remain on licence until the expiry of the longest sentence. *Subsection (3)* states that in cases where a sentence of more than and a sentence of less than 12 months are ordered to be served concurrently, the Secretary of State (in practice

the Prison and Probation Services) may set the licence conditions without having regard to any conditions which the court set when passing the shorter sentence.

Section 264: Consecutive terms

603. This section deals with release in the case of offenders serving two or more terms of imprisonment to be served one after the other (consecutively). In such cases the offender must serve a period equal to the aggregate of the custodial periods of the sentences which have been passed before being released on licence. Where sentences of less than 12 months and more than 12 months (including the extended sentence) are passed at the same time, or where more than one sentence of more than 12 months is passed, following release the offender will remain on licence for a period equal in length to the aggregate of the lengths of the individual licence periods for each sentence. *Subsection (4)* provides that where sentences of less than 12 months are to be served consecutively the offender will remain on licence until he has served a term equal in length to the longest licence period for any one of his sentences. Therefore the term to be served will be the aggregate of the custodial periods plus the longest licence period.

Section 265: Restriction on consecutive sentences for released prisoners

604. This section re-enacts with changes provisions in section 84 of the Powers of Criminal Courts (Sentencing) Act 2000. The section provides that if an offender is sentenced to imprisonment for an offence while he is on licence in connection with a sentence for another offence, the prison term for the new offence is to start immediately, and not wait until the first term expires.

Section 266: Release on licence, etc: drug testing requirements

605. This section amends section 64 of the Criminal Justice and Court Services Act 2000. It provides that should a responsible officer, as defined in subsection (6), be of the opinion that the offender has a propensity to misuse any specified Class A drugs and that such misuse has caused or contributed to any offence of which he was convicted or is likely to cause or contribute to him committing further offences, the offender must provide, when requested, a sample to ascertain whether he has a specified Class A drug in his system. The requirement that a trigger offence has been committed is removed. The minimum age of persons to whom drug testing under this provision applies is lowered to 14 years. A sentence of detention under section 226 or 228 of this Act will be included for the purposes of this section. The presence of an appropriate adult, as defined in subsection (6), is required for the taking of a sample in the case of an offender who is under the age of 17 years.

Section 267: Alteration by order of relevant proportion of sentence

606. This section gives the Secretary of State the power to amend by order the proportion of a custodial sentence of 12 months or more which must be served in prison before the release. It also enables the Secretary of State to amend by order the proportion of an extended sentence for certain sexual and violent offences (see sections 227 and 228) which must be served before a prisoner is eligible for release on the recommendation of the Parole Board.

Section 268: Interpretation of Chapter 6

607. This section explains various terms used in the Chapter.