

CRIMINAL JUSTICE AND IMMIGRATION ACT 2008

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 2: Sentencing

Section 9: Purposes etc of sentencing: offenders under 18

181. This section complements section 142 of the 2003 Act which sets out the purposes of adult sentencing.
182. *Subsection (1)* inserts a new section 142A into the 2003 Act setting out the purposes of sentencing for offenders under the age of 18 years. The new section requires the court when dealing with an offender to have regard to:
- the principal aim of the youth justice system (which is to prevent offending or re-offending by persons aged under 18),
 - the welfare of the offender in accordance with section 44 of the Children and Young Persons Act 1933, and
 - the following purposes of sentencing:
 - the punishment of offenders,
 - the reform and rehabilitation of offenders,
 - the protection of the public, and
 - the making of reparation by offenders to persons affected by their offences.
183. New section 142A(4) sets out the circumstances in which that section does not apply, namely:
- where the sentence for the offence is fixed by law (eg a mandatory sentence of detention imposed for murder);
 - where offences require certain custodial sentences (i.e certain firearms offences; in certain offences of using someone to mind a weapon; and certain serious, violent or sexual offences to which sections 226 or 228 of the 2003 Act applies); and
 - where certain orders are made under the Mental Health Act 1983.
184. *Subsection (2)* amends section 142 of the 2003 Act to ensure that where young people reach their 18th birthday before being sentenced the courts have regard to the adult purposes of sentencing.

185. *Subsection (3)* amends section 44 of the Children and Young People Act 1933, which requires courts to have regard to the welfare of a child or young person brought before it, so that the court also has regard to the other matters mentioned in the new section 142A of the 2003 Act.
186. *Subsection (4)* amends section 42(1) of the 1998 Act, (interpretation of Part 3 of the Act) to include a definition of offending as including re-offending.

Section 10: Effect of restriction on imposing community sentences

187. **Section 10** amends section 148 of the 2003 Act, which makes provision as to when it is appropriate to impose a community sentence. It provides that nothing in section 148 requires the court to impose a community sentence even though the offence is serious enough to justify such a sentence. It similarly provides that there is no requirement to impose restrictions on liberty as part of such a sentence just because section 148 provides a power to do so.

Section 11: Restriction on power to make a community order

188. This section provides that the community order is available to the courts as a sentencing option only for offences where the court can impose imprisonment or for persistent offenders who have previously been fined three or more times, even though the current offence does not justify a community sentence.
189. *Subsection (1)* adds a new section 150A to the 2003 Act. A court may make a community order only where the offence is punishable with imprisonment or where section 151(2) of the Act as amended by the section confers such a power. Section 151(2) provides a power to make a community order where an offender has, since the age of 16, received three or more sentences comprising only a fine. Section 150A also provides that for these purposes an either-way offence is to be regarded as punishable with imprisonment if the sentencing court has the power to impose custody for the offence.
190. *Subsections (2) to (7)* amend section 151 of the 2003 Act. Read together with amendments to section 151 in Schedule 4 related to youth rehabilitation orders, the restriction on making community orders in cases where the current offence is not imprisonable is limited to persons over the age of 18.
191. *Subsection (3)* adds a new subsection (A1) to section 151 making it clear that section 151(2) operates in two cases: where the particular offence before the court is imprisonable, but not serious enough to warrant a community sentence; and where the offence is not imprisonable. In neither case would a community order be available without the operation of section 151 in future.
192. *Subsection (4)* amends section 151(1) so that it operates on imprisonable offences and *subsection (5)* adds a new subsection 151(1A) which makes corresponding provision for non-imprisonable offences.

Section 12: Pre-sentence reports

193. **Section 12** inserts a new subsection (1A) and (1B) into section 158 of the 2003 Act, which defines what a pre-sentence report is. New subsection (1A) makes it clear that, subject to any rules made by the Secretary of State under section (1)(b) of section 158, the court may accept an oral pre-sentence report. However, where a pre-sentence report relates to an offender under 18 years of age and the court is required to obtain and consider a pre-sentence report before the court forms an opinion under section 156(3)(a) - as to whether a discretionary custodial sentence should be imposed - new subsection (1B) provides that such a pre-sentence report must be in writing.

Section 13: Sentences of imprisonment for public protection

194. **Section 13** amends section 225 of the 2003 Act (life sentence or imprisonment for public protection for serious offences). Section 225 applies to those 18 or over. The amendments have the following effect.
- They give the court a power, rather than a duty, to impose a sentence of imprisonment for public protection.
 - They provide that this power may only be exercised where either of two conditions is met: either the immediate offence would attract a notional minimum term of at least 2 years; or the offender has on a previous occasion been convicted of one of the offences listed in the new Schedule 15A to the 2003 Act (inserted by Schedule 5 to the Act).
195. In the notes on this section and sections 14 to 18, the term “immediate offence” is used to refer to the offence for which the person is being sentenced.
196. New subsection (3C) defines what is meant by notional minimum term. The court should follow the usual practice for setting tariffs for sentences of imprisonment for public protection (in accordance with section 82A(2) of the 2000 Act), except that it should not credit periods of time on remand (in custody or on bail) in arriving at the minimum term.

Section 14: Sentences of detention for public protection

197. **Section 14** amends section 226 of the 2003 Act (detention for life or detention for public protection). Section 226 applies to those under 18. The amendments have the following effect.
- They give the court a power, rather than a duty, to impose a sentence of detention for public protection: currently it has an obligation to do so unless it considers an extended sentence adequate;
 - They provide that this power may only be exercised where the immediate offence would attract a notional minimum term of at least 2 years.
198. Subsection (3A) defines what is meant by notional minimum term. The court should follow the usual practice for setting tariffs for sentences of detention for public protection (in accordance with section 82A(2) of the 2000 Act), except that it should not credit periods on remand (in custody or on bail) in arriving at the minimum term.

Section 15: Extended sentences for certain violent or sexual offences: persons 18 or over

199. **Section 15** amends section 227 of the 2003 Act (extended sentence for certain violent or sexual offences: persons 18 or over)
200. **Subsection (2)** amends section 227(1) to allow extended sentences to be given for “serious” violent and sexual offences i.e. offences in Schedule 15 which carry a maximum penalty of 10 years or more. The power to give extended sentences for violent or sexual offences carrying a maximum penalty of less than 10 years is left intact.
201. **Subsections (3) and (4)** amend section 227(2) and insert new subsections (2A) and (2B). The amendments have the following effect.
- They give the court a power rather than a duty to impose an extended sentence;
 - They provide that this power may only be exercised where either of two conditions is met: either the immediate offence would attract an “appropriate custodial term” of at least 4 years; or the offender has on a previous occasion been convicted of one of the offences listed in Schedule 15A.

202. *Subsection (4)* also inserts a new subsection (2C) which sets out the structure of the extended sentence: it consists of an “appropriate custodial term” followed by a further licence period. This simply reproduces the definition of extended sentence of imprisonment which is currently in section 227(2).
203. *Subsection (5)* is consequential and preserves the current position whereby (a) the custodial period of the extended sentence is set according to the seriousness of the offence; (b) if the seriousness of the offence would normally warrant a custodial period of less than 12 months, the court must impose a custodial period of 12 months. (The provision mentioned at (b) may continue to be relevant in cases where the court is imposing an extended sentence on the basis that the condition in section 227(2A)) is met (i.e., that the offender has on a previous occasion been convicted of one of the offences specified in Schedule 15A).
204. *Subsection (6)* gives the Secretary of State an order-making power to amend the custodial period of 4 years specified in new subsection (2B). This is because the intention is that the condition should be met only if the offence warrants that the offender spend a minimum period of 2 years in custody. This currently means that a custodial period of at least 4 years should be imposed, as release on licence from an extended sentence occurs at the halfway point (under section 247 of the 2003 Act, as amended by section 25 of this Act). The proportion of sentence served prior to release on licence may be changed, however, by secondary legislation. If this were to happen, the figure of 4 years would need to be changed accordingly, to retain the 2 year threshold.

Section 16: Extended sentences for certain violent or sexual offences: persons under 18

205. **Section 16** amends sections 228 of the 2003 Act (extended sentence for certain violent or sexual offences: persons under 18)
206. *Subsection (2)* is a consequential amendment to reflect the fact that the courts will no longer have an obligation to impose public protection sentences.
207. *Subsections (3) and (4)* amend section 228. The amendments have the following effect:
- They give the court a power rather than a duty to impose an extended sentence
 - They provide that this power may only be exercised where the immediate offence would attract an “appropriate custodial term” of at least 4 years.
208. *Subsection (4)* then inserts a new subsection (2B) which sets out the structure of the extended sentence: it consists of an “appropriate custodial term” followed by a further licence period. This simply reproduces the definition of extended sentence of detention which is currently in section 228(2).
209. *Subsection (5)* preserves the current position whereby the custodial period of the extended sentence must not exceed the maximum penalty for the offence. It also removes the current requirement for the custodial period of the extended sentence to be set at 12 months or more (as this is no longer required in the light of the other changes to section 228).
210. *Subsection (6)* gives the Secretary of State an order-making power to amend the custodial period of 4 years specified in new subsection (2A). This is because the intention is that an extended sentence should be imposed only if the offence warrants that the offender spend a minimum period of 2 years in custody. This currently means that a custodial period of at least 4 years should be imposed, as release on licence from an extended sentence occurs at the halfway point (under section 247 of the 2003 Act, as amended by section 25 of this Act). The proportion of sentence served prior to release on licence may be changed, however, by secondary legislation. If this were to happen, the figure of 4 years would need to be changed accordingly, to retain the 2 year threshold.

Section 17: The assessment of dangerousness

211. **Section 17** amends section 229 of the 2003 Act (the assessment of dangerousness).
212. **Section 229** currently draws a distinction between cases where the offender has not previously been convicted of an offence specified in Schedules 15 to 17 (or was aged under 18) and cases where the offender has previously been convicted of such an offence. In the first case, section 229(2) requires the court (in deciding whether there is a significant risk of serious harm) to take into account all information available to it about the offence for which the offender is being sentenced and allows the court to take into account any information about any pattern of behaviour of which that offence forms a part. In the second case, section 229(3) requires the court to assume that there is a significant risk of serious harm unless the court considers it would be unreasonable to do so.
213. The amendments made by *subsections (2) and (4)* are related. *Subsection (4)* removes section 229(3) so that the court is no longer required to make any assumption. *Subsection (2)* amends section 229(2) so that it applies to all offenders. These changes mean that there is no longer any distinction between the two types of cases mentioned above.
214. *Subsection (2)* also amends section 229(2) to provide expressly that the court may take into account all information available to it about any previous convictions of the offender and any pattern of behaviour of which they form a part. This is intended to provide clarification.

Section 18: Further amendments relating to sentences for public protection

215. **Section 18** provides for further amendments relating to sentences for public protection.
216. *Subsection (1)* substitutes a new subsection (1) in section 231 of the 2003 Act (appeals where previous convictions set aside).
217. The new subsection (1) applies where an offender has received a sentence of imprisonment for public protection, or an extended sentence for certain violent or sexual offences, if the court relied upon the condition in section 225(3A) or 227(2A) having been satisfied. If a previous conviction of the type listed in Schedule 15A to the 2003 Act, which lists the offences relevant for the condition, is subsequently set aside on appeal, section 231 as amended by this section confers on the offender an extension of time for appealing against the public protection sentence.
218. *Subsection (2)* amends section 232 (certificates of conviction) of the 2003 Act.
219. The effect of the amendments to section 232 is that a court that has convicted an offender of a Schedule 15A offence in England and Wales may, once Schedule 15A has come into force, subsequently certify the fact and date of that conviction. This certificate will stand as evidence for the purposes of proving that the condition in section 225(3A) and 227(2A) is satisfied.
220. *Subsection (3)* omits section 234 of the 2003 Act (determination of day when offence committed) in consequence of the amendments to section 229.

Section 19: Indeterminate Sentences: determination of tariffs

221. Section 82A of the 2000 Act requires a court determining the minimum period to be served in custody by an offender subject to a discretionary life sentence or indeterminate sentence for public protection to determine the tariff with reference to the period that the offender would have served in custody if sentenced to a determinate term. Section 82A(3) requires the court to determine the notional determinate term commensurate with the seriousness of the offence, to halve it to take account of the early release provisions and to give credit for time spent on remand.

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

222. This section increases the courts' discretion when determining tariffs under section 82A in certain limited cases by giving courts discretion to reduce the notional determinate term by less than half in certain cases.
223. The discretion not to halve the notional determinate term applies in two sorts of case. The first case ("Case A") is limited to the tariff determination for discretionary life sentences and applies where the circumstances of the offence or offences make the crime exceptionally serious (without being serious enough to justify a whole-life tariff, which requires a very extreme degree of exceptionality), and the court is of the opinion that to halve the notional determinate term would not adequately reflect the seriousness of the offence(s). The court may then reduce the tariff by any amount ranging from one-half to nil, as is appropriate to reflect the seriousness of the case. The increased discretion will only apply when a court is sentencing a person over 18 years old.
224. The second case ("Case B") applies to both discretionary life sentences and indeterminate sentences of imprisonment (or juvenile or young adult equivalents) for public protection. Case B preserves a power developed in case law (as referred to in *R v Lang & Ors* [2005] EWCA Crim 2864), which addresses a technical problem that occasionally arises: it allows a court not to apply the full 50 per cent reduction in exceptional cases when to do so would result in a situation where the offender would not serve any extra time in custody. This situation historically has arisen where the offender is already serving a determinate custodial sentence and the minimum term would expire before the offender is eligible for release, because tariffs of indeterminate sentences cannot be served consecutively with other custodial sentences. Where Case B applies, the court may reduce the notional determinate term by less than half but by no less than one third.

Section 20: Consecutive terms of imprisonment

225. **Section 20** amends the 2003 Act in respect of consecutive custody plus and intermittent custody sentences and general restrictions on consecutive sentences for released prisoners.
226. **Subsection (2)** inserts a new subsection (7A) into section 181 of the 2003 Act which states that when calculating whether the aggregate length of consecutive terms of imprisonment is within the 65 week maximum limit for consecutive terms referred to in section 181(7)(a), account is to be taken of all the custody periods but only the longest of the licence periods.
227. **Subsection (3)** amends section 264A(3), (4)(b) and (5). The effect of these amendments is that where intermittent custody sentences are ordered by a court to be served consecutively the offender will be required to serve all the custody periods plus all the licence periods.
228. **Subsection (4)** amends section 265 to clarify the position on imposing consecutive sentences on different occasions. Subsection (4)(a) amends section 265(1), the effect of which is that if an offender has been released on licence under Part II of the 1991 Act or Chapter 6 of Part 12 of the 2003 Act then a subsequent sentence may not be ordered to be served consecutively to the sentence from which he has already been released. Subsection (4)(b) inserts new subsections (1A) and (1B) into section 265: these ensure that persons sentenced under the 1991 Act are subject to section 265(1) as amended by subsection (4)(a) and provide that for the purposes of determining whether someone has already been released on licence, any temporary release on licence under section 183(1)(b)(i) in respect of an intermittent custody sentence is to be discounted.

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

229. This section amends the 2003 Act to make provision for crediting periods of remand on bail on an electronically monitored curfew against a subsequent custodial sentence.

230. *Subsection (2)* confirms that the new provisions will not apply to a service court. *Subsection (3)* amends the heading preceding section 240 of the 2003 Act.
231. *Subsection (4)* inserts a new section 240A into the 2003 Act. The new section 240A will apply only to prisoners whose offence was committed on or after 4 April 2005 and who have been remanded on bail, subject to a qualifying electronically monitored curfew bail condition, on or after the commencement of section 240A (section 240A(1)). The qualifying conditions are defined in sections 240A(12). They provide that in order to qualify for the credit provisions a person must be subject to a curfew condition of 9 hours or more per day, and that that curfew must be subject to electronic monitoring.
232. Unless Rules under section 240A(6) provide otherwise, or the Court considers it would not be just in all the circumstances, the Court must direct that the “credit period” is to be counted as time served toward the sentence (section 240A(2)). The credit period is defined in section 240A(3). A person will receive credit at the rate of a half a day for every day spent subject to a qualifying electronically monitored curfew.
233. Section 240A(5) allows the court to direct that, where the prisoner has not been given the full available credit, a partial credit may be awarded. In exercising their discretion to make a direction, sentencers must take into account the extent to which the prisoner has complied with the qualifying curfew condition and electronic monitoring condition (section 240A(7)). The Court must state in open court the number of days for which the prisoner was subject to the relevant conditions, the number of days credit that is to be directed or whether no direction is to be made. Where none of the period is to be credited, or only part of it, the courts must explain the reasons for the decision (sections 240A(8),(9) and (10)).
234. *Subsections (5) and (6)* insert amendments to the 2003 Act to provide for the effect of a direction given under section 240A on a person released on licence, and to ensure that section 240A is captured in the relevant interpretation provisions.
235. *Subsection (7)* provides that rules made under section 240A will be subject to the affirmative resolution procedure.

Section 22: Credit for period of remand on bail: other cases

236. *Subsections (1) to (7)* make provision for a new section 240A of the 2003 Act to apply in respect of prisoners serving mandatory and discretionary life sentences, detention and training orders, International Criminal Court sentences, prisoners eligible for early release under Home Detention Curfew and retrials.

Section 23 and Schedule 6: Credit for period of remand on bail: transitional provisions

237. **Section 23** introduces Schedule 6. This Schedule provides for a credit toward a subsequent custodial sentence for periods of remand on bail subject to an electronically monitored curfew. The provisions are the same in substance as those set out in section 21 but apply to offenders committed to a custodial sentence whose offences were committed before 4 April 2005 and, therefore, are subject to the provisions relating to treatment of periods spent remanded under section 67 of the Criminal Justice Act 1967. The provisions therefore have the same effect on prisoners as those set out in section 21.

Section 24: Minimum conditions for early release under section 246(1) of the Criminal Justice Act 2003

238. This section amends the statutory formula set out in section 246(2) of the 2003 Act that determines the period of time a prisoner must spend in custody before becoming eligible for early release under the Home Detention Curfew scheme. The amendment will ensure

that prisoners will spend at least half of the custodial period in custody, subject to a minimum of 4 weeks before they can be released on Home Detention Curfew.

Section 25: Release on licence under Criminal Justice Act 2003 of prisoners serving extended sentences

239. **Section 25** amends section 247 of the 2003 Act (release on licence of prisoner serving extended sentence).
240. The section omits subsection (2)(b) and subsections (3) to (6) from section 247 of the 2003 Act thereby removing the Parole Board's role in directing the release of the prisoner. Such prisoners become automatically entitled to release on licence once they have served one-half of the appropriate custodial term.

Section 26: Release of certain long-term prisoners under the Criminal Justice Act 1991

241. This section amends the early release provisions contained in Part 2 of the 1991 Act for certain long term prisoners. These provisions apply to prisoners sentenced for an offence committed before 4 April 2005.
242. *Subsection (2)* inserts new subsections (1A) to (1D) into section 33 of the 1991 Act. New section 33(1A) requires the Secretary of State to release long term prisoners (those serving sentences of 4 years and over) on licence at the halfway point in their sentence. New section 33(1B) excludes from (1A) those prisoners serving sentences for a sexual or violent offence listed in Schedule 15 to the 2003 Act. New sections (1C) and (1D) extend this provision to include offenders serving sentences for the relevant armed services offences. *Subsection (3)* makes a consequential amendment to section 33(2).
243. *Subsection (4)* provides that section 35, which concerns Parole Board recommendations to release long term prisoners after they have reached the halfway point of their sentences, does not apply to prisoners who are caught by the new duty to release at the halfway point in section 33(1A).
244. *Subsection (5)* provides that section 37, which concerns the duration and conditions of licences for prisoners released on licence under Part 2, does not apply to prisoners who are caught by the new duty to release at the halfway point in section 33(1A).
245. *Subsection (6)* inserts a new section 37ZA into Part 2 after section 37 of the 1991 Act. New section 37ZA makes provision for the duration and conditions of licences granted to long term prisoners released automatically on licence at the halfway point under section 33(1A). The licence will last until the end of the sentence, the conditions of the licence will be the standard conditions prescribed by the Secretary of State under section 250 of the 2003 Act and may also include other conditions in accordance with section 37ZA. When prescribing licence conditions, the Secretary of State must have regard to the following purposes of the supervision of offenders while on licence: protecting the public, preventing re-offending and securing the prisoner's successful re-integration into society. The offender must comply with the licence conditions imposed, and failure to do so may result in the offender being recalled to prison under section 254(1) of the 2003 Act, with section 37ZA(4) expressly providing that section 254(1) is the recall power applicable to offenders who have been released on licence in pursuance of the new duty in section 33(1A). This supplements the provision in paragraph 23(1) of Schedule 2 to the [Criminal Justice Act 2003 \(Commencement No.8 and Transitional and Saving Provisions\) Order 2005 \(SI 2006/950\)](#) applying the section 254(1) recall power to release on licence under Part 2 of the 1991 Act.
246. **Paragraph 8** of Schedule 27 provides that this section does not apply to long term prisoners who have already reached the halfway point of their sentence before the date on which section 26 is commenced

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

247. *Subsection (1)* provides that section 46(1) and part of section 50(2) of the 1991 Act are to cease to have effect. The practical effect of that provision is that foreign national prisoners liable to removal from the United Kingdom and sentenced under the provisions of the 1991 Act to sentences of 4 years and over will no longer be ineligible, at the halfway point of sentence, to have their cases considered by the Parole Board for early release on licence under section 35(1) of the same Act. The provisions only apply to offenders whose offences were committed before 4 April 2005. Under the existing provisions of the 1991 Act such prisoners' applications for early release can only be determined by the Secretary of State. This provision is made to address the fact that existing provisions were the subject of a declaration of incompatibility as regards Article 14 (when read with Article 5) of the ECHR in the case of *R (Hindawi and Headley) v Secretary of State for the Home Department* [2006] UKHL 54.
248. *Subsection (2)* ensures that the definition of "liable to removal from the United Kingdom" which is used in the 1991 Act applies equally here.

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

249. This section concerns the early release of fine defaulters and contemnors on compassionate grounds under the 1991 Act. *Subsections (2) and (4)* amend section 45 of the 1991 Act by inserting a new subsection (3A). This subsection modifies section 36 of the 1991 Act so that fine defaulters and contemnors released early on compassionate grounds are no longer released on licence but instead are released unconditionally. It also removes the obligation to consult with the Parole Board in the case of long term prisoners.
250. As a consequence of this amendment, *subsection (3)* omits a provision dealing with the further release of fine defaulters and contemnors (if they are recalled following release on compassionate grounds) and *subsection (5)* omits a provision dealing with the duration of licences where they are released on compassionate grounds.

Section 29: Release of prisoners after recall

251. This section retains the power in section 254 of the 2003 Act for the Secretary of State to recall determinate sentence prisoners while on licence. Such prisoners will continue to have the right to be informed of the reason for their recall and to make representations against the decision to recall. However, the requirement to refer a recalled prisoner's case to the Parole Board and, following such a reference, the power of the Board to recommend re-release is repealed.
252. *Subsection (2)* inserts four new sections into the 2003 Act, which provide a new re-release procedure for prisoners recalled under section 254.

Section 255A Further release after recall: introductory

253. Section 255A introduces the new procedures governing further release following a prisoner's recall, including automatic release at the end of a fixed period of 28 days (subsection (4)). Subsection (2) provides that recalled prisoners will be eligible for automatic release unless they are serving an extended sentence or a sentence for a sexual or violent offence specified in Schedule 15, they have been released early on the home detention curfew scheme or on compassionate grounds and recalled before the date on which they would otherwise have been released or they have previously been recalled and released under section 255B(1)(b) or (2) or section 255C(2). However, eligible prisoners will only be released automatically if they are also suitable for automatic release, which means that the Secretary of State must be satisfied that they will not

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present a risk of serious harm to members of the public if they are released after 28 days (subsections (3) and (5)).

254. Subsection (6) summarises which of the new further release procedures will apply to which category of recalled prisoner:
- a) prisoners who are suitable for automatic release are dealt with under section 255B;
 - b) prisoners who are eligible but not suitable for automatic release, and prisoners serving a sentence for a specified offence and certain other prisoners, are dealt with under section 255C; and
 - c) extended sentence prisoners are dealt with under section 255D.
255. Subsection (7) defines “extended sentence prisoner” for this purpose as a prisoner serving an extended sentence under the 2003 Act, the Crime and Disorder Act 1998 or the 2000 Act.
256. Subsection (8) defines a “specified offence prisoner” for this purpose with reference to section 224 of the 2003 Act, namely as a prisoner serving a sentence imposed for an offence specified in Schedule 15 to the 2003 Act. Subsection (9) and (10) extend this definition to the relevant armed services offences (The definition of specified offence prisoner does not include those serving extended sentences).
257. Subsection (12) sets out how consecutive and concurrent sentences should be treated for the purpose of determining whether the prisoner is ineligible for automatic release because he has, during the same term of imprisonment, already been released under section 255(1)(b) or (2) or 255C(2).
258. Subsection (13) defines “serious harm” for the purpose of assessing a prisoner’s suitability for automatic release as a risk of death or causing serious physical or psychological personal injury.
259. Subsection (14) defines term of imprisonment to ensure that it includes determinate sentences of detention imposed on juveniles under section 91 of the 2000 Act or section 228 of the 2003 Act

Section 255B Automatic release

260. Subsection (1) requires the Secretary of State to inform a prisoner entitled to automatic re-release that he will be released after 28 days. It also requires him to release the prisoner automatically at the end of the 28 days unless he has already been released under the provisions of subsection (2).
261. Subsections (2) and (3) give the Secretary of State the discretionary power to release any recalled prisoner subject to automatic release at any time prior to the expiry of the 28 day recall period if the Secretary of State is satisfied that it is not necessary for the protection of the public for that prisoner to remain in prison.
262. Subsection (4) requires the Secretary of State to refer to the Parole Board the case of any prisoner subject to automatic release who exercises the right under section 254(2) to make representations against the decision of the Secretary of State to recall him. Subsection (5) provides that if the Parole Board then recommends immediate re-release, the Secretary of State must give effect to that recommendation.
263. Subsection (6) applies to prisoners serving a sentence of intermittent custody. Should such a prisoner be recalled from licence before the expiry of the custodial element of the sentence and subsequently be re-released they will be on licence until the end of one of the licence periods specified in the intermittent custody order.

255C Specified offence prisoners and those not suitable for automatic release

264. Subsection (1) provides that section 255C applies to recalled prisoners who are serving a sentence (other than an extended sentence) for a specified offence, to recalled prisoners who are ineligible for automatic release because of section 255A(2)(b) or (c) and to recalled prisoners who were eligible but were not considered suitable for automatic release.
265. Subsections (2) and (3) give the Secretary of State the discretionary power to release any recalled prisoner to whom this section applies at any time during the period of the recall if he is satisfied that it is not necessary for the protection of the public for that prisoner to remain in prison.
266. Subsection (4) requires the Secretary of State to refer to the Parole Board the case of any prisoner to whom this section applies who exercises the right under section 254(2) to make representations against the decision of the Secretary of State to recall him. In any event, the Secretary of State is required to refer to the Board at the end of 28 days the case of any prisoner to whom this section applies who has not been released by that time. Subsection (5) provides that if the Parole Board recommends the immediate release of a prisoner referred to it under subsection (4), the Secretary of State must give effect to that recommendation.
267. Subsection (6) refers to prisoners serving a sentence of intermittent custody. Should such a prisoner be recalled from licence before the expiry of the custodial element of the sentence and subsequently be re-released they will be on licence until the end of one of the licence periods specified in the intermittent custody order.

255D Extended sentence prisoners

268. This section applies to those prisoners recalled under section 254(1) who are serving an extended sentence imposed under the 1998 Act, the 2000 Act or the 2003 Act.
269. The Secretary of State is required to refer all such cases to the Parole Board and must give effect to any subsequent recommendation by the Parole Board to release a prisoner immediately.
270. *Subsection (3)* of section 29 makes a minor consequential amendment to section 256 of the 2003 Act.

Section 30: Further review and release of prisoners after recall

271. *Subsections (1) to (4)* amend section 256 of the 2003 Act to remove the requirement for the Parole Board to fix the date of the next review of a prisoner recalled under section 254(1) and for whom the Board has declined to recommend immediate release or to fix a future re-release date under section 256(1)(a). Instead, the Parole Board may determine a reference by making no recommendation as to a prisoner's release. *Subsection (5)* makes a consequential amendment to the heading of section 256.
272. *Subsection (6)* inserts a new section 256A, dealing with further review, into the 2003 Act. This requires the Secretary of State to refer recalled prisoners to the Parole Board at least every 12 months after the prisoner's last review by the Board, with discretion to refer the case earlier. The Parole Board also has the power to recommend referral at any time before the expiry of 12 months from the prisoner's last Parole Board review.
273. When determining a referral by the Secretary of State, the Parole Board may recommend immediate release, fix a date for future release or make no recommendation as to release. The Secretary of State must give effect to any recommendation made by the Parole Board to release the prisoner.

Section 31: Recall of life prisoners: abolition of requirement for recommendation by Parole Board

274. This section amends section 32 of the Crime (Sentences) Act 1997 to remove the requirement for a Parole Board recommendation before the Secretary of State may decide whether to recall a life sentence prisoner or a prisoner serving an indeterminate sentence for public protection.

Section 32: Release of prisoners recalled following release under Criminal Justice Act 1991

275. This section concerns the further release of prisoners released on licence under the 1991 Act and then recalled under section 254(1) of the 2003 Act.
276. *Subsection (1)* inserts section 50A into the 1991 Act, a new section applying to prisoners released under the 1991 Act and subsequently recalled to prison under section 254(1) of the 2003 Act. Section 50A(2) specifically precludes the Secretary of State from releasing a prisoner who falls within the criteria set out in subsection (1) under any of the following 1991 Act release provisions:
- a) section 33 – the duties to release short term and long-term prisoners;
 - b) section 33A – the duty to release a prisoner released early under the Home Detention Curfew Scheme or on compassionate grounds then subsequently recalled;
 - c) section 34A – the power to release a short term prisoner early under the Home Detention Curfew Scheme;
 - d) section 35 – the duty to release long term prisoners serving less than 15 years and the power to release long term prisoners serving 15 years or more once they have served one-half of their sentence if so recommended by the Parole Board; and
 - e) section 43(4) – the duty to release short term young offenders at the halfway point of their sentence.
277. New section 50A also provides that the further release on licence of such prisoners will be governed by the 2003 Act rather than the 1991 Act. Whether such a prisoner is re-released under the 2003 Act or on compassionate grounds under section 36 of the 1991 Act, the licence will be governed by the relevant provisions of the 2003 Act. That means that it will remain in force until the end of the sentence, the conditions of the licence will be the standard conditions prescribed by the Secretary of State under section 250 of the 2003 Act, and may also include other conditions in accordance with section 250, and the offender will be subject to a duty to comply with the licence conditions (new section 50A(4) and (5)).
278. New section 50(A)(6) (7) and (8) modify sections 249 and 250 of the 2003 Act in their application to persons covered by the new section.
279. New section 50A(9) ensures that the rules relating to the treatment of consecutive and concurrent terms in the 1991 Act continue to apply to prisoners released under that Act and subsequently recalled under section 254(1) of the 2003 Act.
280. New section 50A(10) requires that those prisoners who were originally released under the provisions of the 1991 Act and are subsequently recalled under the section 254(1) of the 2003 Act will not be subject to any of the provisions of Part 2 of the 1991 Act concerning licence duration and conditions, except as expressly provided by section 50A(7)(b) and (9).
281. [Paragraph 12](#) of Schedule 27 provides that new section 50A applies only to those prisoners who are recalled under section 254(1) of the 2003 Act on or after the date on

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which section 32 is commenced regardless of when they were initially released under Part 2 of the 1991 Act.

282. *Subsection (2)* of section 32 modifies the application of the savings in the Commencement Order which implemented Chapter 6 of Part 12 of the 2003 Act so as to remove any inconsistency with the provision made by the new section 50A.

Section 33: Removal under Criminal Justice Act 1991

283. This section amends the early removal scheme in sections 46A and 46B of the 1991 Act under which prisoners who are liable to deportation may be released from prison for the purpose of removing them from the UK.
284. *Subsection (2)* inserts a new section 46ZA, which defines a new category of prisoners who are not liable to removal from the UK at the end of their sentence but who have demonstrated a settled intention to reside permanently outside the UK upon release.
285. *Subsection (4)* extends the early removal scheme to those prisoners.
286. *Subsection (5)* provides that removal under the early removal scheme is not available once the prisoner has reached the halfway point of the sentence.
287. *Subsection (6)* removes existing exclusions which bar certain categories of prisoner from removal under the early removal scheme. Consequently, removal of these exclusions will ensure that a prisoner who falls into one or more of the following categories may be removed early under the scheme:
- a prisoner serving an extended sentence;
 - a prisoner serving a sentence under the Prisoners (Return to Custody Act) 1995;
 - a prisoner subject to registration under the Sexual Offenders Act 2003.
 - a prisoner subject to a hospital order, hospital direction or transfer direction under section 37, 45A or 47 of the Mental Health Act 1983.
288. This section also extends the possibility of removal under the early removal scheme to the 14 day period immediately prior to the halfway point of the sentence.
289. *Subsections (7) and (8)* make consequential amendments arising from the inclusion of the new category of prisoners who are to be eligible for removal under the early removal scheme.

Section 34: Removal under Criminal Justice Act 2003

290. This section makes broadly similar provision to that made by section 33, but in relation to the equivalent provisions of the 2003 Act. The amendments make similar extensions to the availability of removal from the UK under the early removal scheme as set out in Chapter 6 of Part 12 of that Act.
291. *Subsection (4)*, as read with the new definition inserted by *subsection (2)*, extends the availability of the early removal scheme to prisoners who are not liable for removal from the UK at the end of their sentence but who have demonstrated a settled intention to reside permanently outside the UK upon removal.
292. *Subsection (6)* removes a number of exclusions which bar certain categories of prisoner from removal under the early removal scheme. Those exclusions mirror the exclusions removed by section 33(6). *Subsection (5)* removes a time restriction which is found only in the 2003 Act early removal scheme provisions. The result will allow the removal under the scheme of -
- those a serving custodial period of less than 6 weeks, and

- those who have not served at least 4 weeks of their sentence.

293. *Subsections (7), (8) and (9)* make consequential amendments arising from the inclusion of the new category of prisoners who are to be eligible for removal under the early removal scheme.

Section 35: Referral conditions

294. This section amends section 17 of the 2000 Act which sets out the circumstances in which a magistrates' court must or may impose a referral order when sentencing a child or young person. When a child or young person is given a referral order, he or she is required to attend a **youth offender panel**, which is made up of two volunteers from the local community and a panel adviser from a youth offending team. The panel, with the young person, their parents/carers and the victim (where appropriate), agree a contract lasting between three and 12 months. The aim of the contract is the prevention of reoffending by the offender.

295. Under section 16 of the 2000 Act, a referral order cannot be given at present to an offender where the sentence: is fixed by law; is so serious that the court decides a custodial sentence is absolutely necessary; or the offence is relatively minor and the court proposes to give an **absolute discharge**.

296. Subject to those exceptions, under the 2000 Act a referral order must be given to a child or young person where the following conditions are met, namely:

- the offence is punishable with imprisonment,
- the offender pleads guilty to the offence and any connected offence,
- the offender has not previously been convicted of an offence, and
- the offender has never been bound over to keep the peace.

297. *Subsection (2)* amends section 17(1) of the 2000 Act so as to remove the condition that the offender must never have been bound over to keep the peace. As a result the fact that the offender has previously been bound over to keep the peace would not be a bar on the making of a mandatory referral order.

298. A referral order may be given to a child or young person where the following conditions are met, namely:

- the offence is one that is not punishable with imprisonment,
- the offender pleads guilty to the offence and any connected offence,
- the offender has not previously been convicted of an offence, and
- the offender has never been bound over to keep the peace.

299. A referral order may also be given to a child or young person where the offender is being dealt with for two or more connected offences and the following conditions are met, namely:

- the offender pleads guilty to at least one of those offences and not guilty to at least one,
- the offender has not previously been convicted of an offence, and
- the offender has never been bound over to keep the peace.

300. *Subsection (3)* inserts a new subsection (2) into section 17 of the 2000 Act, the effect of which is to modify the conditions that must be met before a discretionary referral order may be made. As with mandatory referral orders, the fact that the offender has

previously been bound over to keep the peace would no longer be a bar to making a discretionary order. In addition, it would now be possible to make a discretionary order where the offender had one previous conviction and where, in respect of that previous conviction, a referral order had not been made.

301. *Subsection (4)* repeals section 17(5) of the 2000 Act. As a result a conditional discharge would no longer be treated as a conviction for the purposes of section 17.

Section 36: Power to revoke a referral order

302. *Subsection (2)* inserts a new section 27A into Part 3 of the 2000 Act (which deals with the mandatory and discretionary referral of young offenders). Under this new section a power is provided for a youth offender panel to refer the offender back to the appropriate court where they consider it is in the interests of justice for the referral order to be revoked. This will allow a young offender's referral order to be revoked early where the offender makes good progress or where there are other good reasons to do so.

Section 37: Extension of period for which young offender contract has effect

303. This section inserts a new section 27B into Part 3 of the 2000 Act and inserts a new Part into Schedule 1 to that Act (further court proceedings). The new section provides a power for the youth offender panel to refer the offender back to the appropriate court where they consider it is in the interests of justice for the period of the referral order to be extended. The effect of the new section and new Part of that Schedule is that the court may extend the period of the order by up to 3 months subject to the over-arching maximum period for a referral order of 12 months.

Section 38: Imposition of unpaid work requirement for breach of community order

304. This section amends paragraphs 9 and 10 of Schedule 8 to the 2003 Act, which governs the way in which the courts deal with offenders who breach their community orders. One of the three ways in which a court must deal with such an offender is by amending the terms of the community order so as to impose more onerous requirements under paragraphs 9(1)(a) and 10(1)(a). Where the court deals with an offender in this way, this section reduces the minimum period of unpaid work that may be imposed for breach of a community order from 40 to 20 hours, where the community order does not already contain an unpaid work requirement. *Subsection (2)* gives this effect in the magistrates' courts and *subsection (3)* in the Crown Court.
305. The section does nothing to alter the position regarding breach of a community order that already contains an unpaid work requirement; in such a case there is no minimum amount by which the period of unpaid work may be increased. This section affects neither the 40 hour minimum period of unpaid work that may be imposed as a requirement of a community order at the point of sentence, nor the existing maximum of 300 hours that applies to unpaid work, whether imposed as a sentence or for breach.

Section 39: Youth default orders

306. At present where a magistrates' court would, but for section 89 of the 2000 Act (which restricts courts from imprisoning persons aged under 21), have power to commit to prison a person under the age of 18 for a default consisting in failure to pay a sum adjudged to be paid by a conviction, for instance a fine, the court may take enforcement proceedings against the parent or guardian under section 81 of the Magistrates' Courts Act 1981. This section makes provision in *subsections (1) and (2)* for a magistrates' court to impose a youth default order if a person aged under 18 defaults on a fine imposed following a conviction, instead of taking proceedings against the parent or guardian. A youth default order may require the court to order the young person in default to undertake unpaid work (if the person is 16 or 17), attend an attendance centre or be subject to a curfew.

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Act 2008 (c.4) which received Royal Assent on 8 May 2008*

307. *Subsection (4)* provides for a power to impose electronic monitoring of a curfew requirement imposed under subsection (2).
308. *Subsection (5)* allows a court to postpone making a youth default order if expedient.
309. *Subsection (6)* provides that certain provisions relating to YROs have effect in relation to youth default orders with the modifications set out in Schedule 7.
310. *Subsections (7) and (8)* provide for the youth default order to cease to have effect if the sum owed is paid in full and for the total number of hours or days specified in the default order to be reduced by a proportion if part payment is made.