



**Law  
Commission**  
Reforming the law

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**Sentencing law in England and Wales**  
**Legislation currently in force**  
Part 5 – Post-sentencing matters

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9 October 2015

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## Part 5. Post-sentencing matters

5.1	Variation	1176
	5.1.1. Statutory power	1176
	5.1.1.1. Crown Court	1176
	5.1.1.2. Magistrates' Court	1179
	5.1.1.3. Extent of the power	1180
	5.1.2. Common law power: Variations after the statutory time limit has expired	1182
	5.1.2.1. Existence of the power	1182
	5.1.2.2. The extent of the power	1182
5.2	Commencement of sentence	1184
5.3	HDC (Home Detention Curfew)	1185
	5.3.1. "Fixed-term prisoner"	1185
	5.3.2. Power to release on HDC tag	1186
5.4	Release	1189
	5.4.1. "Fixed-term prisoner"	1189
	5.4.2. Unconditional release	1190
	5.4.3. Release on licence: Determinate sentences	1190
	5.4.4. Release on licence: Extended sentences	1191
	5.4.5. Release on licence: Offenders of particular concern	1193
	5.4.6. Release on licence: Life sentences	1193
	5.4.7. Release on licence: Compassionate grounds	1195
	5.4.8. Release on licence: Transitional cases	1197
	5.4.9. Supervision and the licence period	1209
	5.4.9.1. Fixed term prisoners	1209
	5.4.9.2. Life sentence prisoners	1218
5.5	Recall and re-release	1221
	5.5.1. Fixed term prisoners	1221
	5.5.1.1. Recall	1221
	5.5.1.2. Re-release	1223
	5.5.2. Life sentence prisoners	1226

## 5.1 Variation

### 5.1.1. Statutory power

#### 5.1.1.1. Crown Court

##### Power

##### ***PCC(S)A 2000 s.155<sup>1964</sup>: Alteration of Crown Court sentence***

s.155(1) - subject to the following provisions of this section, a sentence imposed, or other order made, by the Crown Court when dealing with an offender may be varied or rescinded by the Crown Court within the period of 56 days beginning with the day on which the sentence or other order was imposed or made, within the time allowed by that subsection.

##### **Sentence may not be varied or rescinded where appeal or application for leave has been determined**

##### ***PCC(S)A 2000 s.155<sup>1965</sup>: Alteration of Crown Court sentence***

s.155(1A) - the power conferred by subsection (1) may not be exercised in relation to any sentence or order if an appeal, or an application for leave to appeal, against that sentence or order has been determined.

##### **Same judge must vary or rescind the order**

##### ***PCC(S)A 2000 s.155<sup>1966</sup>: Alteration of Crown Court sentence***

s.155(4) - a sentence or other order shall not be varied or rescinded under this section except by the court constituted as it was when the sentence or other order was imposed or made, or, where that court comprised one or more justices of the peace, a court so constituted except for the omission of any one or more of those justices.

##### **Varied sentence takes effect from day original order was imposed**

##### ***PCC(S)A 2000 s.155<sup>1967</sup>: Alteration of Crown Court sentence***

s.155(5) - subject to subsection (6) below, where a sentence or other order is varied under this section the sentence or other order, as so varied, shall take effect from the beginning of the day on which it was originally imposed or made, unless the court otherwise directs.

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<sup>1964</sup> Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

<sup>1965</sup> Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

<sup>1966</sup> Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

<sup>1967</sup> Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

## Appeal time limits

### ***PCC(S)A 2000 s.155<sup>1968</sup>: Alteration of Crown Court sentence***

s.155(6) - for the purposes of—

- (a) section 18(2) of the Criminal Appeal Act 1968 (time limit for notice of appeal or of application for leave to appeal), and
- (b) paragraph 1 of Schedule 3 to the Criminal Justice Act 1988 (time limit for notice of an application for leave to refer a case under section 36 of that Act),

the sentence or other order shall be regarded as imposed or made on the day on which it is varied under this section.

## Co-defendant exception: Time limits

### ***PCC(S)A 2000 s.155<sup>1969</sup>: Alteration of Crown Court sentence***

s.155(7) Criminal Procedure Rules—

- (a) may, as respects cases where two or more persons are tried separately on the same or related facts alleged in one or more indictments, provide for extending the period fixed by subsection (1) above;
- (b) may, subject to the preceding provisions of this section, prescribe the cases and circumstances in which, and the time within which, any order or other decision made by the Crown Court may be varied or rescinded by that court.

## Criminal procedure rules

### ***Criminal Procedure Rules 2015 (SI 2015/1490)***

rule.28.4(1) This rule—

- (a) applies where a magistrates' court or the Crown Court can vary or rescind a sentence or order, other than an order to which rule 24.18 applies (Setting aside a conviction or varying a costs etc. order); and
- (b) authorises the Crown Court, in addition to its other powers, to do so within the period of 56 days beginning with another defendant's acquittal or sentencing where—
  - (i) defendants are tried separately in the Crown Court on the same or related facts alleged in one or more indictments, and
  - (ii) one is sentenced before another is acquitted or sentenced.

rule.28.4(2) The court may exercise its power—

- (a) on application by a party, or on its own initiative;
- (b) at a hearing, in public or in private, or without a hearing.

rule.28.4(3) A party who wants the court to exercise that power must—

- (a) apply in writing as soon as reasonably practicable after—
  - (i) the sentence or order that that party wants the court to vary or rescind, or

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<sup>1968</sup> Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

<sup>1969</sup> Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

- (ii) where paragraph (1)(b) applies, the other defendant's acquittal or sentencing;
- (b) serve the application on—
  - (i) the court officer, and
  - (ii) each other party; and
- (c) in the application—
  - (i) explain why the sentence should be varied or rescinded,
  - (ii) specify the variation that the applicant proposes, and
  - (iii) if the application is late, explain why.

rule.28.4(4) The court must not exercise its power in the defendant's absence unless—

- (a) the court makes a variation—
  - (i) which is proposed by the defendant, or
  - (ii) the effect of which is that the defendant is no more severely dealt with under the sentence as varied than before; or
- (b) the defendant has had an opportunity to make representations at a hearing (whether or not the defendant in fact attends).

rule.28.4(5) The court may—

- (a) extend (even after it has expired) the time limit under paragraph (3), unless the court's power to vary or rescind the sentence cannot be exercised;
- (b) allow an application to be made orally.

*Note.*<sup>1970</sup> Under section 142 of the Magistrates' Courts Act 1980(a), in some cases a magistrates' court can vary or rescind a sentence or other order that it has imposed or made, if that appears to be in the interests of justice. The power cannot be exercised if the Crown Court or the High Court has determined an appeal about that sentence or order. See also rule 24.18 (Setting aside a conviction or varying a costs etc. order), which governs the exercise by a magistrates' court of the power conferred by section 142 of the 1980 Act in the circumstances to which that rule applies.

Under section 155 of the Powers of Criminal Courts (Sentencing) Act 2000(b), the Crown Court can vary or rescind a sentence or other order that it has imposed or made. The power cannot be exercised—

- (a) after the period of 56 days beginning with the sentence or order (but see the note below); or
- (b) if an appeal or application for permission to appeal against that sentence or order has been determined.

Under section 155(7), Criminal Procedure Rules can extend that period of 56 days where another defendant is tried separately in the Crown Court on the same or related facts alleged in one or more indictments.

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<sup>1970</sup> The note appears in the procedure rules.

## Interpretation

### ***PCC(S)A 2000 s.155<sup>1971</sup>: Alteration of Crown Court sentence***

s.155(8) - in this section—

“*sentence*” includes a recommendation for deportation made when dealing with an offender;

“*order*” does not include an order relating to a requirement to make a payment under regulations under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

### **5.1.1.2. Magistrates’ Court**

#### **Power**

### ***MCA 1980 s.142<sup>1972</sup>: Power of magistrates’ court to re-open cases to rectify mistakes etc.***

s.142(1) - a magistrates’ court may vary or rescind a sentence or other order imposed or made by it when dealing with an offender if it appears to the court to be in the interests of justice to do so; and it is hereby declared that this power extends to replacing a sentence or order which for any reason appears to be invalid by another which the court has power to impose or make.

### **Sentence may not be varied or rescinded where Crown Court has determined appeal or High Court determined case stated**

### ***MCA 1980 s.142<sup>1973</sup>: Power of magistrates’ court to re-open cases to rectify mistakes etc.***

s.142(1A) - the power conferred on a magistrates’ court by subsection (1) above shall not be exercisable in relation to any sentence or order imposed or made by it when dealing with an offender if—

- (a) the Crown Court has determined an appeal against—
  - (i) that sentence or order;
  - (ii) the conviction in respect of which that sentence or order was imposed or made; or
  - (iii) any other sentence or order imposed or made by the magistrates’ court when dealing with the offender in respect of that conviction (including a sentence or order replaced by that sentence or order); or
- (b) the High Court has determined a case stated for the opinion of that court on any question arising in any proceeding leading to or resulting from the imposition or making of the sentence or order.

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<sup>1971</sup> Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

<sup>1972</sup> Commencement: 6 July 1981, SI 1981/457 art.2.

<sup>1973</sup> Commencement: 6 July 1981, SI 1981/457 art.2.

### Power to direct that case should be heard by different justices

#### ***MCA 1980 s.142<sup>1974</sup>: Power of magistrates' court to re-open cases to rectify mistakes etc.***

- s.142(2) - where a person is convicted by a magistrates' court and it subsequently appears to the court that it would be in the interests of justice that the case should be heard again by different justices, the court may so direct.
- s.142(2A) - the power conferred on a magistrates' court by subsection (2) above shall not be exercisable in relation to a conviction if—
- (a) the Crown Court has determined an appeal against—
    - (i) the conviction; or
    - (ii) any sentence or order imposed or made by the magistrates' court when dealing with the offender in respect of the conviction; or
  - (b) the High Court has determined a case stated for the opinion of that court on any question arising in any proceeding leading to or resulting from the conviction.
- s.142(3) - where a court gives a direction under subsection (2) above—
- (a) the conviction and any sentence or other order imposed or made in consequence thereof shall be of no effect; and
  - (b) section 10(4) above shall apply as if the trial of the person in question had been adjourned.

### Varied sentence takes effect from day it was originally imposed

#### ***MCA 1980 s.142<sup>1975</sup>: Power of magistrates' court to re-open cases to rectify mistakes etc.***

- s.142(5) - where a sentence or order is varied under subsection (1) above, the sentence or other order, as so varied, shall take effect from the beginning of the day on which it was originally imposed or made, unless the court otherwise directs.

### Criminal Procedure Rules

Under section 155(7), Criminal Procedure Rules can extend that period of 56 days where another defendant is tried separately in the Crown Court on the same or related facts alleged in one or more indictments.

#### **5.1.1.3. Extent of the power**

*Note: Save for some minor differences between the two powers (e.g. there is no time limit in the Magistrates' Court) there appears no reason to treat the powers differently.*

#### **R. v May (1981) 3 Cr. App. R. (S.) 165**

There must be a hearing in open court and the defendant is entitled to be present at all stages of the sentencing procedure.

*Note: This is subject to the Criminal Procedure Rules rule 28.4(4).*

#### **R. v Hart (1983) 5 Cr. App. R. (S.) 25**

The power may be used to increase or reduce the sentence.

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<sup>1974</sup> Commencement: 6 July 1981, SI 1981/457 art.2.

<sup>1975</sup> Commencement: 6 July 1981, SI 1981/457 art.2.

**R. v Nodjoui (1985) 7 Cr. App. R. (S.) 183**

Cases probably have occurred—they certainly could occur—when the sentence having been passed, the grateful defendant then refuses to give evidence [for the prosecution against co-defendants]. In such a case it might be just that the sentence should be reviewed. Subject to that kind of case, in our judgment, trial judges should not after an interval of days, and after thinking over what they have done by way of sentence, decide that their sentence has been over-lenient. (Lawton LJ, at p.190)

**R. v Crozier (1990) 12 Cr. App. R. (S.) 206**

There are also, we think, very good reasons why, when a change is considered to be necessary, it should not usually be markedly radical as it undoubtedly was in the present case. A rare circumstance only, unknown at the time of sentencing, could warrant a departure from that well understood principle or practice. Increasing a sentence by variation, though not unknown in the past, should be carefully avoided. (Watkins LJ, at p.211)

**Holmes v Liverpool Justices [2004] EWHC 3131 (Admin)**

If it is appropriate for the powers under section 142 to be used, and if they in truth extend to cover this sort of situation where an increase in sentence is intended [which the Court later held they did, albeit only in “very rare circumstances” – see para [43]], then the power must be exercised very speedily. (Collins J, at [26])

**R. v Reynolds [2007] EWCA Crim 538; [2007] 2 Cr. App. R. (S.) 87 (p.553)**

...this Court has made it clear that the power to increase the sentence should be exercised with care: see *Woop [2002] 2 Cr. App. R. (S.) 65* (p.281). But in our view, the power to increase the sentence would be properly exercised if the mistake was that the court had failed to appreciate for example that the “specified” offence was a “serious” offence, so that the mandatory provisions of s.225 or 227<sup>1976</sup> required an indeterminate sentence as opposed to an extended sentence. Equally the power could be exercised where the mistake was a failure to recognise the offence as a “specified” offence, as a result of which an ordinary determinate sentence or other disposal has been imposed. Whatever inhibition there may be on increasing sentences cannot apply if the court is merely seeking to comply with its statutory obligations. (Latham J, at [7])

**R. v Reynolds [2007] EWCA Crim 538; [2007] 2 Cr. App. R. (S.) 87 (p.553)**

The consequence of rescinding a sentence is that the convicted offender is, as a result of the quashing of his sentence, back before the court as a convicted but unsentenced defendant. It seems to us to follow that the court is then in the same position as it was at the time that the original sentence was imposed. It, accordingly, has all the powers it had at that time. It is difficult, therefore, to see why the court should not have jurisdiction, in accordance with *R v Annesley [1976] 1 WLR 106*, to adjourn sentence, having quashed the original sentence, if the justice of the case so requires. (Latham J, at [14])

**R. v Perkins [2013] EWCA Crim 323; [2013] 2 Cr. App. R. (S.) 72 (p.461)**

...[the s 155 PCC(S)A variation hearing] should be listed so that all the interested parties, not only the defendant, but the victims, and the public and the media may be present if they wish. This variation hearing undoubtedly took place in open court, but if no one with a direct interest in the case had any idea that it was to be listed, for those most closely concerned the hearing was effectively a private hearing. That should not happen. (Lord Judge CJ, at [32])

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<sup>1976</sup> This example is obviously no longer relevant however it serves to demonstrate the type of “mistake” that the court considered it permissible to use the power to vary a sentence to increase it.



## 5.1.2. Common law power: Variations after the statutory time limit has expired

### 5.1.2.1. Existence of the power

#### **Lawrie v Lees (1881) 7 App. Cas 19 (HL)**

There is an inherent power within every court to vary its own orders to carry out its own meaning.

#### **R. v Michael [1976] QB 414<sup>1977</sup>**

The cases show that the court can have an inherent jurisdiction to amend or rectify the order recorded in its record to make such record accord with the order intended by the court.

### 5.1.2.2. The extent of the power

#### **R. v Michael [1976] QB 414<sup>1978</sup>**

The cases show that the court has an inherent jurisdiction to amend or rectify the order recorded in its record to make such record accord with the order intended by the court.

#### **Customs and Excise Commissioners v Menocal [1980] AC 598 (HL)**

[what is now s 155 PCC(S)A 2000] lays down very clearly that any sentence or other order may be varied or rescinded by the Crown Court within 28 days (as it then was) beginning with the day on which the sentence or other order was made. There is however no power in the Crown Court to vary or rescind a sentence or any other order after the expiry of that period. (Lord Salmon, at p.607)

#### **R. v Saville (1980) 2 Cr. App. R. (S.) 26**

The judge imposed a criminal bankruptcy order but omitted to specify the amount of loss or damage arising from the offence, as required by statute. After the time limit expired, the error was drawn to the judge's attention and he made the necessary specification. The defence contended that the order was defective and it was too late to vary the order. The Court of Appeal distinguished *Customs v Menocal* (above) and were reinforced by the decision in *Michael* (above). The Lord Chief Justice said, at p.209:

Having regard to the existence of the power, having regard to the total unimportance of the alteration performed, we think that that distinguishes this case from the earlier authorities to the contrary to which I have referred. We consider the learned judge properly made the adjustment which he made and it can properly be regarded as an adjustment of an inchoate order which at that moment existed.

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<sup>1977</sup> Note that this was a first instance decision.

<sup>1978</sup> Note that this was a first instance decision.

**R. v TD [2014] EWCA Crim 2340; [2015] 1 Cr. App. R. (S.) 23 (p.168)**

The defendant had been sentenced to an extended sentence but the way in which the sentence had been articulated by the judge did not comply with the requirements of the relevant legislation. The judge then sought to vary the order outside of the permitted period, relying on *Michael* and *Saville* (both above). The defendant appealed. The Court of Appeal found that the judge had not been entitled to adjust the sentence outside of the 56-day period permitted by the Powers of Criminal Courts (Sentencing) Act 2000 s.155, notwithstanding the fact that the appellant would not have been adversely affected by the adjustment. *Customs v Menocal* (above) made clear that “any variation of substance made after the expiration of the time limit of 56 days will be of no effect” (Sir Brian Leveson PQBD, at [17]). Additionally, the variation was made without the defendant present, contrary to authority.

## 5.2 Commencement of sentence

### Sentences cannot be backdated

#### ***PCC(S)A 2000 s.154<sup>1979</sup>: Commencement of Crown Court sentence***

s.154(1) - a sentence imposed...by the Crown Court when dealing with a defendant shall take effect from the beginning of the day on which it is imposed, unless the court otherwise directs.

#### ***R. v Gilbert [1974] 60 Cr. App. R. 220***

[the authorities] lead us to the conclusion that courts of assize and quarter session did not have power to ante-date their sentences. If there was such a power, there would have been no need to resort to the legal fiction under which sentences were ordered to run from the first day. There was, and there is today, no need for the existence of a power to ante-date in order to fulfil the intention of the court in relation to sentence....in our judgment, the words of [the materially identical predecessor to s 154] do not give to the Crown Court any greater powers in relation to the date from which sentences are made to run than existed by virtue of the same words used in the earlier Acts. (James LJ, at p.224-225)

### Sentences to take effect from specified point in future

#### ***R. v Salmon [2002] EWCA Crim 2088; [2003] 1 Cr. App. R. (S.) 85 (p.441)***

...there is no power either to antedate a sentence (*Gilbert* [above]), or to make a sentence begin at some uncertain time in the future otherwise than on the expiry of another sentence. (Rix LJ, at [11])

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<sup>1979</sup> Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

## 5.3 HDC (Home Detention Curfew)

### 5.3.1. “Fixed-term prisoner”

#### **CJA 2003 s.237<sup>1980</sup>: Meaning of “fixed-term prisoner” etc**

s.237(1) - in this Chapter “fixed-term prisoner” means—

- (a) a person serving a sentence of imprisonment for a determinate term, or
- (b) a person serving a determinate sentence of detention under section 91 or 96 of the Sentencing Act or under section 226A, 226B, 227, 228 or 236A of this Act, and “fixed-term sentence” means a sentence falling within paragraph (a) or (b)

s.237(1B) - in this Chapter—

- (a) references to a sentence of imprisonment include such a sentence passed by a service court;
- (b) references to a sentence of detention under section 91 of the Sentencing Act include a sentence of detention under section 209 of the Armed Forces Act 2006;
- (ba) references to a sentence under section 226A of this Act include a sentence under that section passed as a result of section 219A of the Armed Forces Act 2006;
- (bb) references to a sentence under section 226B of this Act include a sentence under that section passed as a result of section 221A of the Armed Forces Act 2006;
- (c) references to a sentence under section 227 of this Act include a sentence under that section passed as a result of section 220 of the Armed Forces Act 2006;
- (d) references to a sentence under section 228 of this Act include a sentence under that section passed as a result of section 222 of that Act, and
- (e) references to a sentence under section 236A of this Act include a sentence under that section passed as a result of section 224A of that Act.

s.237(1C) - nothing in subsection (1B) has the effect that section 240ZA or 265 (provision equivalent to which is made by the Armed Forces Act 2006) or section 240A applies to a service court.

s.237(2) - in this Chapter, unless the context otherwise requires, “prisoner” includes a person serving a sentence falling within subsection (1)(b); and “prison” includes any place where a person serving such a sentence is liable to be detained.

s.237(3) - in this Chapter, references to a sentence of detention under section 96 of the Sentencing Act or section 226A, 227 or 236A of this Act are references to a sentence of detention in a young offender institution.

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<sup>1980</sup> Commencement: 26 January 2004, for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2, otherwise, 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.

### 5.3.2. Power to release on HDC tag

#### Power

#### ***CJA 2003 s.246<sup>1981</sup>: Power to release prisoners on licence before required to do so***

s.246(1) - subject to subsections (2) to (4), the Secretary of State may—

- (a) release on licence under this section a fixed-term prisoner at any time during the period of 135 days ending with the day on which the prisoner will have served the requisite custodial period.

#### Who is eligible?

#### ***CJA 2003 s.246<sup>1982</sup>: Power to release prisoners on licence before required to do so***

s.246(2) - subsection (1)(a) does not apply in relation to a prisoner unless—

- (a) the length of the requisite custodial period is at least 6 weeks, and
- (b) he has served—
  - (i) at least 4 weeks of that period, and
  - (ii) at least one-half of that period.

#### Exclusions

#### ***CJA 2003 s.246<sup>1983</sup>: Power to release prisoners on licence before required to do so***

s.246(4) - subsection (1) does not apply where—

- (a) the sentence is imposed under section 226A, 227, 228 or 236A,
- (aa) the sentence is for a term of 4 years or more,
- (b) the sentence is for an offence under section 1 of the Prisoners (Return to Custody) Act 1995 (c. 16),
- (c) the prisoner is subject to a hospital order, hospital direction or transfer direction under section 37, 45A or 47 of the Mental Health Act 1983 (c. 20),
- (d) the sentence was imposed by virtue of paragraph 9(1)(b) or (c) or 10(1)(b) or (c) of Schedule 8 in a case where the prisoner has failed to comply with a curfew requirement of a community order,

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<sup>1981</sup> Commencement: s.246(1)(b), (3), (4)(b) to (i), (5) and (6) in force 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. Section 246(5) otherwise in force 7 March 2005, SI 2005/373 art.2 Section 246 otherwise in force 4 April 2005, SI 2005/950 art.2, Sch.1 para.19 and Sch.2 para 14.

<sup>1982</sup> Commencement: s.246(1)(b), (3), (4)(b) to (i), (5) and (6) in force 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. Section 246(5) otherwise in force 7 March 2005, SI 2005/373 art.2 Section 246 otherwise in force 4 April 2005, SI 2005/950 art.2, Sch.1 para.19 and Sch.2 para 14.

<sup>1983</sup> Commencement: s.246(1)(b), (3), (4)(b) to (i), (5) and (6) in force 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. Section 246(5) otherwise in force 7 March 2005, SI 2005/373 art.2 Section 246 otherwise in force 4 April 2005, SI 2005/950 art.2, Sch.1 para.19 and Sch.2 para 14.

- (e) the prisoner is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c. 42),
- (f) the prisoner is liable to removal from the United Kingdom,
- (g) the prisoner has been released on licence under this section at any time, and has been recalled to prison under section 255(1)(a) (and the revocation has not been cancelled under section 255(3)),
- (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);
- (h) the prisoner has been released on licence under section 248 during the currency of the sentence, and has been recalled to prison under section 254,
- (ha) the prisoner has at any time been returned to prison under section 40 of the Criminal Justice Act 1991 or section 116 of the Sentencing Act, or
- (i) in the case of a prisoner to whom section 240ZA applies or a direction under section 240A relates, the interval between the date on which the sentence was passed and the date on which the prisoner will have served the requisite custodial period is less than 14 days.

s.246(4ZA) - where subsection (4)(aa) applies to a prisoner who is serving two or more terms of imprisonment, the reference to the term of the sentence is—

- (a) if the terms are partly concurrent, a reference to the period which begins when the first term begins and ends when the last term ends;
- (b) if the terms are to be served consecutively, a reference to the aggregate of the terms.

s.246(4A) - in subsection (4)–

- (a) the reference in paragraph (d) to a community order includes a service community order or overseas community order under the Armed Forces Act 2006; and
- (b) the reference in paragraph (i) to section 240ZA includes section 246 of that Act.

s.246(5) - the Secretary of State may by order—

- (a) amend the number of days for the time being specified in subsection (1)(a) or (4)(i),
- (b) amend the number of weeks for the time being specified in subsection (2)(a) or (b)(i), and
- (c) amend the fraction for the time being specified in subsection (2)(b)(ii).

## Interpretation

### **CJA 2003 s.246<sup>1984</sup>: Power to release prisoners on licence before required to do so**

s.246(6) - in this section—

*“the requisite custodial period”* in relation to a person serving any sentence, has the meaning given by paragraph (a) or (b) of section 243A(3) or (as the case may be) paragraph (a) or (d) of section 244(3);

*“term of imprisonment”* includes a determinate sentence of detention under section 91 or 96 of the Sentencing Act or under section 226A, 226B, 227, 228 or 236A of this Act.

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<sup>1984</sup> Commencement: s.246(1)(b), (3), (4)(b) to (i), (5) and (6) in force 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. Section 246(5) otherwise in force 7 March 2005, SI 2005/373 art.2 Section 246 otherwise in force 4 April 2005, SI 2005/950 art.2, Sch.1 para.19 and Sch.2 para 14.

## 5.4 Release

### 5.4.1. “Fixed-term prisoner”

#### **CJA 2003 s.237<sup>1985</sup>: Meaning of “fixed-term prisoner” etc**

s.237(1) - in this Chapter “fixed-term prisoner” means—

- (a) a person serving a sentence of imprisonment for a determinate term, or
- (b) a person serving a determinate sentence of detention under section 91 or 96 of the Sentencing Act or under section 226A, 226B, 227, 228 or 236A of this Act, and “fixed-term sentence” means a sentence falling within paragraph (a) or (b)

s.237(1B) - in this Chapter—

- (a) references to a sentence of imprisonment include such a sentence passed by a service court;
- (b) references to a sentence of detention under section 91 of the Sentencing Act include a sentence of detention under section 209 of the Armed Forces Act 2006;
- (ba) references to a sentence under section 226A of this Act include a sentence under that section passed as a result of section 219A of the Armed Forces Act 2006;
- (bb) references to a sentence under section 226B of this Act include a sentence under that section passed as a result of section 221A of the Armed Forces Act 2006;
- (c) references to a sentence under section 227 of this Act include a sentence under that section passed as a result of section 220 of the Armed Forces Act 2006;
- (d) references to a sentence under section 228 of this Act include a sentence under that section passed as a result of section 222 of that Act, and
- (e) references to a sentence under section 236A of this Act include a sentence under that section passed as a result of section 224A of that Act.

s.237(1C) - nothing in subsection (1B) has the effect that section 240ZA or 265 (provision equivalent to which is made by the Armed Forces Act 2006) or section 240A applies to a service court.

s.237(2) - in this Chapter, unless the context otherwise requires, “prisoner” includes a person serving a sentence falling within subsection (1)(b); and “prison” includes any place where a person serving such a sentence is liable to be detained.

s.237(3) - in this Chapter, references to a sentence of detention under section 96 of the Sentencing Act or section 226A, 227 or 236A of this Act are references to a sentence of detention in a young offender institution.

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<sup>1985</sup> Commencement: 26 January 2004, for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2, otherwise, 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.



## 5.4.2. Unconditional release

### Applicability

#### **CJA 2003 s.243A<sup>1986</sup>: Duty to release certain prisoners serving less than 12 months**

s.243A(1) - this section applies to a fixed-term prisoner if—

- (a) the prisoner is serving a sentence which is for a term of 1 day, or
- (b) the prisoner—
  - (i) is serving a sentence which is for a term of less than 12 months, and
  - (ii) is aged under 18 on the last day of the requisite custodial period.

(1A) This section also applies to a fixed-term prisoner if—

- (a) the prisoner is serving a sentence which is for a term of less than 12 months, and
- (b) the sentence was imposed in respect of an offence committed before the day on which section 1 of the Offender Rehabilitation Act 2014 came into force.

s.243A(2) - as soon as a prisoner to whom this section applies has served the requisite custodial period for the purposes of this section, it is the duty of the Secretary of State to release that person unconditionally.

s.243A(3) - for the purposes of this section “*the requisite custodial period*” is—

- (a) in relation to a person serving one sentence, one-half of the sentence, 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).

s.243A(4) - this section is subject to—

- (a) section 256B (supervision of young offenders after release), and
- (b) paragraph 8 of Schedule 20B (transitional cases).

## 5.4.3. Release on licence: Determinate sentences

#### **CJA 2003 s.244<sup>1987</sup>: Duty to release prisoners**

s.244(1) - as soon as a fixed-term prisoner, other than a prisoner to whom section 243A, 244A, 246A or 247 applies, has served the requisite custodial period for the purposes of this section, it is the duty of the Secretary of State to release him on licence under this section.

s.244(1A) - subsection (1) does not apply if the prisoner has been released on licence under section 246 or 248 and recalled under section 254 (provision for the release of such persons being made by sections 255B and 255C).

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<sup>1986</sup> Commencement: 3 December 2012, as inserted by LASPOA 2012 s.111(1), SI 2012/2906 art.2(d).

<sup>1987</sup> Commencement: Section 244(1), (2) and (3)(c) and (d) in force 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. Section 244(1), (2) and (3)(a) and (d) otherwise in force 4 April 2005, SI 2005/950 art.2, Sch.1 para.19 and Sch.2. Otherwise not in force.

- s.244(3) - for the purposes of this section “*the requisite custodial period*” means—
- (a) in relation to a prisoner serving one sentence, one-half of his sentence,
  - (d) in relation to a person serving two or more concurrent or consecutive sentences, the period determined under sections 263(2) and 264(2).
- s.244(4) - this section is subject to paragraphs 5, 6, 8, 25 and 28 of Schedule 20B (transitional cases).

#### 5.4.4. Release on licence: Extended sentences

##### Extended determinate sentences

##### ***CJA 2003 s.246A<sup>1988</sup>: Release on licence of prisoners serving extended sentence under section 226A or 226B***

- s.246A(1) - this section applies to a prisoner (“P”) who is serving an extended sentence imposed under section 226A or 226B.
- s.246A(2) - it is the duty of the Secretary of State to release P on licence under this section as soon as P has served the requisite custodial period for the purposes of this section if—
- (a) the sentence was imposed before the coming into force of section 4 of the Criminal Justice and Courts Act 2015,
  - (b) the appropriate custodial term is less than 10 years, and
  - (c) the sentence was not imposed in respect of an offence listed in Parts 1 to 3 of Schedule 15B or in respect of offences that include one or more offences listed in those Parts of that Schedule.
- s.246A(3) - in any other case, it is the duty of the Secretary of State to release P on licence in accordance with subsections (4) to (7).
- s.246A(4) - the Secretary of State must refer P’s case to the Board—
- (a) as soon as P has served the requisite custodial period, and
  - (b) where there has been a previous reference of P’s case to the Board under this subsection and the Board did not direct P’s release, not later than the second anniversary of the disposal of that reference.
- s.246A(5) - it is the duty of the Secretary of State to release P on licence under this section as soon as—
- (a) P has served the requisite custodial period, and
  - (b) the Board has directed P’s release under this section.
- s.246A(6) - the Board must not give a direction under subsection (5) unless—
- (a) the Secretary of State has referred P’s case to the Board, and
  - (b) the Board is satisfied that it is no longer necessary for the protection of the public that P should be confined.

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<sup>1988</sup> Commencement: 3 December 2012, as inserted by LASPOA 2012 s.125(3), SI 2012/2906 art.2(e).

s.246A(7) - it is the duty of the Secretary of State to release P on licence under this section as soon as P has served the appropriate custodial term, unless P has previously been released on licence under this section and recalled under section 254 (provision for the release of such persons being made by section 255C).

(8) For the purposes of this section—

*“appropriate custodial term”* means the term determined as such by the court under section 226A or 226B (as appropriate);

*“the requisite custodial period”* means—

- (a) in relation to a person serving one sentence, two-thirds 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).

*Note: This section was amended by CJA 2015 s.4. There was a previous release regime for extended sentences under CJA 2003 ss.226A and 226B. That section has not been included in this document.*

### **Extended sentences under the 2003 Act**

#### **CJA 2003 s.247<sup>1989</sup>: Release on licence of prisoner serving extended sentence under section 227 or 228**

s.247(1) - this section applies to a prisoner who is serving an extended sentence imposed under section 227 or 228.

s.247(2) - as soon as—

- (a) a prisoner to whom this section applies has served the requisite custodial period, it is the duty of the Secretary of State to release him on licence.

s.247(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).

s.247(8) - in its application to a person serving a sentence imposed before 14 July 2008, this section is subject to the modifications set out in paragraph 15 of Schedule 20B (transitional cases).

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<sup>1989</sup> Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.

### 5.4.5. Release on licence: Offenders of particular concern

#### **CJA 2003 s.244A<sup>1990</sup>: Release on licence of prisoners serving sentence under section 236A**

s.244A(1) - this section applies to a prisoner (“P”) who is serving a sentence imposed under section 236A.

s.244A(2) - the Secretary of State must refer P’s case to the Board—

- (a) as soon as P has served the requisite custodial period, and
- (b) where there has been a previous reference of P’s case to the Board under this subsection and the Board did not direct P’s release, not later than the second anniversary of the disposal of that reference.

s.244A(3) - it is the duty of the Secretary of State to release P on licence under this section as soon as—

- (a) P has served the requisite custodial period, and
- (b) the Board has directed P’s release under this section.

s.244A(4) - the Board must not give a direction under subsection (3) unless—

- (a) the Secretary of State has referred P’s case to the Board, and
- (b) the Board is satisfied that it is not necessary for the protection of the public that P should be confined.

s.244A(5) - it is the duty of the Secretary of State to release P on licence under this section as soon as P has served the appropriate custodial term, unless P has previously been released on licence under this section and recalled under section 254 (provision for the release of such persons being made by sections 255A to 255C).

s.244A(6) - for the purposes of this section—

*“the appropriate custodial term”* means the term determined as such by the court under section 236A;

*“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).

### 5.4.6. Release on licence: Life sentences

#### **C(S)A 1997 s.28<sup>1991</sup>: Duty to release certain life prisoners**

s.28(1A) - this section applies to a life prisoner in respect of whom a minimum term order has been made; and any reference in this section to the relevant part of such a prisoner’s sentence is a reference to the part of the sentence specified in the order.

s.28(1B) - but if a life prisoner is serving two or more life sentences—

- (a) this section does not apply to him unless a minimum term order has been made in respect of each of those sentences; and

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<sup>1990</sup> Commencement: 13 April 2015, SI 2015/778 art.3 and Sch.1 para.72.

<sup>1991</sup> Commencement: 1 October 1997, SI 1997/2200 art.2(1)(f).

- (b) the provisions of subsections (5) to (8) below do not apply in relation to him until he has served the relevant part of each of them.

s.28(5) - as soon as—

- (a) a life prisoner to whom this section applies has served the relevant part of his sentence,
  - (b) the Parole Board has directed his release under this section,
- it shall be the duty of the Secretary of State to release him on licence.

s.28(6) - the Parole Board shall not give a direction under subsection (5) above with respect to a life prisoner to whom this section applies unless—

- (a) the Secretary of State has referred the prisoner's case to the Board; and
- (b) the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.

s.28(7) - a life prisoner to whom this section applies may require the Secretary of State to refer his case to the Parole Board at any time—

- (a) after he has served the relevant part of his sentence; and
- (b) where there has been a previous reference of his case to the Board, after the end of the period of two years beginning with the disposal of that reference; and
- (c) where he is also serving a sentence of imprisonment or detention for a term, after he has served one-half of that sentence;

and in this subsection "*previous reference*" means a reference under subsection (6) above or section 32(4) below.

s.28(8) - in determining for the purpose of subsection (5) or (7) above whether a life prisoner to whom this section applies has served the relevant part of his sentence, no account shall be taken of any time during which he was unlawfully at large within the meaning of section 49 of the Prison Act 1952.

s.28(8A) - in this section "*minimum term order*" means an order under—

- (a) subsection (2) of section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 (determination of minimum term in respect of life sentence that is not fixed by law), or
- (b) subsection (2) of section 269 of the Criminal Justice Act 2003 (determination of minimum term in respect of mandatory life sentence).

### **C(S)A 1997 s.34<sup>1992</sup>: Interpretation of Chapter II**

s.34(1) - in this Chapter "*life prisoner*" means a person serving one or more life sentences and includes a transferred life prisoner as defined by section 273 of the Criminal Justice Act 2003

s.34(2) - in this section "*life sentence*" means any of the following imposed for an offence, whether committed before or after the commencement of this Chapter, namely—

- (a) a sentence of imprisonment for life;
- (b) a sentence of detention during Her Majesty's pleasure or for life under section 90 or 91 of the Powers of Criminal Courts (Sentencing) Act 2000; and

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<sup>1992</sup> Commencement: 1 October 1997, SI 1997/2200 art.2(1)(f).

- (c) a sentence of custody for life under section 93 or 94 of that Act
- (d) a sentence of imprisonment or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (including one passed as a result of section 219 of the Armed Forces Act 2006),
- (e) a sentence of detention for public protection under section 226 of that Act (including one passed as a result of section 221 of the Armed Forces Act 2006);
- (f) a sentence of detention for life under section 209 of the Armed Forces Act 2006;
- (g) a sentence under section 218 of that Act (detention at Her Majesty's pleasure).

s.34(4) - where a person has been sentenced to one or more life sentences and to one or more terms of imprisonment, nothing in this Chapter shall require the Secretary of State to release the person in respect of any of the life sentences unless and until the Secretary of State is required to release him in respect of each of the terms.

### 5.4.7. Release on licence: Compassionate grounds

#### Fixed term prisoners

#### **CJA 2003 s.237<sup>1993</sup>: Meaning of “fixed-term prisoner” etc**

s.237(1) - in this Chapter “fixed-term prisoner” means—

- (a) a person serving a sentence of imprisonment for a determinate term, or
- (b) a person serving a determinate sentence of detention under section 91 or 96 of the Sentencing Act or under section 226A, 226B, 227, 228 or 236A of this Act, and “fixed-term sentence” means a sentence falling within paragraph (a) or (b)

s.237(1B) - in this Chapter—

- (a) references to a sentence of imprisonment include such a sentence passed by a service court;
- (b) references to a sentence of detention under section 91 of the Sentencing Act include a sentence of detention under section 209 of the Armed Forces Act 2006;
- (ba) references to a sentence under section 226A of this Act include a sentence under that section passed as a result of section 219A of the Armed Forces Act 2006;
- (bb) references to a sentence under section 226B of this Act include a sentence under that section passed as a result of section 221A of the Armed Forces Act 2006;
- (c) references to a sentence under section 227 of this Act include a sentence under that section passed as a result of section 220 of the Armed Forces Act 2006;
- (d) references to a sentence under section 228 of this Act include a sentence under that section passed as a result of section 222 of that Act [, and
- (e) references to a sentence under section 236A of this Act include a sentence under that section passed as a result of section 224A of that Act.

s.237(1C) - nothing in subsection (1B) has the effect that section 240ZA or 265 (provision equivalent to which is made by the Armed Forces Act 2006) or section 240A applies to a service court.

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<sup>1993</sup> Commencement: 26 January 2004, for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2, otherwise, 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.

- s.237(2) - in this Chapter, unless the context otherwise requires, “*prisoner*” includes a person serving a sentence falling within subsection (1)(b); and “*prison*” includes any place where a person serving such a sentence is liable to be detained.
- s.237(3) - in this Chapter, references to a sentence of detention under section 96 of the Sentencing Act or section 226A, 227 or 236A of this Act are references to a sentence of detention in a young offender institution.

**CJA 2003 s.248<sup>1994</sup>: Power to release prisoners on compassionate grounds**

- s.248(1) - the Secretary of State may at any time release a fixed-term prisoner on licence if he is satisfied that exceptional circumstances exist which justify the prisoner’s release on compassionate grounds.

**Life prisoners**

**C(S)A 1997 s.34<sup>1995</sup>: Interpretation of Chapter II**

- s.34(1) - in this Chapter “*life prisoner*” means a person serving one or more life sentences and includes a transferred life prisoner as defined by section 273 of the Criminal Justice Act 2003
- s.34(2) - in this section “*life sentence*” means any of the following imposed for an offence, whether committed before or after the commencement of this Chapter, namely—
- (a) a sentence of imprisonment for life;
  - (b) a sentence of detention during Her Majesty’s pleasure or for life under section 90 or 91 of the Powers of Criminal Courts (Sentencing) Act 2000; and
  - (c) a sentence of custody for life under section 93 or 94 of that Act
  - (d) a sentence of imprisonment or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (including one passed as a result of section 219 of the Armed Forces Act 2006),
  - (e) a sentence of detention for public protection under section 226 of that Act (including one passed as a result of section 221 of the Armed Forces Act 2006);
  - (f) a sentence of detention for life under section 209 of the Armed Forces Act 2006;
  - (g) a sentence under section 218 of that Act (detention at Her Majesty’s pleasure).
- s.34(4) - where a person has been sentenced to one or more life sentences and to one or more terms of imprisonment, nothing in this Chapter shall require the Secretary of State to release the person in respect of any of the life sentences unless and until the Secretary of State is required to release him in respect of each of the terms.

**C(S)A 1997 s.30<sup>1996</sup>: Power to release life prisoners on compassionate grounds**

- s.30(1) - the Secretary of State may at any time release a life prisoner on licence if he is satisfied that exceptional circumstances exist which justify the prisoner’s release on compassionate grounds.

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<sup>1994</sup> Commencement: 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. Otherwise in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.

<sup>1995</sup> Commencement: 1 October 1997, SI 1997/2200 art.2(1)(f).

<sup>1996</sup> Commencement: 1 October 1997, SI 1997/2200 art.2(1)(f).



s.30(2) - before releasing a life prisoner under subsection (1) above, the Secretary of State shall consult the Parole Board, unless the circumstances are such as to render such consultation impracticable.

#### 5.4.8. Release on licence: Transitional cases

##### **CJA 2003 Sch.20B<sup>1997</sup>: Modifications Of Chapter 6 Of Part 12 In Certain Transitional Cases**

###### **Part 1 Introductory**

###### **Interpretation**

para.1(1) - the following provisions apply for the purposes of this Schedule.

para.1(2) - "*The commencement date*" means the date on which section 121 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force.

para.1(3) - "*The 1967 Act*" means the Criminal Justice Act 1967.

para.1(4) - "*The 1991 Act*" means the Criminal Justice Act 1991.

para.1(5) - a "*section 85 extended sentence*" means an extended sentence under section 85 of the Sentencing Act and includes (in accordance with paragraph 1(3) of Schedule 11 to that Act) a sentence under section 58 of the Crime and Disorder Act 1998.

para.1(6) - in relation to a section 85 extended sentence, "*the custodial term*" and "*the extension period*" have the meaning given by that section.

para.1(7) - references to section 86 of the Sentencing Act include (in accordance with paragraph 1(3) of Schedule 11 to that Act) section 44 of the 1991 Act as originally enacted.

para.1(8) - a "*1967 Act sentence*" is a sentence imposed before 1 October 1992.

para.1(9) - a "*1991 Act sentence*" is a sentence which is—

- (a) imposed on or after 1 October 1992 but before 4 April 2005, or
- (b) imposed on or after 4 April 2005 but before the commencement date and is either—
  - (i) imposed in respect of an offence committed before 4 April 2005, or
  - (ii) for a term of less than 12 months.

para.1(10) - a "*2003 Act sentence*" is a sentence which is—

- (a) imposed on or after the commencement date, or
- (b) imposed on or after 4 April 2005 but before the commencement date and is both—
  - (i) imposed in respect of an offence committed on or after 4 April 2005, and
  - (ii) for a term of 12 months or more.

para.1(11) - where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it is to be taken for the purposes of this Schedule to have been committed on the last of those days.

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<sup>1997</sup> Commencement: 3 December 2012, as inserted by LASPOA 2012 Sch.17 para.10.



### ***Explanation of dates***

para.2 - the following dates (which are mentioned in this Schedule) are dates on which changes to the law relating to the release and recall of prisoners came into force—

1 October 1992 is the date on which Part 2 of the 1991 Act came into force;

30 September 1998 is the date on which certain provisions of the Crime and Disorder Act 1998 came into force;

4 April 2005 is the date on which this Chapter came into force;

9 June 2008 is the date on which section 26 of the Criminal Justice and Immigration Act 2008 came into force;

14 July 2008 is the date on which certain other provisions of that Act came into force;

2 August 2010 is the date on which section 145 of the Coroners and Justice Act 2009 came into force.

### **Part 2 Prisoners Serving 1991 Act Sentences Etc**

para.3(1) - this Part applies to certain persons serving a 1991 Act sentence.

para.3(2) - this Part also applies to a person serving a 2003 Act sentence which is—

- (a) a section 85 extended sentence, or
- (b) an extended sentence imposed under section 227 or 228 before 14 July 2008.

para.3(3) - but this Part does not apply to a person who—

- (a) has been released on licence under Part 2 of the 1991 Act,
- (b) has been recalled to prison, and
- (c) (whether or not having returned to custody in consequence of that recall) is unlawfully at large on the commencement date.

### ***Duty to release on licence at two-thirds of sentence***

para.4(1) - this paragraph applies to a person in relation to whom—

- (a) all the conditions in sub-paragraph (2) are met, and
- (b) the condition in any one or more of sub-paragraphs (3) to (5) is met.

para.4(2) - the conditions in this sub-paragraph are that—

- (a) the person has been convicted of an offence committed before 4 April 2005,
- (b) the person is serving a sentence of imprisonment imposed in respect of that offence on or after 1 October 1992 but before the commencement date,
- (c) the sentence or (in the case of a section 85 extended sentence) the custodial term is for a term of 4 years or more, and
- (d) the person has not previously been released from prison on licence in respect of that sentence.

para.4(3) - the condition in this sub-paragraph is that the offence (or one of the offences) in respect of which the sentence was imposed is—

- (a) an offence specified in Schedule 15 (specified violent offences and specified sexual offences) as it had effect on 4 April 2005,
- (b) an offence under any of sections 11, 12, 15 to 18, 54 and 56 to 63 of the Terrorism Act 2000,

- (c) an offence under any of sections 47, 50 and 113 of the Antiterrorism, Crime and Security Act 2001,
- (d) an offence under section 12 of the Sexual Offences Act 1956,
- (e) an offence of aiding, abetting counselling, procuring or inciting the commission of an offence listed in any of paragraphs (b) to (d), or
- (f) an offence of conspiring or attempting to commit an offence listed in any of paragraphs (b) to (d).

para.4(4) - the condition in this sub-paragraph is that the person has served one-half of the sentence or (in the case of a section 85 extended sentence) of the custodial term before 9 June 2008.

para.4(5) - the condition in this sub-paragraph is that—

- (a) the person is serving the sentence by virtue of having been transferred to the United Kingdom in pursuance of a warrant under section 1 of the Repatriation of Prisoners Act 1984,
- (b) the warrant was issued before 9 June 2008, and
- (c) the offence (or one of the offences) for which the person is serving the sentence corresponds to murder or to any offence specified in Schedule 15 as it had effect on 4 April 2005.

para.5(1) - as soon as a person to whom paragraph 4 applies has served two-thirds of the sentence, it is the duty of the Secretary of State to release the person on licence under this paragraph.

para.5(2) - if the person is serving a section 85 extended sentence, the reference in sub-paragraph (1) to two-thirds of the sentence is a reference to two-thirds of the custodial term.

para.5(3) - sub-paragraphs (1) and (2) apply in place of section 244 (release on licence of prisoners serving 12 months or more).

#### ***Duty to release on direction of Parole Board***

para.6(1) After a person to whom paragraph 4 applies has served one-half of the sentence, the Secretary of State must, if directed to do so by the Board, release the person on licence under this paragraph.

para.6(2) - the Board must not give a direction under sub-paragraph (1) unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined.

para.6(3) - if the person is serving a section 85 extended sentence, the reference in sub-paragraph (1) to one-half of the sentence is a reference to one-half of the custodial term.

para.6(4) - sub-paragraphs (1) to (3) apply in place of section 244 (release on licence of prisoners serving 12 months or more).

#### ***Release on licence at one-half of sentence: section 85 extended sentence prisoners***

para.7(1) - this paragraph applies to a person if—

- (a) the person has been convicted of an offence committed on or after 30 September 1998 but before 4 April 2005,

- (b) the person is serving a section 85 extended sentence in respect of that offence,
- (c) the person has not previously been released from prison on licence in respect of that sentence, and
- (d) paragraph 4 does not apply to the person.

para.8(1) - as soon as a person to whom paragraph 7 applies has served one half of the custodial term, it is the duty of the Secretary of State to release the person on licence under this paragraph.

para.8(2) - sub-paragraph (1) applies in place of section 243A or 244, as the case may be (release of prisoners serving less than 12 months, or serving 12 months or more).

***Duty to release unconditionally at three-quarters of sentence***

para.9(1) - this paragraph applies to a person if—

- (a) the person has been convicted of an offence committed before 30 September 1998,
- (b) the person is serving a sentence of imprisonment imposed in respect of that offence on or after 1 October 1992,
- (c) the sentence is for a term of 12 months or more,
- (d) the person has been released on licence under Part 2 of the 1991 Act, and
- (e) the person has been recalled before 14 July 2008 (and has not been recalled after that date).

para.9(2) - but this paragraph does not apply if the court by which the person was sentenced ordered that section 86 of the Sentencing Act (extension of periods in custody and on licence in the case of certain sexual offences) should apply.

para.10 - as soon as a person to whom paragraph 9 applies would (but for the earlier release) have served three-quarters of the sentence, it is the duty of the Secretary of State to release the person unconditionally.

***Duty to release on licence at three-quarters of sentence***

para.11(1) - this paragraph applies to a person who—

- (a) has been convicted of an offence committed on or after 30 September 1998 but before 4 April 2005,
- (b) is serving a sentence of imprisonment for a term of 12 months or more imposed in respect of that offence,
- (c) has been released on licence under Part 2 of the 1991 Act, and
- (d) has been recalled before 14 July 2008 (and has not been recalled after that date).

para.11(2) - but this paragraph does not apply if the person has been released and recalled more than once.

para.11(3) - nor does this paragraph apply if the sentence is a section 85 extended sentence (paragraph 13 applying to such a case instead).

para.12 - as soon as a person to whom paragraph 11 applies would (but for the earlier release) have served three-quarters of the sentence, it is the duty of the Secretary of State to release the person on licence.

***Release on licence: re-release of section 85 extended sentence prisoners***

para.13(1) - this paragraph applies to a person who—

- (a) has been convicted of an offence committed on or after 30 September 1998 but before 4 April 2005,
- (b) is serving a section 85 extended sentence imposed in respect of that offence,
- (c) has been released on licence under Part 2 of the 1991 Act, and
- (d) has been recalled before 14 July 2008 (and has not been recalled after that date).

para.13(2) - but this paragraph does not apply if the person has been released and recalled more than once.

para.14(1) - if a person to whom paragraph 13 applies is serving a sentence with a custodial term of less than 12 months, it is the duty of the Secretary of State to release the person on licence as soon as the person would (but for the earlier release) have served the period found by adding—

- (a) one-half of the custodial term, and
- (b) the extension period.

para.14(2) - if a person to whom paragraph 13 applies is serving a sentence with a custodial term of 12 months or more, it is the duty of the Secretary of State to release the person on licence as soon as the person would (but for the earlier release) have served the period found by adding—

- (a) three-quarters of the custodial term, and
- (b) the extension period.

***Release of section 227 or 228 extended sentence prisoners: Parole Board direction***

para.15(1) - this paragraph applies to a person (“P”) who is serving an extended sentence imposed under section 227 or 228 before 14 July 2008.

para.15(2) - section 247 (release of prisoner on licence) applies to P with the following modifications.

para.15(3) - the Secretary of State must not release P under subsection (2) of that section unless the Board has directed P’s release under that subsection.

para.15(4) - the Board must not give a direction under sub-paragraph (3) unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined.

para.15(5) - as soon as P has served the appropriate custodial term, the Secretary of State must release P on licence, unless P has previously been recalled under section 254.

***Licence to remain in force to three-quarters of sentence***

para.16(1) - this paragraph applies to a person to whom paragraph 4 applies.

para.16(2) - this paragraph also applies to a person if—

- (a) the person has been convicted of an offence committed before 4 April 2005,
- (b) the person is serving a sentence of imprisonment imposed in respect of that offence on or after 1 October 1992 but before the commencement date,

- (c) that sentence is for a term of 12 months or more but less than 4 years, and
- (d) the person has not previously been released from prison on licence in respect of that sentence.

para.16(3) - this paragraph also applies to a person if—

- (a) the person has been convicted of an offence committed before 4 April 2005,
- (b) the person is serving a sentence of imprisonment imposed in respect of that offence on or after 1 October 1992,
- (c) that sentence is for a term of 12 months or more,
- (d) the person has been released on licence under Part 2 of the 1991 Act, and
- (e) the person has been recalled before 14 July 2008 (and has not been recalled after that date).

para.16(4) - but this paragraph does not apply if the person has been released and recalled more than once.

para.16(5) - nor does this paragraph apply if—

- (a) the person is serving a section 85 extended sentence, or
- (b) the court by which the person was sentenced ordered that section 86 of the Sentencing Act (extension of periods in custody and on licence in the case of certain sexual offences) should apply.

para.16(6) - if a person has been—

- (a) released under section 34A of the 1991 Act or section 246 (home detention curfew), and
- (b) recalled under section 38A(1)(b) of the 1991 Act or section 255(1)(b) (no longer possible to monitor curfew),

the release and recall are to be disregarded for the purposes of this paragraph.

para.17(1) - where a person to whom paragraph 16 applies is released on licence under section 244 or paragraph 5 or 6, the licence shall remain in force until the date on which the person would (but for the release) have served three-quarters of the sentence.

para.17(2) - sub-paragraph (1) is subject to any revocation under section 254.

para.17(3) - sub-paragraphs (1) and (2) apply in place of section 249 (duration of licence).

***Period for which licence to remain in force: section 85 extended sentence prisoners***

para.18 - this paragraph applies to a person who—

- (a) has been convicted of an offence committed on or after 30 September 1998 but before 4 April 2005,
- (b) is serving a section 85 extended sentence imposed in respect of that offence, and
- (c) has not previously been released from prison on licence in respect of that sentence.

para.19(1) - where a person to whom paragraph 18 applies is released on licence and the custodial term is less than 12 months, the licence shall remain in force until the end of the period found by adding—

- (a) one-half of the custodial term, and
- (b) the extension period.

para.19(2) - where a person to whom paragraph 18 applies is released on licence and the custodial term is 12 months or more, the licence shall remain in force until the end of the period found by adding—

- (a) three-quarters of the custodial term, and
- (b) the extension period.

para.19(3) - sub-paragraphs (1) and (2) are subject to any revocation under section 254.

para.19(4) - sub-paragraphs (1) to (3) apply in place of section 249 (duration of licence).

### ***Concurrent or consecutive terms***

para.20 - paragraphs 21 and 22 apply where a person (“P”) is serving two or more sentences of imprisonment imposed on or after 1 October 1992 and—

- (a) the sentences were passed on the same occasion, or
- (b) where they were passed on different occasions, the person has not been released under Part 2 of the 1991 Act or under this Chapter at any time during the period beginning with the first and ending with the last of those occasions.

para.21(1) - this paragraph applies if each of the sentences is a 1991 Act sentence.

para.21(2) - sections 263 and 264 (consecutive and concurrent terms) do not apply in relation to the sentences.

para.21(3) - for the purposes of any reference in this Chapter, however expressed, to the term of imprisonment to which P has been sentenced or which, or part of which, P has served, the terms are to be treated as a single term.

para.21(4) - if one or more of the sentences is a section 85 extended sentence—

- (a) for the purpose of determining the single term mentioned in sub-paragraph (3), the extension period or periods is or are to be disregarded, and
- (b) the period for which P is to be on licence in respect of the single term is to be increased in accordance with sub-paragraph (5).

para.21(5) - that period is to be increased—

- (a) if only one of the sentences is a section 85 extended sentence, by the extension period;
- (b) if there is more than one such sentence and they are wholly or partly concurrent, by the longest of the extension periods;
- (c) if there is more than one such sentence and they are consecutive, by the aggregate of the extension periods.

para.22(1) - this paragraph applies where two or more sentences are to be served consecutively on each other and—

- (a) one or more of those sentences is a 1991 Act sentence, and
- (b) one or more of them is a 2003 Act sentence.

para.22(2) - section 264 does not affect the length of the period which P must serve in prison in respect of the 1991 Act sentence or sentences.

para.22(3) - nothing in this Chapter requires the Secretary of State to release P until P has served a period equal in length to the aggregate of the length of the periods which P must serve in relation to each of the sentences mentioned in sub-paragraph (1).

para.22(4) - if P is also serving one or more 1967 Act sentences, paragraphs 32 and 33 apply instead of this paragraph.

### **Part 3 Prisoners Serving 1967 Act Sentences**

para.23(1) - this Part applies to certain persons serving a 1967 Act sentence.

para.23(2) - but this Part does not apply to a person who—

- (a) has been released on licence,
- (b) has been recalled to prison, and
- (c) (whether or not having returned to custody in consequence of that recall) is unlawfully at large on the commencement date.

para.23(3) - in this Part, references to release under Part 2 of the 1991 Act include release under section 60 of the 1967 Act.

### ***Sentence of more than 12 months imposed before 1 October 1992***

para.24(1) - this paragraph applies to a person if—

- (a) the person is serving a sentence of imprisonment imposed before 1 October 1992,
- (b) the sentence is for a term of more than 12 months, and
- (c) the person has not previously been released from prison on licence in respect of that sentence.

para.24(2) - this paragraph also applies to a person if—

- (a) the person is serving a sentence of imprisonment imposed before 1 October 1992,
- (b) the sentence is for a term of more than 12 months,
- (c) the person has been released on licence under Part 2 of the 1991 Act, and
- (d) the person has been recalled before 14 July 2008 (and has not been recalled after that date).

para.24(3) - but this paragraph does not apply if, on the passing of the sentence, an extended sentence certificate was issued (see paragraph 27).

para.24(4) - if a person has been—

- (a) released under section 34A of the 1991 Act or section 246 (home detention curfew), and
- (b) recalled under section 38A(1)(b) of the 1991 Act or section 255(1)(b) (no longer possible to monitor curfew),

the release and recall are to be disregarded for the purposes of this paragraph.

para.25(1) - it is the duty of the Secretary of State to release a person to whom paragraph 24 applies unconditionally under this paragraph—

- (a) in the case of a person falling within paragraph 24(1), as soon as the person has served two-thirds of the sentence;



- (b) in the case of a person falling within paragraph 24(2), as soon as the person would (but for the earlier release) have served two-thirds of the sentence.

para.25(2) - after a person falling within paragraph 24(1) has served one-third of the sentence or six months, whichever is longer, the Secretary of State must, if directed to do so by the Board, release the person on licence under this paragraph.

para.25(3) - the Board must not give a direction under sub-paragraph (2) unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined.

para.25(4) - sub-paragraphs (1) to (3) apply in place of section 244 (release on licence of prisoners serving 12 months or more).

para.26(1) - where a person to whom paragraph 24 applies is released on licence under paragraph 25(2), the licence shall remain in force until the date on which the person would (but for the release) have served two-thirds of the sentence.

para.26(2) - sub-paragraph (1) is subject to any revocation under section 254.

para.26(3) - sub-paragraphs (1) and (2) apply in place of section 249 (duration of licence).

### ***Extended sentence of more than 12 months imposed before 1 October 1992***

para.27(1) - this paragraph applies to a person if—

- (a) the person is serving a sentence of imprisonment imposed before 1 October 1992,
- (b) the sentence is for a term of more than 12 months,
- (c) on the passing of the sentence an extended sentence certificate was issued, and
- (d) the person has not previously been released from prison on licence in respect of that sentence.

para.27(2) - this paragraph also applies to a person if—

- (a) the person is serving a sentence of imprisonment imposed before 1 October 1992,
- (b) the sentence is for a term of more than 12 months,
- (c) on the passing of the sentence an extended sentence certificate was issued,
- (d) the person has been released on licence under Part 2 of the 1991 Act, and
- (e) the person has been recalled before 14 July 2008 (and has not been recalled after that date).

para.27(3) - in this paragraph “*extended sentence certificate*” means a certificate was issued under section 28 of the Powers of Criminal Courts Act 1973 (punishment of persistent offenders) stating that an extended term of imprisonment was imposed on the person under that section.

para.28(1) - it is the duty of the Secretary of State to release a person to whom paragraph 27 applies on licence under this paragraph—

- (a) in the case of a person falling within paragraph 27(1), as soon as the person has served two-thirds of the sentence;
- (b) in the case of a person falling within paragraph 27(2), as soon as the person would (but for the earlier release) have served two-thirds of the sentence.



para.28(2) - after a person falling within paragraph 27(1) has served one-third of the sentence or six months, whichever is longer, the Secretary of State must, if directed to do so by the Board, release the person on licence under this paragraph.

para.28(3) - the Board must not give a direction under sub-paragraph (2) unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined.

para.28(4) - sub-paragraphs (1) to (3) apply in place of section 244 (release on licence of prisoners serving twelve months or more).

### ***Additional days***

para.29(1) - prison rules made by virtue of section 257 may include provision for applying any provisions of this Chapter, in relation to any person falling within sub-paragraph (2), as if the person had been awarded such number of additional days as may be determined by or under the rules.

para.29(2) - a person falls within this sub-paragraph if—

- (a) the person was released on licence under section 60 of the 1967 Act before 1 October 1992 and the licence was in force on that date, or
  - (b) the person was, on that date, serving a custodial sentence,
- and (in either case) the person has forfeited any remission of the sentence.

### ***Concurrent or consecutive terms***

para.30 - paragraphs 31 to 33 apply where a person (“P”) is serving two or more sentences of imprisonment and—

- (a) the sentences were passed on the same occasion, or
- (b) where they were passed on different occasions, the person has not been released under Part 2 of the 1991 Act or under this Chapter at any time during the period beginning with the first and ending with the last of those occasions.

para.31(1) - this paragraph applies where each of the sentences is a 1967 Act sentence.

para.31(2) - sections 263 and 264 (consecutive and concurrent terms) do not apply in relation to the sentences.

para.31(3) - for the purposes of any reference in this Chapter, however expressed, to the term of imprisonment to which P has been sentenced or which, or part of which, P has served, the terms are to be treated as a single term.

para.32(1) - this paragraph applies where—

- (a) one or more of the sentences is a 1967 Act sentence, and
- (b) one or more of them is a 1991 Act sentence.

para.32(2) - sections 263 and 264 (consecutive and concurrent terms) do not apply in relation to the sentences mentioned in sub-paragraph (1).

para.32(3) - for the purposes of any reference in this Chapter, however expressed, to the term of imprisonment to which P has been sentenced or which, or part of which, P has served—

- (a) the terms mentioned in sub-paragraph (1) are to be treated as a single term, and

(b) that single term is to be treated as if it were a 1967 Act sentence.

para.32(4) - if one or more of the sentences is a section 85 extended sentence—

- (a) for the purpose of determining the single term mentioned in sub-paragraph (3), the extension period or periods is or are to be disregarded, and
- (b) the period for which P is to be on licence in respect of the single term is to be increased in accordance with sub-paragraph (5).

para.32(5) - that period is to be increased—

- (a) if only one of the sentences is a section 85 extended sentence, by the extension period;
- (b) if there is more than one such sentence and they are wholly or partly concurrent, by the longest of the extension periods;
- (c) if there is more than one such sentence and they are consecutive, by the aggregate of the extension periods.

para.32(6) - if P is also serving a 2003 Act sentence, sub-paragraph (3) is to be applied before the period mentioned in section 263(2)(c) (concurrent terms) or paragraph 33(3) (consecutive terms) is calculated.

para.33(1) - this paragraph applies where two or more sentences are to be served consecutively on each other and—

- (a) one or more of those sentences is a 1967 Act sentence, and
- (b) one or more of them is a 2003 Act sentence.

para.33(2) - section 264 does not affect the length of the period which P must serve in prison in respect of the 1967 Act sentence or sentences.

para.33(3) - nothing in this Chapter requires the Secretary of State to release P until P has served a period equal in length to the aggregate of the length of the periods which P must serve in relation to each of the sentences mentioned in sub-paragraph (1).

## **Part 4 Provisions Applying Generally**

### ***Licence conditions***

para.34(1) - this paragraph applies to any licence (a “Parole Board licence”) which falls within sub-paragraph (2) or (3).

para.34(2) - a licence falls within this sub-paragraph if—

- (a) it is or was granted to a person (“P”) on P’s release (at any time) on the recommendation or direction of the Board, and
- (b) P has not been released otherwise than on such a recommendation or direction.

para.34(3) - a licence falls within this sub-paragraph if—

- (a) it is or was granted to a person (“P”) on P’s release (at any time), and
- (b) condition A or condition B is met.

para.34(4) - condition A is that, before 2 August 2010, the Board exercised the function under section 37(5) of the 1991 Act of making recommendations as to any condition to be included or inserted as a condition in a licence granted to P (including by making a recommendation that no condition should be included in such a licence).

para.34(5) - condition B is that, before 2 August 2010—

- (a) P was released on licence under section 33(2), (3) or (3A) or 35(1) of the 1991 Act, and
- (b) the Board exercised the function under section 37(5) of that Act of—
  - (i) making recommendations as to the inclusion or insertion of a condition in a licence granted to P (including by making a recommendation that no condition should be included in such a licence), or
  - (ii) making recommendations as to the variation or cancellation of any such condition (including a recommendation that the condition should not be varied or cancelled).

para.34(6) - the Secretary of State must not—

- (a) include on release, or subsequently insert, a condition in a Parole Board licence, or
- (b) vary or cancel any such condition,  
except in accordance with directions of the Board.

### ***Fine defaulters and contemnors***

para.35(1) - this paragraph applies to any person if—

- (a) the person has been committed to prison or to be detained under section 108 of the Sentencing Act—
  - (i) in default of payment of a sum adjudged to be paid by a conviction, or
  - (ii) for contempt of court or any kindred offence,
- (b) the person was so committed or detained before 4 April 2005, and
- (c) the term for which the person was committed or detained is 12 months or more.

para.35(2) - as soon as a person to whom this paragraph applies has served two-thirds of the term, it is the duty of the Secretary of State to release the person unconditionally.

para.35(3) - sub-paragraph (2) applies in place of section 258(2) (early release of fine defaulters and contemnors).

### ***Early removal of prisoners liable to removal from UK***

para.36(1) - this paragraph applies to any person who—

- (a) has served one-half of a sentence of imprisonment, and
- (b) has not been released on licence under this Chapter.

para.36(2) - the reference in sub-paragraph (1)(a) to one-half of a sentence is—

- (a) in the case of a section 85 extended sentence, a reference to one-half of the custodial term;
- (b) in the case of an extended sentence imposed under section 227 or 228, a reference to one-half of the appropriate custodial term.

para.37(1) - if a person to whom paragraph 36 applies—

- (a) is liable to removal from the United Kingdom, and
- (b) has not been removed from prison under section 260 during the period mentioned in subsection (1) of that section,

the Secretary of State may remove the person from prison under that section at any time after the end of that period.

para.37(2) - sub-paragraph (1) applies whether or not the Board has directed the person's release under paragraph 6, 15, 25 or 28.

## 5.4.9. Supervision and the licence period

### 5.4.9.1. Fixed term prisoners

#### Licence period

##### **CJA 2003 s.249<sup>1998</sup>: Duration of licence**

s.249(1) - subject to subsection (3), where a fixed-term prisoner, other than one to whom section 243A applies, is released on licence, the licence shall, subject to any revocation under section 254 or 255, remain in force for the remainder of his sentence.

s.249(1A) - where a prisoner to whom section 243A applies is released on licence, the licence shall, subject to any revocation under section 254 or 255, remain in force until the date on which, but for the release, the prisoner would have served one-half of the sentence.

This is subject to subsection (3).

s.249(3) - subsections (1) and (1A) have effect subject to section 263(2) (concurrent terms) and sections 264(3C)(a) and 264B (consecutive terms).

s.249(5) - this section is subject to paragraphs 17, 19 and 26 of Schedule 20B (transitional cases).

##### **CJA 2003 s.250<sup>1999</sup>: Licence conditions**

s.250(1) - in this section—

(a) “*the standard conditions*” means such conditions as may be prescribed for the purposes of this section as standard conditions, and

(b) “*prescribed*” means prescribed by the Secretary of State by order.

s.250(4) - any licence under this Chapter in respect of a prisoner serving a sentence of imprisonment or detention in a young offender institution (including a sentence imposed under section 226A, 227 or 236A) or any sentence of detention under section 91 or 96 of the Sentencing Act or section 226A, 226B, 227, 228 or 236A of this Act—

(a) must include the standard conditions, and

(b) may include—

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<sup>1998</sup> Commencement: 26 January 2004, for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. Otherwise in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.

<sup>1999</sup> Commencement: Section 250(1) to (3) and (5) to (8) in force 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. Section 250(1), (2)(b)(ii), (4)(b)(ii) and (8) in force so far as not already in force 7 March 2005, SI 2005/373 art.2(n). Section 250(1) and (4) to (7) in force so far as not already in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.

- (i) any condition authorised by section 62, 64 or 64A of the Criminal Justice and Court Services Act 2000 or section 28 of the Offender Management Act 2007, and
- (ii) such other conditions of a kind prescribed by the Secretary of State for the purposes of this paragraph as the Secretary of State may for the time being specify in the licence.

s.250(5) - a licence under section 246 must also include a curfew condition complying with section 253.

s.250(5A) - subsection (5B) applies to a licence granted, either on initial release or after recall to prison, to—

- (a) 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), or
- (b) a prisoner serving a sentence imposed under section 236A.

s.250(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.

s.250(8) - in exercising his powers to prescribe standard conditions or the other conditions referred to in subsection (4)(b)(ii), the Secretary of State must have regard to the following purposes of the supervision of offenders while on licence under this Chapter—

- (a) the protection of the public,
- (b) the prevention of re-offending, and
- (c) securing the successful re-integration of the prisoner into the community.

**CJA 2003 s.252<sup>2000</sup>: Duty to comply with licence conditions**

s.252(1) - a person subject to a licence under this Chapter must comply with such conditions as may for the time being be specified in the licence.

s.252(2) - but where—

- (a) the licence relates to a sentence of imprisonment passed by a service court, and
- (c) the person is residing outside the British Islands,

the conditions specified in the licence apply to him only so far as it is practicable for him to comply with them where he is residing.

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<sup>2000</sup> Commencement: In force 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. Otherwise in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.

## Supervision

### **CJA 2003 s.256AA<sup>2001</sup>: Supervision after end of sentence of prisoners serving less than 2 years**

- s.256AA(1) - this section applies where a person (“the offender”) has served a fixed term sentence which was for a term of more than 1 day but less than 2 years, except where—
- (a) the offender was aged under 18 on the last day of the requisite custodial period (as defined in section 243A(3)),
  - (b) the sentence was an extended sentence imposed under section 226A or 226B,
  - (ba) the sentence was imposed under section 236A, or
  - (c) the sentence was imposed in respect of an offence committed before the day on which section 2(2) of the Offender Rehabilitation Act 2014 came into force.
- s.256AA(2) - the offender must comply with the supervision requirements during the supervision period, except at any time when the offender is—
- (a) in legal custody,
  - (b) subject to a licence under this Chapter or Chapter 2 of Part 2 of the 1997 Act, or
  - (c) subject to DTO supervision.
- s.256AA(3) - the supervision requirements are the requirements for the time being specified in a notice given to the offender by the Secretary of State (but see the restrictions in section 256AB).
- s.256AA(4) - “*The supervision period*” is the period which—
- (a) begins on the expiry of the sentence, and
  - (b) ends on the expiry of the period of 12 months beginning immediately after the offender has served the requisite custodial period (as defined in section 244(3)).
- s.256AA(5) - the purpose of the supervision period is the rehabilitation of the offender.
- s.256AA(6) - the Secretary of State must have regard to that purpose when specifying requirements under this section.
- s.256AA(7) - the supervisor must have regard to that purpose when carrying out functions in relation to the requirements.
- s.256AA(8) - in this Chapter, “*the supervisor*”, in relation to a person subject to supervision requirements under this section, means a person who is for the time being responsible for discharging the functions conferred by this Chapter on the supervisor in accordance with arrangements made by the Secretary of State.
- s.256AA(9) - in relation to a person subject to supervision requirements under this section following a sentence of detention under section 91 of the Sentencing Act, the supervisor must be—
- (a) an officer of a provider of probation services, or
  - (b) a member of the youth offending team established by the local authority in whose area the offender resides for the time being.

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<sup>2001</sup> Commencement: 1 February 2015, as inserted by ORA 2015 s.2, SI 2015/40 art.2(b).

s.256AA(10) - in relation to any other person, the supervisor must be an officer of a provider of probation services.

s.256AA(11) - in this section “*DTO supervision*” means supervision under—

- (a) a detention and training order (including an order under section 211 of the Armed Forces Act 2006), or
- (b) an order under section 104(3)(aa) of the Powers of Criminal Courts (Sentencing) Act 2002 (breach of supervision requirements of detention and training order).

s.256AA(12) - this section has effect subject to section 264(3C)(b) and (3D).

**CJA 2003 s.256AB<sup>2002</sup>: Supervision requirements under section 256AA**

s.256AB(1) - the only requirements that the Secretary of State may specify in a notice under section 256AA are—

- (a) a requirement to be of good behaviour and not to behave in a way which undermines the purpose of the supervision period;
- (b) a requirement not to commit any offence;
- (c) a requirement to keep in touch with the supervisor in accordance with instructions given by the supervisor;
- (d) a requirement to receive visits from the supervisor in accordance with instructions given by the supervisor;
- (e) a requirement to reside permanently at an address approved by the supervisor and to obtain the prior permission of the supervisor for any stay of one or more nights at a different address;
- (f) a requirement not to undertake work, or a particular type of work, unless it is approved by the supervisor and to notify the supervisor in advance of any proposal to undertake work or a particular type of work;
- (g) a requirement not to travel outside the British Islands, except with the prior permission of the supervisor or in order to comply with a legal obligation (whether or not arising under the law of any part of the British Islands);
- (h) a requirement to participate in activities in accordance with any instructions given by the supervisor;
- (i) a drug testing requirement (see section 256D);
- (j) a drug appointment requirement (see section 256E).

s.256AB(2) - where a requirement is imposed under subsection (1)(h), section 200A(5) to (10) apply in relation to the requirement (reading references to the responsible officer as references to the supervisor).

s.256AB(3) - paragraphs (i) and (j) of subsection (1) have effect subject to the restrictions in sections 256D(2) and 256E(2).

s.256AB(4) - the Secretary of State may by order—

- (a) add requirements that may be specified in a notice under section 256AA,
- (b) remove or amend such requirements,

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<sup>2002</sup> Commencement: 1 February 2015, as inserted by ORA 2015 Sch.1 para.1, SI 2015/40 art.2(s).



- (c) make provision about such requirements, including about the circumstances in which they may be imposed, and
- (d) make provision about instructions given for the purposes of such requirements.

s.256AB(5) - an order under subsection (4) may amend this Act.

s.256AB(6) - in this section “work” includes paid and unpaid work.

**CJA 2003 s.256AC<sup>2003</sup>: Breach of supervision requirements imposed under section 256AA**

s.256AC(1) - where it appears on information to a justice of the peace that a person has failed to comply with a supervision requirement imposed under section 256AA, the justice may—

- (a) issue a summons requiring the offender to appear at the place and time specified in the summons, or
- (b) if the information is in writing and on oath, issue a warrant for the offender’s arrest.

s.256AC(2) - any summons or warrant issued under this section must direct the person to appear or be brought—

- (a) before a magistrates’ court acting for the local justice area in which the offender resides, or
- (b) if it is not known where the person resides, before a magistrates’ court acting for the same local justice area as the justice who issued the summons or warrant.

s.256AC(3) - where the person does not appear in answer to a summons issued under subsection (1)(a), the court may issue a warrant for the person’s arrest.

s.256AC(4) - if it is proved to the satisfaction of the court that the person has failed without reasonable excuse to comply with a supervision requirement imposed under section 256AA, the court may—

- (a) order the person to be committed to prison for a period not exceeding 14 days (subject to subsection (7)),
- (b) order the person to pay a fine not exceeding level 3 on the standard scale, or
- (c) make an order (a “supervision default order”) imposing on the person—
  - (i) an unpaid work requirement (as defined by section 199), or
  - (ii) a curfew requirement (as defined by section 204).

s.256AC(5) - section 177(3) (obligation to impose electronic monitoring requirement) applies in relation to a supervision default order that imposes a curfew requirement as it applies in relation to a community order that imposes such a requirement.

s.256AC(6) - if the court deals with the person under subsection (4), it must revoke any supervision default order which is in force at that time in respect of that person.

s.256AC(7) - where the person is under the age of 21—

- (a) an order under subsection (4)(a) in respect of the person must be for committal to a young offender institution instead of to prison, but

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<sup>2003</sup> Commencement: 1 February 2015, as inserted by ORA 2015 s.3(1), SI 2015/40 art.2(c).



- (b) the Secretary of State may from time to time direct that a person committed to a young offender institution by such an order is to be detained in a prison or remand centre instead.

s.256AC(8) - a person committed to prison or a young offender institution by an order under subsection (4)(a) is to be regarded as being in legal custody.

s.256AC(9) - a fine imposed under subsection (4)(b) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.

s.256AC(10) - in Schedule 19A (supervision default orders)—

- (a) Part 1 makes provision about requirements of supervision default orders, and
- (b) Part 2 makes provision about the breach, revocation and amendment of supervision default orders.

s.256AC(11) - a person dealt with under this section may appeal to the Crown Court against —

- (a) the order made by the court under this section, and
- (b) an order made by the court under section 21A of the Prosecution of Offences Act 1985 (criminal courts charge) when dealing with the person under this section.

***CJA 2003 s.256B<sup>2004</sup>: Supervision after release of certain young offenders serving less than 12 months***

s.256B(1) - this section applies where a person (“the offender”) is released under this Chapter if—

- (a) the person is, at the time of the release, serving a sentence of detention under section 91 of the Sentencing Act which is for a term of less than 12 months, and
- (b) the person is aged under 18 on the last day of the requisite custodial period (as defined in section 243A(3)).

s.256B(1A) - this section also applies where a person (“the offender”) is released under this Chapter if—

- (a) the person is, at the time of the release, serving a sentence of detention under section 91 or 96 of the Sentencing Act which is for a term of less than 12 months, and
- (b) the sentence was imposed in respect of an offence committed before the day on which section 1 of the Offender Rehabilitation Act 2014 came into force.

s.256B(2) - the offender is to be under the supervision of—

- (a) an officer of a provider of probation services,
- (b) a social worker of a local authority, or
- (c) a member of the youth offending team.

s.256B(3) - where the supervision is to be provided by an officer of a provider of probation services, the officer must be an officer acting in the local justice area in which the offender resides for the time being.

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<sup>2004</sup> Commencement: 3 December 2012, as inserted by LASPOA 2012 s.115, SI 2012/2906 art.2(d).

s.256B(4) - where the supervision is to be provided by—

- (a) a social worker of a local authority, or
- (b) a member of a youth offending team,

the social worker or member must be a social worker of, or a member of a youth offending team established by, the local authority within whose area the offender resides for the time being.

s.256B(5) - the supervision period begins on the offender's release and ends three months later (whether or not the offender is detained under section 256C or otherwise during that period).

s.256B(6) - during the supervision period, the offender must comply with such requirements, if any, as may for the time being be specified in a notice from the Secretary of State.

s.256B(7) - the requirements that may be specified in a notice under subsection (6) include—

- (a) requirements to submit to electronic monitoring of the offender's compliance with any other requirements specified in the notice;
- (b) requirements to submit to electronic monitoring of the offender's whereabouts (otherwise than for the purpose of securing compliance with requirements specified in the notice);
- (c) where the offender is aged 18 or over—
  - (i) drug testing requirements (see section 256D);
  - (ii) drug appointment requirements (see section 256E).

s.256B(7A) - paragraph (c)(i) and (ii) of subsection (7) have effect subject to the restrictions in sections 256D(2) and 256E(2).

s.256B(9) - the Secretary of State may make rules about the requirements that may be imposed by virtue of subsection (7)(a) or (b).

**CJA 2003 s.256C<sup>2005</sup>: Breach of supervision requirements imposed under section 256B**

s.256C(1) - where an offender is under supervision under section 256B and it appears on information to a justice of the peace that the offender has failed to comply with requirements under section 256B(6), the justice may—

- (a) issue a summons requiring the offender to appear at the place and time specified in the summons, or
- (b) if the information is in writing and on oath, issue a warrant for the offender's arrest.

s.256C(2) - any summons or warrant issued under this section must direct the offender to appear or be brought—

- (a) before a court acting for the local justice area in which the offender resides, or
- (b) if it is not known where the offender resides, before a court acting for same local justice area as the justice who issued the summons or warrant.

s.256C(3) - where the offender does not appear in answer to a summons issued under subsection (1)(a), the court may issue a warrant for the offender's arrest.

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<sup>2005</sup> Commencement: 3 December 2012, as inserted by LASPOA 2012 s.115, SI 2012/2906 art.2(d).

- s.256C(4) - if it is proved to the satisfaction of the court that the offender has failed to comply with requirements under section 256B(6), the court may—
- (a) order the offender to be detained, in prison or such youth detention accommodation as the Secretary of State may determine, for such period, not exceeding 30 days, as the court may specify, or
  - (b) order the offender to pay a fine not exceeding level 3 on the standard scale.
- s.256C(5) - an offender detained in pursuance of an order under subsection (4)(a) is to be regarded as being in legal custody.
- s.256C(6) - a fine imposed under subsection (4)(b) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.
- s.256C(7) - an offender may appeal to the Crown Court against any order made under subsection (4)(a) or (b).
- s.256C(8) - in this section “*court*” means—
- (a) if the offender has attained the age of 18 years at the date of release, a magistrates’ court other than a youth court;
  - (b) if the offender is under the age of 18 years at the date of release, a youth court.

**CJA 2003 s.256D<sup>2006</sup>: Drug testing requirements**

- s.256D(1) - “*Drug testing requirement*”, in relation to an offender subject to supervision under this Chapter, means a requirement that, when instructed to do so by the supervisor, the offender provide a sample mentioned in the instruction for the purpose of ascertaining whether the offender has a specified Class A drug or a specified Class B drug in his or her body.
- s.256D(2) - a drug testing requirement may be imposed on an offender subject to supervision under this Chapter only if—
- (a) the Secretary of State is satisfied of the matters in subsection (3), and
  - (b) the requirement is being imposed for the purpose of determining whether the offender is complying with any other supervision requirement.
- s.256D(3) - those matters are—
- (a) that the misuse by the offender of a specified class A drug or a specified class B drug caused or contributed to an offence of which the offender has been convicted or is likely to cause or contribute to the commission of further offences by the offender, and
  - (b) that the offender is dependent on, or has a propensity to misuse, a specified class A drug or a specified class B drug.
- s.256D(4) - an instruction given for the purpose of a drug testing requirement must be given in accordance with guidance given from time to time by the Secretary of State.
- s.256D(5) - the Secretary of State may make rules regulating the provision of samples in accordance with such an instruction.
- s.256D(6) - in this section, “*specified Class A drug*” and “*specified Class B drug*” have the same meaning as in Part 3 of the Criminal Justice and Court Services Act 2000.

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<sup>2006</sup> Commencement: 1 February 2015, as inserted by ORA 2015 Sch.1 para.2, SI 2015/40 art.2(s).

**CJA 2003 s.256E<sup>2007</sup>: Drug appointment requirements**

- s.256E(1) - “*Drug appointment requirement*”, in relation to an offender subject to supervision under this Chapter, means a requirement that the offender, in accordance with instructions given by the supervisor, attend appointments with a view to addressing the offender’s dependency on, or propensity to misuse, a controlled drug.
- s.256E(2) - a drug appointment requirement may be imposed on an offender subject to supervision under this Chapter only if—
- (a) the supervisor has recommended to the Secretary of State that such a requirement be imposed on the offender, and
  - (b) the Secretary of State is satisfied of the matters in subsection (3).
- s.256E(3) - those matters are—
- (a) that the misuse by the offender of a controlled drug caused or contributed to an offence of which the offender has been convicted or is likely to cause or contribute to the commission of further offences by the offender,
  - (b) that the offender is dependent on, or has a propensity to misuse, a controlled drug,
  - (c) that the dependency or propensity requires, and may be susceptible to, treatment, and
  - (d) that arrangements have been made, or can be made, for the offender to have treatment.
- s.256E(4) - the requirement must specify—
- (a) the person with whom the offender is to meet or under whose direction the appointments are to take place, and
  - (b) where the appointments are to take place.
- s.256E(5) - the person specified under subsection (4)(a) must be a person who has the necessary qualifications or experience.
- s.256E(6) - the only instructions that the supervisor may give for the purposes of the requirement are instructions as to—
- (a) the duration of each appointment, and
  - (b) when each appointment is to take place.
- s.256E(7) - for the purposes of this section, references to a requirement to attend an appointment do not include a requirement to submit to treatment.
- s.256E(8) - in this section, “*controlled drug*” has the same meaning as in the Misuse of Drugs Act 1971.

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<sup>2007</sup> Commencement: 1 February 2015, as inserted by ORA 2015 Sch.1 para.2, SI 2015/40 art.2(s).

## Curfew

### **CJA 2003 s.253<sup>2008</sup>: Curfew condition to be included in licence under section 246, 255B or 255C**

- s.253(1) - for the purposes of this Chapter, a curfew condition is a condition which—
- (a) requires the released person to remain, for periods for the time being specified in the condition, at a place for the time being so specified (which may be premises approved by the Secretary of State under section 13 of the Offender Management Act 2007 (c.21)), and
  - (b) includes a requirement, imposed under section 62 of the Criminal Justice and Court Services Act 2000, to submit to electronic monitoring of his whereabouts during the periods for the time being so specified.
- s.253(2) - the curfew condition may specify different places or different periods for different days, but may not specify periods which amount to less than 9 hours in any one day (excluding for this purpose the first and last days of the period for which the condition is in force).
- s.253(3) - the curfew condition is to remain in force until the date when the released person would (but for his release) fall to be released unconditionally under section 243A or on licence under section 244.
- s.253(6) - nothing in this section is to be taken to require the Secretary of State to ensure that arrangements are made for the electronic monitoring of released persons' whereabouts in any particular part of England and Wales.

### **5.4.9.2. Life sentence prisoners**

#### **C(S)A 1997 s.31<sup>2009</sup>: Duration and conditions of licences**

- s.31(1) - where a life prisoner, other than a prisoner to whom section 31A below applies, is released on licence, the licence shall, unless previously revoked under section 32 below, remain in force until his death.
- s.31(1A) - where a prisoner to whom section 31A below applies is released on licence, the licence shall remain in force until his death unless—
- (a) it is previously revoked under section 32(1) or (2) below; or
  - (b) it ceases to have effect in accordance with an order made by the Secretary of State under section 31A below.
- s.31(2) - a life prisoner subject to a licence shall comply with such conditions as may for the time being be specified in the licence; and the Secretary of State may make rules for regulating the supervision of any description of such persons.

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<sup>2008</sup> Commencement: Section 253 in force 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. Section 253(5) otherwise in force 7 March 2005, SI 2005/373 art.2(o). Section 253 otherwise in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.

<sup>2009</sup> Commencement: 1 October 1997, SI 1997/2200 art.2(1)(f) and 5(3)(a).

- s.31(2A) - the conditions so specified shall include on the prisoner's release conditions as to his supervision by—
- (a) an officer of a local probation board appointed for or assigned to the local justice area within which the prisoner resides for the time being, or (as the case may be) an officer of a provider of probation services acting in the local justice area within which the prisoner resides for the time being;
  - (b) where the prisoner is under the age of 22, a social worker of the local authority within whose area the prisoner resides for the time being; or
  - (c) where the prisoner is under the age of 18, a member of a youth offending team established by that local authority under section 39 of the Crime and Disorder Act 1998.
- s.31(3) - the Secretary of State must not include a condition in a life prisoner's licence on release, insert a condition in such a licence or vary or cancel a condition of such a licence except—
- (a) in accordance with recommendations of the Parole Board, or
  - (b) where required to do so by an order under section 62A of the Criminal Justice and Court Services Act 2000 (compulsory electronic monitoring conditions).
- s.31(5) - the power to make rules under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- s.31(6) - in relation to a life prisoner who is liable to removal from the United Kingdom (within the meaning given by section 259 of the Criminal Justice Act 2003), subsection (2) above shall have effect as if subsection (2A) above were omitted.

***C(S)A 1997 s.31A<sup>2010</sup>: Imprisonment or detention for public protection: termination of licences***

- s.31(1) - this section applies to a prisoner who—
- (a) is serving one or more preventive sentences, and
  - (b) is not serving any other life sentence.
- s.31(2) - where—
- (a) the prisoner has been released on licence under this Chapter; and
  - (b) the qualifying period has expired,
- the Secretary of State shall, if directed to do so by the Parole Board, order that the licence is to cease to have effect.
- s.31(3) - where—
- (a) the prisoner has been released on licence under this Chapter;
  - (b) the qualifying period has expired; and
  - (c) if he has made a previous application under this subsection, a period of at least twelve months has expired since the disposal of that application,
- the prisoner may make an application to the Parole Board under this subsection.

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<sup>2010</sup> Commencement: 4 April 2005, as inserted by CJA 2003 Sch.18 para.2, SI 2005/950 art.2 and Sch.1 para.40.

- s.31(4) - where an application is made under subsection (3) above, the Parole Board—
- (a) shall, if it is satisfied that it is no longer necessary for the protection of the public that the licence should remain in force, direct the Secretary of State to make an order that the licence is to cease to have effect;
  - (b) shall otherwise dismiss the application.

- s.31(5) - in this section—

*“preventive sentence”* means a sentence of imprisonment or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 or a sentence of detention for public protection under section 226 of that Act (including such a sentence of imprisonment or detention passed as a result of section 219 or 221 of the Armed Forces Act 2006);

*“the qualifying period”*, in relation to a prisoner who has been released on licence, means the period of ten years beginning with the date of his release.



## 5.5 Recall and re-release

### 5.5.1. Fixed term prisoners

#### 5.5.1.1. Recall

##### Power to recall prisoner

##### ***CJA 2003 s.254<sup>2011</sup>: Recall of prisoners while on licence***

- s.254(1) - the Secretary of State may, in the case of any prisoner who has been released on licence under this Chapter, revoke his licence and recall him to prison.
- s.254(2) - a person recalled to prison under subsection (1)—
- (a) may make representations in writing with respect to his recall, and
  - (b) on his return to prison, must be informed of the reasons for his recall and of his right to make representations.
- s.254(2A) - the Secretary of State, after considering any representations under subsection (2)(a) or any other matters, may cancel a revocation under this section.
- s.254(2B) - the Secretary of State may cancel a revocation under subsection (2A) only if satisfied that the person recalled has complied with all the conditions specified in the licence.
- s.254(2C) - where the revocation of a person's licence is cancelled under subsection (2A), the person is to be treated as if the recall under subsection (1) had not happened.
- s.254(6) - on the revocation of the licence of any person under this section, he shall be liable to be detained in pursuance of his sentence and, if at large, is to be treated as being unlawfully at large.
- s.254(7) - nothing in this section applies in relation to a person recalled under section 255.

##### Power to recall prisoners released on HDC

##### ***CJA 2003 s.255<sup>2012</sup>: Recall of prisoners released early under section 246***

- s.255(1) - if it appears to the Secretary of State, as regards a person released on licence under section 246—
- (a) that he has failed to comply with the curfew condition included in the licence, or
  - (b) that his whereabouts can no longer be electronically monitored at the place for the time being specified in the curfew condition included in his licence,
- the Secretary of State may, if the curfew condition is still in force, revoke the licence and recall the person to prison under this section.

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<sup>2011</sup> Commencement: 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. Otherwise in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.

<sup>2012</sup> Commencement: 26 January 2004 for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, SI 2003/3282 art.2 and Sch.1. Otherwise in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19.

- s.255(2) - a person whose licence under section 246 is revoked under this section—
- (a) may make representations in writing with respect to the revocation, and
  - (b) on his return to prison, must be informed of the reasons for the revocation and of his right to make representations.
- s.255(3) - the Secretary of State, after considering any representations under subsection (2)(a) or any other matters, may cancel a revocation under this section.
- s.255(4) - where the revocation of a person's licence is cancelled under subsection (3), the person is to be treated for the purposes of section 246 as if he had not been recalled to prison under this section.
- s.255(5) - on the revocation of a person's licence under section 246, he is liable to be detained in pursuance of his sentence and, if at large, is to be treated as being unlawfully at large.

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

#### ***CJA 2003 s.255ZA<sup>2013</sup>: Offence of remaining unlawfully at large after recall***

- s.255ZA(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.
- s.255ZA(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.
- s.255ZA(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.
- s.255ZA(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.
- s.255ZA(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).

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<sup>2013</sup> Commencement: 13 April 2015, as inserted by CJCA 2015 s.12(2), SI 2015/778 art.3 and Sch.1 para.8.

- s.255ZA(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.
- s.255ZA(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.

### 5.5.1.2. Re-release

#### **CJA 2003 s.255A<sup>2014</sup>: Further release after recall: introductory**

- s.255A(1) - this section applies for the purpose of identifying which of sections 255B and 255C governs the further release of a person who has been recalled under section 254.
- s.255A(2) - the Secretary of State must, on recalling a person other than an extended sentence prisoner, consider whether the person is suitable for automatic release.
- s.255A(4) - a person is suitable for automatic release only if the Secretary of State is satisfied that the person will not present a risk of serious harm to members of the public if released at the end of [the automatic release period].
- s.255A(5) - the person must be dealt with—
- (a) in accordance with section 255B if suitable for automatic release;
  - (b) in accordance with section 255C otherwise,
- but that is subject, where applicable, to section 243A(2) (unconditional release).
- s.255A(6) - for the purposes of this section, a person returns to custody when that person, having been recalled, is detained (whether or not in prison) in pursuance of the sentence.
- s.255A(7) - an “*extended sentence prisoner*” is a prisoner serving an extended sentence imposed under—
- (a) section 226A, 226B, 227 or 228 of this Act, or
  - (b) section 85 of the Sentencing Act;
- and paragraph (b) includes (in accordance with paragraph 1(3) of Schedule 11 to the Sentencing Act) a reference to section 58 of the Crime and Disorder Act 1998.
- s.255A(8) - “*Automatic release*” means release at the end of the automatic release period.
- s.255A(9) - in the case of a person recalled under section 254 while on licence under a provision of this Chapter other than section 246, “*the automatic release period*” means—
- (a) where the person is serving a sentence of less than 12 months, the period of 14 days beginning with the day on which the person returns to custody;
  - (b) where the person is serving a sentence of 12 months or more, the period of 28 days beginning with that day.
- s.255A(10) - in the case of a person recalled under section 254 while on licence under section 246, “*the automatic release period*” means whichever of the following ends later—
- (a) the period described in subsection (9)(a) or (b) (as appropriate);

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<sup>2014</sup> Commencement: Partially commenced 14 July 2008, see SI 2008/1586 art.2(1) and Sch.1 para.15 but subsequently substituted on 3 December 2012 by LASPOA 2012 s.114, SI 2012/2906 art.2(d).

- (b) the requisite custodial period which the person would have served under section 243A or 244 but for the earlier release.

**CJA 2003 s.255B<sup>2015</sup>: Automatic release**

s.255B(1) - a prisoner who is suitable for automatic release ("P") must—

- (a) on return to prison, be informed that he or she will be released under this section (subject to subsections (8) and (9)), and
- (b) at the end of the automatic release period (as defined in section 255A(9) and (10)), be released by the Secretary of State on licence under this Chapter (unless P is released before that date under subsection (2) or (5)).

s.255B(2) - the Secretary of State may, at any time after P is returned to prison, release P again on licence under this Chapter.

s.255B(3) - the Secretary of State must not release P under subsection (2) unless the Secretary of State is 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).

s.255B(4) - if P makes representations under section 254(2) before the end of that period, the Secretary of State must refer P's case to the Board on the making of those representations.

s.255B(5) - where on a reference under subsection (4) the Board directs P's immediate release on licence under this Chapter, the Secretary of State must give effect to the direction.

s.255B(6) - subsection (7) applies if P is recalled before the date on which P would (but for the earlier release) have served the requisite custodial period for the purposes of section 243A or (as the case may be) section 244.

s.255B(7) - where this subsection applies—

- (a) if P is released under this section before that date, P's licence must include a curfew condition complying with section 253, and
- (b) P is not to be so released (despite subsections (1)(b) and (5)) unless the Secretary of State is satisfied that arrangements are in place to enable that condition to be complied with.

s.255B(8) - subsection (9) applies if, after P has been informed that he or she will be released under this section, the Secretary of State receives further information about P (whether or not relating to any time before P was recalled).

s.255B(9) - if the Secretary of State determines, having regard to that and any other relevant information, that P is not suitable for automatic release—

- (a) the Secretary of State must inform P that he or she will not be released under this section, and
- (b) section 255C applies to P as if the Secretary of State had determined, on P's recall, that P was not suitable for automatic release.

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<sup>2015</sup> Commencement: Partially commenced 14 July 2008, see SI 2008/1586 art.2(1) and Sch.1 para.15 but subsequently substituted on 3 December 2012 by LASPOA 2012 s.114, SI 2012/2906 art.2(d).

**CJA 2003 s.255C<sup>2016</sup>: Extended sentence prisoners and those not suitable for automatic release**

- s.255C(1) - this section applies to a prisoner ("P") who—
- (a) is an extended sentence prisoner, or
  - (b) is not considered to be suitable for automatic release.
- s.255C(2) - the Secretary of State may, at any time after P is returned to prison, release P again on licence under this Chapter.
- s.255C(3) - the Secretary of State must not release P under subsection (2) unless the Secretary of State is satisfied that it is not necessary for the protection of the public that P should remain in prison.
- s.255C(4) - the Secretary of State must refer P's case to the Board—
- (a) if P makes representations under section 254(2) before the end of the period of 28 days beginning with the date on which P returns to custody, on the making of those representations, or
  - (b) if, at the end of that period, P has not been released under subsection (2) and has not made such representations, at that time.
- s.255C(5) - where on a reference under subsection (4) the Board directs P's immediate release on licence under this Chapter, the Secretary of State must give effect to the direction.
- s.255C(6) - subsection (7) applies if P is recalled before the date on which P would (but for the earlier release) have served the requisite custodial period for the purposes of section 243A or (as the case may be) section 244.
- s.255C(7) - where this subsection applies—
- (a) if P is released under this section before that date, P's licence must include a curfew condition complying with section 253, and
  - (b) P is not to be so released (despite subsection (5)) unless the Secretary of State is satisfied that arrangements are in place to enable that condition to be complied with.
- s.255C(8) - for the purposes of this section, P returns to custody when P, having been recalled, is detained (whether or not in prison) in pursuance of the sentence.

**CJA 2003 s.256<sup>2017</sup>: Review by the Board**

- s.256(1) - where on a reference under section 255B(4) or 255C(4) in relation to any person, the Board does not direct his immediate release on licence under this Chapter, the Board must either—
- (a) fix a date for the person's release on licence, or
  - (b) determine the reference by making no [direction] as to his release.
- s.256(2) - any date fixed under subsection (1)(a) must not be later than the first anniversary of the date on which the decision is taken.

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<sup>2016</sup> Commencement: Partially commenced 14 July 2008, see SI 2008/1586 art.2(1) and Sch.1 para.15 but subsequently substituted on 3 December 2012 by LASPOA 2012 s.114, SI 2012/2906 art.2(d).

<sup>2017</sup> Commencement: Partially commenced 14 July 2008, see SI 2008/1586 art.2(1) and Sch.1 para.15 but subsequently substituted on 3 December 2012 by LASPOA 2012 s.114, SI 2012/2906 art.2(d).

s.256(4) - where the Board has fixed a date under subsection (1)(a), it is the duty of the Secretary of State to release him on licence on that date.

**CJA 2003 s.256A<sup>2018</sup>: Further review**

s.256A(1) - the Secretary of State must, not later than the first anniversary of a determination by the Board under section 256(1) or subsection (4) below, refer the person's case to the Board.

s.256A(2) - the Secretary of State may, at any time before that anniversary, refer the person's case to the Board.

s.256A(3) - the Board may at any time recommend to the Secretary of State that a person's case be referred under subsection (2).

s.256A(4) - on a reference under subsection (1) or (2), the Board must determine the reference by—

- (a) directing the person's immediate release on licence under this Chapter,
- (b) fixing a date for his release on licence, or
- (c) making no direction as to his release.

s.256A(5) - the Secretary of State—

- (a) where the Board makes a direction under subsection (4)(a) for the person's immediate release on licence, must give effect to the direction; and
- (b) where the Board fixes a release date under subsection (4)(b), must release the person on licence on that date.

*Note: There is a power to amend the test for re-release following recall contained in the uncommenced section 256AZA.*

## 5.5.2. Life sentence prisoners

### Power to recall prisoner released on licence

**C(S)A 1997 s.32<sup>2019</sup>: Recall of life prisoners while on licence**

s.32(1) - the Secretary of State may, in the case of any life prisoner who has been released on licence under this Chapter, revoke his licence and recall him to prison.

s.32(3) - a life prisoner recalled to prison under this section —

- (a) may make representations in writing with respect to his recall; and
- (b) on his return to prison, shall be informed of the reasons for his recall and of his right to make representations.

s.32(4) - the Secretary of State shall refer to the Parole Board—  
the case of a life prisoner recalled under this section.

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<sup>2018</sup> Commencement: Partially commenced 14 July 2008, see SI 2008/1586 art.2(1) and Sch.1 para.15 but subsequently substituted on 3 December 2012 by LASPOA 2012 s.114, SI 2012/2906 art.2(d).

<sup>2019</sup> Commencement: 1 October 1997, SI 1997/2200 art. 2(1)(f).

- s.32(5) - where on a reference under subsection (4) above the Parole Board directs the immediate release on licence under this section of the life prisoner, the Secretary of State shall give effect to the direction.
- s.32(6) - on the revocation of the licence of any life prisoner under this section, he shall be liable to be detained in pursuance of his sentence and, if at large, shall be deemed to be unlawfully at large.

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

#### ***CJA 2003 s.32ZA<sup>2020</sup>: Offence of remaining unlawfully at large after recall***

- s.32ZA(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
  - (b) while unlawfully at large fails, without reasonable excuse, to take all necessary steps to return to prison as soon as possible.
- s.32ZA(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.
- s.32ZA(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.
- s.32ZA(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.
- s.32ZA(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).
- s.32ZA(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.
- s.32ZA(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.

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<sup>2020</sup> Commencement: 13 April 2015, as inserted by CJCA 2015 s.12(1), SI 2015/778 art.3 and Sch.1 para.8.