

HALSBURY'S Laws of England

FIFTH EDITION
2013

Additional Materials: Sentencing and Disposition of Offenders (Release and Recall of Prisoners)

This additional materials booklet supplements the Fifth Edition title SENTENCING AND DISPOSITION OF OFFENDERS, contained in volume 92 (2010).

For a full list of volumes comprised in a current set of Halsbury's Laws of England please see overleaf.

Fifth Edition volumes:

1 (2008), 2 (2008), 3 (2011), 4 (2011), 6 (2011), 7 (2008), 8 (2010), 9 (2012), 10 (2012), 11 (2009), 12 (2009), 13 (2009), 14 (2009), 15 (2009), 16 (2011), 17 (2011), 18 (2009), 19 (2011), 21 (2011), 22 (2012), 23 (2013), 24 (2010), 25 (2010), 26 (2010), 27 (2010), 28 (2010), 30 (2012), 31 (2012), 32 (2012), 34 (2011), 35 (2011), 36 (2011), 39 (2009), 40 (2009), 41 (2009), 42 (2011), 43 (2011), 44 (2011), 45 (2010), 46 (2010), 48 (2008), 49 (2008), 50 (2008), 52 (2009), 53 (2009), 54 (2008), 55 (2012), 56 (2011), 57 (2012), 60 (2011), 61 (2010), 62 (2012), 63 (2012), 64 (2012), 65 (2008), 66 (2009), 67 (2008), 68 (2008), 69 (2009), 70 (2012), 71 (2013), 72 (2009), 73 (2009), 74 (2011), 75 (2013), 76 (2013), 77 (2010), 78 (2010), 79 (2008), 80 (2013), 81 (2010), 82 (2010), 83 (2010), 84 (2013), 84A (2013), 85 (2012), 87 (2012), 88 (2012), 88A (2013), 89 (2011), 90 (2011), 91 (2012), 92 (2010), 93 (2008), 94 (2008), 96 (2012), 97 (2010), 99 (2012), 100 (2009), 101 (2009), 102 (2010), 103 (2010)

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Fourth and Fifth Edition volumes:

2013 Consolidated Index (A–E), 2013 Consolidated Index (F–O), 2012 Consolidated Index (P–Z), 2013 Consolidated Table of Statutes, 2013 Consolidated Table of Statutory Instruments, etc, 2013 Consolidated Table of Cases (A–L), 2013 Consolidated Table of Cases (M–Z, ECJ Cases)

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June 2013

HALSBURY'S Laws of England

FIFTH EDITION

LORD MACKAY OF CLASHFERN

Lord High Chancellor of Great Britain
1987-97

Additional Materials:
Sentencing and Disposition of
Offenders (Release and Recall of
Prisoners)

2013



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LORD MACKAY OF CLASHFERN

LORD HIGH CHANCELLOR OF GREAT BRITAIN

1987–97

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**SENTENCING AND DISPOSITION OF OFFENDERS
(RELEASE AND RECALL OF PRISONERS)**

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The law stated in this volume is in general that in force on 1 May 2013,
although subsequent changes have been included wherever possible.

Any future updating material will be found in the Current Service and
annual Cumulative Supplement to Halsbury's Laws of England.

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HOW TO USE HALSBURY'S LAWS OF ENGLAND

Volumes

Each text volume of Halsbury's Laws of England contains the law on the titles contained in it as at a date stated at the front of the volume (the operative date).

Information contained in Halsbury's Laws of England may be accessed in several ways.

First, by using the tables of contents.

Each volume contains both a general Table of Contents, and a specific Table of Contents for each title contained in it. From these tables you will be directed to the relevant part of the work.

Readers should note that the current arrangement of titles can be found in the Current Service.

Secondly, by using tables of statutes, statutory instruments, cases or other materials.

If you know the name of the Act, statutory instrument or case with which your research is concerned, you should consult the Consolidated Tables of statutes, cases and so on (published as separate volumes) which will direct you to the relevant volume and paragraph. The Consolidated Tables will indicate if the volume referred to is a Fifth Edition volume.

(Each individual text volume also includes tables of those materials used as authority in that volume.)

Thirdly, by using the indexes.

If you are uncertain of the general subject area of your research, you should go to the Consolidated Index (published as separate volumes) for reference to the relevant volume(s) and paragraph(s). The Consolidated Index will indicate if the volume referred to is a Fifth Edition volume.

(Each individual text volume also includes an index to the material contained therein.)

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The reorganisation of the title scheme of Halsbury's Laws for the Fifth Edition means that from time to time Fourth Edition volumes will be *partially* replaced by Fifth Edition volumes.

In certain instances an Additional Materials softbound book will be issued, in which will be reproduced material which has not yet been replaced by a Fifth Edition title. This will enable users to remove specific Fourth Edition

volumes from the shelf and save valuable space pending the replacement of that material in the Fifth Edition. These softbound books are supplied to volumes subscribers free of charge. They continue to form part of the set of Halsbury's Laws Fourth Edition Reissue, and will be updated by the annual Cumulative Supplement and monthly Noter-Up in the usual way.

This additional materials booklet supplements the Fifth Edition title SENTENCING AND DISPOSITION OF OFFENDERS, contained in volume 92 (2010) and the material contain herein will form part of that title when it is republished.

Updating publications

The text volumes of Halsbury's Laws should be used in conjunction with the annual Cumulative Supplement and the monthly Noter-Up.

The annual Cumulative Supplement

The Supplement gives details of all changes between the operative date of the text volume and the operative date of the Supplement. It is arranged in the same volume, title and paragraph order as the text volumes. Developments affecting particular points of law are noted to the relevant paragraph(s) of the text volumes. As from the commencement of the Fifth Edition, the Supplement will clearly distinguish between Fourth and Fifth Edition titles.

For narrative treatment of material noted in the Cumulative Supplement, go to the Annual Abridgment volume for the relevant year.

Destination Tables

In certain titles in the annual *Cumulative Supplement*, reference is made to Destination Tables showing the destination of consolidated legislation. Those Destination Tables are to be found either at the end of the titles within the annual *Cumulative Supplement*, or in a separate *Destination Tables* booklet provided from time to time with the *Cumulative Supplement*.

The Noter-Up

The Noter-Up is contained in the Current Service Noter-Up booklet, issued monthly and noting changes since the publication of the annual Cumulative Supplement. Also arranged in the same volume, title and paragraph order as the text volumes, the Noter-Up follows the style of the Cumulative Supplement. As from the commencement of the Fifth Edition, the Noter-Up will clearly distinguish between Fourth and Fifth Edition titles.

For narrative treatment of material noted in the Noter-Up, go to the relevant Monthly Review.

REFERENCES AND ABBREVIATIONS

ACT	Australian Capital Territory
A-G	Attorney General
Admin	Administrative Court
Admlty	Admiralty Court
Adv-Gen	Advocate General
affd.....	affirmed
affg.....	affirming
Alta	Alberta
App	Appendix
art.....	article
Aust.....	Australia
B.....	Baron
BC	British Columbia
C	Command Paper (of a series published before 1900)
c	chapter number of an Act
CA.....	Court of Appeal
CAC	Central Arbitration Committee
CA in Ch.....	Court of Appeal in Chancery
CB	Chief Baron
CCA	Court of Criminal Appeal
CCR	County Court Rules 1981 (SI 1981/1687) as subsequently amended
CCR	Court for Crown Cases Reserved
C-MAC	Courts-Martial Appeal Court
CO	Crown Office
COD.....	Crown Office Digest
CPR.....	Civil Procedure Rules 1998 (SI 1998/3132) as subsequently amended (see the Civil Court Practice)
Can.....	Canada
Cd	Command Paper (of the series published 1900–18)
Cf	compare
Ch	Chancery Division
ch	chapter
cl	clause

Cm	Command Paper (of the series published 1986 to date)
Cmd	Command Paper (of the series published 1919–56)
Cmnd	Command Paper (of the series published 1956–86)
Comm	Commercial Court
Comr	Commissioner
Court Forms (2nd Edn).....	Atkin's Encyclopaedia of Court Forms in Civil Proceedings, 2nd Edn. See note 2 post.
Court Funds Rules 1987	Court Funds Rules 1987 (SI 1987/821) as subsequently amended
CrimPR	Criminal Procedure Rules 2010 (SI 2010/60) as subsequently amended
DC.....	Divisional Court
DPP	Director of Public Prosecutions
EAT	Employment Appeal Tribunal
EC	European Community
ECJ.....	Court of Justice of the European Community
EComHR.....	European Commission of Human Rights
ECSC.....	European Coal and Steel Community
ECtHR Rules of Court.....	Rules of Court of the European Court of Human Rights
EEC.....	European Economic Community
EFTA	European Free Trade Association
EWCA Civ	Official neutral citation for judgments of the Court of Appeal (Civil Division)
EWCA Crim.....	Official neutral citation for judgments of the Court of Appeal (Criminal Division)
EWHC.....	Official neutral citation for judgments of the High Court
Edn.....	Edition
Euratom	European Atomic Energy Community
Ex Ch.....	Court of Exchequer Chamber
ex p	ex parte
Fam	Family Division
Fed	Federal
Forms & Precedents (5th Edn).....	Encyclopaedia of Forms and Precedents other than Court Forms, 5th Edn. See note 2 post.
GLC	Greater London Council
HC	High Court
HC	House of Commons

HK	Hong Kong
HL.....	House of Lords
IAT.....	Immigration Appeal Tribunal
ILM.....	International Legal Materials
INLR.....	Immigration and Nationality Law Reports
IRC.....	Inland Revenue Commissioners
Ind.....	India
Int Rels.....	International Relations
Ir	Ireland
J.....	Justice
JA.....	Judge of Appeal
Kan.....	Kansas
LA	Lord Advocate
LC	Lord Chancellor
LCC.....	London County Council
LCJ.....	Lord Chief Justice
LJ	Lord Justice of Appeal
LoN.....	League of Nations
MR.....	Master of the Rolls
Man.....	Manitoba
n	note
NB.....	New Brunswick
NI.....	Northern Ireland
NS	Nova Scotia
NSW.....	New South Wales
NY	New York
NZ	New Zealand
OHIM	Office for Harmonisation in the Internal Market
OJ.....	The Official Journal of the European Community published by the Office for Official Publications of the European Community
Ont.....	Ontario
P	President
PC	Judicial Committee of the Privy Council
PEI.....	Prince Edward Island
Pat	Patents Court
q	question
QB.....	Queen's Bench Division
QBD.....	Queen's Bench Division of the High Court
Qld.....	Queensland
Que	Quebec
r.....	rule

RDC.....	Rural District Council
RPC.....	Restrictive Practices Court
RSC.....	Rules of the Supreme Court 1965 (SI 1965/1776) as subsequently amended
reg.....	regulation
Res.....	Resolution
revsd.....	reversed
Rly.....	Railway
s.....	section
SA.....	South Africa
S Aust.....	South Australia
SC.....	Supreme Court
SI.....	Statutory Instruments published by authority
SR & O.....	Statutory Rules and Orders published by authority
SR & O Rev 1904.....	Revised Edition comprising all Public and General Statutory Rules and Orders in force on 31 December 1903
SR & O Rev 1948.....	Revised Edition comprising all Public and General Statutory Rules and Orders and Statutory Instruments in force on 31 December 1948
SRNI.....	Statutory Rules of Northern Ireland
STI.....	Simon's Tax Intelligence (1973–1995); Simon's Weekly Tax Intelligence (1996-current)
Sask.....	Saskatchewan
Sch.....	Schedule
Sess.....	Session
Sing.....	Singapore
TCC.....	Technology and Construction Court
TS.....	Treaty Series
Tanz.....	Tanzania
Tas.....	Tasmania
UDC.....	Urban District Council
UKHL.....	Official neutral citation for judgments of the House of Lords
UKPC.....	Official neutral citation for judgments of the Privy Council
UN.....	United Nations
V-C.....	Vice-Chancellor
Vict.....	Victoria
W Aust.....	Western Australia
Zimb.....	Zimbabwe

NOTE 1. A general list of the abbreviations of law reports and other sources used in this work can be found at the beginning of the Consolidated Table of Cases.

NOTE 2. Where references are made to other publications, the volume number precedes and the page number follows the name of the publication; eg the reference '12 Forms & Precedents (5th Edn) 44' refers to volume 12 of the Encyclopaedia of Forms and Precedents, page 44.

NOTE 3. An English statute is cited by short title or, where there is no short title, by regnal year and chapter number together with the name by which it is commonly known or a description of its subject matter and date. In the case of a foreign statute, the mode of citation generally follows the style of citation in use in the country concerned with the addition, where necessary, of the name of the country in parentheses.

NOTE 4. A statutory instrument is cited by short title, if any, followed by the year and number, or, if unnumbered, the date.

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12. RELEASE AND RECALL OF PRISONERS

(1) INTRODUCTION

(i) Overview of Early Release Provisions

761. General overview of early release and recall arrangements. The current regimes that govern the release of prisoners on licence, and the supervision of prisoners after release, derive from the Crime (Sentences) Act 1997 (if the prisoner is serving an indeterminate sentence)¹ or the Criminal Justice Act 2003 (if the prisoner is serving a determinate sentence)². Transitional provisions govern the release and supervision of prisoners serving determinate sentences for offences committed before 4 April 2005 (that is, before the main provisions of the Criminal Justice Act 2003 were commenced)³.

Accordingly, subject to any relevant statutory guidance:

- (1) a prisoner serving a determinate sentence has his or her release on licence, and supervision after release, determined under the Criminal Justice Act 2003⁴ (but modified significantly with regard to release dates and release conditions in the case of prisoners who were sentenced in respect of offences committed before 4 April 2005⁵); and
- (2) the release of prisoners serving an indeterminate sentence (once the minimum term has been served⁶) is determined in accordance with the Crime (Sentences) Act 1997⁷.

The processes referred to under head (1) above generally take their course without the Parole Board being involved but the processes referred to under both heads (1) and (2) above generally require the Parole Board to be involved where there is a discretionary element to a prisoner's release (that is, where an assessment of risk to the public is required, either because of the nature of the sentence being served or where the prisoner is recalled and subsequently becomes eligible for re-release)⁸.

Release is available on extraordinary grounds for any prisoner regardless of these usual factors (for instance, on compassionate grounds or for medical reasons)⁹.

The process of recall (and subsequent release after recall) is governed by the Criminal Justice Act 2003 in respect of all prisoners serving determinate terms released on licence after 4 April 2005 whether or not the prisoners were released previously before that date¹⁰, except that such prisoners sentenced in respect of offences committed before 4 April 2005 are subject to transitional provisions (which have themselves been incorporated into the 2003 Act)¹¹, and the recall of prisoners serving indeterminate sentences continues to be governed by the Crime (Sentences) Act 1997¹².

¹ Ie under the Crime (Sentences) Act 1997 Pt II Ch II (ss 28–34) (life sentences) (see PARAS 770, 778 et seq). The significance of an indeterminate prison sentence is that a minimum period of detention is imposed for the purposes of punishment and deterrence, and this must be served before a prisoner becomes eligible to be considered for release by the Parole Board (see the text and note 8). Various forms of indeterminate and life sentence have been available to sentencing courts over the years, including:

(1) imprisonment for life for the offence of murder, ie a 'mandatory life sentence', where the penalty is fixed by law: see the Murder (Abolition of Death Penalty) Act 1965 s 1(1) (cited in SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 4; and CRIMINAL LAW vol 25 (2010) PARAS 15, 97); and sentences of

- detention at Her Majesty's pleasure (passed on a person convicted of murder or any other offence, the sentence for which is fixed by law as life imprisonment, who appears to the court to have been aged under 18 at the time the offence was committed) imposed under the Powers of Criminal Courts (Sentencing) Act 2000 s 90 (see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1308; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 81);
- (2) sentences of detention for life imposed under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (power to impose sentence of detention for a specified period on a person aged under 18 who has committed a serious offence: see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1307; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 78);
 - (3) life sentences imposed for a second serious offence (ie an 'automatic life sentence'), which applied to offences committed on or after 1 October 1997 and before 4 April 2005 (see the Powers of Criminal Courts (Sentencing) Act 2000 s 109 (repealed with savings); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 77);
 - (4) a sentence of imprisonment for life imposed for serious offences or a sentence of detention for life where the sentence is not fixed by law (ie a 'discretionary life sentence': see the Criminal Justice Act 2003 ss 225, 226; SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 67 et seq; and as to what constitutes a 'serious offence' for the purposes of Pt 12 Ch 5 (ss 224–236) (dangerous offenders) see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 68, 69);
 - (5) an indeterminate sentence of imprisonment for public protection (IPP) (and the equivalent sentence of detention in a young offender institution for public protection), which applied to offences committed on or after 4 April 2005 and before 3 December 2012 (see the Criminal Justice Act 2003 ss 225(3)–(4), 226(3)–(4) (both repealed with savings)).

Where a person aged 18 or over was convicted of a specified violent or sexual offence committed on or after 4 April 2005, and the court considered that there was a significant risk of serious harm to members of the public, but the court was not required to impose a sentence of imprisonment for life (or, in the case of a person aged at least 18 but under 21, a sentence of custody for life), the court had power to impose an extended sentence of imprisonment for public protection: see the Criminal Justice Act 2003 s 227 (repealed with savings); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 75. As to what constitutes 'significant risk of serious harm' for the purposes of Pt 12 Ch 5 (dangerous offenders) see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 68, 69. As to extended sentences of detention in a young offender institution passed on persons aged under 18 see s 228 (repealed with savings); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 84. As to extended sentences for violent or sexual offences committed before 4 April 2005 see the Powers of Criminal Courts (Sentencing) Act 2000 s 85 (repealed) (extended sentences for violent or sexual offences committed before 4 April 2005: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 76), references to which include, in accordance with s 165, Sch 11 para 1(3), references to a sentence under the Crime and Disorder Act 1998 s 58 (repealed) (extended sentences for violent or sexual offences committed after 30 September 1998: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 76), which applied between 30 September 1998 (ie the date on which the relevant Crime and Disorder Act 1998 provisions were brought into force by the Crime and Disorder Act 1998 (Commencement No 2 and Transitional Provisions) Order 1998, SI 1998/2327) and 3 April 2005 (after which the Criminal Justice Act 2003 applied: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 76). The Criminal Justice Act 2003 s 332, Sch 37 Pt 7 (Repeals: Sentencing), in so far as it relates to the Powers of Criminal Courts (Sentencing) Act 2000 s 85, came into force on 3 December 2012 for all remaining purposes but this has no effect in relation to a person convicted before 3 December 2012: see the Criminal Justice Act 2003 (Commencement No. 30 and Consequential Amendment) Order 2012, SI 2012/2905, art 3(2), (3). As to young offender institutions see PRISONS AND PRISONERS vol 85 (2012) PARA 487 et seq; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 85 et seq.

Most of these sentences have equivalents under legislation affecting the armed forces: see ARMED FORCES.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 has introduced further reform to the sentencing regime (see Pt 3 Ch 1 (ss 63–89) (sentencing); Pt 3 Ch 5

(ss 122–128) (dangerous offenders)) as well as to other, related subjects (such as the amount of relevant remand time to be counted towards a prisoner's sentence). Most notably, the IPP (and the equivalent sentence of detention) (see head (5) above), and the extended determinate sentences under the Criminal Justice Act 2003 ss 227, 228, were abolished and replaced with the extended determinate sentence ('EDS') for offenders convicted on or after 3 December 2012: see s 226A (for offenders aged 18 or over) (added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 124); the Criminal Justice Act 2003 s 226B (for those under 18) (added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 124); and SENTENCING AND DISPOSITION OF OFFENDERS. In the most serious cases, a sentencing court is obliged to impose a life sentence either under the Criminal Justice Act 2003 s 224A (second listed offence) (added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 122) or under the provisions mentioned at head (5) above: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 67 et seq. Prisoners serving a sentence of IPP or an extended sentence for serious offences (and the equivalent sentences of detention) imposed before 3 December 2012 will continue to be released under arrangements that remain unchanged, ie under the provisions of the Crime (Sentences) Act 1997 Pt II Ch II or the Criminal Justice Act 2003 Pt 12 Ch 6 (ss 237–268) (sentencing: release, licences and recall) (see PARAS 769, 772, 781 et seq), as appropriate. Release arrangements for EDS prisoners depend on the length of custodial term and whether the sentence was imposed in respect of an offence listed in Sch 15B Pt 1 (paras 1–44) (offences under the law of England and Wales), Sch 15B Pt 2 (paras 45–46) (further offences under the law of England and Wales) or Sch 15B Pt 3 (paras 47–48) (offences under service law) (or in respect of offences that include one or more offences listed in Sch 15B Pts 1–3) (see s 246A (added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 125); and PARA 787).

2. Ie under the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall) (see PARAS 769, 772, 781 et seq). A determinate prison sentence is where the court sets a fixed length for the prison sentence: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 29 et seq. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 introduces further reform to the determinate sentencing regime: see note 1. By virtue of s 89(2), Sch 10, it also repeals the Criminal Justice Act 2003 ss 181 to 188, Schs 10, 11 (custody plus and intermittent custody: intermittent custody having been piloted from January 2004 to November 2006 but not implemented further, and custody plus never having been implemented).
3. See the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release on licence) (see PARA 781 et seq), incorporating s 267A, Sch 20A (added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121, Sch 16) (see PARA 794; and see note 5).
4. Ie in accordance with the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall) (see PARAS 769, 772, 781 et seq).
5. Ie subject to the transitional provisions contained in the Criminal Justice Act 2003 ss 267A, 267B, Schs 20A, 20B (added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121, Schs 16, 17): see PARA 792 et seq. The Criminal Justice Act 2003 s 243A, which now deals with the release of prisoners serving sentences of under 12 months, was also added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (see s 111(1); and PARA 784); and s 111(2), Sch 14 para 17 revoked the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, art 2(1), Sch 2 para 14 (which had preserved most of the Criminal Justice Act 1991 Pt II (ss 33–51) in relation to any sentence of imprisonment of less than twelve months, whether or not such a sentence is imposed to run concurrently or consecutively with another such sentence).
6. See note 1.
7. Ie in accordance with the Crime (Sentences) Act 1997 Pt II Ch II (in respect of life prisoners within the meaning of Pt II Ch II): see PARA 778 et seq.
8. Ie the Parole Board acting under the Criminal Justice Act 2003 s 239 (see PARA 772) in respect of the functions conferred on it by Pt 12 Ch 6 (sentencing: release, licences and recall) (see PARAS 769, 772, 781 et seq) in respect of fixed-term prisoners and by the Crime (Sentences) Act 1997 Pt II Ch II (life sentences) (see PARAS 770, 778 et seq) in respect of prisoners serving indeterminate sentences.

The decisions made by the Parole Board may be challenged under common law requirements of procedural fairness or under the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (Rome, 4 November 1950; TS 71 (1953); Cmd 8969; ETS no 5): see PARA 773. The Convention is commonly referred to as the European Convention on Human Rights ('ECHR') and most of the rights and freedoms

guaranteed thereby are incorporated into English law by means of the Human Rights Act 1998 s 1, Sch 1: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 122 et seq. The ECHR guarantees, in particular, that a person may be deprived of his liberty only according to specified circumstances (which include lawful detention after conviction by a competent court) and in accordance with a procedure prescribed by law (see art 5(1)); and that a person deprived of his liberty by arrest or detention is entitled to take proceedings by which the lawfulness of his detention may be decided speedily by a court and his release ordered if the detention is not lawful (see art 5(4)): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 127 et seq. Where a sentence imposed is conclusive of the lawfulness of the detention, the supervision required by art 5(4) is incorporated in the original decision so the administrative implementation of a determinate sentence does not engage art 5(4) (unless 'new issues' arise that affect the lawfulness of the detention, such as a prisoner's recall for breach of his licence conditions after release, which necessarily implies that the punitive element of a sentence has been served); however, where the law imposes a sentence of an indeterminate character, 'new issues' arise when the prisoner becomes eligible for release following expiry of the tariff, and his dangerousness has to be determined, so that art 5(4) is engaged and must be satisfied before the lawfulness of the continued detention can be attributable, under art 5(1)(a), to the original sentence: see Applications 2832/66, 2835/66, 2899/66 *De Wilde v Belgium* (1971) 1 EHRR 373, ECtHR; Application 6301/73 *Winterwerp v Netherlands* (1979) 2 EHRR 387, ECtHR; Application 7906/77 *Van Droogenbroeck v Belgium* (1982) 4 EHRR 443, ECtHR; Application 9787/82 *Weeks v United Kingdom* (1987) 10 EHRR 293, ECtHR (life sentences); Application 11787/85 *Thynne, Wilson and Gunnell v United Kingdom* (1990) 13 EHRR 666, ECtHR (discretionary life sentences); Application 21928/93 *Hussain v United Kingdom* (1996) 22 EHRR 1, ECtHR; Application 46295/99 *Stafford v United Kingdom* (2002) 35 EHRR 1121, 13 BHRC 260, ECtHR (mandatory life sentences); and see *R v Offen* [2001] 1 WLR 253, CA (automatic life sentences); *R (on the application of Smith) v Parole Board*, *R (on the application of West) v Parole Board* [2005] UKHL 1, [2005] 1 All ER 755, [2005] 1 WLR 350; *R (on the application of Black) v Secretary of State for Justice* [2009] UKHL 1, [2009] AC 949, [2009] 4 All ER 1; *R (on the application of James) v Secretary of State for Justice* [2009] UKHL 22, [2010] 1 AC 553, [2009] 4 All ER 255 (indeterminate sentences of imprisonment for public protection); PARA 773; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 127 et seq.

ECHR art 5(4), being concerned with the means of determining the lawfulness of the individual's detention and not with the conditions in which the prisoner is held, is not engaged where a serving prisoner is transferred from open to closed conditions (see *R (on the application of Davies) v Secretary of State for Justice* [2008] EWHC 397 (Admin), [2008] All ER (D) 44 (Mar)), although conditions of confinement generally may engage ECHR art 3 (prohibition of torture or inhuman or degrading treatment or punishment: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 124) or art 8 (right to respect for private and family life, home and correspondence: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 149 et seq), and decisions made by the Parole Board, particularly those relating to licence conditions, may also raise issues under art 8 (see eg *R (on the application of Craven) v Secretary of State for the Home Department* [2001] EWHC Admin 850, [2001] All ER (D) 74 (Oct); and PARA 806).

- 9 As to compassionate release see PARAS 769, 770. See also the Royal Prerogative of Mercy (cited in PARA 768). As to transfers on medical grounds see PARAS 766, 767. Rules made by the Secretary of State under the Prison Act 1952 s 47 (see PRISONS AND PRISONERS vol 85 (2012) PARAS 403, 404) may also provide for the temporary release of convicted and sentenced prisoners: see PARA 764; and see PARA 765. As to the release of certain determinate sentence prisoners to make best use of the places available for detention see PARA 771.

10 See PARA 788 et seq.

11 See PARAS 796, 798; and see note 5.

12 See PARA 780.

762. Release, supervision and recall of persons aged under 18 or aged between 18 and 21. Although statute provides for young offenders to be sentenced under provisions that are distinct from those applied to adult offenders¹, young persons detained in a young offender institution or secure training centre² (or, if the Secretary of State so directs, a prison) are released

on licence, and subject to supervision and recall after release, according to almost identical mechanisms as adult prisoners³.

- 1 See CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1300 et seq; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 78 et seq.
- 2 As to young offender institutions see PRISONS AND PRISONERS vol 85 (2012) PARA 487 et seq; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 85 et seq. As to secure training centres see PRISONS AND PRISONERS vol 85 (2012) PARA 491 et seq.
- 3 See PARA 772 et seq. As to special provision made for the supervision of young offenders after release see PARA 814.

763. Persons detained in England and Wales in pursuance of a sentence of the International Criminal Court. Where the United Kingdom¹ is designated by the ICC² as the state in which a person ('the prisoner') is to serve a sentence of imprisonment imposed by the ICC, and where the Secretary of State³ informs the ICC that the designation is accepted, the Secretary of State must issue a warrant authorising the bringing of the prisoner to England and Wales or Northern Ireland, the detention of the prisoner there in accordance with the sentence of the ICC, and the taking of the prisoner to a specified place where he is to be detained⁴. A prisoner subject to such a warrant authorising his detention is to be treated⁵ as if he were subject to a sentence of imprisonment imposed in exercise of its criminal jurisdiction by a court in the part of the United Kingdom in which he is to be detained⁶. The operation of certain domestic statutory provisions is excluded in relation to a person detained in pursuance of a sentence of the ICC⁷; and this exclusion affects the early release or release on licence of ICC prisoners⁸.

- 1 In any Act, 'United Kingdom' means Great Britain and Northern Ireland (see the Interpretation Act 1978 s 5, Sch 1); and 'Great Britain' means England, Scotland and Wales (see the Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a)). Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 3. The land comprising the Channel Tunnel system, as far as the frontier with France, as it became occupied by or on behalf of the Concessionaires working from England, was deemed to be incorporated into England and form part of the district of Dover in the county of Kent, and the law of England applies accordingly: see the Channel Tunnel Act 1987 s 10(1); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 324.

In any Act, unless the contrary intention appears, 'England' means, subject to any alteration of the boundaries of local government areas, the areas consisting of the counties established by the Local Government Act 1972 s 1 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 5, 22), and Greater London and the Isles of Scilly: see the Interpretation Act 1978 s 5, Sch 1. As to local government areas in England see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq; and as to boundary changes see LOCAL GOVERNMENT vol 69 (2009) PARA 54 et seq. As to Greater London see LONDON GOVERNMENT vol 71 (2013) PARA 14. 'Wales' means the combined areas of the counties created by the Local Government Act 1972 s 20 (as originally enacted) (see LOCAL GOVERNMENT vol 69 (2009) PARAS 5, 37), but subject to any alteration made under s 73 (consequential alteration of boundary following alteration of watercourse: see LOCAL GOVERNMENT vol 69 (2009) PARA 90); see the Interpretation Act 1978 Sch 1 (definition substituted by the Local Government (Wales) Act 1994 s 1(3), Sch 2 para 9).

- 2 In the International Criminal Court established by the Statute of the International Criminal Court (Rome, 17 July 1998; Cm 5590) (see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 437 et seq); see the International Criminal Court Act 2001 s 1(1).
- 3 As to the Secretary of State for these purposes see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 29.
- 4 See the International Criminal Court Act 2001 s 42(1), (3); and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 450. As to enforcement of sentences imposed by the International Criminal Court see the Agreement between the government of the United

Kingdom of Great Britain and Northern Ireland and the International Criminal Court on the enforcement of sentences imposed by the International Criminal Court (London, 8 November 2007; TS 1 (2008); Cm 7306); and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 450.

5. Ie for all purposes, subject to the International Criminal Court Act 2001 s 42(5) and Sch 7 (see the text and notes 7–8); see s 42(4); and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 450. The Repatriation of Prisoners Act 1984 (see PRISONS AND PRISONERS vol 85 (2012) PARA 463 et seq) and the Crime (Sentences) Act 1997 Sch 1 (transfers of prisoners within the British Islands: see PRISONS AND PRISONERS vol 85 (2012) PARA 455 et seq) do not apply to a person detained in pursuance of a sentence of the ICC: see the International Criminal Court Act 2001 s 42(5); and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 450. As to transfer of such a person within the United Kingdom see ss 44, 45; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 451.
6. See the International Criminal Court Act 2001 s 42(4); and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 450.
7. See the International Criminal Court Act 2001 s 42(6), Sch 7; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 450. See also the text and note 8.
8. Specifically, the following provisions of the law of England and Wales do not apply in relation to a person detained in England and Wales in pursuance of a sentence of the ICC (see the International Criminal Court Act 2001 Sch 7 paras 1, 3(1) (Sch 7 para 3(1) amended by the Criminal Justice Act 2003 s 304, Sch 32 para 139(1), (3); and by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 111(2), Sch 14 para 4):
 - (1) the Prison Act 1952 s 28 (power to discharge prisoners temporarily on grounds of ill health: see PARA 765) (see the International Criminal Court Act 2001 Sch 7 paras 1, 3(1) (Sch 7 para 3(1) as so amended));
 - (2) any provision of rules under the Prison Act 1952 s 47 (prison rules: see PRISONS AND PRISONERS vol 85 (2012) PARA 403 et seq) permitting temporary release on licence (see PARA 764) (see the International Criminal Court Act 2001 Sch 7 1, 3(1) (Sch 7 para 3(1) as so amended));
 - (3) the Criminal Justice Act 1982 s 32 (order to release certain determinate sentence prisoners to make best use of places available for detention: see PARA 771) or the Criminal Justice Act 2003 ss 243A–264 (early release of prisoners: see PARA 784 et seq) (see the International Criminal Court Act 2001 Sch 7 paras 1, 3(1) (Sch 7 para 3(1) as so amended));
 - (4) the Crime (Sentences) Act 1997 Pt II Ch II (ss 28–34) (life sentences) (see PARAS 770, 778 et seq) (see the International Criminal Court Act 2001 Sch 7 para 1, 3(1) (Sch 7 para 3(1) as so amended)).

Nor does the Criminal Justice Act 1961 s 23(3) (discharge at weekend or on a holiday: see PARA 815) apply in relation to such a person: see Sch 7 paras 1, 2(1)(c).

(ii) Other Powers of Release

A. TEMPORARY RELEASE

764. Temporary release. Rules made by the Secretary of State¹ under the Prison Act 1952² may provide for the temporary release of convicted and sentenced prisoners (that is, for the temporary release of persons detained in a prison³, remand centre⁴, young offender institution⁵ or secure training centre⁶, not being persons committed in custody for trial before the Crown Court or committed to be sentenced or otherwise dealt with by the Crown Court or remanded in custody by any court)⁷.

Accordingly, the Secretary of State may⁸ release temporarily certain classes of prisoner or inmate⁹. Such a prisoner or inmate may be released for any period or periods and subject to any conditions¹⁰, but only for the following purposes¹¹:

- (1) on compassionate grounds or for the purpose of receiving medical treatment¹²;
- (2) to engage in employment or voluntary work¹³;

- (3) to receive instructions or training which cannot reasonably be provided in the prison or young offender institution (as the case may be)¹⁴;
- (4) to enable him to participate in any proceedings before any court, tribunal or inquiry¹⁵;
- (5) to enable him to consult with his legal adviser in circumstances where it is not reasonably practicable for the consultation to take place in the prison or young offender institution (as the case may be)¹⁶;
- (6) to assist any police officer in any enquiries¹⁷;
- (7) to facilitate the prisoner's transfer between prisons or (as the case may be) the inmate's transfer between the young offender institution and another penal establishment¹⁸;
- (8) to assist him in maintaining family ties or in his transition from life in custody to freedom¹⁹.

A prisoner or an inmate may not be temporarily released in this way unless the Secretary of State is satisfied that there would not be an unacceptable risk of his committing offences whilst released or otherwise of his failing to comply with any condition upon which he is released²⁰. Furthermore, the Secretary of State must not release a prisoner or an inmate under these provisions if, having regard to²¹:

- (a) the period or proportion of his sentence which the prisoner or inmate has served²²; and
- (b) the frequency with which the prisoner or inmate has been granted temporary release²³,

the Secretary of State is of the opinion that the release of the prisoner or inmate would be likely to undermine public confidence in the administration of justice²⁴.

If a prisoner or an inmate has been temporarily released under these provisions during the relevant period²⁵ and has been sentenced to imprisonment, detention or custody for a criminal offence committed whilst at large following that release, he must not be temporarily released in this way unless his release, having regard to the circumstances of his conviction, would not, in the opinion of the Secretary of State, be likely to undermine public confidence in the administration of justice²⁶.

A prisoner or an inmate who is temporarily released in this way may be recalled at any time whether the conditions of his release have been broken or not²⁷.

The Prison Service Instructions System²⁸ makes further provision with regard to release on temporary licence²⁹.

- 1 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.
- 2 *Ie* under the Prison Act 1952 s 47 (prison rules: see PRISONS AND PRISONERS vol 85 (2012) PARA 403 et seq): see s 47(5); and PRISONS AND PRISONERS vol 85 (2012) PARA 404.
- 3 As to the meaning of 'prison' for the purposes of the Prison Act 1952 see PRISONS AND PRISONERS vol 85 (2012) PARA 403.
- 4 As to remand centres see PRISONS AND PRISONERS vol 85 (2012) PARAS 485, 486.
- 5 As to young offender institutions see PRISONS AND PRISONERS vol 85 (2012) PARA 487 et seq; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 85 et seq.
- 6 As to secure training centres see PRISONS AND PRISONERS vol 85 (2012) PARA 491 et seq. As to temporary release from a secure training centre see PRISONS AND PRISONERS vol 85 (2012) PARA 496.
- 7 See the Prison Act 1952 s 47(5); and PRISONS AND PRISONERS vol 85 (2012) PARA 404. See also note 9.

Any provision of rules under the Prison Act 1952 s 47(5) permitting temporary release on licence does not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of 'England' and 'Wales' see PARA 763 note 1.

- 8 In accordance with the Prison Rules 1999, SI 1999/728, r 9(2)–(11) or the Young Offender Institution Rules 2000, SI 2000/3371, r 5(2)–(11), as the case may be (see the text and notes 10–27): see the Prison Rules 1999, SI 1999/728, r 9(1); and the Young Offender Institution Rules 2000, SI 2000/3371, r 5(1).
- 9 See the Prison Rules 1999, SI 1999/728, r 9(1); and the Young Offender Institution Rules 2000, SI 2000/3371, r 5(1). The provision made by Prison Rules 1999, SI 1999/728, r 9, or the Young Offender Institution Rules 2000, SI 2000/3371, r 5, as the case may be, applies to prisoners or inmates other than persons committed in custody for trial or to be sentenced or otherwise dealt with before or by any Crown Court or remanded in custody by any court: see the Prison Rules 1999, SI 1999/728, r 9(9); and the Young Offender Institution Rules 2000, SI 2000/3371, r 5(9). See also the Prison Act 1952 s 47(5) (cited in the text and notes 1–7); and see the text and notes 28–29.

The decision whether or not to grant an application for temporary release from prison is a decision entrusted by prison rules to the Secretary of State alone, although the decision will, in practice, normally be made on behalf of the Secretary of State by the prison governor: *Lexi Holdings plc v Luqman* [2008] EWHC 151 (Ch), (2008) Times, 19 February, [2008] All ER (D) 22 (Jan) (application by contemnor); and see note 29. Even though continued detention is generally justified, the denial of temporary release may engage the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (Rome, 4 November 1950; TS 71 (1953); Cmd 8969; ETS no 5) art 8 (right to respect for private and family life, home and correspondence: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 149 et seq); any restriction on a prisoner's Convention rights, including those guaranteed under ECHR art 8, could be justified as flowing, *inter alia*, from the necessary and inevitable consequences of imprisonment or from an adequate link between the restriction and the circumstances of the prisoner in question, but this does not preclude a subsequent breach of art 8 arising from refusal of temporary leave from prison in an appropriate case so that any such refusal must be justifiable in accordance with art 8(2): see Application 26761/95 *Ploski v Poland* [2002] ECHR 26761/95, ECtHR; Application 44362/04 *Dickson v United Kingdom* (2007) 46 EHRR 927, [2007] 3 FCR 877, ECtHR; and *R (on the application of MP) v Secretary of State for Justice, R (on the application of P) v Governor of HMP Downview* [2012] EWHC 214 (Admin), [2012] 09 LS Gaz R 17, [2012] All ER (D) 81 (Feb). See also note 24. The Convention is commonly referred to as the European Convention on Human Rights ('ECHR') and most of the rights and freedoms guaranteed thereby are incorporated into English law by means of the Human Rights Act 1998 s 1, Sch 1: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 122 et seq.

- 10 See the Prison Rules 1999, SI 1999/728, r 9(2); and the Young Offender Institution Rules 2000, SI 2000/3371, r 5(2).
- 11 See the Prison Rules 1999, SI 1999/728, r 9(3); and the Young Offender Institution Rules 2000, SI 2000/3371, r 5(3).
- 12 See the Prison Rules 1999, SI 1999/728, r 9(3)(a); and the Young Offender Institution Rules 2000, SI 2000/3371, r 5(3)(a). As to the temporary and conditional discharge of prisoner and his removal for ill health see also PARA 765.
- 13 See the Prison Rules 1999, SI 1999/728, r 9(3)(b); and the Young Offender Institution Rules 2000, SI 2000/3371, r 5(3)(b).
- 14 See the Prison Rules 1999, SI 1999/728, r 9(3)(c); and the Young Offender Institution Rules 2000, SI 2000/3371, r 5(3)(c).
- 15 See the Prison Rules 1999, SI 1999/728, r 9(3)(d); and the Young Offender Institution Rules 2000, SI 2000/3371, r 5(3)(d).
- 16 See the Prison Rules 1999, SI 1999/728, r 9(3)(e); and the Young Offender Institution Rules 2000, SI 2000/3371, r 5(3)(e).
- 17 See the Prison Rules 1999, SI 1999/728, r 9(3)(f); and the Young Offender Institution Rules 2000, SI 2000/3371, r 5(3)(f).
- 18 See the Prison Rules 1999, SI 1999/728, r 9(3)(g); and the Young Offender Institution Rules 2000, SI 2000/3371, r 5(3)(g).
- 19 See the Prison Rules 1999, SI 1999/728, r 9(3)(h); and the Young Offender Institution Rules 2000, SI 2000/3371, r 5(3)(h). See also *R (on the application of MP) v Secretary of*

State for Justice, R (on the application of P) v Governor of HMP Downview [2012] EWHC 214 (Admin), [2012] 09 LS Gaz R 17, [2012] All ER (D) 81 (Feb); and note 29.

- 20 See the Prison Rules 1999, SI 1999/728, r 9(4); and the Young Offender Institution Rules 2000, SI 2000/3371, r 5(4).
- 21 See the Prison Rules 1999, SI 1999/728, r 9(5); and the Young Offender Institution Rules 2000, SI 2000/3371, r 5(6).

Where at any time an offender is subject concurrently to a detention and training order and to a sentence of detention in a young offender institution, he must be treated for the purposes of r 5(6) and r 5(7) as if he were subject only to the one of them that was imposed on the later occasion: see r 5(5). As to detention and training orders see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 89 et seq.

- 22 See the Prison Rules 1999, SI 1999/728, r 9(5)(a); and the Young Offender Institution Rules 2000, SI 2000/3371, r 5(6)(a). See note 21. For the purposes of any reference in the Prison Rules 1999, SI 1999/728, r 9, or in the Young Offender Institution Rules 2000, SI 2000/3371, r 5, as the case may be, to a prisoner's sentence or an inmate's sentence, consecutive terms and terms which are wholly or partly concurrent are to be treated as a single term: see the Prison Rules 1999, SI 1999/728, r 9(10) (substituted by SI 2005/3437); and the Young Offender Institution Rules 2000, SI 2000/3371, r 5(10) (substituted by SI 2005/3438). Any reference to a sentence of imprisonment is to be construed as including any sentence to detention or custody: see the Prison Rules 1999, SI 1999/728, r 9(11)(a).

Where the Prison Rules 1999, SI 1999/728, r 9(10), or the Young Offender Institution Rules 2000, SI 2000/3371, r 5(10), as the case may be, does not apply to require all the sentences the prisoner or inmate is serving to be treated as a single term, then the Secretary of State must have regard to the period or portion of any such sentence which he has served: see the Prison Rules 1999, SI 1999/728, r 9(5)(a); and the Young Offender Institution Rules 2000, SI 2000/3371, r 5(6)(a).

- 23 See the Prison Rules 1999, SI 1999/728, r 9(5)(b); and the Young Offender Institution Rules 2000, SI 2000/3371, r 5(6)(b). See note 21. The Prison Act 1952 s 47(5) and rules made thereunder (see the text and notes 1–7) confer a wide discretion on the Secretary of State to grant temporary leave, and do not restrict it to the period leading up to release: see *R (on the application of MP) v Secretary of State for Justice, R (on the application of P) v Governor of HMP Downview* [2012] EWHC 214 (Admin), [2012] 09 LS Gaz R 17, [2012] All ER (D) 81 (Feb); and see note 29.
- 24 See the Prison Rules 1999, SI 1999/728, r 9(5); and the Young Offender Institution Rules 2000, SI 2000/3371, r 5(6). See note 21. Cases concerning temporary leave from prison have identified factors which could be in play under ECHR art 8(2) (see note 9), such as the risk of absconding and re-offending, and the fact that mother and child are already separated, by virtue of the sentence of imprisonment; the risk of 'offending public opinion' (see Application 44362/04 *Dickson v United Kingdom* (2007) 46 EHRR 927, [2007] 3 FCR 877, ECtHR) may be covered in the concerns encapsulated in the Prison Rules 1999, SI 1999/728, r 9(5) so that, while offending public opinion is capable of being a relevant factor in considering whether to grant temporary release, a refusal of temporary release could not, consistently with ECHR art 8(2), be based solely on this factor: *R (on the application of MP) v Secretary of State for Justice, R (on the application of P) v Governor of HMP Downview* [2012] EWHC 214 (Admin), [2012] 09 LS Gaz R 17, [2012] All ER (D) 81 (Feb).

- 25 For these purposes, the 'relevant period' is:

- (1) in the case of a prisoner or an inmate serving a determinate sentence of imprisonment, detention or custody, the period he has served in respect of that sentence, unless, notwithstanding the Prison Rules 1999, SI 1999/728, r 9(10), or the Young Offender Institution Rules 2000, SI 2000/3371, r 5(10), as the case may be (see note 22), the sentences he is serving do not fall to be treated as single term, in which case it is the period since he was last released in relation to one of those sentences under the Criminal Justice Act 1991 Pt II (ss 32–51) (repealed) or the Powers of Criminal Courts (Sentencing) Act 2000 s 100 (ie in relation to detention and training orders: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 89 et seq) or the Criminal Justice Act 2003 Pt 12 Ch 6 (ss 237–268) (sentencing: release, licences and recall) (see PARAS 769, 772, 781 et seq) (see the Prison Rules 1999, SI 1999/728, r 9(7)(a) (r 9(7)(a), (b) amended by SI 2005/3437); and the Young Offender Institution Rules 2000, SI 2000/3371, r 5(7)(a) (r 5(7)(a), (b) amended by SI 2005/3438)); or
- (2) in the case of a prisoner or an inmate serving an indeterminate sentence of

imprisonment, detention or custody, if he has been previously released on licence under the Criminal Justice Act 1991 Pt II (repealed) or the Crime (Sentences) Act 1997 Pt II (ss 28–34) (life sentences) (see PARAS 770, 778 et seq) or the Criminal Justice Act 2003 Pt 12 Ch 6, the period since the date of his last recall in respect of that sentence or, where the prisoner or inmate has not been so released, the period he has served in respect of that sentence (see the Prison Rules 1999, SI 1999/728, r 9(7)(b) (as so amended); and the Young Offender Institution Rules 2000, SI 2000/3371, r 5(7)(b) (as so amended)); or

- (3) (only in the case of a prisoner detained for any other reason) the period for which he has been detained for that reason (see the Prison Rules 1999, SI 1999/728, r 9(7)(c)).

However, where a prisoner falls within two or more of heads (1) to (3) above, or where an inmate falls within both head (1) and head (2) above, the ‘relevant period’, in the case of that prisoner or inmate, is determined by whichever of the applicable heads produces the longer period: see the Prison Rules 1999, SI 1999/728, r 9(7); and the Young Offender Institution Rules 2000, SI 2000/3371, r 5(7). See note 21. Any reference to release on licence or otherwise under the Criminal Justice Act 1991 Pt II (repealed) includes any release on licence under any legislation providing for early release on licence: see the Prison Rules 1999, SI 1999/728, r 9(11)(b); and the Young Offender Institution Rules 2000, SI 2000/3371, r 5(11).

- 26 See the Prison Rules 1999, SI 1999/728, r 9(6); and the Young Offender Institution Rules 2000, SI 2000/3371, r 5(7). See note 21.
- 27 See the Prison Rules 1999, SI 1999/728, r 9(8); and the Young Offender Institution Rules 2000, SI 2000/3371, r 5(8).

It is an offence to remain unlawfully at large after temporary release in pursuance of rules made under the Prison Act 1952 s 47(5) (cited in the text and notes 1–7): see the Prisoners (Return to Custody) Act 1995 s 1; and PRISONS AND PRISONERS vol 85 (2012) PARA 429. As to the concept of ‘custody’ as an element of the common law offence of escape from lawful custody see *R v Dhillon* [2005] EWCA Crim 2996, [2006] 1 Cr App Rep 237, [2005] All ER (D) 307 (Nov) (escape from hospital having been taken there for treatment from police station); and CRIMINAL LAW vol 26 (2010) PARA 698. For the purposes of the common law offence, ‘custody’ is to be construed as a matter of common sense and ordinary language so that, while temporary release lasted and the prisoner was not subject to any supervision, he was not in custody and therefore could not be guilty of the offence at common law: *R v Montgomery* [2007] EWCA Crim 2157, [2008] 2 All ER 924, [2008] 1 WLR 636 (prisoner who simply failed to return to prison at the end of a period of temporary release for employment could not be said to have escaped from lawful custody at common law; however, because he had been released under the provisions of the Prison Rules 1999, SI 1999/728, r 9, the prisoner could have been charged under the Prisoners (Return to Custody) Act 1995 s 1).

- 28 As to the system of central policy instructions and guidance contained e.g. in Prison Service Orders (PSOs) and Prison Service Instructions (PSIs) see PRISONS AND PRISONERS vol 85 (2012) PARA 406.
- 29 Accordingly, see Prison Service Order (PSO) 6300 (Release on Temporary Licence); and see also Prison Service Order 2300 (Resettlement). A prisoner may not assert a substantive legitimate expectation that any particular scheme for administering the grant of temporary release will remain in force, only that he will be treated fairly in accordance with the published criteria: *R v Secretary of State for the Home Department, ex p Hargreaves* [1997] 1 All ER 397, [1997] 1 WLR 906, CA. See also *R v Secretary of State for the Home Department, ex p Briggs* (1995) Independent, 26 September, DC. See further *Lexi Holdings plc (in Administration) v Luqman* [2008] EWHC 151 (Ch), (2008) Times, 19 February, [2008] All ER (D) 22 (Jan) (PSO 6300 guidance, purporting to require permission of sentencing judge before granting temporary release on licence of prisoner serving a term of imprisonment for civil contempt, unlawful); *R (on the application of Adelana) v Governor of HMP Downview* [2008] EWHC 2612 (Admin), [2008] All ER (D) 275 (Oct) (application for temporary release refused on ground of ineligibility pursuant to PSO 6300; policy restricting temporary leave for prisoners in default of confiscation orders declared unlawful); and *R (on the application of MP) v Secretary of State for Justice, R (on the application of P) v Governor of HMP Downview* [2012] EWHC 214 (Admin), [2012] 09 LS Gaz R 17, [2012] All ER (D) 81 (Feb) (Childcare Resettlement Leave (‘CRL’) is a type of temporary licence available under the Prison Rules 1999, SI 1999/728, r 9, to prisoners who have sole caring responsibility for a child under 16, and the thorough risk assessment and decision-making process in PSO 6300 is

capable of meeting the requirements of release on CRL at any stage of the sentence and not only when prisoners were in the final stages of their custodial term).

765. Temporary and conditional discharge of prisoner and removal for ill health. In addition to the general power to release a prisoner temporarily¹, there is power available to the Secretary of State² to order a temporary and conditional discharge of a prisoner on grounds of ill health³. Accordingly, if the Secretary of State is satisfied that by reason of the condition of the prisoner's health it is undesirable to detain him in prison⁴ but that, since his condition is due in whole or in part to the prisoner's own conduct in prison, it is desirable that his release should be temporary and conditional only, the Secretary of State may, if he thinks fit, and having regard to the circumstances of the case, by order authorise the temporary discharge of the prisoner for such period and subject to such conditions as may be stated in the order⁵. Any prisoner so discharged must comply with any conditions in the order of temporary discharge and must return to prison at the expiration of the period stated in the order (or of such extended period as may be fixed by any subsequent order of the Secretary of State), and he may be arrested without warrant and returned to prison if he fails to do either⁶. Where a prisoner under sentence is discharged in pursuance of an order of temporary discharge, the currency of the sentence is suspended from the day on which he is discharged from prison under the order to the day on which he is received back into prison⁷.

1 See PARA 764.

2 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.

3 See the Prison Act 1952 s 28; and the text and notes 4–7. No provision of s 28 applies in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of 'England' and 'Wales' see PARA 763 note 1.

4 As to the meaning of 'prison' for the purposes of the Prison Act 1952 see PRISONS AND PRISONERS vol 85 (2012) PARA 403.

5 See the Prison Act 1952 s 28(1). The power, previously under the Prisoners (Temporary Discharge for Ill-health) Act 1913 (repealed), was once used liberally in the case of hunger-striking prisoners, but is now not used. The Prison Act 1952 s 28 does not apply to remand centres, young offender institutions or secure training centres: see s 43(5), (5A); and PRISONS AND PRISONERS vol 85 (2012) PARAS 485, 487, 491.

As to the removal to hospital of mentally disordered prisoners see MENTAL HEALTH AND CAPACITY vol 75 (2013) PARA 892 et seq.

6 See the Prison Act 1952 s 28(3).

7 See the Prison Act 1952 s 28(4). The day on which he is discharged from prison is to be reckoned but the day on which he is received back into prison is not to be reckoned as part of the sentence: see s 28(4).

B. TRANSFER TO HOSPITAL, ETC

766. Escorted removal of appellant for medical investigation, observation or treatment. If the Secretary of State¹ is satisfied that an appellant who is in custody and is to be taken to, kept in custody at, and brought back from, any place at which he is entitled to be present for the purposes of the Criminal Appeal Act 1968², requires medical investigation or observation, or medical or surgical treatment of any description, the Secretary of State may direct him to be taken to a hospital or other suitable place for that purpose³. Where any person is directed in this way to be taken to any place

he must, unless the Secretary of State otherwise directs, be kept in custody while being so taken, while at that place, and while being taken back to the prison in which he is required in accordance with law to be detained⁴.

- 1 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.
- 2 If the Secretary of State is satisfied that a person detained in accordance with the Prison Act 1952 s 22(1) (see PRISONS AND PRISONERS vol 85 (2012) PARA 587): see s 22(2)(b) (amended by the Criminal Justice Act 1982 s 77, Sch 14 para 5). The reference in the text to an appellant is to an appellant within the meaning of the Criminal Appeal Act 1968 Pt I (ss 1–32) (appeal to Court of Appeal in criminal cases: see CRIMINAL PROCEDURE vol 28 (2010) PARA 765 et seq): see the Prison Act 1952 s 22(1); and PRISONS AND PRISONERS vol 85 (2012) PARA 587.
- 3 See the Prison Act 1952 s 22(2)(b) (as amended: see note 2).
- 4 See the Prison Act 1952 s 22(2). As to legal custody see PRISONS AND PRISONERS vol 85 (2012) PARA 426.

767. Transfer from custody of mentally disordered persons. Persons detained in custody (whether serving a sentence of imprisonment or not) who are suffering from mental disorder may at the direction of the Secretary of State¹ be transferred to hospital for treatment².

If a prisoner or an inmate is removed to hospital on account of mental disorder, the governor must at once inform next of kin or a spouse (if he knows his or her address) and also any other person whom the prisoner or inmate may reasonably have asked should be informed³.

- 1 As to the Secretary of State for these purposes see MENTAL HEALTH AND CAPACITY vol 75 (2013) PARA 568.
- 2 See the Mental Health Act 1983 ss 47, 48, 49; and MENTAL HEALTH AND CAPACITY vol 75 (2013) PARA 892 et seq. See also Prison Service Instruction 62/2011 (Procedure for the Transfer from Custody of Children and Young People to and from Hospital under the Mental Health Act 1983 in England) (valid until 27 December 2015); and Prison Service Order 4700 (Indeterminate Sentence Prisoner Manual) Ch 15 (Mentally Disordered Indeterminate Sentenced Prisoners), which gives policy on indeterminate sentenced prisoners transferred to hospital under the provisions of the Mental Health Act 1983. As to the system of central policy instructions and guidance contained eg in Prison Service Orders (PSOs) and Prison Service Instructions (PSIs) see PRISONS AND PRISONERS vol 85 (2012) PARA 406.
- 3 See the Prison Rules 1999, SI 1999/728, r 22(1); the Young Offender Institution Rules 2000, SI 2000/3371, r 29(1); and PRISONS AND PRISONERS vol 85 (2012) PARA 547.

C. ROYAL PREROGATIVE OF MERCY

768. Release by prerogative. The royal prerogative of mercy may be extended at any time to a person sentenced to imprisonment or other form of detention¹. The prerogative, although sparingly exercised for reasons of constitutional propriety associated with the inviolability of the judicial process and general non-interference by executive action, is not restricted by the fact that an appeal is pending before, or has been dismissed by, the Criminal Division of the Court of Appeal². It may rarely be exercised in the form of a pardon³; more commonly, prisoners benefit from a reduction of the whole or a part of the court's sentence⁴. The occasions for clemency might be, for example: medical grounds; fresh evidence indicating a wrongful conviction revealed too late or unavailable for consideration by the court of trial but insufficiently conclusive to justify a pardon; to mitigate the consequences of some irregularity at a summary trial⁵; to compensate a prisoner for physical injury suffered in prison through no fault of his own;

as a reward for supplying valuable information to the authorities investigating serious crime; or for exceptionally meritorious conduct by the prisoner during his imprisonment⁶.

- 1 As to pardon and reprieves generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 823–830.
- 2 See the Criminal Appeal Act 1968 s 49; and CRIMINAL PROCEDURE vol 28 (2010) PARA 853.
- 3 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 823–830; and CRIMINAL PROCEDURE vol 28 (2010) PARA 853. Although it is probably right to say that the formulation of criteria for the exercise of the prerogative of mercy by the grant of a free pardon is entirely a matter of policy and not justiciable, such a decision of the Secretary of State has been reviewed on the basis that he had failed to appreciate the full extent of his powers: see *R v Secretary of State for the Home Department, ex p Bentley* [1994] QB 349, [1993] 4 All ER 442, DC. As to the granting of a pardon under the Convention on the Transfer of Sentenced Persons 1983 (as to which see PRISONS AND PRISONERS vol 85 (2012) PARA 463) see *R (on the application of Shields) v Secretary of State for Justice* [2008] EWHC 3102 (Admin), [2010] QB 150, [2009] 3 All ER 265 (Secretary of State had the power and jurisdiction, in the instant case, to consider the grant of a pardon, which was a flexible process intended in very rare cases to secure justice which the concluded court process could not achieve). See also JUDICIAL REVIEW vol 61 (2010) PARA 607.
- 4 As to the policy regarding validation of an incorrect release date through exercise of the Royal Prerogative of Mercy see Prison Service Order (PSO) 6650 (Sentence Calculation) Ch 13 (Special Remission). As to the system of central policy instructions and guidance contained eg in Prison Service Orders (PSOs) and Prison Service Instructions (PSIs) see PRISONS AND PRISONERS vol 85 (2012) PARA 406.
- 5 If an irregularity is such as to make the whole proceedings null and void, the Secretary of State may order a prisoner to be released, but this is, strictly speaking, not an exercise of the prerogative of mercy.
- 6 See eg *R (on the application of Ghartey) v Secretary of State for the Home Department* [2001] EWHC Admin 199, [2001] 1 PLR 145, [2001] All ER (D) 69 (Mar).

D. RELEASE ON COMPASSIONATE GROUNDS

769. Power to release fixed-term prisoners on compassionate grounds.

The Secretary of State¹ may at any time release on licence² a fixed-term prisoner³ if he is satisfied that exceptional circumstances exist which justify the prisoner's release on compassionate grounds⁴.

The Prison Service Instructions System⁵ makes further provision with regard to early release on compassionate grounds⁶.

- 1 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.
- 2 As to the duration of licences, and as to licence conditions, see PARAS 805–807.
- 3 As to the meaning of 'fixed-term prisoner' for the purposes of the Criminal Justice Act 2003 Pt 12 Ch 6 (ss 237–268) (sentencing: release, licences and recall) see PARA 781. As to equivalent provision made for life prisoners see the Crime (Sentences) Act 1997 s 30; and PARA 770.
- 4 See the Criminal Justice Act 2003 s 248(1). Any provision made by ss 243A–264 does not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of 'England' and 'Wales' see PARA 763 note 1.

As to the release on compassionate grounds of young offenders serving under detention and training orders see the Powers of Criminal Courts (Sentencing) Act 2000 s 102(3); *R (on the application of A) v Governor of Huntercombe Young Offender Institution* [2006] EWHC 2544 (Admin), 171 JP 65, 171 JPN 345, [2006] All ER (D) 226 (Oct); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 91. The Secretary of State also may at any time release on compassionate grounds a person committed to prison for defaulting on a fine or for contempt: see PARA 799 et seq.

- 5 As to the system of central policy instructions and guidance contained e.g. in Prison Service Orders (PSOs) and Prison Service Instructions (PSIs) see PRISONS AND PRISONERS vol 85 (2012) PARA 406.
- 6 Accordingly, see Prison Service Order (PSO) 6000 (Parole Release and Recall) Ch 12 (Early Release on Compassionate Grounds (ERCG)).

770. Power to release life prisoners on compassionate grounds. The Secretary of State¹ may at any time release on licence² a life prisoner³ if he is satisfied that exceptional circumstances exist which justify the prisoner's release on compassionate grounds⁴. However, before releasing a life prisoner in this way, the Secretary of State must consult the Parole Board⁵, unless the circumstances are such as to render such consultation impracticable⁶.

The Prison Service Instructions System⁷ makes further provision with regard to compassionate release on medical grounds⁸.

- 1 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.
- 2 As to the duration of licences, and as to licence conditions, see PARAS 805–807.
- 3 As to the meaning of 'life prisoner' for the purposes of the Crime (Sentences) Act 1997 Pt II Ch II (ss 28–34) (life sentences) see PARA 778. As to equivalent provision made for fixed-term prisoners see the Criminal Justice Act 2003 s 248(1); and PARA 769.
The Crime (Sentences) Act 1997 Pt II Ch II does not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of 'England' and 'Wales' see PARA 763 note 1.
- 4 See the Crime (Sentences) Act 1997 s 30(1).
The statutory power that is available to the Secretary of State under s 30 means that, if the position were reached, in England and Wales, where the continued imprisonment of a prisoner was held to amount to inhuman or degrading treatment, so as to engage the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 3 (prohibition of torture or inhuman or degrading treatment or punishment: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 124), there was no reason why, having particular regard to the requirement to comply with the Convention, the statutory power could not be used to release the prisoner on compassionate grounds: *R v Bieber* [2008] EWCA Crim 1601, [2009] 1 All ER 295, [2009] 1 WLR 223 (treatment of prisoner serving mandatory life sentence for the offence of murder where a whole life term was specified is not incompatible with ECHR art 3 provided that the offender is not detained beyond a period justified on the grounds of punishment and deterrence).
- 5 As to the constitution and functions of the Parole Board, continued by the Criminal Justice Act 2003 s 239(1), see PARA 772.
- 6 See the Crime (Sentences) Act 1997 s 30(2). The provision made by s 30 does not require that matters should be investigated further by the Parole Board where the Secretary of State had not considered that a prisoner could be released on compassionate grounds: *R (on the application of Spinks) v Secretary of State for the Home Department* [2005] EWCA Civ 275, [2005] All ER (D) 297 (Jan). While the power to release on compassionate grounds has to be exercised so as not to provoke a breach of ECHR art 3 (see note 4), on the proper construction of the Crime (Sentences) Act 1997 s 30, the Parole Board has no role to play in disciplining the Secretary of State for actual, current breaches of ECHR art 3; that supervisory role is to be played by the court, which is in a position to determine whether an actual breach of art 3 is in progress and, if so, to require its termination: *R (on the application of Spinks) v Secretary of State for the Home Department*. See also *R (on the application of AS) v Secretary of State for Justice* [2009] EWHC 1315 (Admin), [2009] All ER (D) 108 (Jun) (Secretary of State had failed to give adequate reasons for his decision not to release indeterminate sentence prisoner suffering from terminal cancer; and had failed to have regard to the medical evidence which was before him). See also the text and notes 7–8.
- 7 As to the system of central policy instructions and guidance contained e.g. in Prison Service Orders (PSOs) and Prison Service Instructions (PSIs) see PRISONS AND PRISONERS vol 85 (2012) PARA 406.
- 8 Accordingly, see Prison Service Order (PSO) 4700 (Indeterminate Sentence Manual) Ch 12 (Compassionate Release on Medical Grounds). Although the Crime (Sentences) Act 1997

s 30 gives the Secretary of State a general discretion, his decision to adopt a policy on how applications under s 30 should be dealt with meant that he had created a procedural legitimate expectation that the policy would be complied with, unless there were reasons not to do so: see *R (on the application of AS) v Secretary of State for Justice* [2009] EWHC 1315 (Admin), [2009] All ER (D) 108 (Jun) (Secretary of State had failed to fulfil the procedural legitimate expectation raised in PSO 4700 that he would obtain an up-to-date medical report addressing the issues of life expectancy and the effect of the claimant's condition on his ability to commit offences).

E. ADMINISTRATIVE POWER OF RELEASE

771. Order to release certain determinate sentence prisoners to make best use of places available for detention. The Secretary of State¹ may order that persons of any class specified in the order who are serving a sentence of imprisonment², other than³:

- (1) imprisonment for life, imprisonment for public protection⁴ or an extended sentence⁵; or
- (2) imprisonment to which they were sentenced⁶: (a) for an excluded offence⁷; (b) for attempting to commit such an offence⁸; (c) for conspiracy to commit such an offence⁹; or (d) for aiding or abetting, counselling, procuring or inciting the commission of such an offence¹⁰; or
- (3) imprisonment to which they were sentenced for an offence of criminal conduct under the Armed Forces Act 2006¹¹ as respects which the corresponding offence under the law of England and Wales¹² is¹³: (a) an excluded offence¹⁴; (b) an attempt to commit an excluded offence¹⁵; (c) conspiracy to commit an excluded offence¹⁶; or (d) aiding or abetting, counselling, procuring or inciting the commission of an excluded offence¹⁷,

are to be released from prison at such time earlier (but not more than six months earlier) than they would otherwise be so released as may be fixed by the order¹⁸; but the Secretary of State must not make such an order unless he is satisfied that it is necessary to do so in order to make the best use of the places available for detention¹⁹. Nor may any person be released in this way if he is subject to more than one sentence of imprisonment²⁰ and at least one of the terms that he has to serve is for an offence mentioned in head (2) or in head (3) above²¹.

Such an order:

- (i) may define a class of persons in any way²²;
- (ii) may relate to one or more specified prisons, or to prisons of a specified class (however defined), or to prisons generally²³; and
- (iii) may make the time at which a person of any specified class is to be released depend on any circumstances whatever²⁴; and
- (iv) must be made by statutory instrument²⁵.

Where a person who is to be released from prison in pursuance of such an order is a person serving a sentence of imprisonment in respect of whom an extended sentence certificate²⁶ was issued when the sentence was passed, his release must be a release on licence²⁷, irrespective of whether at the time of his release he could have been released on licence²⁸. Where a person is released from prison in pursuance of such an order, but is not a person serving a sentence of imprisonment in respect of whom an extended sentence certificate was issued, his sentence expires on his release²⁹.

Such an order, that persons of a specified class are to be released from prison at a time earlier than they would otherwise be released³⁰, does not remain in force after the expiration of six months beginning with the date on which it is made³¹. However, this is without prejudice to the power of the Secretary of State to revoke the order or to make a further such order³².

1 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.

2 As to defining classes of persons for these purposes see head (i) in the text.

3 See the Criminal Justice Act 1982 s 32(1).

No provision of s 32 applies in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of 'England' and 'Wales' see PARA 763 note 1.

4 Ie under the Criminal Justice Act 2003 s 225 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 74): see the Criminal Justice Act 1982 s 32(1)(a) (amended by the Criminal Justice Act 2003 s 304, Sch 32 Pt 1 paras 34, 35; and the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 126, Sch 21 para 3). The reference in head (1) in the text to sentences of imprisonment for public protection under the Criminal Justice Act 2003 s 225 includes such sentences passed as a result of the Armed Forces Act 2006 s 219 (life sentence for person aged at least 18 but under 21 convicted by Court Martial of offence of criminal conduct corresponding to a serious offence: see ARMED FORCES vol 3 (2011) PARA 611): see the Criminal Justice Act 1982 s 32(1A) (added by the Armed Forces Act 2006 s 378(1), Sch 16 para 94(1), (3); and amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 127, Sch 22 para 13).

5 Criminal Justice Act 1982 s 32(1)(a) (as amended: see note 4). The text refers to an extended sentence under the Criminal Justice Act 2003 s 226A (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS) or s 227 (repealed with savings) (extended sentence of detention where offender aged at least 18 but under 21: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 75, 88): see the Criminal Justice Act 1982 s 32(1)(a) (as so amended). The reference in head (1) in the text to extended sentences under the Criminal Justice Act 2003 s 226A or s 227 includes such sentences passed as a result of the Armed Forces Act 2006 s 219A (extended sentence for certain violent or sexual offenders aged 18 or over: see ARMED FORCES) or s 220 (repealed): see the Criminal Justice Act 1982 s 32(1A) (as added and amended: see note 4).

6 See the Criminal Justice Act 1982 s 32(1)(b).

7 Criminal Justice Act 1982 s 32(1)(b)(i). For these purposes, 'excluded offence' means:

- (1) an offence (whether at common law or under any enactment) specified in the Criminal Justice Act 1982 s 32, Sch 1 Pt I (see heads (a) to (c) below) (s 32(2)(a)); and
- (2) an offence under an enactment specified in Sch 1 Pt II (see heads (i) to (xxiii) below) (s 32(2)(b)); and
- (3) an offence specified in Sch 1 Pt III (s 32(2)(c)), being offences under the Customs and Excise Management Act 1979 ss 50(2), (3), 68(2), 170 (see MEDICAL PRODUCTS AND DRUGS vol 75 (2013) PARAS 487, 491) in connection with a prohibition or restriction on importation or exportation of a controlled drug which has effect by virtue of the Misuse of Drugs Act 1971 s 3 (see MEDICAL PRODUCTS AND DRUGS vol 75 (2013) PARA 491) (see the Criminal Justice Act 1982 Sch 1 Pt III).

The offences referred to in head (1) above are:

- (a) manslaughter (Sch 1 Pt I para 1);
- (b) kidnapping (Sch 1 Pt I para 3);
- (c) assault of any description (Sch 1 Pt I para 4).

The enactments referred to in head (2) above are:

- (i) the Malicious Damage Act 1861 ss 35, 47, 48 (ss 47, 48 repealed) (criminal damage: see CRIMINAL LAW vol 25 (2010) PARAS 326, 337) (Criminal Justice Act 1982 Sch 1 Pt II para 1);
- (ii) the Offences Against the Person Act 1861 s 16 (making threats to kill: see CRIMINAL LAW vol 25 (2010) PARA 115), s 18 (wounding with intent to do grievous bodily harm or to resist apprehension: see CRIMINAL LAW vol 25 (2010) PARAS 128–129), s 20 (wounding or inflicting grievous bodily harm: see CRIMINAL LAW vol 25 (2010) PARA 130), s 21 (garrotting: see CRIMINAL LAW vol 25 (2010)

- PARA 131), s 23 (endangering life or causing harm by administering poison: see CRIMINAL LAW vol 25 (2010) PARA 133), s 28 (burning, maiming, etc by explosion: see CRIMINAL LAW vol 25 (2010) PARA 135), s 29 (causing explosions or casting corrosive fluids with intent to do grievous bodily harm: see CRIMINAL LAW vol 25 (2010) PARA 136) (see the Criminal Justice Act 1982 Sch 1 Pt II paras 2–8);
- (iii) the Explosive Substances Act 1883 s 2 (causing explosion likely to endanger life or property: see CRIMINAL LAW vol 25 (2010) PARA 137) (Criminal Justice Act 1982 Sch 1 Pt II para 9);
 - (iv) the Infant Life (Preservation) Act 1929 s 1 (child destruction: see CRIMINAL LAW vol 25 (2010) PARA 118) (Criminal Justice Act 1982 Sch 1 Pt II para 10);
 - (v) the Infanticide Act 1938 s 1(1) (infanticide: see CRIMINAL LAW vol 25 (2010) PARA 113) (Criminal Justice Act 1982 Sch 1 Pt II para 11);
 - (vi) the Firearms Act 1968 s 17(1) (use of firearms and imitation firearms to resist arrest: see CRIMINAL LAW vol 26 (2010) PARA 630) (Criminal Justice Act 1982 Sch 1 Pt II para 15);
 - (vii) the Theft Act 1968 s 8 (robbery: see CRIMINAL LAW vol 25 (2010) PARA 289), s 10 (aggravated burglary: see CRIMINAL LAW vol 25 (2010) PARA 291) (see the Criminal Justice Act 1982 Sch 1 Pt II paras 16, 17);
 - (viii) the Misuse of Drugs Act 1971 s 4 (production or supply of a controlled drug: see CRIMINAL LAW vol 26 (2010) PARA 725; and MEDICAL PRODUCTS AND DRUGS vol 75 (2013) PARA 492), s 5(3) (possession of a controlled drug with intent to supply it to another: see MEDICAL PRODUCTS AND DRUGS vol 75 (2013) PARA 495), s 20 (assisting in, or inducing the commission outside the United Kingdom of, an offence relating to drugs punishable under a corresponding law: see CRIMINAL LAW vol 26 (2010) PARA 732; and MEDICAL PRODUCTS AND DRUGS vol 75 (2013) PARA 504) (see the Criminal Justice Act 1982 Sch 1 Pt II paras 18–20);
 - (ix) the Criminal Damage Act 1971 s 1(2)(b) (criminal damage, including arson, with intent to endanger life: see CRIMINAL LAW vol 25 (2010) PARA 329) (Criminal Justice Act 1982 Sch 1 Pt II para 21);
 - (x) the Road Traffic Act 1972 s 1 (repealed) (causing death by reckless driving) (Criminal Justice Act 1982 Sch 1 Pt II para 22);
 - (xi) the Customs and Excise Management Act 1979 s 85(2) (shooting at naval or revenue vessels: see CRIMINAL LAW vol 26 (2010) PARA 484) (Criminal Justice Act 1982 Sch 1 Pt II para 23);
 - (xii) the Aviation Security Act 1982 ss 1, 2, 3, 6 (hijacking, destroying or damaging an aircraft or endangering its safety in flight and ancillary offences: see AIR LAW vol 2 (2008) PARA 624 et seq) (see the Criminal Justice Act 1982 Sch 1 Pt II paras 24, 25);
 - (xiii) the Drug Trafficking Offences Act 1986 s 23A (repealed) (acquisition, possession or use of proceeds of drug trafficking), s 24 (assisting another to retain the benefit of drug trafficking) (repealed) (see the Criminal Justice Act 1982 Sch 1 Pt II paras 25A, 26 (Sch 1 Pt II paras 25A, 29A–29C added by the Criminal Justice Act 1993 s 74(2), (3); the Criminal Justice Act 1982 Sch 1 Pt II para 26 added by the Drug Trafficking Offences Act 1986 s 24(6)));
 - (xiv) the Public Order Act 1986 s 1 (riot: see CRIMINAL LAW vol 26 (2010) PARA 487), s 2 (violent disorder: see CRIMINAL LAW vol 26 (2010) PARAS 488), s 3 (affray: see CRIMINAL LAW vol 26 (2010) PARA 489) (see the Criminal Justice Act 1982 Sch 1 Pt II paras 27–29 (Sch 1 Pt II paras 27–29 added by the Public Order Act 1986 s 40(2), Sch 2 para 4));
 - (xv) the Criminal Justice Act 1988 s 93A (repealed) (assisting another to retain the benefit of criminal conduct), s 93B (repealed) (acquisition, possession or use of proceeds of criminal conduct), s 93C (repealed) (concealing or transferring proceeds of criminal conduct), s 134 (torture: see CRIMINAL LAW vol 25 (2010) PARA 172) (Criminal Justice Act 1982 Sch 1 Pt II paras 29A–29C, 30 (Sch 1 Pt II paras 29A–29C as so added; Sch 1 Pt II para 30 added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 91));
 - (xvi) the Road Traffic Act 1988 s 1 (causing death by dangerous driving: see ROAD TRAFFIC vol 90 (2011) PARA 720), s 3A (causing death by careless driving when under the influence of drink or drugs: see ROAD TRAFFIC vol 90 (2011) PARA 731) (see the Criminal Justice Act 1982 Sch 1 Pt II (entry added by the Road Traffic

- (Consequential Provisions) Act 1988 s 4, Sch 3 para 24; and amended by the Road Traffic Act 1991 s 48, Sch 4 para 17));
- (xvii) the Criminal Justice (International Co-operation) Act 1990 s 14 (repealed) (concealing or transferring proceeds of drug trafficking) (see the Criminal Justice Act 1982 Sch 1 Pt II (entry added by the Criminal Justice (International Co-operation) Act 1990 s 31(1), Sch 4 para 3));
- (xviii) the Aviation and Maritime Security Act 1990 s 1 (endangering safety at aerodromes: see AIR LAW vol 2 (2008) PARA 631), s 9 (hijacking of ships: see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1210), s 10 (seizing or exercising control of fixed platforms: see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1211), ss 11–14 (destroying ships or fixed platforms or endangering their safety, endangering safe navigation, threats and ancillary offences: see SHIPPING AND MARITIME LAW vol 94 (2008) PARAS 1212–1215) (see the Criminal Justice Act 1982 Sch 1 Pt II (entry added by the Aviation and Maritime Security Act 1990 s 53(1), Sch 3 para 7));
- (xix) the Channel Tunnel (Security) Order 1994, SI 1994/570, art 4 (hijacking of Channel Tunnel trains: see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 324), art 5 (seizing or exercising control of the Channel Tunnel system: see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 324), arts 6–8 (other offences relating to Channel Tunnel trains or the tunnel system: see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 324) (see the Criminal Justice Act 1982 Sch 1 Pt II (entry added by SI 1994/570));
- (xx) the Drug Trafficking Act 1994 s 49 (repealed) (concealing or transferring the proceeds of drug trafficking), s 50 (repealed) (assisting another person to retain the benefit of drug trafficking), s 51 (repealed) (acquisition, possession or use of proceeds of drug trafficking) (see the Criminal Justice Act 1982 Sch 1 Pt II (entry added by the Drug Trafficking Act 1994 s 65(1), Sch 1 para 7));
- (xxi) the Proceeds of Crime Act 2002 s 327 (concealing criminal property etc: see CRIMINAL LAW vol 26 (2010) PARA 744), s 328 (arrangements relating to criminal property: see CRIMINAL LAW vol 26 (2010) PARA 745), s 329 (acquisition, use and possession of criminal property: see CRIMINAL LAW vol 26 (2010) PARA 746) (see the Criminal Justice Act 1982 Sch 1 Pt II (entry added by the Proceeds of Crime Act 2002 s 456, Sch 11 paras 1, 13));
- (xxii) the Sexual Offences Act 2003 ss 1, 2 (rape, assault by penetration: see CRIMINAL LAW vol 25 (2010) PARAS 178, 180), s 4 (causing a person to engage in sexual activity without consent), where the activity caused involved penetration within s 4(4)(a)–(d) (see CRIMINAL LAW vol 25 (2010) PARA 184), ss 5, 6 (rape of a child under 13, assault of a child under 13 by penetration: see CRIMINAL LAW vol 25 (2010) PARAS 179, 181), s 8 (causing or inciting a child under 13 to engage in sexual activity), where an activity involving penetration within s 8(2)(a)–(d) was caused (see CRIMINAL LAW vol 25 (2010) PARA 185), s 30 (sexual activity with a person with a mental disorder impeding choice), where the touching involved penetration within s 30(3)(a)–(d) (see CRIMINAL LAW vol 25 (2010) PARA 214), s 31 (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity), where an activity involving penetration within s 31(3)(a)–(d) was caused (see CRIMINAL LAW vol 25 (2010) PARA 214) (see the Criminal Justice Act 1982 Sch 1 Pt II (entry added by the Sexual Offences Act 2003 s 139, Sch 6 para 27));
- (xxiii) the Domestic Violence, Crime and Victims Act 2004 s 5 (causing or allowing a child or vulnerable adult to die or suffer serious physical harm: see CRIMINAL LAW vol 25 (2010) PARA 117) (see the Criminal Justice Act 1982 Sch 1 Pt II (entry added by the Domestic Violence, Crime and Victims Act 2004 s 58(1), Sch 10 para 16; and amended by the Domestic Violence, Crime and Victims (Amendment) Act 2012 s 3, Schedule para 1)).

Further to head (xxii) above, see the Violent Crime Reduction Act 2006 s 55 (continuity of sexual offences law); and CRIMINAL LAW vol 25 (2010) PARA 174. As to the meaning of 'United Kingdom' see PARA 763 note 1.

8 Criminal Justice Act 1982 s 32(1)(b)(ii).

9 Criminal Justice Act 1982 s 32(1)(b)(iii).

10 Criminal Justice Act 1982 s 32(1)(b)(iv). The reference in s 32(1)(b)(iv) to (or to conduct amounting to) the common law offence of inciting the commission of another offence, has effect (as from the day that offence is abolished) as a reference to (or to conduct

amounting to) offences under the Serious Crime Act 2007 Pt 2 (ss 44–67) (see *CRIMINAL LAW* vol 25 (2010) PARAS 65–72): see s 63(1), Sch 6 Pt 1 para 8.

- 11 It is an offence under the Armed Forces Act 2006 s 42 (see *ARMED FORCES* vol 3 (2011) PARA 587): see the Criminal Justice Act 1982 s 32(1)(c) (added by the Armed Forces Act 2006 Sch 16 para 94(1), (2)).
- 12 It is within the meaning of the Armed Forces Act 2006 s 42 (see *ARMED FORCES* vol 3 (2011) PARA 587): see the Criminal Justice Act 1982 s 32(1)(c) (as added: see note 11).
- 13 See the Criminal Justice Act 1982 s 32(1)(c) (as added: see note 11).
The provision made by s 32(1)(c) is modified so that the reference to an offence under the Armed Forces Act 2006 s 42 (see *ARMED FORCES* vol 3 (2011) PARA 587) includes an SDA civil offence; and the reference to the corresponding offence under the law of England and Wales includes the corresponding civil offence: see the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009, SI 2009/1059, art 205, Sch 1 para 23. For these purposes, 'SDA civil offence' means an offence under the Army Act 1955 s 70 (repealed), the Air Force Act 1955 s 70 (repealed) or the Naval Discipline Act 1957 s 42 (repealed): see the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009, SI 2009/1059, art 2(4), (5).
- 14 Criminal Justice Act 1982 s 32(1)(c)(i) (as added: see note 11).
- 15 Criminal Justice Act 1982 s 32(1)(c)(ii) (as added: see note 11).
The Armed Forces Act 2006 s 48 (attempts, conspiracy, encouragement and assistance and aiding and abetting outside England and Wales: see *ARMED FORCES* vol 3 (2011) PARA 587) applies for the purposes of the Criminal Justice Act 1982 s 32(1)(c)(ii)–(iv) (see also heads (3)(c), (d) in the text) as if the reference in the Armed Forces Act 2006 s 48(3)(b) to 'any of the following provisions of that Act' were a reference to the Criminal Justice Act 1982 s 32(1)(c)(ii)–(iv): see s 32(2A) (added by the Armed Forces Act 2006 Sch 16 para 94(1), (4); and amended by the Serious Crime Act 2007 s 60, Sch 5 para 1).
- 16 Criminal Justice Act 1982 s 32(1)(c)(iii) (as added: see note 11). See also note 15.
- 17 Criminal Justice Act 1982 s 32(1)(c)(iv) (as added: see note 11). The reference in s 32(1)(c)(iv) to (or to conduct amounting to) the common law offence of inciting the commission of another offence, has effect (as from the day that offence is abolished) as a reference to (or to conduct amounting to) offences under the Serious Crime Act 2007 Pt 2 (ss 44–67) (see *CRIMINAL LAW* vol 25 (2010) PARAS 65–72): see s 63(1), Sch 6 Pt 1 para 8. See also note 15.
- 18 See the Criminal Justice Act 1982 s 32(1). At the date at which this volume states the law, no such order had been made.
- 19 See the Criminal Justice Act 1982 s 32(1). This provision applies in relation to any institution to which the Prison Act 1952 applies (see *PRISONS AND PRISONERS* vol 85 (2012) PARA 403) and to persons detained in any such institutions other than persons serving sentences of custody for life, as it applies in relation to prisons and persons serving such sentences of imprisonment as are mentioned in the Criminal Justice Act 1982 s 32(1) (see s 32(7)); and s 32(1) applies also in relation to secure training centres and to persons detained in such centres as it applies, by virtue of the Prison Act 1952 s 43(5) (see *PRISONS AND PRISONERS* vol 85 (2012) PARA 487), to young offender institutions and to persons detained in such institutions (see the Criminal Justice Act 1982 s 32(7A) (added by the Criminal Justice and Public Order Act 1994 s 168(2), Sch 10 para 50)). As to the establishment of young offender institutions see *PRISONS AND PRISONERS* vol 85 (2012) PARA 487; and as to the establishment of secure training centres see *PRISONS AND PRISONERS* vol 85 (2012) PARA 491.
- 20 See the Criminal Justice Act 1982 s 32(3)(a).
- 21 See the Criminal Justice Act 1982 s 32(3)(b) (amended by the Armed Forces Act 2006 Sch 16 para 94(1), (5)).
- 22 Criminal Justice Act 1982 s 32(4)(a). The provision made by s 32(4) applies in relation to any institution to which the Prison Act 1952 applies (see *PRISONS AND PRISONERS* vol 85 (2012) PARA 403) and to persons detained in any such institutions other than persons serving sentences of custody for life, as it applies in relation to prisons and persons serving such sentences of imprisonment as are mentioned in the Criminal Justice Act 1982 s 32(1) (see the text and notes 1–19) (see s 32(7)); and s 32(4) applies also in relation to secure training centres and to persons detained in such centres as it applies, by virtue of the Prison Act 1952 s 43(5) (see *PRISONS AND PRISONERS* vol 85 (2012) PARA 487), to young offender institutions and to persons detained in such institutions (see the Criminal Justice Act 1982 s 32(7A) (as added: see note 19)).
- 23 Criminal Justice Act 1982 s 32(4)(b). See also note 22.

- 24 Criminal Justice Act 1982 s 32(4)(c). See also note 22.
- 25 See the Criminal Justice Act 1982 s 32(8).
 No order under s 32 may be made unless a draft of the order has been laid before Parliament and approved by resolution of each House of Parliament (see s 32(9)(a)), or unless the expedited procedure conditions are satisfied (see s 32(9)(b)). The expedited procedure conditions are satisfied if the order does not provide for the release of any persons before one month earlier than they would otherwise be released (s 32(10)(a)); and if it is declared in the order that it appears to the Secretary of State that by reason of urgency it is necessary to make the order without a draft having been so approved (s 32(10)(b)). Every such order (except such an order of which a draft has been so approved) must be laid before Parliament (s 32(11)(a)); and ceases to have effect at the expiry of a period of 40 days beginning with the date on which it was made unless, before the expiry of that period, the order has been approved by resolution of each House of Parliament, but without prejudice to anything previously done or to the making of a new order (s 32(11)(b)). In reckoning for these purposes any period of 40 days, no account may be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days: s 32(12).
- 26 *le* within the meaning of the Powers of Criminal Courts Act 1973 s 28(4) (repealed): see the Criminal Justice Act 1982 s 32(5).
- 27 *le* under the Criminal Justice Act 1967 s 60 (repealed) (release on licence of persons serving determinate sentences): see the Criminal Justice Act 1982 s 32(5).
- 28 See the Criminal Justice Act 1982 s 32(5). The text refers to the application of s 32(5) irrespective of whether at the time of the prisoner's release he could have been released on licence under the Criminal Justice Act 1967 s 60 (repealed) (see note 27) by virtue of s 60(3) (repealed) (ie where the Secretary of State had power to direct that a person serving a sentence of imprisonment in respect of whom an extended sentence certificate was issued when the sentence was passed, or that a person serving a sentence of imprisonment for a term of 18 months or more who was under the age of 21 when the sentence was passed, may, instead of being granted remission of any part of his sentence under the prison rules, be released on licence at any time on or after the day on which he could have been discharged from prison if the remission had been granted): see the Criminal Justice Act 1982 s 32(5).
- 29 Criminal Justice Act 1982 s 32(6). The provision made by s 32(6) applies in relation to any institution to which the Prison Act 1952 applies (see PRISONS AND PRISONERS vol 85 (2012) PARA 403) and to persons detained in any such institutions other than persons serving sentences of custody for life, as it applies in relation to prisons and persons serving such sentences of imprisonment as are mentioned in the Criminal Justice Act 1982 s 32(1) (see the text and notes 1–19): see s 32(7).
- 30 *le* an order under the Criminal Justice Act 1982 s 32: see s 32(13).
- 31 See the Criminal Justice Act 1982 s 32(13).
- 32 See the Criminal Justice Act 1982 s 32(13).

(2) THE PAROLE BOARD

(i) Establishment and Functions of the Parole Board

772. Constitution and functions of the Parole Board. The Parole Board continues to be¹, by that name, a body corporate². As such, it is constituted in accordance with Chapter 6 of Part 12 of the Criminal Justice Act 2003³, and it has the functions conferred on it⁴:

- (1) in respect of fixed-term prisoners, by that Chapter⁵; and
- (2) in respect of life prisoners, by Chapter II of Part II of the Crime (Sentences) Act 1997⁶.

It is the duty of the Board to advise the Secretary of State⁷ with respect to any matter referred to it by him which is to do with the early release or recall of prisoners⁸.

In dealing with cases⁹ as respects which it makes recommendations under head (1) or head (2) above, the Board must consider¹⁰:

- (a) any documents given to it by the Secretary of State¹¹; and

(b) any other oral or written information obtained by it¹².
If, in any particular case, the Board thinks it necessary to interview the person to whom the case relates before reaching a decision, the Board may authorise one of its members to interview him and must consider the report of the interview made by that member¹³. The Board must deal with cases as respects which it gives directions under head (1) or head (2) above on consideration of all such evidence as may be adduced before it¹⁴. Without prejudice to these procedural provisions¹⁵, the Secretary of State may make rules with respect to the proceedings of the Board, including proceedings authorising cases to be dealt with by a prescribed number of its members or requiring cases to be dealt with at prescribed times¹⁶.

The Secretary of State may also give to the Board directions as to the matters to be taken into account by it in discharging any functions under head (1) above or under head (2) above¹⁷; and in giving any such directions the Secretary of State must have regard to: (i) the need to protect the public from serious harm from offenders¹⁸; and (ii) the desirability of preventing the commission by them of further offences and of securing their rehabilitation¹⁹. The Secretary of State may by order²⁰ provide that, following a referral by the Secretary of State of the case of a discretionary release prisoner²¹, the Parole Board²²:

- (A) must direct the prisoner's release if it is satisfied that conditions specified in the order are met²³; or
- (B) must do so unless it is satisfied that conditions specified in the order are met²⁴.

The Prison Service Instructions System²⁵ gives guidance and deals with basic matters of policy relating to the process of parole release and recall²⁶.

- 1 The Parole Board for England and Wales was established in 1968 under the Criminal Justice Act 1967 s 59 (repealed) with the primary function of advising the Secretary of State in relation to the exercise of his powers to release prisoners on licence under the 1967 Act (although the Secretary of State was under no obligation to comply with the advice given). The Board was constituted a body corporate under the Criminal Justice and Public Order Act 1994 (see s 149, substituting the Criminal Justice Act 1991 s 32(1) (repealed)) and, as such, has the status of an Executive Non-Departmental Public Body (ENDPB). The respective roles of the Secretary of State and Parole Board have shifted as they have developed over time: see note 17.
- 2 See the Criminal Justice Act 2003 s 239(1). As to membership, proceedings etc of the Board see s 239(7), Sch 19. The Board is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the Board's property is not to be regarded as property of, or held on behalf of, the Crown: see Sch 19 para 1(1). It is within the capacity of the Board as a statutory corporation to do such things and enter into such transactions as are incidental to or conducive to the discharge of:
 - (1) its functions under Pt 12 Ch 6 (ss 237–268) (sentencing: release, licences and recall) (see PARAS 769, 781 et seq) in respect of fixed-term prisoners (see Sch 19 para 1(2)(a)); and
 - (2) its functions under the Crime (Sentences) Act 1997 Pt II Ch II (ss 28–34) (life sentences) (see PARA 778 et seq) in relation to life prisoners within the meaning of Pt II Ch II (see PARA 778) (see the Criminal Justice Act 2003 Sch 19 para 1(2)(b)).
 As to the meaning of 'fixed-term prisoner' for the purposes of Pt 12 Ch 6 (sentencing: release, licences and recall) see PARA 781.

Further provision is made in relation to the Board particularly with regard to:

- (a) membership (see Sch 19 para 2);
- (b) payments to members (see Sch 19 para 3);
- (c) subject to s 239(5) (see the text and notes 15–16), proceedings (see Sch 19 para 4);
- (d) staff (see Sch 19 paras 5, 6);
- (e) financial provisions (see Sch 19 para 7);

- (f) authentication of the Board's seal (see Sch 19 para 8);
- (g) presumption of authenticity of documents issued by Board (see Sch 19 para 9);
- (h) accounts and audit (see Sch 19 para 10); and
- (i) reports (see Sch 19 para 11).

There must be transparency not only in the appointment process to the Board, but also in any stipulation of the qualities to be looked for in candidates, because departmental sponsorship arrangements were capable of giving rise to the perception that the Board was not independent: *R (on the application of Brooke) v Parole Board*, *R (on the application of Murphy) v Parole Board* [2008] EWCA Civ 29, [2008] 3 All ER 289, [2008] 1 WLR 1950 (ministers should not require that lay members demonstrate qualities that are not relevant to the Board's functions but which are likely to affect the Board's decisions). See further note 17.

The Parole Board is subject to investigation by the Parliamentary Commissioner for Administration: see the Parliamentary Commissioner Act 1967 s 4(1), Sch 2; and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 43.

- 3 See the Criminal Justice Act 2003 s 239(1)(a). As to Pt 12 Ch 6 (sentencing: release, licences and recall) see also PARAS 769, 781 et seq.
- 4 See the Criminal Justice Act 2003 s 239(1)(b).
- 5 See the Criminal Justice Act 2003 s 239(1)(b).
- 6 See the Criminal Justice Act 2003 s 239(1)(b). As to the Crime (Sentences) Act 1997 Pt II Ch II (life sentences), and as to life prisoners within the meaning of Pt II Ch II, see PARA 778 et seq.
- 7 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.
- 8 See the Criminal Justice Act 2003 s 239(2). See *R (on the application of Brooke) v Parole Board*, *R (on the application of Murphy) v Parole Board* [2008] EWCA Civ 29 at [47], [2008] 3 All ER 289 at [47], [2008] 1 WLR 1950 at [47] per Lord Phillips of Worth Matravers CJ (whatever uncertainty there may be as to the scope of the Board's advisory functions, there is no doubt that the major part of the Board's duties is judicial in nature, involving the adjudication, in respect of different types of sentence, on whether the continued detention of prisoners is lawful or whether they are entitled to be released under licence). See also note 14; and PARA 773.
- 9 The Criminal Justice Act 2003 s 239(3) does not deprive the Parole Board of its judicial power to exclude a document or documents provided by the Secretary of State (see head (a) in the text) from consideration by the panel of the Parole Board making the decision whether to direct release: *R (on the application of McGetrick) v Parole Board* [2013] EWCA Civ 182, [2013] All ER (D) 151 (Mar). Such a decision to exclude is likely to be taken only in rare circumstances and, if taken at all, will be taken by a Panel of the Parole Board at an interlocutory hearing conducted in accordance with the Criminal Justice Act 2003 s 293(4) (see the text and note 14).
- 10 See the Criminal Justice Act 2003 s 239(3). The wording of s 239 does not qualify the inherent power of the Parole Board to decide what if any weight is to be given to any evidence it considers, eg evidence contained in any document given to it by the Secretary of State (see head (a) in the text): see *R (on the application of McGetrick) v Parole Board* [2013] EWCA Civ 182 at [33], [2013] All ER (D) 151 (Mar) at [33] per Pill LJ; and see note 9.
- 11 Criminal Justice Act 2003 s 239(3)(a). See notes 9, 10.
- 12 Criminal Justice Act 2003 s 239(3)(b).
- 13 See the Criminal Justice Act 2003 s 239(3). As to whether procedural fairness requires the Board to consider whether further evidence should be obtained, or whether to hold an oral hearing, see PARA 773.
- 14 See the Criminal Justice Act 2003 s 239(4). In rare cases, a panel of the Parole Board can decide, when dealing with cases in respect of which it makes recommendations, that one or more documents provided by the Secretary of State are excluded from consideration by the panel which is to make a recommendation under s 239(3) (see note 9): *R (on the application of McGetrick) v Parole Board* [2013] EWCA Civ 182, [2013] All ER (D) 151 (Mar). As to procedure before the Board, and the scope for the Board to regulate its own procedure, see PARA 773.

The Parole Board exercises a quasi-judicial function but there is no requirement that, in performing its function, it has to follow a criminal trial procedure, or anything like it, so long as it conducts its deliberations fairly: *R v Parole Board, ex p Harris* (15 September 1997, unreported). See also *R (on the application of Allen) v Parole Board* [2012] EWHC 3496 (Admin), [2012] All ER (D) 73 (Dec) (Parole Board was engaged in a different legal

exercise to the sentencing judge, asking a different legal question, applying a different legal standard of proof, using a different juridical approach, and taking account of different (and ample) evidence and materials when properly determining an issue which the sentencing judge expressly said he was not able to decide himself).

The Board is required to have before it all information that bears on its consideration of the risk to the public of the prisoner committing further offences if he is released: *R (on the application of Roberts) v Parole Board* [2005] UKHL 45, [2005] 2 AC 738, sub nom *Roberts v Parole Board* [2006] 1 All ER 39 (the Board should be in a position to know all the relevant information about the progress that the prisoner has made during his sentence; in some situations, the risk that will exist could relate to circumstances that did not exist at the time of sentence). The information before the Board may include material provided by the Secretary of State containing factual allegations about the prisoner's pre-trial conduct, which formed part of the original prosecution case against him, but in relation to which he was never convicted ('untried material'): *R (on the application of McGettrick) v Parole Board* [2013] EWCA Civ 182 at [9], [39], [2013] All ER (D) 151 (Mar) at [9], [39] per Pill LJ (the weight, if any, to be given to that evidence is a matter for the Board but, if it concludes that the allegations relied on at trial are relevant, but that it cannot fairly determine whether or not they have been made out, little or no weight should be given to such allegations and the Board's view of any reports that relied on them would be affected accordingly). See also *R (on the application of Wyles) v Parole Board* [2006] EWHC 493 (Admin), [2006] All ER (D) 233 (Jan) (prisoner released on life licence was charged with causing grievous bodily harm with intent, but acquitted; nevertheless, circumstances of the incident for which he was charged had a sufficient causal connection with the index offence that the claimant might pose a risk to the public if released); cf *R (on the application of Headley) v Parole Board* [2009] EWHC 663 (Admin), [2009] All ER (D) 307 (Jul) (allegations made by ex-wife which appeared to have some bearing on the index offence ought to have given rise to opportunity for cross examination). Where an initial sentence was substituted or varied on appeal prior to the application for parole, the Parole Board should take into account that new judgment, as well as any fresh sentencing reports and other relevant material before making its assessment: *R (on the application of Martin) v Parole Board* [2003] EWHC 1512 (Admin), (2003) Times, 15 May, [2003] All ER (D) 89 (May).

- 15 Ie without prejudice to the Criminal Justice Act 2003 s 239(3), (4) (see the text and notes 9–14): see s 239(5).
- 16 See the Criminal Justice Act 2003 s 239(5). In exercise of the power conferred by s 239(5), the Secretary of State has made the Parole Board Rules 2011, SI 2011/2947 (see PARA 773).
- 17 See the Criminal Justice Act 2003 s 239(6). Directions may have been issued to the Board by the Secretary of State under the Criminal Justice Act 1991 s 32(6) (which is repealed, but re-enacted in identical terms as the Criminal Justice Act 2003 s 239(6)). As to the way in which the Secretary of State should treat the Parole Board's recommendations see *R v Secretary of State for the Home Department, ex p Draper* [2000] All ER (D) 79, DC (rules of procedural fairness did not require the Home Secretary to issue a 'minded to refuse' letter indicating the views of the board and the Home Secretary's reasons for rejecting the board's view, where there was no new evidence or new points being raised before the Home Secretary that had not been before the board); *R (on the application of Burgess) v Secretary of State for the Home Department* [2000] All ER (D) 1682, DC (notwithstanding the increased emphasis on the sexual element in the index offence, there was nothing material before the Secretary of State which had not been before the parole board); and see *R (on the application of Hill) v Secretary of State for the Home Department* [2007] EWHC 2164 (Admin), [2007] All ER (D) 112 (Sep) (Secretary of State had to maintain an even-handed approach to the exercise of his discretion in relation to the transfer of prisoners following an apparent change in policy); and *R (on the application of Banfield) v Secretary of State for Justice* [2007] EWHC 2605 (Admin), [2007] All ER (D) 116 (Oct) (in any given case what the court has to do is to determine whether the Secretary of State's decision was lawful). See also *R (on the application of Oletunde Adetoro) v Secretary of State for Justice* [2012] EWHC 2576 (Admin), [2012] All ER (D) 162 (Sep) (there was an unfairness inherent in the procedure adopted by the Secretary of State where, having held out as his decision one reached in which he accepted the recommendation of the Parole Board, he then acted upon arguments advanced privately by one party to change his mind, without inviting submissions from the prisoner).

The power of the Secretary of State to give directions to the Board (conferred by the Criminal Justice Act 2003 s 239(6) or under predecessor legislation) was construed as a power to give guidance to the Board as to the matters to be taken into account, in so far as they were legally relevant, in order to assist the Board to reach a structured decision on the question which it was its duty to decide (ie whether to direct the release of a prisoner in accordance with the law): *R (on the application of Girling) v Parole Board* [2006] EWCA Civ 1779, [2007] QB 783, [2007] 2 All ER 688. Construed in this way, directions do not infringe the independence of the board, but the Secretary of State is not entitled to direct the board how it was to decide a particular case, or class of case, or to direct it to have regard to an irrelevant consideration, or not to have regard to a relevant consideration, since that would be to impugn the board's independence and interfere with its functions as a court in contravention of the common law and the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 5(4) (see PARA 761 note 8): *R (on the application of Girling) v Parole Board* (Secretary of State's directions objectionable insofar as they purported to tell the Parole Board how to decide whether or not a prisoner should be released); and see also *Sturnham v Secretary of State for Justice* [2012] EWCA Civ 452, [2012] 3 WLR 476, [2012] All ER (D) 148 (Aug) (Board simply referring to unobjectionable part of Secretary of State's guidance when stating that it had taken into account 'the matters specified in the Secretary of State's directions'). The Convention is commonly referred to as the European Convention on Human Rights ('ECHR') and most of the rights and freedoms guaranteed thereby are incorporated into English law by means of the Human Rights Act 1998 s 1, Sch 1: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 122 et seq.

In *R (on the application of Brooke) v Parole Board*, *R (on the application of Murphy) v Parole Board* [2008] EWCA Civ 29, [2008] 3 All ER 289, [2008] 1 WLR 1950, the Court of Appeal gave guidance in relation to areas of policy and practice that required attention, having found that neither the Secretary of State nor his department had adequately addressed the need for the Parole Board to be and to be seen to be free of influence in relation to the performance of its judicial functions, given that these latter functions have gradually assumed greater importance over time. See also *R (on the application of Morales) v Parole Board* [2011] EWHC 28 (Admin), [2011] 1 WLR 1095, [2011] All ER (D) 94 (Jan) (tribunal which lacked power to summon witnesses nevertheless had independence necessary to constitute a court); and *R (on the application of D' Cunha) v Parole Board* [2011] EWHC 128 (Admin), 175 CL & J 111, [2011] All ER (D) 105 (Feb) (Board obliged to follow Secretary of State's directions when it gave advice on the suitability of a prisoner for transfer to open conditions).

In Application 7205/07 *Clift v United Kingdom* (2010) Times, 21 July, [2010] ECHR 7205/07, ECtHR, the Secretary of State's continuing role in deciding upon the releases under the Criminal Justice Act 1991 provisions of prisoners sentenced to determinate terms of 15 years or more for offences committed before 4 April 2005 was held by the European Court of Human Rights to violate the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (Rome, 4 November 1950); TS 71 (1953) Cmd 8969; ETS no 5) art 5 (see PARA 761 note 8) in conjunction with art 14 (rights and fundamental freedoms to be secured without discrimination on any ground: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 164) because there was no objective justification for treating prisoners serving determinate terms of less than 15 years more favourably; in the case of such prisoners, the Secretary of State was required by the Parole Board (Transfer of Functions) Order 1998, SI 1998/3218, art 2 (lapsed) to act in accordance with a Parole Board recommendation for release. Effect was given to the judgment of the European Court of Human Rights by an amendment to the Criminal Justice Act 1991 s 35 (power to release long-term prisoners) (repealed) which required the Secretary of State to give effect to a recommendation for release of any long term prisoner: see the Coroners and Justice Act 2009 s 145(2) (repealed). See also *R (on the application of Mills) v Secretary of State for the Home Department* [2005] EWHC 2508 (Admin), [2005] All ER (D) 307 (Oct) (Board's powers were circumscribed by its specific statutory duties and any specific matters which might have been referred to it by the Secretary of State under the Criminal Justice Act 1991 (now repealed)); and *R (on the application of Foley) v Parole Board for England and Wales* [2012] EWHC 2184 (Admin), [2012] All ER (D) 09 (Aug) (no longer any objective justification for the different tests applied by the Parole Board to those serving indeterminate sentences and those serving determinate sentences of 15 years or more).

- 18 Criminal Justice Act 2003 s 239(6)(a). As to when there is a significant risk of serious harm to members of the public for the purposes of Pt 12 Ch 5 (ss 224–236): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 73 et seq.
- 19 Criminal Justice Act 2003 s 239(6)(b).
- 20 An order under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 128 may:
- (1) amend the Crime (Sentences) Act 1997 s 28 (duty to release IPP prisoners and others: see PARA 779) (Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 128(3)(a));
 - (2) amend the Criminal Justice Act 2003 s 246A (release on licence of extended sentence prisoners: see PARA 787) (Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 128(3)(b));
 - (3) amend the Criminal Justice Act 2003 s 267B, Sch 20B para 6 (duty to release on direction of Parole Board (transitional provisions): see PARA 795), Sch 20B para 15 (release on licence of certain extended sentence prisoners on direction of Parole Board (transitional provisions): see PARA 796), Sch 20B para 25 (duty to release Criminal Justice Act 1967 sentence prisoners unconditionally (transitional provisions): see PARA 797) or Sch 20B para 28 (duty to release Criminal Justice Act 1967 sentence prisoners on licence (transitional provisions): see PARA 797) (Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 128(3)(c));
 - (4) make provision in relation to any person whose case is disposed of by the Parole Board on or after the day on which the regulations come into force (even if the Secretary of State referred that person's case to the Board before that day) (Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 128(3)(d));
 - (5) make different provision in relation to each of the categories of discretionary release prisoner mentioned in s 128(2) (see note 21) (s 128(3)(e)); and
 - (6) include consequential provision (s 128(3)(f)).
- An order under s 128 must be made by statutory instrument (s 128(4)); but a statutory instrument containing such an order may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament (s 128(5)).
- 21 For these purposes, 'discretionary release prisoner' means: (1) an IPP prisoner; (2) an extended sentence prisoner; or (3) a person to whom the Criminal Justice Act 2003 Sch 20B para 4 (duty to make automatic initial release (transitional provisions): see PARA 795), Sch 20B para 15 (release on licence of certain extended sentence prisoners on direction of Parole Board (transitional provisions): see PARA 796), Sch 20B para 24 (duty to release Criminal Justice Act 1967 sentence prisoners unconditionally (transitional provisions): see PARA 797) or Sch 20B para 27 (duty to release Criminal Justice Act 1967 extended sentence prisoners on licence (transitional provisions): see PARA 797) applies: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 128(2). 'IPP prisoner' means a prisoner who is serving one or more of the following sentences and is not serving any other life sentence (ie a life sentence within the meaning the Crime (Sentences) Act 1997 s 34: see PARA 778):
- (a) a sentence of imprisonment for public protection or detention in a young offender institution for public protection under the Criminal Justice Act 2003 s 225 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 74), including one imposed as a result of the Armed Forces Act 2006 s 219 (person aged at least 18 but under 21 convicted by Court Martial of offence of criminal conduct corresponding to a serious offence: see ARMED FORCES vol 3 (2011) PARA 611) (see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 128(6));
 - (b) a sentence of detention for public protection under the Criminal Justice Act 2003 s 226 (see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1300; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 82), including one imposed as a result of the Armed Forces Act 2006 s 221 (required custodial sentences for dangerous offenders: see ARMED FORCES vol 3 (2011) PARA 611) (see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 128(6)).
- 'Extended sentence prisoner' means a prisoner who is serving a sentence under the Criminal Justice Act 2003 s 226A (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS) or s 226B (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS), including one imposed as a result of the Armed Forces Act 2006 s 219A (extended sentence for certain violent or sexual offenders

- aged 18 or over: see ARMED FORCES) or s 221A (extended sentence for certain violent or sexual offenders aged under 18: see ARMED FORCES): see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 128(6).
- 22 See the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 128(1).
- 23 Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 128(1)(a).
- 24 Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 128(1)(b).
- 25 As to the system of central policy instructions and guidance contained eg in Prison Service Orders (PSOs) and Prison Service Instructions (PSIs) see PRISONS AND PRISONERS vol 85 (2012) PARA 406.
- 26 Accordingly, see eg:
- (1) Prison Service Order 6000 (Parole Release and Recall);
 - (2) Prison Service Order 6010 (Generic Parole Process);
 - (3) Prison Service Order 6300 (Release on Temporary Licence);
 - (4) Prison Service Instruction 40/2012 (Licences and Licence Conditions) (valid until 30 November 2016); and
 - (5) Prison Service Instruction 41/2012 (AI 10/2012; PI 21/2012) (Sentence Planning) (valid until 16 December 2016).
- See also Prison Service Instruction 34/2009 (PI 08/2009) (Victim Representations at Parole Board Hearings); and PI 16/2011 (Giving Evidence Through Video-links to Parole Board Oral Hearings); and see the Public Protection Manual (especially Ch 8: Joint National Protocol Supervision, Revocation and Recall for Offenders Released on Licence; Ch 9: Risk of Harm; Ch 11: Inappropriate Materials Guidance).

(ii) Procedure

773. General procedural matters relating to the Parole Board. The Secretary of State¹ may² make rules with respect to the proceedings of the Parole Board³, including proceedings authorising cases to be dealt with by a prescribed number of its members or requiring cases to be dealt with at prescribed times⁴. In exercise of the power so conferred, the Secretary of State has made the Parole Board Rules 2011⁵, which:

- (1) cover general procedures which are required in Parole Board proceedings, including the appointment of panels, information and reports to be prepared by the Secretary of State and the giving of directions⁶;
- (2) set out the timetable and rules for proceedings without a hearing where the Parole Board determines the initial release of a prisoner serving an indeterminate sentence⁷;
- (3) set out the timetable and rules for proceedings with a hearing by an oral panel⁸; and
- (4) contain miscellaneous provisions about time limits, the transmission of documents and procedural errors⁹.

The fairness of the procedure before the Board is to be judged according to the common law rules of procedural fairness and the applicable articles of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) ('the Convention')¹⁰. Fairness may require the Board, of its own initiative, to consider whether further evidence should be obtained, such as where there is a factual dispute and the material before it is inadequate to resolve the issue¹¹. However, neither the common law duty of procedural fairness nor the obligations imposed by the Convention require the Board to hold an oral hearing in every case¹². The Convention requires that any proceedings by which the lawfulness of a prisoner's detention is decided must be determined speedily by a court¹³, but as to what constitutes speedy determination will depend on the circumstances of the case¹⁴.

Within such constraints, it seems that the Parole Board has power to regulate its own procedure¹⁵.

- 1 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.
- 2 *Id* without prejudice to the Criminal Justice Act 2003 s 239(3), (4): see s 239(5); and PARA 772.
- 3 As to the constitution and functions of the Parole Board, continued by the Criminal Justice Act 2003 s 239(1), see PARA 772.
- 4 See the Criminal Justice Act 2003 s 239(5); and PARA 772.
- 5 *Id* the Parole Board Rules 2011, SI 2011/2947, which contain provisions for the commencement, application and interpretation of the Rules (see Pt 1 (rr 1–3)). The 2011 Rules came into force on 3 January 2012 (see r 1(1)); and they revoke the Parole Board Rules 2004 (see the Parole Board Rules 2011, SI 2011/2947, r 1(2)). This revocation does not, however, affect anything done under the Parole Board Rules 2004 before 3 January 2012: see the Parole Board Rules 2011, SI 2011/2947, r 1(3). Although the Parole Board Rules 2004 were made under the Criminal Justice Act 1991 s 32(5) (revoked), which was couched in almost identical terms to the Criminal Justice Act 2003 s 239(5), they were not made by statutory instrument.
The Parole Board Rules 2011, SI 2011/2947, apply where the Secretary of State refers a case to the Parole Board relating to the release or recall of a prisoner: see r 3(1). However:
 - (1) Rule 7(3) (service of information and reports: see PARA 774) applies only where the Secretary of State refers a case to the Board relating to the initial release of a prisoner serving an indeterminate sentence (see r 3(2)); and
 - (2) Pt 3 (rr 16–18) (see head (2) in the text) applies only where the Secretary of State refers a case to the Board relating to the release of a prisoner serving an indeterminate sentence (see r 3(3)).
 A reference to a period of time (in the case of the initial release of a prisoner serving an indeterminate sentence) applies as set out in the Parole Board Rules 2011, SI 2011/2947 and (in all other cases) applies as if it was a reference to such period of time as the chair may in each case determine: see r 3(4). As to the meaning of ‘Board’ for these purposes see PARA 774 note 2; as to the meaning of ‘chair’ for these purposes see PARA 774 note 13; as to the meaning of ‘determinate sentence’ see PARA 774 note 10; and as to the meaning of ‘indeterminate sentence’ see PARA 774 note 6.
- 6 See the Parole Board Rules 2011, SI 2011/2947, Pt 2 (rr 4–15); and PARA 774. As to the information and reports to be sent to the Parole Board by the Secretary of State see r 7, Schs 1, 2; and PARA 774.
- 7 See the Parole Board Rules 2011, SI 2011/2947, Pt 3; and PARA 775.
- 8 See the Parole Board Rules 2011, SI 2011/2947, Pt 4 (rr 19–26); and PARAS 776, 777.
- 9 See the Parole Board Rules 2011, SI 2011/2947, Pt 5 (rr 27–29); and PARA 774 et seq.
- 10 *Id* the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) and, in this context, especially art 5(4) (ie that everyone who is deprived of his liberty by arrest or detention is entitled to take proceedings by which the lawfulness of his detention is to be decided speedily by a court and his release ordered if the detention is not lawful: see PARA 761 note 8). The Convention is commonly referred to as the European Convention on Human Rights (‘ECHR’) and most of the rights and freedoms guaranteed thereby are incorporated into English law by means of the Human Rights Act 1998 s 1, Sch 1: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 122 et seq. The question as to whether the procedures adopted by the Parole Board are fair is a question of law for the Court to determine, but that question will be judged in the context of the circumstances identified and evaluated by the Board, including their appraisal of the material already available, formed with the expertise which the court does not share, and their resulting assessment of what will be needed to satisfy it that release will not put the public at risk: *Osborn v Parole Board*, *Booth v Parole Board* [2010] EWCA Civ 1409, (2011) Times, 14 February, [2010] All ER (D) 185 (Dec).
- 11 See *R v Parole Board, ex p Davies* (27 November 1996, unreported), DC; and *R (on the application of Emirsoylu) v Parole Board* [2007] EWHC 2007 (Admin), [2007] All ER (D) 82 (Aug) (Parole Board should decide whether it required further evidence in the light of the information it already had before it, including the expressed stance of the parties, but it should also reach its view in the light of the impact of the factual issue it had determined, and what it could get from the reports it already had and what it would get from any further reports). Cf note 12.
- 12 Under earlier authorities, it was held that the Board had a discretion conferred by statute whether to hold an oral hearing and it will be acting illegally if it refuses to consider a

request for such a hearing: *R v Parole Board, ex p Davies* (27 November 1996, unreported), DC (considering the Criminal Justice Act 1991 s 32(3) (repealed), which was enacted in identical terms to the Criminal Justice Act 2003 s 239(3) (see PARA 772)). See also *R v Parole Board, ex p Mansell* [1996] COD 327, DC; *R v Parole Board, ex p Downing* [1997] COD 149, DC. The position now is that, while the common law duty of procedural fairness does not require the Parole Board to hold an oral hearing in every case where a determinate sentence prisoner resisted recall, the board's duty is not as restricted as had hitherto been assumed: see *R (on the application of Smith) v Parole Board*, *R (on the application of West) v Parole Board* [2005] UKHL 1, [2005] 1 All ER 755, [2005] 1 WLR 350 (on the facts of the case, the board had breached its duty of procedural fairness by failing to offer the prisoner an oral hearing of his representations against revocation of his licence, and was accordingly in breach of ECHR art 5(4) (see note 10)). While an oral hearing is most obviously necessary to achieve a just decision in a case where facts are in issue which may affect the outcome, there are other cases in which an oral hearing may well contribute to achieving a just decision, on the facts of the case: *R (on the application of Smith) v Parole Board*, *R (on the application of West) v Parole Board* (important facts, whether or not, in dispute, might be open to explanation or mitigation, or might lose some of their significance in the light of other new facts). The board's task in assessing risk might well be greatly assisted by exposure to the prisoner, or by the questioning of those who had dealt with him, as it could often be very difficult to address effective representations without knowing the points which were troubling the decision maker: *R (on the application of Smith) v Parole Board*, *R (on the application of West) v Parole Board*. The emphasis should be on the utility of the oral procedure in allowing a proper exploration of a claimant's case and in assisting in the resolution of the issues before the decision maker: *Osborn v Parole Board*, *Booth v Parole Board* [2010] EWCA Civ 1409, (2011) Times, 14 February, [2010] All ER (D) 185 (Dec) (where an assessment of dangerousness was being undertaken on the basis of personality and maturity, an oral hearing was not always necessary because the board is entitled to take into account its own judgment on the basis of the material available, including the information already available from previous assessments, and to consider whether there was a realistic prospect of that being affected by an oral hearing; on the other hand, where the board was in doubt as to whether an oral hearing could be of assistance, the presumption should be in favour of it). See also *R (on the application of Yusuf) v Parole Board* [2010] EWHC 1483 (Admin), [2011] 1 WLR 63, [2010] All ER (D) 166 (Jun) (oral hearing would be convened where the circumstances required evidence to be given orally for a lifer whose minimum term had not expired and whose transfer to open conditions was in issue); *Roose v Parole Board* [2010] EWHC 1780 (Admin), (2010) Times, 1 September, [2010] All ER (D) 194 (Jul) (in an exceptional case, the court may think it appropriate to decide whether procedural fairness required an oral hearing on the basis of documents and information which the prisoner or his representatives could have put before the board but did not do so); and as for an example of 'those rare cases' in which an oral hearing is necessary to achieve a just result, notwithstanding that there was no apparent dispute of fact or discernible issue of law advanced by the prisoner see *R (on the application of Chester) v Parole Board* [2011] EWHC 800 (Admin), [2011] All ER (D) 126 (Apr).

Strasbourg jurisprudence draws a distinction between the administrative implementation (ie by a tribunal such as the Parole Board) of a determinate sentence of the court, and the determination of the length of a life-sentence prisoner's imprisonment beyond the minimum term, which was otherwise indeterminate and had to be determined by a court: see *R (on the application of Giles) v Parole Board* [2003] UKHL 42 at [25]–[26], [2004] 1 AC 1 [25]–[26], [2003] 4 All ER 429 at [25]–[26] per Lord Hope of Craighead; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 127 et seq. See also *R (on the application of K) v Parole Board* [2006] EWHC 2413 (Admin), [2006] NLJR 1561, [2006] All ER (D) 75 (Oct) (Board failed to advise child applicant, not assisted by adult, that an oral hearing was possible and he was not visited by the Board, despite being told he would be, before decision made); *R (on the application of Black) v Secretary of State for Justice* [2009] UKHL 1, [2009] AC 949, [2009] 4 All ER 1 (decision when to release a prisoner subject to an indeterminate sentence engaged ECHR art 5); *R (on the Application of Jacob) v Parole Board* [2010] EWHC 2475 (Admin) (Parole Board has power to make a provisional decision on a prisoner's parole application without his representations if they are not submitted within the time limit under the applicable rules, which are sufficient to ensure fairness overall).

13 Ie in accordance with ECHR art 5(4) (see note 10).

- 14 As to delay and claims made against the Parole Board in relation to prisoner's rights under ECHR art 5(4) (see note 10) see *R (on the application of James) v Secretary of State for Justice* [2009] UKHL 22, [2010] 1 AC 553, [2009] 4 All ER 255 (provided the Parole Board has been given the basic dossier under the Parole Board Rules, the board's inability to obtain the further reports from those responsible for providing such reports does not amount to a breach of ECHR art 5(4) on the part of the Parole Board unless and until the point has been reached when the delay in providing information has continued for such a long period that continued detention has become arbitrary because the absence of such material does not preclude the board from taking a decision as to the necessity of continued detention). However, delay to a hearing due to lack of resources (and *a fortiori* where the delay is due to error or omission on the part of the Parole Board or its staff or members) is capable of being a breach of ECHR art 5(4); see *R (on the application of Pennington) v Parole Board* [2009] EWHC 2296 (Admin), 153 Sol Jo (no 37) 38, [2009] All ER (D) 126 (Sep), where the authorities were reviewed at [17] per Pelling QC (sitting as a judge of the High Court). Accordingly, delays to a hearing occasioned by a lack of resources (and *a fortiori* where the delay is due to error or omission on the part of the Board or its staff or members,) are capable of being a breach of ECHR art 5(4); see *R (on the application of Betteridge) v Parole Board* [2009] EWHC 1638 (Admin), [2009] All ER (D) 202 (Jul); *R (on the application of Noorkoiv) v Secretary of State for the Home Department* [2002] EWCA Civ 770 at [15], [30], [45], [2002] 4 All ER 515, [2002] 1 WLR 3284 per Buxton LJ; *R (on the application of Robson) v Parole Board* [2008] EWHC 248 (Admin) at [32], [2008] All ER (D) 200 (Jan) at [32] per Cranston J. However, delays resulting from the Parole Board's own reasonable actions (eg in requiring further information before a case is listed for hearing) do not amount to a breach of ECHR art 5(4); see *R (on the application of D) v Life Sentence Review Comrs (Northern Ireland)* [2008] UKHL 33, [2008] 4 All ER 992, [2008] 1 WLR 1499; *R (on the application of Robson) v Parole Board* at [36] per Cranston J; and *R (on the application of Betteridge) v Parole Board* at [22] per Collins J. See also *R (on the application of Black) v Secretary of State for Justice* [2009] UKHL 1, [2009] AC 949, [2009] 4 All ER 1.

On the point as to whether the Parole Board should be held liable for delay caused by the failure of others to provide reports as directed see *R (on the application of Smith (Craig)) v Secretary of State for Justice* [2008] EWHC 2998 (Admin), [2008] All ER (D) 70 (Dec); and see also *R (on the application of Pennington) v Parole Board* (although it was reasonable for the Parole Board to delay fixing a hearing until addendum reports were received, delay cannot be characterised as a 'reasonable action' such that ECHR art 5(4) is not breached). As to prioritisation of overdue cases see *R (on the application of Alcock) v Parole Board* [2009] EWHC 2401 (Admin), [2009] All ER (D) 18 (Sep) (Board's procedure was adequate, being designed to bring to the fore cases meriting hearing sooner rather than later; no basis of a claim for damages); *R (on the application of Hoole) v Parole Board* [2010] EWHC 186 (Admin), [2010] All ER (D) 100 (Feb) (correct approach to the decision whether to prioritise a prisoner's case was to make an assessment of the effects of continued incarceration on third parties by reference to the prospects of release, after the alleged compassionate circumstances had been examined). As to damages see *R (on the application of Pennington) v Parole Board* [2010] EWHC 78 (Admin), [2010] All ER (D) 69 (Feb). See also *R (on the application of Johnson) v Secretary of State for the Home Department* [2007] EWCA Civ 427, [2007] 3 All ER 532, [2007] 1 WLR 1990 (delay by the parole board in its consideration of a case after the prisoner with a determinate sentence became eligible for parole breached ECHR art 5(4) so that, provided only he could demonstrate that an earlier consideration of his case would have resulted in his earlier release, he was entitled to compensation); *R (on the application of Faulkner) v Secretary of State for Justice* [2010] EWCA Civ 1434, (2011) Times, 23 February, [2010] All ER (D) 178 (Dec) (unjustified delay by Parole Board in conducting review prevented the appellant from having the lawfulness of his continued detention decided in accordance with ECHR art 5(4), for which prisoner entitled to damages); *R (on the application of Flinders) v Director of High Security* [2011] EWHC 1630 (Admin), [2011] All ER (D) 02 (Jul) (Board had failed to explain its delay in holding a review of the prisoner's case and acknowledged that the delay constituted a breach of his rights under ECHR art 5(4); however, there was no proper foundation to infer that the delay in convening the parole hearing had had any additional adverse effect upon the prisoner sufficient to justify an award of damages); and see *Sturnham v Secretary of State for Justice* [2012] EWCA Civ 452 at [22], [2012] 3 WLR 476 at [22], [2012] All ER (D) 148 (Aug) at [22] per Laws LJ

(in an ECHR art 5(4) delay case, just satisfaction is ordinarily achieved by a declaration unless the violation involves an additional outcome for the claimant which requires an award of damages).

There is a second element to the requirement of speediness under ECHR art 5(4): indeterminate sentence prisoners have a right to a prompt review of the lawfulness of their detention determined at regular intervals because the justification for their detention, namely continued dangerousness, is susceptible to change over time; the Parole Board must conduct these periodic reviews to assess continuing dangerousness at reasonable intervals, but the question of whether the periods between reviews are reasonable is to be determined in the light of the circumstances of each case: Application 36273/97 *Oldham v United Kingdom* (2000) 31 EHRR 813, ECtHR; Application 59512/00 *Blackstock v United Kingdom* (2005) 42 EHRR 55, (2005) Times, 29 June, [2005] All ER (D) 218 (Jun). See also *R (on the application of MacNeill) v HMP Lifer Panel* [2001] EWCA Civ 448, [2001] All ER (D) 248 (Mar) (European Court of Human Rights had not given a ruling on the maximum period of time between reviews applicable to all cases, and recognised that what was reasonable depended on the facts and circumstances of the individual case). The decision as to the appropriate interval between reviews is not one which under the Convention needs to be taken by a court for the purposes of ECHR art 5(4) and it can properly be taken by the Secretary of State, who has a discretion to refer a case to the Parole Board before the expiry of the statutory two years minimum, whether an early review is recommended by the Parole Board or of his own motion: Application 36273/97 *Oldham v United Kingdom*; *R (on the application of Spence) v Secretary of State for the Home Department* [2003] EWCA Civ 732, 147 Sol Jo LB 660, [2003] All ER (D) 354 (May); and see *R (on the application of Day) v Secretary of State for the Home Department* [2004] EWHC 1742 (Admin), [2004] All ER (D) 274 (Jun) (authority indicates that there are aspects of the release procedures which properly remain administrative procedures under the control of the Secretary of State; ECHR art 5 does not require the Parole Board to be charged with the fixing of a review date). The Secretary of State's decision to fix the period before the next review can be challenged by judicial review, however, whereby the court may not merely determine whether the decision was reasonable but also reach its own decision as to the appropriate review period: see *R (on the application of Loch) v Secretary of State for Justice* [2008] EWHC 2278 (Admin), [2008] All ER (D) 39 (Oct) (while there was no formal presumption that an interval of more than a year was unreasonable and non-compliant, the court should approach the question on the basis that where there was an interval of more than a year it was generally for the decision maker to show, by reference to the facts, that it was reasonable and thus compliant); *R (on the application of Ashford) v Secretary of State for Justice* [2008] EWHC 2734 (Admin), [2008] All ER (D) 203 (Oct) (in the circumstances of the case, the Secretary of State's decision not to bring forward the claimant's parole board hearing had been reasonable and pragmatic); *R (on the application of Johnson) v Secretary of State for Justice* [2009] EWHC 3336 (Admin), [2009] All ER (D) 195 (Dec) (reasonableness of the interval between reviews necessarily had to be related to the assessment of risk and due weight and regard had to be had to the decision maker; but any decision had to be made in the context of preventing unjustified detention and, the greater the period between reviews, the more cogent the reasons would have to be if the court was not to be persuaded that it was unreasonably long in that context); *R (on the application of Gray) v Secretary of State for Justice* [2010] EWHC 2 (Admin), [2010] All ER (D) 53 (Jan) (claim for judicial review allowed to the extent that parole board had violated the claimant's right to a speedy hearing, to consider whether it was safe to release him); *R (on the application of NW and YW) v Secretary of State for Justice* [2010] EWHC 2485 (Admin), [2010] All ER (D) 75 (Aug) (in assessing the parole board's decision that had set the period between parole review meetings, the court had to determine whether: (i) a need for monitoring and progress had been identified; (ii) a sensible timetable had been proposed; (iii) the Secretary of state had approached the task with flexibility; and (iv) whether the 'public protection' test was irrelevant); *R (on the application of Harrison) v Secretary of State for Justice* [2009] EWHC 1769 (Admin), [2009] All ER (D) 236 (Jul) (ECHR art 5(4) not infringed; decision to delay review was open to criticism because it was not specific as to the reasons for setting a date beyond a 12-month bench mark but there were clear reasons within the material which had been before the Secretary of State to justify it; and the Secretary of State had expressed an intention to review the claimant's case, and, if appropriate, to have the claimant's next hearing brought forward); *R (on the application of Parratt) v Secretary of State for Justice* [2013] EWHC 17 (Admin), [2013] All ER (D) 142 (Jan) (ECHR art 5(4) not infringed where the review period set at 15 months had been calculated having

regard to what the claimant would need to do in order to persuade the Parole Board that it was safe to order his release, it having been by no means clear that the claimant would have been ready for release had the review period been fixed at 12 months).

- 15 See the Criminal Justice Act 2003 s 239(7), Sch 19 para 1(2); and PARA 772 note 2. See also *R (on the application of Roberts) v Parole Board* [2005] UKHL 45, [2005] 2 AC 738, sub nom *Roberts v Parole Board* [2006] 1 All ER 39 (although the appointment of special advocates should remain wholly exceptional, the Board was permitted to direct their use if the need to have regard to all the evidence in assessing risk relevant to a prisoner's parole review required the protection of a source from the prisoner and his legal representatives) (considering predecessor legislation to the Criminal Justice Act 2003 Sch 19 para 1(2)); *R (on the application of Brooks) v Parole Board* [2004] EWCA Civ 80, 148 Sol Jo LB 233, [2004] All ER (D) 142 (Feb) (Parole Board able to rely on hearsay evidence, following *R (on the application of Sim) v Parole Board* [2003] EWCA Civ 1845, [2004] QB 1288, [2004] 2 WLR 1170); and *R (on the application of Gardner) v Parole Board* [2006] EWCA Civ 1222, (2006) Times, 29 September, [2006] All ER (D) 12 (Sep) (Board had power to exclude prisoner from part of a hearing). As to the general procedural rules applicable to the Parole Board see PARA 774 et seq. As to the appointment of special advocates particularly see PARA 774 note 29.

774. General procedural rules applicable to Parole Board proceedings.

Where the Secretary of State¹ refers a case to the Parole Board² relating to the release or recall of a prisoner³, the chairman⁴ must appoint:

- (1) a single member of the Board to constitute a panel⁵ to deal with a case where the Board is to consider the initial release of a prisoner serving an indeterminate sentence⁶; and
- (2) one or more members of the Board to constitute a panel⁷ to deal with a case where⁸:
 - (a) the case is to be heard in accordance with the rules that provide for a hearing⁹;
 - (b) the Board is to consider the release of a prisoner serving a determinate sentence¹⁰; or
 - (c) the Board is under a duty to give advice to the Secretary of State¹¹; but

a person appointed under head (1) above may not in the same case sit on a panel appointed under head (2)(a) above¹².

The Chairman must appoint one member of each panel to act as chair of that panel¹³.

In respect of a hearing in the case of a prisoner serving a life sentence or a sentence during Her Majesty's pleasure¹⁴, an oral panel¹⁵ must consist of or include a sitting or retired judge¹⁶, and the sitting or retired judge must act as chair of the oral panel¹⁷.

Directions may be given, varied or revoked (before the appointment of a panel) by a member of the Parole Board or (after the appointment of a panel) by the chair¹⁸.

A party may be represented by any person appointed by the party¹⁹; but the following may not act as a representative²⁰: (i) any person who is detained or is liable to be detained under the Mental Health Act 1983²¹; (ii) any person serving a sentence of imprisonment²²; (iii) any person who is on licence having been released from a sentence of imprisonment²³; or (iv) any person with a conviction for an offence which remains unspent under the Rehabilitation of Offenders Act 1974²⁴. Within five weeks of a case being referred to the Parole Board²⁵, a party must notify the Board and the other party of the name, address and occupation of any person appointed to act as their representative²⁶. Where a prisoner does not appoint a person to act as their representative, the Board may, with the prisoner's agreement, appoint a person to do so²⁷.

The Secretary of State must serve on the Parole Board²⁸ and, subject to the rules that provide for the Secretary of State to withhold information and reports²⁹, the prisoner or their representative³⁰:

- (A) where a case relates to the initial release of a prisoner, the information³¹ and the reports³² that are specified for this purpose³³;
- (B) where a case relates to the recall following release of a prisoner, the information³⁴ and the reports³⁵ that are specified for that purpose³⁶; and
- (C) in either case, any other information which the Secretary of State considers relevant to the case³⁷.

Where the Board has a duty to advise the Secretary of State, the Secretary of State must serve on the Board and, subject again to the rules that provide for the Secretary of State to withhold information and reports³⁸, the prisoner or their representative, any information or reports which the Secretary of State considers relevant to the case³⁹.

Information about the proceedings and the names of persons concerned in the proceedings must not be made public⁴⁰.

A prisoner who wishes to make representations to the Parole Board must serve them on the Board and the Secretary of State within 12 weeks of the case being referred to the Board⁴¹; and any documentary evidence that a prisoner wishes to present at their hearing must be served on the Board and the Secretary of State at least 14 days before the date of the hearing⁴².

A chair may adjourn proceedings to obtain further information or for such other purpose as the chair considers appropriate⁴³. Where the chair adjourns a hearing without a further hearing date being fixed, the chair must give the parties at least three weeks' notice of the date, time and place of the resumed hearing⁴⁴ (or such shorter notice period as the parties agree)⁴⁵.

Where a panel has been appointed under head (2) above, a decision of the majority of the members of the panel is to be the decision of the panel⁴⁶. Where the Secretary of State refers a case to the Parole Board relating to a prisoner serving a determinate sentence, the Board may make a decision without a hearing⁴⁷. Similarly, where the Board has a duty to advise the Secretary of State with respect to any matter referred to it by the Secretary of State which is to do with the early release or recall of a prisoner, the Board may advise the Secretary of State without a hearing⁴⁸.

Where there has been an error of procedure, such as a failure to comply with a rule⁴⁹, the error does not invalidate any steps taken in the proceedings unless the panel so directs⁵⁰, and the panel may remedy the error⁵¹.

- 1 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.
- 2 For these purposes, 'Board' means the Parole Board, continued by the Criminal Justice Act 2003 s 239(1) (see PARA 772): see the Parole Board Rules 2011, SI 2011/2947, r 2.
- 3 Ie where the Parole Board Rules 2011, SI 2011/2947, apply: see r 3; and PARA 773.
- 4 For these purposes, 'chairman' means the chairman of the Board appointed under the Criminal Justice Act 2003 s 239(7), Sch 19 para 2 (see PARA 772 note 2): see the Parole Board Rules 2011, SI 2011/2947, r 2.
- 5 For these purposes, 'single member' means a member of the Parole Board who has been appointed to constitute a panel in accordance with Parole Board Rules 2011, SI 2011/2947, r 5(1) (see head (1) in the text); and 'panel' means a panel appointed in accordance with r 5(1) or r 5(2) (see head (2) in the text): see r 2.

- 6 See the Parole Board Rules 2011, SI 2011/2947, r 5(1). For these purposes, ‘indeterminate sentence’ means a sentence of imprisonment listed under the Crime (Sentences) Act 1997 s 34(2) (see PARA 778): see the Parole Board Rules 2011, SI 2011/2947, r 2. See further Pt 3 (rr 16–18) (which sets out the timetable and rules for proceedings without a hearing where the Parole Board determines the initial release of a prisoner serving an indeterminate sentence); and PARA 775.
- 7 See note 5.
- 8 See the Parole Board Rules 2011, SI 2011/2947, r 5(2).
- 9 Parole Board Rules 2011, SI 2011/2947, r 5(2)(a). Head (a) in the text refers to a case that is to be heard in accordance with Pt 4 (rr 19–26) (see PARAS 776, 777): see r 5(2)(a).
- 10 Parole Board Rules 2011, SI 2011/2947, r 5(2)(b). For these purposes, ‘determinate sentence’ means a sentence of imprisonment other than an indeterminate sentence (see note 6): see r 2.
- 11 Parole Board Rules 2011, SI 2011/2947, r 5(2)(c).
- 12 Parole Board Rules 2011, SI 2011/2947, r 5(5).
- 13 Parole Board Rules 2011, SI 2011/2947, r 5(3). Accordingly, for these purposes, ‘chair’ means a chairman of a panel appointed under r 5(3): see r 2.
- 14 See the Parole Board Rules 2011, SI 2011/2947, r 5(4). As to the various forms of life sentence that have been available to sentencing courts over the years see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1300 et seq; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 29 et seq. As to a sentence of detention at Her Majesty’s pleasure (passed on a person under 18 convicted of murder or any other offence the sentence for which is fixed by law as life imprisonment) see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1308; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 81. See also PARAS 762, 778.
- 15 For these purposes, ‘oral panel’ means a panel which determines a case or matter at a hearing: see the Parole Board Rules 2011, SI 2011/2947, r 2.
- 16 Parole Board Rules 2011, SI 2011/2947, r 5(4)(a).
- 17 Parole Board Rules 2011, SI 2011/2947, r 5(4)(b). See further Pt 4 (which sets out the timetable and rules for proceedings with a hearing); and PARAS 776, 777.
- 18 See the Parole Board Rules 2011, SI 2011/2947, r 10(1). Such directions may relate to:
- (1) the timetable for the proceedings (r 10(2)(a));
 - (2) the service of information or a report (r 10(2)(b));
 - (3) whether any information or report should be withheld (r 10(2)(c));
 - (4) the submission of evidence (r 10(2)(d));
 - (5) the attendance of a witness or observer (r 10(2)(e)).

Within seven days of being notified of a direction under r 10(2)(c) (see head (3) above), either party may appeal against that direction to the chairman, who must notify the other party of the appeal (r 10(3)); and within seven days of being notified that a party has appealed under r 10(3), the other party may make representations on the appeal to the chairman (r 10(4)). For these purposes, ‘party’ means either a prisoner or the Secretary of State: see r 2. (The prisoner may be represented by a legal representative and a public protection advocate may represent the Secretary of State: see the guidance available at <https://www.gov.uk>).

A party may apply in writing for a direction to be given, varied or revoked (r 10(5)); and such an application must specify any direction sought (r 10(6)(a)), and must be served on the other party (r 10(6)(b)). Where a party has applied in writing for a direction to be given, varied or revoked, either party may make written representations about the application (r 10(7)(a)); and, where the chair thinks it necessary, and subject to r 11(4)(b), either party may make oral submissions at a directions hearing (r 10(7)(b)). The power to give directions may be exercised in the absence of the parties (r 10(8)); but the Board must serve notice on the parties of any directions given, varied or revoked as soon as practicable (r 10(9)).

A chair may hold a directions hearing: r 11(1). He must give the parties at least 14 days’ notice of the date, time and place fixed for any such hearing (r 11(2)), which must be held in private (r 11(3)). At such a hearing, unless the chair directs otherwise, the chair is to sit alone (r 11(4)(a)); and a prisoner who is represented may not attend (r 11(4)(b)).

In the Parole Board Rules 2011, SI 2011/2947, except where the initial release of a prisoner serving an indeterminate sentence is being considered (see PARA 775), a reference to a period of time applies as if it was a reference to such period of time as the chair may in each case determine: see r 3(4); and PARA 773 note 5. Where the time prescribed by or under the Parole Board Rules 2011, SI 2011/2947, for doing any act expires on a Saturday, Sunday or public holiday, the act will be in time if it is done on the next working

day: see r 27. Any document required or authorised by the Parole Board Rules 2011, SI 2011/2947, to be served or otherwise transmitted to any person may be transmitted by electronic means, sent by pre-paid post or delivered (in the case of a document directed to the Board or the chair) to the office of the Board, or (in any other case) to the last known address of the person to whom the document is directed: see r 28.

- 19 Parole Board Rules 2011, SI 2011/2947, r 6(1).
- 20 See the Parole Board Rules 2011, SI 2011/2947, r 6(2).
- 21 Parole Board Rules 2011, SI 2011/2947, r 6(2)(a). As to persons liable to be detained under the Mental Health Act 1983 see MENTAL HEALTH AND CAPACITY vol 75 (2013) PARA 766 et seq.
- 22 Parole Board Rules 2011, SI 2011/2947, r 6(2)(b). As to prisoners and their sentences see PARAS 778, 781 et seq.
- 23 Parole Board Rules 2011, SI 2011/2947, r 6(2)(c). As to release on licence see PARA 779 et seq.
- 24 Parole Board Rules 2011, SI 2011/2947, r 6(2)(d). As to the effect of the Rehabilitation of Offenders Act 1974 see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 660 et seq.
- 25 Where the Board is to consider the release of a prisoner serving a determinate sentence, the release following a recall of a prisoner serving an indeterminate sentence or is to advise the Secretary of State, the case is deemed to be referred to the Board on the date it receives the information and reports specified in the Parole Board Rules 2011, SI 2011/2947, r 7 (see the text and notes 29–39): r 4.
- 26 Parole Board Rules 2011, SI 2011/2947, r 6(3).
- 27 Parole Board Rules 2011, SI 2011/2947, r 6(4).
- 28 Where the Secretary of State refers a case to the Board relating to the initial release of a prisoner serving an indeterminate sentence, he must serve the information and reports mentioned in the Parole Board Rules 2011, SI 2011/2947, r 7(1) within eight weeks of the case being referred to the Board: see rr 3(2), 7(3).
- 29 Is subject to the Parole Board Rules 2011, SI 2011/2947, r 8: see r 7(1). The Secretary of State may withhold any information or report from the prisoner and their representative where the Secretary of State considers (see r 8(1)):
 - (1) that its disclosure would adversely affect: (a) national security (r 8(1)(a)(i)); (b) the prevention of disorder or crime (r 8(1)(a)(ii)); or (c) the health or welfare of the prisoner or any other person (r 8(1)(a)(iii)); and
 - (2) that withholding the information or report is a necessary and proportionate measure in the circumstances of the case (r 8(1)(b)).

Where any information or report is withheld, the Secretary of State must record it in a separate document (r 8(2)(a)), must serve it only on the Board (r 8(2)(b)), and must explain to the Board in writing why it has been withheld (r 8(2)(c)). Where any information or report is withheld from the prisoner, the Secretary of State must, unless the chair directs otherwise, serve it as soon as practicable on:

- (i) the prisoner's representative, if the representative is a barrister or solicitor (r 8(3)(a)(i)), a registered medical practitioner (r 8(3)(a)(ii)), or a person whom the chair directs is suitable by virtue of their experience or professional qualification (r 8(3)(a)(iii)); or
- (ii) a special advocate who has been appointed by the Attorney General to represent the prisoner's interests (r 8(3)(b)).

A prisoner's representative or a special advocate may not disclose any information or report disclosed in accordance with r 8(3) without the consent of the chair (see r 8(4)); and, where the chair decides that any information or report withheld by the Secretary of State under r 8(1) should be disclosed to the prisoner or their representative, the Secretary of State may withdraw the information or report (see r 8(5)). If the Secretary of State withdraws any information or report in accordance with r 8(5), nobody who has seen that information or report may sit on a panel which determines the case: see r 8(6). See also Prison Service Instruction 61/2010 (Handling of Sensitive Information provided by Criminal Justice Agencies) (valid until 20 December 2014). As to the system of central policy instructions and guidance contained eg in Prison Service Orders (PSOs) and Prison Service Instructions (PSIs) see PRISONS AND PRISONERS vol 85 (2012) PARA 406. As to the provision of medical attention see PRISONS AND PRISONERS vol 85 (2012) PARA 547. As to registered medical practitioners generally see MEDICAL PROFESSIONS vol 74 (2011) PARA 210 et seq. As to the appointment of special advocates in other contexts see eg CRIMINAL PROCEDURE vol 28 (2010) PARA 492; EMPLOYMENT vol 41 (2009) PARA 1409; and see JUDICIAL REVIEW vol 61 (2010) PARA 640. See also *R (on the application of Roberts) v*

Parole Board [2005] UKHL 45, [2005] 2 AC 738, sub nom *Roberts v Parole Board* [2006] 1 All ER 39 (although the appointment of special advocates should remain wholly exceptional, the Board was permitted to direct their use if the need to have regard to all the evidence in assessing risk relevant to a prisoner's parole review required the protection of a source from the prisoner and his legal representatives); and *R (on the application of Gardner) v Parole Board* [2006] EWCA Civ 1222, (2006) Times, 29 September, [2006] All ER (D) 12 (Sep) (Board had power to exclude prisoner from part of a hearing) (both cases decided before the Parole Board Rules were issued as a statutory instrument: see PARA 773).

30 See the Parole Board Rules 2011, SI 2011/2947, r 7(1).

31 In the information specified in the Parole Board Rules 2011, SI 2011/2947, r 7, Sch 1 Pt A: see r 7(1)(a). Accordingly, the following information related to the prisoner is required for submission to the Board by the Secretary of State on a reference to the Board to determine the initial release of a prisoner:

- (1) the full name of the prisoner (Sch 1 Pt A para 1);
- (2) the date of birth of the prisoner (Sch 1 Pt A para 2);
- (3) the prison in which the prisoner is detained, details of any other prisons in which the prisoner has been detained and the date and the reason for any transfer (Sch 1 Pt A para 3);
- (4) the date on which the prisoner was given the current sentence, details of the offence and any previous convictions (Sch 1 Pt A para 4);
- (5) the comments, if available, of the trial judge when passing sentence (Sch 1 Pt A para 5);
- (6) if available, the conclusions of the Court of Appeal in respect of any appeal by the prisoner against conviction or sentence (Sch 1 Pt A para 6); and
- (7) the parole history, if any, of the prisoner, including details of any periods spent on licence during the current sentence (Sch 1 Pt A para 7).

For these purposes, 'prison' includes a young offender institution or any other institution where a prisoner is or has been detained: see r 2. As to the establishment of young offender institutions see PRISONS AND PRISONERS vol 85 (2012) PARA 487 et seq. Although the Parole Board exercises a quasi-judicial function, it is engaged in a different legal exercise to the sentencing judge: see PARA 772 note 14.

32 In the reports specified in the Parole Board Rules 2011, SI 2011/2947, r 7, Sch 1 Pt B: see r 7(1)(a). Accordingly, the following reports related to the prisoner are required for submission to the Board by the Secretary of State on a reference to the Board to determine the initial release of a prisoner:

- (1) if available, the pre-trial and pre-sentence reports examined by the sentencing court on the circumstances of the offence (Sch 1 Pt B para 1);
- (2) any reports on a prisoner who was subject to a transfer direction under the Mental Health Act 1983 s 47 (see MENTAL HEALTH AND CAPACITY vol 75 (2013) PARA 892 et seq) (Parole Board Rules 2011, SI 2011/2947, Sch 1 Pt B para 2);
- (3) any current reports on the prisoner's risk factors, reduction in risk and performance and behaviour in prison, including views on suitability for release on licence as well as compliance with any sentence plan (Sch 1 Pt B para 3);
- (4) an up-to-date risk management report prepared for the Board by an officer of the supervising local probation trust, including information on the following where relevant (see Sch 1 Pt B para 4):
 - (a) details of the home address, family circumstances and family attitudes towards the prisoner (Sch 1 Pt B para 4(a));
 - (b) alternative options if the offender cannot return home (Sch 1 Pt B para 4(b));
 - (c) the opportunity for employment on release (Sch 1 Pt B para 4(c));
 - (d) the local community's attitude towards the prisoner, if known (Sch 1 Pt B para 4(d));
 - (e) the prisoner's attitude to the index offence (Sch 1 Pt B para 4(e));
 - (f) the prisoner's response to previous periods of supervision (Sch 1 Pt B para 4(f));
 - (g) the prisoner's behaviour during any temporary leave during the current sentence (Sch 1 Pt B para 4(g));
 - (h) the prisoner's attitude to the prospect of release and the requirements and objectives of supervision (Sch 1 Pt B para 4(h));
 - (i) an assessment of the risk of reoffending (Sch 1 Pt B para 4(i));
 - (j) a programme of supervision (Sch 1 Pt B para 4(j));

- (k) if available, an up-to-date victim personal statement setting out the impact the index offence has had on the victim and the victim's immediate family (Sch 1 Pt B para 4(k));
- (l) a view on suitability for release (Sch 1 Pt B para 4(l)); and
- (m) recommendations regarding any non-standard licence conditions (Sch 1 Pt B para 4(m)).

The word 'current' in the context of the Parole Board Rules should not be given an inflexible meaning, e.g. it did not mean that there had to be a very close connection in time between the compilation of the reports required and the date of the oral hearing, and a report could be a current report within the Parole Board Rules even if made some time before the hearing, provided that it still provided a proper and reasonable appraisal of the prisoner as at the time of the hearing: *R (on the application of Flinders) v Director of High Security* [2011] EWHC 1630 (Admin), [2011] All ER (D) 02 (Jul) (considering the Parole Board Rules 2004, specifically 'current material' pursuant to r 6 and Schedule Pt B para 3; see now the Parole Board Rules 2011, SI 2011/2947, r 7, Sch 1 Pt B para 3 (see head (3) above) which is set out in very similar but not identical terms). See also *R (on the application of Brooks) v Parole Board* [2004] EWCA Civ 80, 148 Sol Jo LB 233, [2004] All ER (D) 142 (Feb) (Parole Board able to rely on hearsay evidence) (case decided before the Parole Board Rules were issued as a statutory instrument: see PARA 773); and *R (on the application of Broadbent) v Parole Board for England and Wales* [2005] EWHC 1207 (Admin), (2005) Times, 22 June, [2005] All ER (D) 437 (May) (where a prisoner has been charged with a criminal offence whilst on licence, the possible injustice of hearing evidence before the trial of that charge had to be weighed against the need for the parole board to preserve its jurisdiction to determine whether the claimant should be returned to prison until the determination of the criminal matter; it was for the parole board to make its own assessment of the claimant's risk of re-offending on the basis of all the information before it).

Further to head (4)(e) above, prisoners who deny their offences should not automatically be refused release by the Parole Board, because denial might be ascribed to a variety of reasons and any admission of guilt was unlikely to be more than one of many factors to which undue weight should not be given; however, denial of guilt may make the task of risk assessment particularly difficult, especially if that denial is coupled with a refusal to address offending behaviour: see *R v Secretary of State for the Home Department, ex p Zulfikar* (1995) Times, 26 July, DC; *R v Secretary of State for the Home Department, ex p Zulfikar (No 2)* (1 May 1996, unreported), DC; *R v Secretary of State for the Home Department, ex p Hepworth, Fenton-Palmer and Baldonzy* [1997] EWHC Admin 324; and see *R v Parole Board and Home Secretary ex p Oyston* [2000] All ER (D) 274, CA (Parole Board is free to consider the risk that a prisoner may pose when he denies guilt of his index offence but a decision that is solely based on denial of the index offending is unlawful).

Further to head (4)(k) above, see PARA 777 note 10.

33 Parole Board Rules 2011, SI 2011/2947, r 7(1)(a).

34 If the information specified in the Parole Board Rules 2011, SI 2011/2947, r 7, Sch 2 Pt A: see r 7(1)(b). Accordingly, the following information related to the prisoner is required for submission to the Board by the Secretary of State on a reference to the Board to determine the release of a recalled prisoner:

- (1) the full name of the prisoner (Sch 2 Pt A para 1);
- (2) the date of birth of the prisoner (Sch 2 Pt A para 2);
- (3) the prison in which the prisoner is detained, details of other prisons in which the prisoner has been detained and the date and reason for any transfer (Sch 2 Pt A para 3);
- (4) the date on which the prisoner was given the current sentence, details of the offence and any previous convictions (Sch 2 Pt A para 4);
- (5) the parole history, if any, of the prisoner, including details of any periods spent on licence during the current sentence (Sch 2 Pt A para 5);
- (6) if available, the details of any sentence plan prepared for the prisoner which has previously been disclosed to the prisoner (Sch 2 Pt A para 6);
- (7) the details of any previous recalls of the prisoner including the reasons for such recalls and subsequent re-release on licence (Sch 2 Pt A para 7);
- (8) the statement of reasons for the most recent recall which was given to the prisoner, including the outcome of any criminal charges laid against the prisoner prior to or subsequent to the point at which they were recalled (Sch 2 Pt A para 8).

As to recall and re-release see PARA 788 et seq.

- 35 Ie the reports specified in the Parole Board Rules 2011, SI 2011/2947, Sch 2 Pt B; see r 7(1)(b). Accordingly, the following reports related to the prisoner are required for submission to the Board by the Secretary of State on a reference to the Board to determine the release of a recalled prisoner:
- (1) any reports considered by the Secretary of State in deciding to recall the prisoner (Sch 2 Pt B para 1);
 - (2) if available, any pre-sentence report examined by the sentencing court on the circumstances of the offence (Sch 2 Pt B para 2);
 - (3) any details of convictions prior to the index offence (Sch 2 Pt B para 3);
 - (4) a copy of the prisoner's licence at the point at which the Secretary of State decided to recall the prisoner (see Sch 2 Pt B para 4).
- 36 Parole Board Rules 2011, SI 2011/2947, r 7(1)(b).
 37 Parole Board Rules 2011, SI 2011/2947, r 7(1)(c).
 38 Ie subject to the Parole Board Rules 2011, SI 2011/2947, r 8 (see note 29): see r 7(2).
 39 Parole Board Rules 2011, SI 2011/2947, r 7(2).
 40 Parole Board Rules 2011, SI 2011/2947, r 14. The characterisation of Parole Board proceedings as being administrative rather than judicial in respect of recommendations for early release in the case of determinate sentence prisoners (see PARA 773 note 12) indicates that the protection of judicial privilege may not be available in such cases (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 200) but *quaere* whether a Parole Board hearing is a 'court' for the purposes of the law of contempt of court (ie by analogy with mental health review tribunals: see CONTEMPT OF COURT vol 22 (2012) PARA 39). See also *R (on the application of Brooke) v Parole Board, R (on the application of Murphy) v Parole Board* [2008] EWCA Civ 29 at [47], [2008] 3 All ER 289 at [47], [2008] 1 WLR 1950 at [47] per Lord Phillips of Worth Matravers CJ (cited in PARA 772 note 8).
 41 See the Parole Board Rules 2011, SI 2011/2947, r 9(1).
 42 See the Parole Board Rules 2011, SI 2011/2947, r 9(2).
 43 Parole Board Rules 2011, SI 2011/2947, r 12(1). The Parole Board has power to gather its own evidence, and procedural fairness may require the Board to consider whether further evidence should be obtained: see the Criminal Justice Act 2003 s 239(3); and PARA 772.
 44 See the Parole Board Rules 2011, SI 2011/2947, r 12(2)(a).
 45 See the Parole Board Rules 2011, SI 2011/2947, r 12(2)(b).
 46 Parole Board Rules 2011, SI 2011/2947, r 13(1). A panel that is unable to reach a decision in accordance with r 13(1) must be dissolved by the chairman, who must then appoint a new panel: r 13(2). The Crime (Sentences) Act 1997 places the power to take the decision on the Parole Board: see PARA 779 et seq. Though it is presented with reports from, *inter alios*, prison staff, it is not obliged to accept those views even if they are unanimous, unless in taking a different course it is acting irrationally in that its decision is unsupported by any of the other material presented to it: *R v Parole Board, ex p Telling* (1993) Times, 10 May, DC; *R v Secretary of State for the Home Department and the Parole Board, ex p Evans* (2 November 1994, unreported), DC (Board rejected the clear, emphatic and unanimous views of report writers; the Divisional Court held that in such a case the reasons should have included an explanation in sufficiently clear terms and sufficiently full to ensure that the basis for the difference between them could be understood). See also *R (on the application of D'Cunha) v Parole Board* [2011] EWHC 128 (Admin), 175 CL & J 111, [2011] All ER (D) 105 (Feb); and PARA 777 note 29.
 47 Parole Board Rules 2011, SI 2011/2947, r 15(1). As to whether procedural fairness requires the Board to consider whether to hold an oral hearing see PARA 773.
 48 Parole Board Rules 2011, SI 2011/2947, r 15(2).
 49 See the Parole Board Rules 2011, SI 2011/2947, r 29.
 50 Parole Board Rules 2011, SI 2011/2947, r 29(a).
 51 Parole Board Rules 2011, SI 2011/2947, r 29(b).

775. Parole Board proceedings without a hearing to consider initial release of indeterminate sentence prisoners. Within 14 weeks of a case relating to the initial release of an indeterminate sentence prisoner¹ being referred to the Parole Board² by the Secretary of State³, a single member⁴ must consider the case without a hearing⁵; and he must either⁶:

- (1) decide that the case should be referred to an oral panel⁷; or

- (2) make a provisional decision that the prisoner is unsuitable for release⁸.

The decision of the single member must be recorded in writing with reasons for the decision⁹, and provided to the parties within a week of the date of the decision¹⁰.

Where a single member has made a provisional decision under head (2) above that a prisoner is unsuitable for release, the prisoner may request that an oral panel hear the case¹¹. A prisoner who requests such a hearing must, within 19 weeks of the case being referred to the Parole Board, serve notice giving full reasons for their request on the Board and the Secretary of State¹². If no notice has been served in this way¹³ after the expiry of the period so permitted¹⁴, the provisional decision becomes final¹⁵; and that decision must be provided to the parties within 20 weeks of the case being referred to the Board¹⁶. If notice is duly served¹⁷, however, a single member decides whether or not to hold a hearing¹⁸. The single member who made the provisional decision under head (2) above that a prisoner is unsuitable for release may not in the same case decide whether to grant such a hearing, however¹⁹.

Where a single member has referred a case to an oral panel for consideration under head (1) above, or where a hearing has been ordered pursuant to a request by the prisoner²⁰, the case must be considered by an oral panel within 26 weeks of the case being referred to the Board²¹.

- 1 The Parole Board Rules 2011, SI 2011/2947, Pt 3 (rr 16–18) applies only where the Secretary of State refers a case to the Board relating to the release of a prisoner serving an indeterminate sentence: see r 3(3); and PARA 773 note 5. As to the meaning of ‘Board’ for these purposes see PARA 774 note 2; and as to the meaning of ‘indeterminate sentence’ see PARA 774 note 6.

In the Parole Board Rules 2011, SI 2011/2947, where the initial release of a prisoner serving an indeterminate sentence is being considered, a reference to a period of time applies as set out in the Parole Board Rules 2011, SI 2011/2947: see r 3(4); and PARA 773 note 5. Where the time prescribed by or under the Parole Board Rules 2011, SI 2011/2947, for doing any act expires on a Saturday, Sunday or public holiday, the act will be in time if it is done on the next working day: see r 27; and PARA 774 note 18.

- 2 In the Parole Board, continued by the Criminal Justice Act 2003 s 239(1): see the Parole Board Rules 2011, SI 2011/2947, r 2; and PARA 774 note 2. As to the date when a case is deemed to be referred to the Parole Board see PARA 774 note 25.
- 3 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.
- 4 As to the meaning of ‘single member’ for these purposes see PARA 774 note 5.
- 5 See the Parole Board Rules 2011, SI 2011/2947, r 16(1).
- 6 See the Parole Board Rules 2011, SI 2011/2947, r 16(2).
- 7 Parole Board Rules 2011, SI 2011/2947, r 16(2)(a). As to the meaning of ‘oral panel’ for these purposes see PARA 774 note 15; and see PARAS 776, 777.
- 8 Parole Board Rules 2011, SI 2011/2947, r 16(2)(b).
- 9 See the Parole Board Rules 2011, SI 2011/2947, r 16(3)(a). As to reasons see PARA 777 note 29.
- 10 See the Parole Board Rules 2011, SI 2011/2947, r 16(3)(b).
- Any document required or authorised by the Parole Board Rules 2011, SI 2011/2947, to be served or otherwise transmitted to any person may be transmitted by electronic means, sent by pre-paid post or delivered (in the case of a document directed to the Board or the chair) to the office of the Board, or (in any other case) to the last known address of the person to whom the document is directed: see r 28; and PARA 774 note 18.
- 11 Parole Board Rules 2011, SI 2011/2947, r 17(1).
- 12 Parole Board Rules 2011, SI 2011/2947, r 17(2).
- 13 In accordance with the Parole Board Rules 2011, SI 2011/2947, r 17(2) (see the text and note 12): see r 17(3).
- 14 See the Parole Board Rules 2011, SI 2011/2947, r 17(3). The text refers to expiry of the period permitted by r 17(2) (see the text and note 12): see r 17(3).

- 15 See the Parole Board Rules 2011, SI 2011/2947, r 17(3)(a).
- 16 See the Parole Board Rules 2011, SI 2011/2947, r 17(3)(b).
- 17 It served in accordance with the Parole Board Rules 2011, SI 2011/2947, r 17(2) (see the text and note 12): see r 17(4).
- 18 Parole Board Rules 2011, SI 2011/2947, r 17(4). As to when an oral hearing must be held in order to meet the demands of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (Rome, 4 November 1950; TS 71 (1953); Cmd 8969; ETS no 5) art 5(4) or the requirements of procedural fairness under common law see PARA 773 note 12.
- 19 Parole Board Rules 2011, SI 2011/2947, r 17(5). The text refers to a hearing requested by the prisoner under r 17(1) (see the text and note 11): see r 17(5).
- 20 It is a request by the prisoner under the Parole Board Rules 2011, SI 2011/2947, r 17(1) (see the text and note 11): see r 18.
- 21 Parole Board Rules 2011, SI 2011/2947, r 18.

776. Parole Board proceedings with a hearing: rules as to timings, attendance etc. Where the Secretary of State¹ refers a case to the Parole Board² relating to the release or recall of a prisoner³, provision is made for the hearing (where a hearing is directed)⁴.

Accordingly, the hearing must be held within 26 weeks of a case being referred to the Parole Board⁵. The panel⁶ must consult the parties when fixing the date of the hearing⁷. The Board must notify the parties of the date on which the case is due to be heard within five working days of a case being listed⁸; and the panel must give the parties⁹ at least three weeks' notice of the date, time and place scheduled for the hearing¹⁰ (or such shorter notice as the parties agree)¹¹. If applicable, the panel also must give the parties notice that the hearing is to be held via video link, telephone conference or other electronic means¹².

A prisoner who wishes to attend his hearing must notify the Parole Board and the Secretary of State within 23 weeks of the case being referred to the Board¹³.

A party who wishes to call a witness at a hearing must make a written application to the Parole Board (a copy of which must be served on the other party) within 20 weeks of the case being referred to the Board¹⁴. A chair¹⁵ may grant or refuse an application to call a witness¹⁶ but he must communicate this decision to the parties¹⁷ and he must give reasons in writing for any such refusal¹⁸. Where the panel intends to call a witness, the chair must notify the parties in writing within 21 weeks of the case being referred to the Board¹⁹. Where a witness is called, whether by a party²⁰ or by the panel²¹, it is the duty of the person calling the witness to notify the witness at least two weeks before the hearing of the date of the hearing and the need to attend²².

A party who wishes to be accompanied by an observer must make a written application to the panel (a copy of which must be served on the other party) within 20 weeks of the case being referred to the Parole Board²³. A chair may grant or refuse such an application and must communicate this decision to the parties²⁴. However, before granting such an application, the Board must obtain the agreement (where the hearing is being held in a prison²⁵) of the prison governor or prison director²⁶ or the agreement (in any other case) of the person who has the authority to agree²⁷.

1 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.

- 2 Ie the Parole Board, continued by the Criminal Justice Act 2003 s 239(1): see the Parole Board Rules 2011, SI 2011/2947, r 2; and PARA 774 note 2. As to the date when a case is deemed to be referred to the Parole Board see PARA 774 note 25.
- 3 Ie where the Parole Board Rules 2011, SI 2011/2947, generally apply: see r 3; and PARA 773.
- 4 See the Parole Board Rules 2011, SI 2011/2947, r 19(1). Specifically, the provision made by Pt 4 (rr 19–26) (proceedings with a hearing) applies to hearings: see r 19(1).
- 5 Parole Board Rules 2011, SI 2011/2947, r 20(1).
In the Parole Board Rules 2011, SI 2011/2947, except where the initial release of a prisoner serving an indeterminate sentence is being considered (see PARA 775), a reference to a period of time applies as if it was a reference to such period of time as the chair may in each case determine: see r 3(4); and PARA 773 note 5. Where the time prescribed by or under the Parole Board Rules 2011, SI 2011/2947, for doing any act expires on a Saturday, Sunday or public holiday, the act will be in time if it is done on the next working day: see r 27; and PARA 774 note 18.
- 6 Any reference in the Parole Board Rules 2011, SI 2011/2947, Pt 4 to a ‘panel’ is to an oral panel: see r 19(2). As to the meaning of ‘oral panel’ see PARA 774 note 15.
- 7 See the Parole Board Rules 2011, SI 2011/2947, r 20(2). As to the meaning of ‘party’ for these purposes see PARA 774 note 18.
- 8 See the Parole Board Rules 2011, SI 2011/2947, r 20(3).
Any document required or authorised by the Parole Board Rules 2011, SI 2011/2947, to be served or otherwise transmitted to any person may be transmitted by electronic means, sent by pre-paid post or delivered (in the case of a document directed to the Board or the chair) to the office of the Board, or (in any other case) to the last known address of the person to whom the document is directed: see r 28; and PARA 774 note 18.
- 9 See the Parole Board Rules 2011, SI 2011/2947, r 20(4).
- 10 Parole Board Rules 2011, SI 2011/2947, r 20(4)(a).
- 11 Parole Board Rules 2011, SI 2011/2947, r 20(4)(b).
- 12 Parole Board Rules 2011, SI 2011/2947, r 20(5). See also PI 16/2011 (Giving Evidence Through Video-links to Parole Board Oral Hearings) (cited in PARA 772 note 26).
- 13 Parole Board Rules 2011, SI 2011/2947, r 21.
- 14 Parole Board Rules 2011, SI 2011/2947, r 22(1). A written application to call a witness must include the witness’s name, address and occupation (see r 22(2)(a)) and must explain why the witness is being called (see r 22(2)(b)). In addition to the prisoner and the panel, other people who may be present at the hearing might include witnesses such as the prisoner’s offender manager or a prison psychologist. As to further information and guidance see <https://www.gov.uk>.
Parties may apply to the county court or High Court for a witness summons under CPR 34.4 (witness summons in aid of inferior court or tribunal: see CIVIL PROCEDURE vol 11 (2009) PARA 1006). For these purposes, ‘inferior court or tribunal’ means any court or tribunal that does not have power to issue a witness summons in relation to proceedings before it: see CPR 34.4(3); and CIVIL PROCEDURE vol 11 (2009) PARA 1006.
- 15 As to the meaning of ‘chair’ for these purposes see PARA 774 note 13.
- 16 See the Parole Board Rules 2011, SI 2011/2947, r 22(3).
- 17 See the Parole Board Rules 2011, SI 2011/2947, r 22(3).
- 18 See the Parole Board Rules 2011, SI 2011/2947, r 22(4).
- 19 Parole Board Rules 2011, SI 2011/2947, r 22(5). Written notification from the panel that it intends to call a witness must include the witness’s name, address and occupation (see r 22(6)(a)); and must explain why the witness is being called (see r 22(6)(b)).
- 20 Ie under the Parole Board Rules 2011, SI 2011/2947, r 22(1) (see the text and note 14): see r 22(7).
- 21 Ie under the Parole Board Rules 2011, SI 2011/2947, r 22(5) (see the text and note 19): see r 22(7).
- 22 Parole Board Rules 2011, SI 2011/2947, r 22(7).
- 23 Parole Board Rules 2011, SI 2011/2947, r 23(1).
- 24 Parole Board Rules 2011, SI 2011/2947, r 23(2).
- 25 As to the meaning of ‘prison’ for these purposes see PARA 774 note 31.
- 26 Parole Board Rules 2011, SI 2011/2947, r 23(3)(a). As to governors see PRISONS AND PRISONERS vol 85 (2012) PARA 417; and as to directors of contracted-out prisons see PRISONS AND PRISONERS vol 85 (2012) PARA 522.
- 27 Parole Board Rules 2011, SI 2011/2947, r 23(3)(b).

777. Parole Board proceedings with a hearing: rules as to procedure. A Parole Board hearing¹ must be held at the prison² where the prisoner is detained or at such other place as the chair³, with the agreement of the Secretary of State⁴, directs⁵, except where⁶ a chair exercises his power to direct instead that a hearing is to be held via video link, telephone conference or other electronic means⁷. A hearing must be held in private⁸ but, in addition to any witness and observer whose attendance has been duly approved⁹, the chair may admit any other person to the hearing¹⁰. He may, however, impose conditions on that person's admittance¹¹.

At the beginning of the hearing, the chair must explain the order of proceeding which the panel¹² proposes to adopt¹³, and he must invite each party present to state their view as to the suitability of the prisoner for release¹⁴. The panel:

- (1) must avoid formality in the proceedings¹⁵;
- (2) may ask any question to satisfy itself of the level of risk of the prisoner¹⁶; and
- (3) must conduct the hearing in a manner it considers most suitable to the clarification of the issues before it and to the just handling of the proceedings¹⁷.

The parties are entitled to:

- (a) take such part in the proceedings as the panel thinks fit¹⁸;
- (b) hear each other's evidence¹⁹;
- (c) put questions to each other²⁰;
- (d) call a witness who has been granted permission to give evidence²¹; and
- (e) question any witness or other person appearing before the panel²².

If, in the chair's opinion, any person at the hearing is behaving in a disruptive manner, the chair may require that person to leave²³, but the chair may permit a person who was required to leave in this way to return on such conditions as may be specified by the chair²⁴.

A panel may produce or receive in evidence any document or information whether or not it would be admissible in a court of law²⁵. However, no person is to be compelled to give any evidence or produce any document which they could not be compelled to give or produce on the trial of an action²⁶. The chair may require any person present to leave the hearing where evidence which has been directed to be withheld from the prisoner or their representative is to be considered²⁷. After all the evidence has been given, the prisoner must be given an opportunity to address the panel²⁸.

The panel's decision determining a case must be:

- (i) recorded in writing with reasons²⁹;
- (ii) signed by the chair³⁰; and
- (ii) provided to the parties not more than 14 days after the end of the hearing³¹.

The recorded decision however, must refer only to the matter which the Secretary of State referred to the Board³².

1 The provision made by the Parole Board Rules 2011, SI 2011/2947, Pt 4 (rr 19–26) (proceedings with a hearing) applies to hearings: see r 19(1); and PARA 776. References to the Parole Board are to the Board continued by the Criminal Justice Act 2003 s 239(1): see the Parole Board Rules 2011, SI 2011/2947, r 2; and PARA 774 note 2.

2 As to the meaning of 'prison' for these purposes see PARA 774 note 31.

3 As to the meaning of 'chair' for these purposes see PARA 774 note 13.

4 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.

- 5 See the Parole Board Rules 2011, SI 2011/2947, r 24(1).
- 6 The Parole Board Rules 2011, SI 2011/2947, r 24(1) (see the text and notes 1–5) does not apply where a hearing is held in accordance with r 24(3) (see the text and note 7): see r 24(2).
- 7 See the Parole Board Rules 2011, SI 2011/2947, r 24(3). See also PI 16/2011 (Giving Evidence Through Video-links to Parole Board Oral Hearings) (cited in PARA 772 note 26).
- 8 Parole Board Rules 2011, SI 2011/2947, r 24(4).
- 9 Ie approved in accordance with the Parole Board Rules 2011, SI 2011/2947, r 22 (witnesses: see PARA 776) or r 23 (observers: see PARA 776): see r 24(5). At the hearing, the parties may not challenge the attendance of any witness or observer whose attendance has been approved pursuant to r 22 or r 23: see r 24(6). As to the meaning of ‘party’ for these purposes see PARA 774 note 18.
- 10 See the Parole Board Rules 2011, SI 2011/2947, r 24(5)(a). In addition to the prisoner and the panel, and representatives of the parties (see PARA 774 note 18), the victim of the crime (or one of their relatives) might attend the start of the hearing to read a ‘victim personal statement’, explaining how the crime has affected them and their immediate family, and if they want conditions attached to the prisoner’s release (see Sch 1 Pt B para 4(k); and PARA 774 note 32). However, the victim will not be allowed to add anything to the contents of their written statement, and will not be questioned about the statement, and once it has been read the victim and his/her supporter will be asked to leave, so the panel continues with the hearing in their absence. As to further information and guidance see <https://www.gov.uk>. See also Prison Service Instruction 34/2009 (PI 08/2009) (Victim Representations at Parole Board Hearings) (cited in PARA 772 note 26).
- 11 Parole Board Rules 2011, SI 2011/2947, r 24(5)(b).
- 12 Any reference in the Parole Board Rules 2011, SI 2011/2947, Pt 4 to a ‘panel’ is to an oral panel: see r 19(2); and PARA 776 note 6. As to the meaning of ‘oral panel’ see PARA 774 note 15.
- 13 See the Parole Board Rules 2011, SI 2011/2947, r 25(1)(a).
- 14 See the Parole Board Rules 2011, SI 2011/2947, r 25(1)(b).
- 15 Parole Board Rules 2011, SI 2011/2947, r 25(2)(a). The informality required by head (1) in the text is reflected in the nature of evidence that may be admitted: see further the text and note 25.
- 16 Parole Board Rules 2011, SI 2011/2947, r 25(2)(b). As to whether there is a burden on the prisoner to persuade the Parole Board that it is safe to recommend release see *R v Lichniak*, *R v Pyrah* [2002] UKHL 47, [2003] 1 AC 903, [2002] 4 All ER 1122 (process was administrative and defensible: Board would have before it any material going to show that a prisoner was not dangerous; if the Board was thought to show an exaggerated degree of caution, it could be challenged).
- 17 Parole Board Rules 2011, SI 2011/2947, r 25(2)(c).
- 18 Parole Board Rules 2011, SI 2011/2947, r 25(3)(a).
- 19 Parole Board Rules 2011, SI 2011/2947, r 25(3)(b).
- 20 Parole Board Rules 2011, SI 2011/2947, r 25(3)(c).
- 21 Parole Board Rules 2011, SI 2011/2947, r 25(3)(d).
- 22 Parole Board Rules 2011, SI 2011/2947, r 25(3)(e).
- 23 See the Parole Board Rules 2011, SI 2011/2947, r 25(4).
- 24 See the Parole Board Rules 2011, SI 2011/2947, r 25(5).
- 25 Parole Board Rules 2011, SI 2011/2947, r 25(6). As to evidence before the Parole Board see generally PARA 772 note 14. The Parole Board has power to gather its own evidence, and procedural fairness may require the Board to consider whether further evidence should be obtained: see the Criminal Justice Act 2003 s 239(3); and PARAS 772, 773.
- 26 Parole Board Rules 2011, SI 2011/2947, r 25(7).
- 27 Parole Board Rules 2011, SI 2011/2947, r 25(8). See *R (on the application of Gardner) v Parole Board* [2006] EWCA Civ 1222, (2006) Times, 29 September, [2006] All ER (D) 12 (Sep) (Board had power to exclude prisoner from part of a hearing) (case decided before the Parole Board Rules were issued as a statutory instrument: see PARA 773 note 5).
- 28 Parole Board Rules 2011, SI 2011/2947, r 25(9).
- 29 Parole Board Rules 2011, SI 2011/2947, r 26(1)(a). See *R v Parole Board and Home Secretary ex p Oyston* [2000] All ER (D) 274, CA (whilst the Board had to focus in each case on the question of risk, it should, in its decision letter, identify in general terms the matters which it had considered on both sides in carrying out the balancing exercise, and its reasons for striking the balance, summarising the considerations which had led to its decision), applied in *R (on the application of Tinney) v Parole Board* [2005] EWHC 863 (Admin), [2005] All ER (D) 280 (Apr) (Board failed to identify in broad terms matters

judged by it as pointing towards continuing risk of reoffending). See also *R v Secretary of State for the Home Department and the Parole Board, ex p Evans* (2 November 1994, unreported), DC (where the Board rejected clear, emphatic and unanimous views of report writers, the reasons should have included an explanation in sufficiently clear terms and sufficiently full to ensure that the basis for the difference between them could be understood). The duty to give reasons requires that they are intelligible and deal with the substantial points that have been raised: *R v Parole Board, ex p Gittens* (1994) Times, 3 February, DC; *R v Parole Board, ex p Lodomez* (1994) 26 BMLR 162, [1994] COD 525, DC. See also *R (on the application of D'Cunha) v Parole Board* [2011] EWHC 128 (Admin), 175 CL & J 111, [2011] All ER (D) 105 (Feb) (it was not necessary for the board, in meeting the requirement to give reasons for its decisions, to include in its decision letter a specific section setting out in detail what the views of each expert were and its reasons for rejecting them, in particular in which respects the board disagreed with each witness and upon what basis).

30 Parole Board Rules 2011, SI 2011/2947, r 26(1)(b).

31 Parole Board Rules 2011, SI 2011/2947, r 26(1)(c).

In the Parole Board Rules 2011, SI 2011/2947, except where the initial release of a prisoner serving an indeterminate sentence is being considered (see PARA 775), a reference to a period of time applies as if it was a reference to such period of time as the chair may in each case determine: see r 3(4); and PARA 773 note 5. Where the time prescribed by or under the Parole Board Rules 2011, SI 2011/2947, for doing any act expires on a Saturday, Sunday or public holiday, the act will be in time if it is done on the next working day: see r 27; and PARA 774 note 18. Any document required or authorised by the Parole Board Rules 2011, SI 2011/2947, to be served or otherwise transmitted to any person may be transmitted by electronic means, sent by pre-paid post or delivered (in the case of a document directed to the Board or the chair) to the office of the Board, or (in any other case) to the last known address of the person to whom the document is directed: see r 28; and PARA 774 note 18.

32 Parole Board Rules 2011, SI 2011/2947, r 26(2).

(3) PRISONERS SERVING INDETERMINATE SENTENCE

(i) Introduction

778. Meaning of 'life prisoner' for the purposes of the Crime (Sentences) Act 1997. For the purposes of the provisions of the Crime (Sentences) Act 1997 that govern the early release of prisoners serving life sentences¹, 'life prisoner' means a person serving one or more life sentences², where 'life sentence' means any of the following imposed for an offence, whether committed before or after 1 October 1997³, namely⁴:

- (1) a sentence of imprisonment for life⁵;
- (2) a sentence of detention during Her Majesty's pleasure or for life⁶;
- (3) a sentence of custody for life⁷;
- (4) a sentence of imprisonment or detention in a young offender institution for public protection⁸;
- (5) a sentence of detention for public protection⁹.

This definition of 'life prisoner' includes a transferred life prisoner¹⁰.

1 Ie for the purposes of the Crime (Sentences) Act 1997 Pt II Ch II (ss 28–34) (life sentences) (see also PARAS 770, 779 et seq): see s 34(1) (amended by the Criminal Justice and Court Services Act 2000 ss 74, 75, Sch 7 Pt II paras 135, 138, 145, 148, Sch 8; and the Criminal Justice Act 2003 s 273(4)). The amendment made by the Criminal Justice and Court Services Act 2000, which amended the law in relation to the determination of tariffs, has effect only in relation to life sentences passed after 30 November 2000 (the date on which the Criminal Justice and Court Services Act 2000 obtained Royal Assent): see ss 60, 80(3)(b), Sch 7 Pt II paras 135, 138, 145, 148.

The Crime (Sentences) Act 1997 Pt II Ch II does not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of 'England' and 'Wales' see PARA 763 note 1.

- 2 See the Crime (Sentences) Act 1997 s 34(1) (as amended: see note 1). See also the text and note 10.

Where a person has been sentenced to one or more life sentences and to one or more terms of imprisonment, nothing in the Crime (Sentences) Act 1997 Pt II Ch II (life sentences) (see also PARAS 770, 779 et seq) requires 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: s 34(4) (added by the Crime and Disorder Act 1998 s 101(2)). Where the terms of two or more sentences passed before 30 September 1998 (ie before the commencement of the Crime and Disorder Act 1998 s 101: see the Crime and Disorder Act 1998 (Commencement No 2 and Transitional Provisions) Order 1998, SI 1998/2327, art 2(1)(v)) have been treated, by virtue of the Criminal Justice Act 1991 s 51(2) (repealed), as a single term for the purposes of Pt II (ss 32–51) (repealed), they must continue to be so treated after that commencement: see the Crime and Disorder Act 1998 s 120(1), Sch 9 para 11(1). Subject to Sch 9 para 11(1), s 101 applies where one or more of the sentences concerned were passed after that commencement: see Sch 9 para 11(2). As to the statutory scheme substantially contained in the Criminal Justice Act 1991 Pt II see PARA 792 note 2.

- 3 Is whether committed before or after the commencement of the Criminal Justice Act 1991 Pt II (life sentences) (see also PARAS 770, 779 et seq): see s 34(2); and the Crime (Sentences) Act 1997 (Commencement No 2 and Transitional Provisions) Order 1997, SI 1997/2200, art 2(1)(f).

- 4 See the Crime (Sentences) Act 1997 s 34(2).

- 5 See the Crime (Sentences) Act 1997 s 34(2)(a). As to sentences of imprisonment for life see PARA 761 note 1.

- 6 See the Crime (Sentences) Act 1997 s 34(2)(b) (s 34(2)(b), (c) amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 183(1), (2)). Head (2) in the text refers specifically to a sentence of detention at Her Majesty's pleasure (passed on a person under 18 convicted of murder or any other offence the sentence for which is fixed by law as life imprisonment) under the Powers of Criminal Courts (Sentencing) Act 2000 s 90 (see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1308; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 81) and to a sentence of detention for life (passed on a person aged under 18 who has committed a serious offence) under s 91 (detention for a serious offence for a specified period: see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1307; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 78): see the Crime (Sentences) Act 1997 s 34(2)(b) (as so amended). See also PARA 762.

For these purposes, a sentence of detention for life under the Armed Forces Act 2006 s 209 (person under 18 convicted of serious offence (power to detain for specified period): see ARMED FORCES vol 3 (2011) PARA 611) (see the Crime (Sentences) Act 1997 s 34(2)(f) (s 34(2)(f), (g) added by the Armed Forces Act 2006 s 378(1), Sch 16 para 142(1), (2)(c))) and a sentence of detention at Her Majesty's pleasure under the Armed Forces Act 2006 s 218 (person aged under 18 convicted of murder (mandatory detention at Her Majesty's pleasure): see ARMED FORCES vol 3 (2011) PARA 611) are also included (see the Crime (Sentences) Act 1997 s 34(2)(g) (as so added)).

- 7 See the Crime (Sentences) Act 1997 s 34(2)(c) (as amended: see note 6). Head (3) in the text refers specifically to a sentence of custody for life (passed on a person aged under 21 convicted of murder or any other serious offence, or in certain other cases on a person aged between 18 and 21 where the offence would attract a sentence of imprisonment for life if committed by a person aged 21 years or over) under the Powers of Criminal Courts (Sentencing) Act 2000 ss 93, 94 (prospectively repealed) (see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1309; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 79): see the Crime (Sentences) Act 1997 s 34(2)(c) (as so amended). See also PARA 762.

- 8 See the Crime (Sentences) Act 1997 s 34(2)(d) (s 34(2)(d), (e) added by the Criminal Justice Act 2003 s 230, Sch 18 para 3; the Crime (Sentences) Act 1997 s 34(2)(d) amended by the Armed Forces Act 2006 s 378(1), (2), Sch 16 para 142(1), (2)(a), Sch 17; and the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 117(10)(b), (11)). Head (4) in the text refers specifically to a sentence for public protection under the Criminal Justice Act 2003 s 225 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 74) either of imprisonment or detention in a young offender institution (where the offender is aged at least 18 but under 21), including one passed as a result of the Armed Forces Act 2006 s 219 (person aged at least 18 but under 21 convicted by Court Martial of offence of criminal conduct corresponding to a serious offence: see ARMED FORCES vol 3

(2011) PARA 611): see the Crime (Sentences) Act 1997 s 34(2)(d) (as so added and amended). Indeterminate sentences of imprisonment or detention in a young offender institution for public protection imposed on persons aged at least 18 applied to offences committed on or after 4 April 2005 and before 3 December 2012: see the Criminal Justice Act 2003 s 225(3)–(4) (repealed with savings); and PARA 761 note 1.

The amendments made by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 117 apply in relation to any person who falls to be released under the Crime (Sentences) Act 1997 Pt II Ch II (life sentences) (see also PARAS 770, 779 et seq) on or after 3 December 2012 (ie on or after the commencement date, being the day appointed under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 151 for the coming into force of s 117: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d)); see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 120, Sch 15 paras 1, 2(2).

- 9 See the Crime (Sentences) Act 1997 s 34(2)(e) (as added (see note 8); and amended by the Armed Forces Act 2006 Sch 16 para 142(1), (2)). Head (5) in the text refers specifically to a sentence of detention for public protection (where the offender has committed a serious offence but is aged under 18) imposed under the Criminal Justice Act 2003 s 226 (see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1300; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 82), including one passed as a result of the Armed Forces Act 2006 s 221 (required custodial sentences for dangerous offenders: see ARMED FORCES vol 3 (2011) PARA 611): see the Crime (Sentences) Act 1997 s 34(2)(e) (as so added and amended). Indeterminate sentences of detention in a young offender institution for public protection imposed on persons aged under 18 applied to offences committed on or after 4 April 2005 and before 3 December 2012: see the Criminal Justice Act 2003 s 226(3)–(4) (repealed with savings); and PARA 761 note 1. See also PARA 762.
- 10 It is a transferred life prisoner as defined by the Criminal Justice Act 2003 s 273 (see PRISONS AND PRISONERS vol 85 (2012) PARA 463): see the Crime (Sentences) Act 1997 s 34(1) (as amended: see note 1). This reference to a transferred life prisoner includes a reference to an ‘existing prisoner’ (as to which see PARA 779 note 2) who immediately before 18 December 2003 is a transferred life prisoner for the purposes of the Crime (Sentences) Act 1997 s 33 (life prisoners transferred to England and Wales) (repealed): see the Criminal Justice Act 2003 ss 269, 276, 336(2), Sch 22 paras 1, 17, 18; and see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 97.

(ii) Release

779. Duty to release certain life prisoners. As soon as a life prisoner¹, in respect of whom a minimum term order² has been made³, has served the relevant part of his sentence⁴, and the Parole Board⁵ has directed his release⁶, it is the duty of the Secretary of State⁷ to release him on licence⁸. The Parole Board must not give such a direction with respect to such a life prisoner, however, unless the Secretary of State has referred the prisoner’s case to the Board⁹, and unless the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined¹⁰.

Such a life prisoner may require the Secretary of State to refer his case to the Parole Board at any time¹¹:

- (1) after he has served the relevant part of his sentence¹²; and
- (2) where there has been a previous reference¹³ of his case to the Board, after the end of the period of two years beginning with the disposal of that reference¹⁴; and
- (3) where he is also serving a sentence of imprisonment or detention for a term, after he has served one-half of that sentence¹⁵.

If a life prisoner is serving two or more life sentences:

- (a) the duty to release him¹⁶ does not apply unless a minimum term order has been made in respect of each of those sentences¹⁷; and

- (b) the involvement of the Parole Board¹⁸ does not apply in relation to his case until he has served the relevant part of each of them¹⁹.

Special provision has been made by the Parole Board Rules 2011²⁰ setting out the timetable and rules for proceedings with or without a hearing where the Parole Board determines the initial release of a prisoner serving an indeterminate sentence²¹.

- 1 Ie a life prisoner to whom the Crime (Sentences) Act 1997 s 28 applies (see s 28(1A), (1B); and the text and notes 2–3, 16–19): see s 28(5)(a) (s 28(1A), (1B) added, s 28(5)(a) substituted, by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt II paras 135, 136(a), 145, 148). As to the meaning of ‘life prisoner’ for the purposes of the Crime (Sentences) Act 1997 Pt II Ch II (ss 28–34) (life sentences) see PARA 778. The amendment made by the Criminal Justice and Court Services Act 2000, which amended the law in relation to the determination of tariffs, has effect only in relation to life sentences passed after 30 November 2000 (the date on which the Criminal Justice and Court Services Act 2000 obtained Royal Assent): see ss 60, 80(3)(b), Sch 7 Pt II paras 135, 136, 145, 148; and see also note 17.

The Crime (Sentences) Act 1997 Pt II Ch II (ss 28–34) (life sentences) does not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of ‘England’ and ‘Wales’ see PARA 763 note 1.

- 2 For these purposes, ‘minimum term order’ means an order under:
- (1) the Powers of Criminal Courts (Sentencing) Act 2000 s 82A(2) (determination of minimum term in respect of life sentence that is not fixed by law: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 33) (Crime (Sentences) Act 1997 s 28(8A)(a) (s 28(8A) added by the Criminal Justice Act 2003 s 275(1), (4)); or
 - (2) the Criminal Justice Act 2003 s 269(2) (determination of minimum term in relation to mandatory life sentence: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 97) (Crime (Sentences) Act 1997 s 28(8A)(b) (as so added)).

In relation to head (1) above, if a court passes a life sentence in circumstances where the sentence is not fixed by law (a ‘discretionary life sentence’: see PARA 761 note 1), the court must, unless it orders otherwise, order that s 28(5)–(8) apply to the offender as soon as he has served the part of the sentence which is specified in the order: see the Powers of Criminal Courts (Sentencing) Act 2000 s 82A (life sentences (determination of tariffs)); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 33. As to sentences fixed by law see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 15.

In relation to head (2) above, where a court passes a life sentence in circumstances where the sentence is fixed by law (a ‘mandatory life sentence’: see PARA 761 note 1), it must order that the Crime (Sentences) Act 1997 s 28(5)–(8) are to apply to the offender as soon as he has served the part of his sentence which is specified in the order: see the Criminal Justice Act 2003 s 269 (determination of minimum term in relation to mandatory life sentence); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 97. Further to this purpose, the Crime (Sentences) Act 1997 s 28 is modified in relation to an ‘existing prisoner’ (see the Criminal Justice Act 2003 s 276, Sch 22 para 16(1)), where ‘existing prisoner’ means a person serving one or more mandatory life sentences passed before 18 December 2003 (ie before the day on which s 269 came into force: see s 336(2)), whether or not he is also serving any other sentence (see Sch 22 para 1); ‘mandatory life sentence’ means a life sentence passed in circumstances where the sentence was fixed by law (see PARA 761 note 1); and ‘life sentence’ means a sentence of imprisonment for life or custody for life passed in England and Wales or by a court-martial outside England and Wales (see Sch 22 para 1). As to ‘existing prisoners’ who are transferred life prisoners see PARA 778 note 10. (The history of the development of policy and practice in relation to the mandatory life sentence, before the introduction of the Criminal Justice Act 2003, is comprehensively analysed in the speech of Lord Mustill in *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531, sub nom *Doody v Secretary of State for the Home Department* [1993] 3 All ER 92, HL. The provision made by the Criminal Justice Act 2003 Sch 22 deals mostly with that group of prisoners who were sentenced at a time when decisions on the length of a mandatory life sentence were regarded to be a matter exclusively for the executive, being determined by the Secretary of State after considering recommendations made privately by the trial judge

and the Lord Chief Justice. Following a series of decisions of the European Court of Human Rights, the House of Lords made it clear that the process of determining a minimum period was considered to be indistinguishable from that of determining a sentence and that both tasks ought to be performed by a judge and not by a member of the Executive (although trial judges continued to make recommendations until the new statutory provisions came into force on 18 December 2003, transferring the role of the Secretary of State in determining the minimum term to the trial judge): see eg Application 46295/99 *Stafford v United Kingdom* (2002) 35 EHRR 1121, 13 BHRC 260, ECtHR; *R (on the application of Anderson) v Secretary of State for the Home Department* [2002] UKHL 46, [2003] 1 AC 837, [2002] 4 All ER 1089; and see further note 8). Accordingly, any reference in the Crime (Sentences) Act 1997 s 28 to a life prisoner in respect of whom a minimum term order has been made includes a reference to:

- (a) an existing prisoner in respect of whom an order under the Criminal Justice Act 2003 Sch 22 para 3(1)(a) has been made (ie an order by the High Court that the Crime (Sentences) Act 1997 s 28(5)–(8) ('the early release provisions') are to apply to him as soon as he has served the part of the sentence which is specified in the order and which must not be greater than the minimum period previously set by the Secretary of State) (see the Criminal Justice Act 2003 Sch 22 paras 1, 16(2)(a)); and
- (b) an existing prisoner serving a sentence in respect of which Sch 22 para 3(3) applies (ie where the early release provisions apply to the prisoner in respect of the sentence as soon as he has served the minimum period previously set by the Secretary of State) (see Sch 22 para 16(2)(b)).

See also notes 4, 17. The rest of Sch 22 provides for:

- (i) applications to the High Court by existing prisoners who in respect of a life sentence had prior to 18 December 2003 been notified by the Secretary of State of the minimum period they were to serve and wish the High Court to review the minimum period (or his determination that they should never be released) (see Sch 22 paras 2–4, 15);
- (ii) references by the Secretary of State to the High Court of existing prisoners who on that date had not been so notified for an order to be made under s 269(2), (4) (see Sch 22 paras 5–8); and
- (iii) offenders sentenced to life imprisonment after 18 December 2003 (see Sch 22 paras 9–10).

Procedural matters relating to heads (i) and (ii) above are dealt with at Sch 22 paras 11–13. See also *Re Mohammed Riaz* [2004] EWHC 74 (QB) (in fixing tariff, court must have regard to exceptional circumstances, including exceptional progress made in prison); *Re Brown (reference under paragraph 6 of Schedule 22 to the Criminal Justice Act 2003)* [2006] EWHC 518 (QB), [2006] All ER (D) 280 (Mar); *Re Cadman (application under para 3 of Sch 22 to the Criminal Justice Act 2003)* [2006] EWHC 586 (QB), [2006] 3 All ER 1255, (2006) Times, 26 May; *Re Waters* [2006] EWHC 355 (QB), [2006] 3 All ER 1251; *Re Bingham (application under para 3 of Sch 22 to the Criminal Justice Act 2003)* [2006] EWHC 2591 (QB), [2006] All ER (D) 262 (Oct); *Re Grimson (application under para 3 of Sch 22 to the Criminal Justice Act 2003)* [2008] EWHC 1038 (QB), [2008] All ER (D) 339 (May); *Re Sharif (application under para 3 of Sch 22 to the Criminal Justice Act 2003)* [2012] EWHC 868 (QB), [2012] All ER (D) 129 (Apr); and see *R (on the application of Hammond) v Secretary of State for the Home Department* [2005] UKHL 69, [2006] 1 AC 603, [2006] 1 All ER 219 (fairness would not, in many cases, require an oral hearing, to which many existing prisoners might in any event waive their right).

As to appeals against the decision of the High Court on an application under head (i) above or on a reference under head (ii) above see the Criminal Justice Act 2003 Sch 22 para 14 (amended by the Constitutional Reform Act 2005 ss 40(4), 59(5), Sch 9 Pt 1 para 82(1), (6), Sch 11 Pt 1 para 1(2)). In relation to appeals to the Court of Appeal or the Supreme Court under the Criminal Justice Act 2003 Sch 22 para 14, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968, subject to any specified modifications: see the Criminal Justice Act 2003 Sch 22 para 14(5) (as so amended). In exercise of the powers so conferred, the Secretary of State has made the Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005, SI 2005/2798 (amended by SI 2011/1242). As to appeals made pursuant to head (iii) above see eg *R v Sullivan*, *R v Gibbs*, *R v Elener* [2004]

EWCA Crim 1762, [2005] 1 Cr App Rep (S) 308, [2004] All ER (D) 133 (Jul) (applied in *R v Walker* [2005] EWCA Crim 82, [2005] 2 Cr App Rep (S) 328, [2005] All ER (D) 138 (Mar)).

- 3 See the Crime (Sentences) Act 1997 s 28(1A) (as added (see note 1); and substituted by the Criminal Justice Act 2003 s 275(1), (2)).
- 4 See the Crime (Sentences) Act 1997 s 28(5)(a) (as substituted: see note 1). In determining for the purpose of s 28(5) whether a life prisoner to whom s 28 applies has served the 'relevant part' of his sentence, no account is to be taken of any time during which he was unlawfully at large within the meaning of the Prison Act 1952 s 49 (see *PRISONS AND PRISONERS* vol 85 (2012) PARA 429): see the Crime (Sentences) Act 1997 s 28(8). In relation to a life prisoner in respect of whom a minimum term order has been made, any reference in s 28 to the relevant part of such a prisoner's sentence is a reference to the part of the sentence specified in the order: see s 28(1A) (as added and substituted: see note 3). In relation to an 'existing prisoner' (see note 2), any reference to the relevant part of the sentence is to be read:
 - (1) in relation to a sentence in respect of which an order under the Criminal Justice Act 2003 Sch 22 para 3(1)(a) has been made (see note 2), as a reference to the part specified in the order (Sch 22 para 16(3)(a)); and
 - (2) in relation to a sentence in respect of which Sch 22 para 3(3) applies (see note 2), as a reference to the notified minimum term as defined by Sch 22 para 3(4) (ie the minimum period notified by the Secretary of State, or where the prisoner has been so notified on more than one occasion, the period most recently so notified) (Sch 22 para 16(3)(b)).
- 5 As to the constitution and functions of the Parole Board, continued by the Criminal Justice Act 2003 s 239(1), see PARA 772.
- 6 See the Crime (Sentences) Act 1997 s 28(5)(b). The text refers to the Parole Board directing release under s 28: see s 28(5)(b).
- 7 As to the Secretary of State for these purposes see *PRISONS AND PRISONERS* vol 85 (2012) PARA 408.
- 8 See the Crime (Sentences) Act 1997 s 28(5). As to the duration of licences granted to life prisoners see PARA 803; and as to licence conditions see PARA 804.

The introduction of the Crime (Sentences) Act 1997 s 28 followed the decision of the European Court of Human Rights in Application 21928/93 *Singh and Hussain v United Kingdom* (1996) 22 EHRR 1, ECtHR. The sentence of detention at Her Majesty's pleasure, imposed in respect of offenders convicted of murder committed when they were aged 17 or under, was held to comprise both a punitive and preventative component, so that when the sentence entered the preventative phase, it attracted the guarantees of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) ('ECHR') art 5(4) (ie that everyone who is deprived of his liberty by arrest or detention is entitled to take proceedings by which the lawfulness of his detention is to be decided speedily by a court and his release ordered if the detention is not lawful: see PARA 761 note 8). The Convention is commonly referred to as the European Convention on Human Rights ('ECHR') and most of the rights and freedoms guaranteed thereby are incorporated into English law by means of the Human Rights Act 1998 s 1, Sch 1: see *CONSTITUTIONAL LAW AND HUMAN RIGHTS* vol 8(2) (Reissue) PARA 122 et seq.

The predecessor legislation to the Crime (Sentences) Act 1997 s 28 (contained in the Criminal Justice Act 1991 s 34 (now repealed)) was a response to earlier applications before the European Court of Human Rights: see eg Application 11787/85 *Thynne, Wilson and Gunnell v United Kingdom* (1990) 13 EHRR 666, ECtHR. The applicants were all prisoners serving discretionary life sentences (ie prisoners convicted of offences for which the sentence was not fixed by law: see PARA 761 note 1). At the time the power to direct their release was conferred on the Secretary of State, and they were treated for all purposes relating to release in the same manner as mandatory life sentence prisoners (ie prisoners convicted of offences for which the sentence was fixed by law: see PARA 761 note 1). The Court held that the rationale for the discretionary life sentence differed to that of the mandatory life sentence, in that the former comprised two discrete components, namely a punitive element to mark the requirements of retribution and deterrence, and thereafter, once the punitive period had been served, ongoing detention justified for preventative or security purposes. The pronouncement of sentence was sufficient to authorise, once and for all, a discretionary life sentence prisoner's detention throughout the punitive period, but thereafter the justification for ongoing detention depended upon a criterion of dangerousness that was susceptible to change over time. The pronouncement

of sentence did not authorise, once and for all, detention in respect of the security phase. Once that phase was entered the question whether the prisoner remained dangerous and thus whether his ongoing detention remained lawful, fell to be determined again. In accordance with ECHR art 5(4), the prisoner's release must be ordered if it is not lawful. Since the quality of dangerousness is susceptible to change over time, the Court further reasoned that the lawfulness of detention was to be determined by a court at regular intervals during the preventative phase. The Criminal Justice Act 1991 gave effect in domestic law to that judgment in relation to discretionary life sentence prisoners. In relation to any prisoner sentenced to a discretionary life sentence after the Act came into force on 1 October 1992, the sentencing court was required to consider whether or not to specify a period before which the prisoner's case for release could not be considered by the Parole Board. The decision whether or not to specify a period turned upon whether the discretionary life sentence was imposed solely on punitive grounds, in which case the provisions relating to the treatment of such prisoners in the preventative phase would not apply. Where the court considered that the offence was so grave as to require life-long punishment, no period would be specified. The result would be that the prisoner would be treated as a mandatory life sentence prisoner for the purposes of the release provisions contained in Pt II (ss 32–51): see s 35 (repealed with savings); and PARA 761. Where the court decided to specify a period it was required to do so taking account of: (1) the seriousness of the offence or the combination of the offence and other offences associated with it, ie the notional determinate sentence that would have been passed had the offender's dangerousness not required the imposition of a life sentence (see s 34(2)(a) (repealed)); and (2) the provisions of the Act relating to the automatic and discretionary release of long term prisoners (see s 34(2)(b) (repealed)). The obligation to take account of the release provisions relating to long term prisoners was a requirement to specify a period somewhere between the half way and two-thirds point of the notional determinate sentence. The object was to ensure that a discretionary life sentence prisoner was in no worse a position than his fixed term counterpart in respect of the time at which the Parole Board might consider his case for release. In the case of young offenders the specified period should, unless there are exceptional reasons to do otherwise, be at the half way point of the notional determinate sentence and in relation to adult discretionary life sentence prisoners it should ordinarily be at the half way point: *R v Secretary of State for the Home Department, ex p Furber* [1998] 1 All ER 23, [1998] 1 Cr App Rep (S) 208; *R v Marklew and Lambert* [1998] 2 All ER 939, [1999] 1 WLR 485, CA.

The introduction of the Criminal Justice Act 2003 assimilated the position of mandatory lifers with that of discretionary lifers and those detained at Her Majesty's pleasure which was itself the result of judicial determinations revisiting the characterisation of the sentence. In Application 46295/99 *Stafford v United Kingdom* (2002) 35 EHRR 1121, 13 BHRC 260, ECtHR, the European Court of Human Rights departed from its earlier distinction (in Application 11787/85 *Thymne, Wilson and Gunnell v United Kingdom*; and Application 15484/89 *Wynne v United Kingdom* (1994) 19 EHRR 333, ECtHR) between the mandatory and discretionary life sentences and held that the mandatory life sentence, like the discretionary life sentence, comprises punitive and preventative elements and that once the punitive element has been served, continued detention engages ECHR art 5 and thus requires review by an independent tribunal for the purposes of art 5(4). This position was confirmed domestically in *R (on the application of Anderson) v Secretary of State for the Home Department* [2002] UKHL 46, [2003] 1 AC 837, [2002] 4 All ER 1089, which acknowledged that the European Court of Human Rights had held that the tariff fixing exercise was a sentencing exercise, there being no distinction in that regard between mandatory life prisoners, discretionary life prisoners and juvenile murderers, and that the Secretary of State should pay no part in fixing the tariff of a convicted murderer, even if he did no more than confirm what the judges had recommended, since the rule of law depended on a complete functional separation of the judiciary from the executive. Because it was not possible to read the Crime (Sentences) Act 1997 s 29 (which dealt with the release of life prisoners 'other' than those falling within s 28) as precluding participation by the Secretary of State, s 29 was declared incompatible with the right under ECHR art 6 to have a sentence imposed by an independent and impartial tribunal (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 134 et seq). Accordingly, the Criminal Justice Act 2003 was enacted to repeal the Crime (Sentences) Act 1997 s 29, to amend s 28 to include mandatory life sentence prisoners amongst those who must be released upon the direction of the Parole Board, and to provide for the judicial determination of the minimum term to be served prior to consideration of release by the Parole Board (see the Criminal Justice

Act 2003 ss 269, 276, Sch 21 (determination of minimum term in relation to mandatory life sentence), Sch 22 (mandatory life sentences: transitional cases)).

9 See the Crime (Sentences) Act 1997 s 28(6)(a).

10 See the Crime (Sentences) Act 1997 s 28(6)(b). The test in s 28(6)(b) requires the Parole Board to be satisfied that the prisoner does not present a substantial risk of re-offending in a manner which is dangerous to life or limb or of committing serious sexual offences: *R v Secretary of State for the Home Department, ex p Benson* [1989] COD 329, (1988) Times, 8 November, DC; *R v Parole Board, ex p Bradley* [1990] 3 All ER 828, [1991] 1 WLR 134, DC; and see *R v Parole Board, ex p Watson* [1996] 2 All ER 641 at 650, [1996] 1 WLR 906 at 916 per Sir Thomas Bingham MR (in exercising its practical judgment, the Board is bound to [...] balance[e] the hardship and injustice of continuing to imprison a man who is unlikely to cause serious injury to the public against the need to protect the public against a man who is not unlikely to cause to such injury; in other than a clear case, this is bound to be a difficult and very anxious judgment but in the final balance the Board is bound to give preponderant weight to the need to protect innocent members of the public against any significant risk of serious injury). See also *Sturnham v Secretary of State for Justice* [2012] EWCA Civ 452, [2012] 3 WLR 476, [2012] All ER (D) 148 (Aug) (approving *R v Parole Board, ex p Bradley*) (the test for release under Crime (Sentences) Act 1997 is the same irrespective of the type of indeterminate sentence under consideration and in the case of prisoners sentenced to imprisonment for public protection (IPP), there does not need to be an equivalence of risk at the point when IPP was imposed and when release is being considered); but cf *R v Parole Board, ex p Curley* (22 October 1999, unreported) (mandatory lifers, including those detained at Her Majesty's pleasure (HMP), have their sentence imposed as a matter of law, rather than on a finding of 'dangerousness', so the Board will require cogent evidence of 'dangerousness' before being satisfied that an HMP prisoner poses more than a minimal risk of danger to life and limb).

While the Secretary of State has power to give directions, so as to provide the Parole Board with guidance as to the legally relevant matters to be taken into account to assist it to reach a structured decision on the question it was duty bound to decide, what he could not do was give mandatory directions as this would usurp the Board's judicial function: *R (on the application of Girling) v Parole Board* [2006] EWCA Civ 1779, [2007] QB 783, [2007] 2 All ER 688 (considering the Criminal Justice Act 1991s 32(6): see now the power exercisable under the Criminal Justice Act 2003 s 239(6); and PARA 772 note 17).

In so far as it is relevant to do so, the Parole Board applies the civil standard of proof (see *R (on the application of Brooks) v Parole Board* [2004] EWCA Civ 80, 148 Sol Jo LB 233, [2004] All ER (D) 142 (Feb)). However, because it is concerned with the assessment of risk (ie a more than minimal risk of further grave offences being committed in the future), ultimately the burden of proof has no real part to play: see *R (on the application of Sim) v Parole Board* [2003] EWCA Civ 1845 at [42], [2004] QB 1288 at [42], [2004] 2 WLR 1170 at [42] per Keene LJ (the concept of a burden of proof is inappropriate where one is involved in risk evaluation); and *R (on the application of Brooks) v Parole Board* at [28] per Kennedy LJ; cf *R v Hodgson* (1967) 52 Cr App Rep 113, [1968] Crim LR 46, CA. Prisoners who deny their offences should not automatically be refused release, though the fact of that denial may make the task of risk assessment particularly difficult: see *R v Secretary of State for the Home Department, ex p Hepworth, Fenton-Palmer and Baldonzy* [1997] EWHC Admin 324; *R v Parole Board and Home Secretary, ex p Oyston* [2000] All ER (D) 274, CA (Parole Board is free to consider the risk that a prisoner may pose in the event of an escape when he denies guilt of his index offence but a decision that is solely based on denial of the index offending is unlawful). See also PARA 774 note 32.

As to what material is relevant for the Parole Board to consider when making its evaluation, it is not confined to material which would be admissible in criminal or disciplinary proceedings, nor need it follow procedures prescribed in relation to those types of proceedings: see *R (on the application of West) v Parole Board* [2002] EWCA Civ 1641, [2003] 1 WLR 705, (2002) Times, 21 November, [2002] All ER (D) 194 (Nov); *R (on the application of Sim) v Parole Board*; *R (on the application of Brooks) v Parole Board*. As to whether procedural fairness requires that an oral hearing take place see generally PARA 773 note 12.

Though the Board only has power to direct release, it is the duty of the Board to advise the Secretary of State with respect to any matter referred to it by him which is to do with the early release or recall of prisoners. In practice, it is invited by the Secretary of State to advise whether a prisoner serving an indeterminate sentence should be transferred to an open prison or should have his case next referred to the Board in less than the statutory period (see head (2) in the text). As to open prisons see PRISONS AND PRISONERS vol 85

(2012) PARA 482. In relation to all advice given, the Secretary of State is entitled to take a different course, though any unreasonable failure to follow a recommendation by the Board will be susceptible to judicial review: see eg *R (on the application of Hill) v Secretary of State for the Home Department* [2007] EWHC 2164 (Admin), [2007] All ER (D) 112 (Sep) (Secretary of State's practice differed markedly depending on whether the Parole Board recommendation was for a transfer to open conditions or against: in the former case, he rarely accepted the recommendation but, in the latter, he almost always did so; the Secretary of State should act even-handedly and either accept the Parole Board's advice every time, save in exceptional circumstances, or he could look carefully in each case at every piece of advice whether positive or negative). Where the Secretary of State does reject a recommendation he must, as a matter of fairness, address the reasons given by the Board for taking the view with which he is disagreeing: *R v Secretary of State for the Home Department, ex p Murphy* [1997] COD 478. Where a panel of the Parole Board determines that it is safe to release a prisoner but is unable to direct release because suitable release arrangements have not been put in place, the panel has discharged the function of the Parole Board under the Crime (Sentences) Act 1997 s 28(5) (see the text and notes 4–8), and is *functus officio*: *R v Parole Board, ex p Robinson* (29 July 1999, unreported). Any future panel convened to consider the prisoner's case may not re-open the issue of risk, but must direct release once suitable arrangements are in place: *R v Parole Board, ex p Robinson*.

The detention of prisoners with indeterminate sentences for public protection who have completed their tariff terms is not unlawful in itself, since the provisions of the Crime (Sentences) Act 1997 require that the Parole Board is satisfied that it is no longer necessary for the protection of the public that they are confined, and it is not possible to describe a prisoner who remains detained in accordance with those provisions as unlawfully detained under the common law: *R (on the application of James) v Secretary of State for Justice, R (on the application of Lee) v Secretary of State for Justice, R (on the application of Wells)* [2009] UKHL 22, [2010] 1 AC 553, [2009] 4 All ER 255 (parole review is a matter of form rather than substance). Notwithstanding this, the continuing detention of a post-tariff indeterminate sentence prisoner does engage ECHR art 5(4) (see note 8): Application 11787/85 *Thynne, Wilson and Gunnell v United Kingdom* (1990) 13 EHRR 666, ECtHR; Application 46295/99 *Stafford v United Kingdom* (2002) 35 EHRR 1121, 13 BHRC 260, ECtHR; *R (on the application of James) v Secretary of State for Justice, R (on the application of Lee) v Secretary of State for Justice, R (on the application of Wells); R (on the application of Noorkoiv) v Secretary of State for the Home Department* [2002] EWCA Civ 770, [2002] 4 All ER 515, [2002] 1 WLR 3284 (policy of referring life sentence prisoners to the Parole Board after expiry of the tariff period). A breach by the Secretary of State of his public law duty to provide such courses as would enable prisoners with indeterminate sentences for public protection to demonstrate their safety for release does not result in post-tariff detentions being unlawful at common law or under ECHR art 5 provided the system has not broken down to the extent that the causal link between the initial sentence and the continued detention is broken: *R (on the application of James) v Secretary of State for Justice, R (on the application of Lee) v Secretary of State for Justice, R (on the application of Wells)*. However, see Applications 25119/09, 57715/09 and 57877/09 *James, Lee, Wells v United Kingdom* (2012) 33 BHRC 617, [2012] All ER (D) 109 (Sep), ECtHR (there had been a violation of ECHR art 5(1) in respect of the applicants' detention following the expiry of their tariff periods and until steps were taken to progress them through the prison system with a view to providing them with access to appropriate rehabilitative courses).

- 11 See the Crime (Sentences) Act 1997 s 28(7). The provision made by s 28(7) has effect as if any reference of a prisoner's case made to the Parole Board under the Criminal Justice Act 1991 s 32(2) or s 34(4) (both repealed) had been made under the Crime (Sentences) Act 1997 s 28(6) (see the text and notes 9–10); and as if any such reference made under the Criminal Justice Act 1991 s 39(4) (repealed) had been made under the Crime (Sentences) Act 1997 s 32(4) (see PARA 780): see s 56(1), Sch 5 para 5.

A prisoner to whom s 28 applies is entitled to require the Secretary of State to have his first parole review conducted immediately upon the expiry of the relevant part or punitive period, or as soon as practicable thereafter: *R v Secretary of State for the Home Department, ex p Norney* (1995) Times, 6 October, DC. The prisoner is entitled, under ECHR art 5(4) to have such a review conducted speedily: see note 8. As to the Strasbourg jurisprudence on this point generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 127 et seq. In practice, an indeterminate sentence prisoner's case is usually referred to the Parole Board for the first time three years prior to the expiry of the

minimum term: see Prison Service Order 6010 (Generic Parole Process) para 2.1.1; and PARA 772 note 26. The purpose of such a referral is to ensure that necessary steps are taken to ensure that a prisoner who is likely to be ready for release on tariff expiry can be released without delay. See *R (on the application of Payne) v Secretary of State for the Home Department* [2004] EWHC 581 (Admin), [2004] All ER (D) 21 (Mar) (policy which provided that 'lifers' would be referred to the parole board three and a half years prior to tariff expiry unless there were exceptional circumstances was an operational administrative decision which did not involve a fundamental legal right).

- 12 See the Crime (Sentences) Act 1997 s 28(7)(a). In determining for the purpose of s 28(7) whether a life prisoner to whom s 28 applies has served the relevant part of his sentence, no account is to be taken of any time during which he was unlawfully at large within the meaning of the Prison Act 1952 s 49 (see PRISONS AND PRISONERS vol 85 (2012) PARA 429); see the Crime (Sentences) Act 1997 s 28(8).
- 13 For these purposes, 'previous reference' means a reference either under the Crime (Sentences) Act 1997 s 28(6) (see the text and notes 9–10) or under s 32(4) (recall of life prisoners on licence: see PARA 780); see s 28(7). Following a review, the Board may recommend that the prisoner's case should be heard sooner than the statutory period but the Secretary of State is not obliged to accept any such recommendation, although his refusal to do so may be susceptible to challenge by way of judicial review: see note 10.
- 14 Crime (Sentences) Act 1997 s 28(7)(b). Under ECHR art 5(4) (see note 8), prisoners serving an indeterminate sentence are entitled to have the lawfulness of their detention determined at regular intervals because the justification for detention, namely continued dangerousness, is susceptible to change over time: Application 36273/97 *Oldham v United Kingdom* (2000) 31 EHRR 813, ECtHR (and see relevant cases listed in PARA 773). The Secretary of State has a discretion to refer a case before the expiry of two years, whether an early review is recommended by the Parole Board or of his own motion. because ECHR art 5(4) does not require the decision on the timing of reviews to be taken by a Court; the determination of what the appropriate interval between reviews should be can properly be taken by the Secretary of State who must take into account the circumstances of the particular prisoner's case: see *R (on the application of Spence) v Secretary of State for the Home Department* [2003] EWCA Civ 732, 147 Sol Jo LB 660, [2003] All ER (D) 354 (May); and PARA 773 note 14.
- 15 Crime (Sentences) Act 1997 s 28(7)(c) (amended by the Crime and Disorder Act 1998 s 119, Sch 8 para 130(2)).
- 16 In the general provisions of the Crime (Sentences) Act 1997 s 28 (see the text and notes 1–15): see s 28(1B)(a) (s 28(1B) as added (see note 1); s 28(1B)(a) amended by the Criminal Justice Act 2003 s 275(1), (3)).
- 17 See the Crime (Sentences) Act 1997 s 28(1B)(a) (as added and amended: see note 16).

The Criminal Justice and Court Services Act 2000 provides that, where a person serving any life sentence passed after 30 November 2000 (ie after 'commencement', being the date when s 60 came into force: see note 1) is also serving a 'pre-commencement life sentence', being a life sentence passed before 30 November 2000 or any sentence passed before commencement by reason of which the prisoner is a transferred life prisoner within the meaning of the Crime (Sentences) Act 1997 s 33 (repealed) (life prisoners transferred to England and Wales: see PARA 778 note 10; and note 2), s 28(1B) is to have effect as if (see the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt II paras 146–148):

- (1) any reference to a life sentence included a pre-commencement life sentence (see Sch 7 Pt II para 147(a));
- (2) any reference to an order or direction in relation to such a life sentence were to an order under the Crime (Sentences) Act 1997 s 28(2)(b) (repealed) or a direction under s 28(4) (as originally enacted) (repealed) or to a certificate under s 33 (see the Criminal Justice and Court Services Act 2000 Sch 7 Pt II para 147(b));
- (3) any reference to the relevant part of such a life sentence were to the part specified in the order, direction or certificate (as the case may be) relating to that sentence (see Sch 7 Pt II para 147(c)).

For these purposes, 'life sentence' has the same meaning as in the Crime (Sentences) Act 1997 Pt II Ch II (see PARA 778): see the Criminal Justice and Court Services Act 2000 Sch 7 Pt II para 148.

In relation to an 'existing prisoner' (see note 2), the Crime (Sentences) Act 1997 s 28(1B)(a) is to be read as if it referred to each of the sentences being one: (a) in respect of which a minimum term order or an order under the Criminal Justice Act 2003 Sch 22 para 3(1)(a) has been made (see note 2) (Sch 22 para 16(4)(a)); or (b) in respect of which Sch 22 para 3(3) applies (see note 2) (Sch 22 para 16(4)(b)).

- 18 In the provisions of the Crime (Sentences) Act 1997 s 28(5)–(8) (see the text and notes 4–15): see s 28(1B)(b) (as added: see note 1).
- 19 See the Crime (Sentences) Act 1997s 28(1B)(b) (as added: see note 1).
- 20 In the Parole Board Rules 2011, SI 2011/2947 (see PARA 773).
- 21 See the Parole Board Rules 2011, SI 2011/2947, Pt 3 (rr 16–18); and PARA 775. As to general procedure before a Parole Board see also PARA 774.

(iii) Recall

780. Recall of life prisoners while on licence. The Secretary of State¹ may, in the case of any life prisoner² who has been released on licence under the provisions of the Crime (Sentences) Act 1997 that so provide³, revoke his licence and recall him to prison⁴. A person recalled to prison in this way⁵:

- (1) may make representations in writing with respect to his recall⁶; and
- (2) on his return to prison, must be informed of the reasons for his recall and of his right to make representations⁷.

The Secretary of State must refer the case of any life prisoner recalled in this way to the Parole Board⁸; and where, on such a reference, the Board directs his immediate release on licence, the Secretary of State must give effect to the direction⁹.

On the revocation of the licence of any life prisoner in this way, he is liable to be detained in pursuance of his sentence and, if at large, is deemed to be unlawfully at large¹⁰.

- 1 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.
- 2 As to the meaning of ‘life prisoner’ for the purposes of the Crime (Sentences) Act 1997 Pt II Ch II (ss 28–34) (life sentences) see PARA 778.
- 3 In who has been released on licence under the Crime (Sentences) Act 1997 Pt II Ch II (see also PARAS 770, 779, 803 et seq): see s 32(1) (substituted by the Criminal Justice and Immigration Act 2008 s 31(1), (2)).
The Crime (Sentences) Act 1997 Pt II Ch II (ss 28–34) does not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of ‘England’ and ‘Wales’ see PARA 763 note 1.
- 4 Crime (Sentences) Act 1997 s 32(1) (as substituted: see note 3). The provision made by s 32 is compatible with the right to liberty guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) (‘ECHR’) art 5: see *R (on the application of Hirst) v Secretary of State for the Home Department* [2006] EWCA Civ 945, [2006] 4 All ER 639, [2006] 1 WLR 3083 (provided the circumstances under which the original sentence was imposed were sufficiently reflected in those that pertained at the time when the recall order was made, the recall of a prisoner subject to a discretionary life sentence did not contravene ECHR art 5(1) (which guarantees, in particular, that a person may be deprived of his liberty only according to specified circumstances, which include lawful detention after conviction by a competent court. and in accordance with a procedure prescribed by law: see PARA 761 note 8). A prisoner is entitled also to have the lawfulness of a decision to recall him determined speedily by a court: see ECHR art 5(4) (which guarantees that everyone who is deprived of his liberty by arrest or detention is entitled to take proceedings by which the lawfulness of his detention is to be decided speedily by a court and his release ordered if the detention is not lawful: see PARA 761 note 8). The Convention is commonly referred to as the European Convention on Human Rights (‘ECHR’) and most of the rights and freedoms guaranteed thereby are incorporated into English law by means of the Human Rights Act 1998 s 1, Sch 1: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 122 et seq.
- 5 See the Crime (Sentences) Act 1997 s 32(3) (amended by the Criminal Justice and Immigration Act 2008 s 31(1), (3)).

The Crime (Sentences) Act 1997 s 32(3) has effect as if any life prisoner recalled to prison under the Criminal Justice Act 1991 s 39(1), (2) (repealed) had been recalled to

prison under the Crime (Sentences) Act 1997 s 32: see s 56(1), Sch 5 para 7(1) (amended by the Criminal Justice and Immigration Act 2008 s 149, Sch 28 Pt 2). For these purposes, ‘life prisoner’ has the same meaning as in the Crime (Sentences) Act 1997 Pt II Ch II (see PARA 778); see Sch 5 para 13.

6 Crime (Sentences) Act 1997 s 32(3)(a).

7 Crime (Sentences) Act 1997 s 32(3)(b).

Whether or not reasons given for a recall decision are adequate or prompt is highly fact specific: see *R (on the application of Hirst) v Secretary of State for the Home Department* [2005] EWHC 1480 (Admin), (2005) Times, 4 July, [2005] All ER (D) 223 (Jun); *R (on the application of FM) v Secretary of State for Justice* [2012] EWHC 2630 (QB), 176 CL&J 594, [2012] All ER (D) 176 (Sep). As to the approach taken to requests made to the Secretary of State to rescind a recall see *R (on the application of FM) v Secretary of State for Justice* (it seems highly restrictive to differentiate between a plain and obvious error undermining the original correctness of the decision to recall and a refusal, virtually without exception, to countenance any request to rescind based on a change in the judgement made about management of risk).

8 See the Crime (Sentences) Act 1997 s 32(4) (amended by the Criminal Justice and Immigration Act 2008 s 31(1), (4)). As to the constitution and functions of the Parole Board, continued by the Criminal Justice Act 2003 s 239(1), see PARA 772.

The Crime (Sentences) Act 1997 s 32(4) has effect as if any life prisoner recalled to prison under the Criminal Justice Act 1991 s 39(1), (2) (repealed with savings: see PARA 761) had been recalled to prison under the Crime (Sentences) Act 1997 s 32 (see Sch 5 para 7(1) (as amended: see note 5)); and as if any representations made by a life prisoner under the Criminal Justice Act 1991 s 39(3) had been made under the Crime (Sentences) Act 1997 s 32(3) (see the text and notes 5–7) (see Sch 5 para 7(2)).

9 Crime (Sentences) Act 1997 s 32(5) (substituted by the Criminal Justice Act 2003 s 304, Sch 32 Pt 1 paras 82, 84). The Parole Board must direct release where it concludes that the circumstances giving rise to the recall do not demonstrate any causal connection with the original purpose in imposing the indeterminate sentence; where the circumstances leading to recall demonstrate nothing more than a risk of non-violent offending, they are incapable of justifying detention pursuant to a sentence whose purpose is to protect the public from offences dangerous to life or limb: see eg Application 46295/99 *Stafford v United Kingdom* (2002) 35 EHRR 1121, 13 BHRC 260, ECtHR; and see PARA 761 note 8. Where a panel of the Parole Board determines that it is safe to release a prisoner but is unable to direct release because suitable release arrangements have not been put in place, the panel has discharged the function of the Parole Board under the Crime (Sentences) Act 1997 s 28(5) (see PARA 779), and is *functus officio*: *R v Parole Board, ex p Robinson* (29 July 1999, unreported). Any future panel convened to consider the prisoner’s case may not re-open the issue of risk, but must direct release once suitable arrangements are in place: *R v Parole Board, ex p Robinson*. See also PARA 779 note 10.

10 Crime (Sentences) Act 1997 s 32(6).

(4) PRISONERS SERVING DETERMINATE SENTENCE FOR OFFENCE COMMITTED ON OR AFTER 4 APRIL 2005

(i) Introduction

781. Meaning of ‘fixed-term prisoner’ for the purposes of the Criminal Justice Act 2003. For the purposes of the provisions of the Criminal Justice Act 2003 that govern the early release, and recall, of prisoners¹, ‘fixed-term prisoner’ means a person²:

- (1) serving a sentence of imprisonment for a determinate term³; or
- (2) serving a determinate sentence of detention⁴.

For these purposes also, unless the context otherwise requires, ‘prisoner’ includes a person serving a sentence falling within head (2) above⁵; and ‘prison’ includes any place where a person serving such a sentence is liable to be detained⁶.

- 1 Ie for the purposes of the Criminal Justice Act 2003 Pt 12 Ch 6 (ss 237–268) (sentencing: release, licences and recall) (see also PARAS 769, 772, 782 et seq): see s 237(1).
- 2 At the date at which this volume states the law, in the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 782 et seq), ‘fixed-term prisoner’ has the meaning given by s 237(1) as extended by s 237(1A): see s 268 (definition amended by the Armed Forces Act 2006 s 378(1), Sch 16 para 227). However, the Criminal Justice Act 2003 s 237(1A) was prospectively added by the Police and Justice Act 2006 s 34(1), (3), and s 34 (which was never commenced) was repealed by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 118(1), (3) with effect from 3 December 2012: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d). For the purposes of the statutory scheme regulating the release of determinate sentence prisoners that was substantially contained in the Criminal Justice Act 1991 Pt II (ss 32–51) (repealed with savings), reference was made to ‘long-term’ prisoners (prisoners serving a term of 4 years or more) and ‘short term’ prisoners (prisoners serving a term of under 4 years) rather than to ‘fixed-term’ prisoners: see PARA 792 et seq.
- 3 See the Criminal Justice Act 2003 s 237(1)(a). For the purposes of Pt 12 (ss 142–305) (sentencing), ‘sentence of imprisonment’ does not include a committal in default of payment of any sum of money, for want of sufficient distress to satisfy any sum of money, or for failure to do or abstain from doing anything required to be done or left undone; and references to sentencing an offender to imprisonment are to be read accordingly: see s 305(1). As to sentences of imprisonment for a determinate term see PARA 761 notes 1–2; and as to committal in default of payment of any sum of money etc see PARA 799 et seq.
References in Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 782 et seq) to a sentence of imprisonment include such a sentence passed by a service court: see s 237(1B)(a) (s 237(1B), (1C) added by the Armed Forces Act 2006 Sch 16 para 219). However, nothing in the Criminal Justice Act 2003 s 237(1B) has the effect that s 240ZA (time remanded in custody to count as time served: terms of imprisonment and detention: see SENTENCING AND DISPOSITION OF OFFENDERS) or s 265 (commencement of Crown Court sentence: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 30), provision equivalent to which is made by the Armed Forces Act 2006, or the Criminal Justice Act 2003 s 240A (time remanded on bail to count as time served: terms of imprisonment and detention: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 37), applies to a service court: see s 237(1C) (as so added; amended by the Criminal Justice and Immigration Act 2008 s 21(1), (2); and the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 110(1), (2)(a), (b)). For the purposes of the Criminal Justice Act 2003 Pt 12 (sentencing), ‘service court’ means the Court Martial, the Summary Appeal Court, the Service Civilian Court, the Court Martial Appeal Court, or the Supreme Court on an appeal brought from the Court Martial Appeal Court: see s 305(1) (definition substituted by the Armed Forces Act 2006 Sch 16 para 231(b)). As to the Court Martial see ARMED FORCES vol 3 (2011) PARA 633 et seq; as to the Summary Appeal Court see ARMED FORCES vol 3 (2011) PARA 624 et seq; as to the Service Civilian Court see ARMED FORCES vol 3 (2011) PARA 681 et seq; and as to the Court Martial Appeal Court see ARMED FORCES vol 3 (2011) PARA 656 et seq; COURTS AND TRIBUNALS vol 24 (2010) PARAS 803–806. As to an appeal brought from the Court Martial Appeal Court to the Supreme Court see ARMED FORCES vol 3 (2011) PARA 677; and COURTS AND TRIBUNALS vol 24 (2010) PARA 803.

In determining for the purposes of the Criminal Justice Act 2003 Pt 12 Ch 6 whether a person to whom s 240ZA applies, or to whom a direction under s 240A relates, either has served (or would, but for his release, have served) a particular proportion of his sentence, or has served a particular period, the number of days specified in s 240ZA, or in the direction under s 240A, are to be treated as having been served by him as part of that sentence or period: see s 241(1) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ss 89(2), 110(1), (3), (4)(a), (b), Sch 10 paras 12, 20). For this purpose, the reference to the Criminal Justice Act 2003 s 240ZA includes the Armed Forces Act 2006 s 246 (crediting of time in service custody: terms of imprisonment and detention: see ARMED FORCES vol 3 (2011) PARA 596): see the Criminal Justice Act 2003 s 241(1A) (added by the Armed Forces Act 2006 s 378(1), Sch 16 para 220; and amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 110(1), (3), (5)). For the purposes of the Criminal Justice Act 2003 ss 240ZA, 240A, 241, ‘sentence of imprisonment’ does not include a committal in default of payment of any sum of money (other than one adjudged to be paid on a conviction), for want of sufficient distress to satisfy any sum of money, or for failure to do or abstain from doing anything required to

be done or left undone (see s 305(1) (definition applied and modified by s 242(1) (amended by the Criminal Justice and Immigration Act 2008 s 21(1), (6); and the Legal Aid, Sentencing and Punishment of Offenders Act 2012, s 110(1), (7))); and references in the Criminal Justice Act 2003 ss 240ZA, 240A, 241 to sentencing an offender to imprisonment, and to an offender's sentence, are to be read accordingly (see s 242(1) (as so amended)).

- 4 See the Criminal Justice Act 2003 s 237(1)(b) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ss 117(1), (2)(a), (b), 125(4), Sch 20 paras 1, 2(1), (2)). Head (2) in the text refers to the following sentences:
- (1) a determinate sentence of detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (sentence of detention for a specified period passed on a person aged under 18 who has committed a serious offence: see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1307; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 78) or s 96 (prospectively repealed) (detention in young offender institution for a person aged between 18 and 21: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 85) (see the Criminal Justice Act 2003 s 237(1)(b) (as so amended)); or
 - (2) a sentence imposed under s 226A (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS), s 226B (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS), s 227 (repealed with savings) (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 75, 88) or s 228 (repealed with savings) (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 84) (see s 237(1)(b) (as so amended)).

References in Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 782 et seq) to a sentence of detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 96 (see head (1) above) or under the Criminal Justice Act 2003 s 226A (see head (2) above) or s 227 (see head (2) above) are references to a sentence of detention in a young offender institution: see s 237(3) (added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 117(1), (3); and amended by Sch 20 paras 1, 2(1), (3)). References in the Criminal Justice Act 2003 Pt 12 Ch 6:

- (a) to a sentence of detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 include a sentence of detention under the Armed Forces Act 2006 s 209 (offenders under 18 convicted of certain serious offences (power to detain for a specified period): see ARMED FORCES vol 3 (2011) PARA 611) (see the Criminal Justice Act 2003 s 237(1B)(b) (s 237(1B) as added: see note 3));
- (b) to a sentence under the Criminal Justice Act 2003 s 226A include a sentence under s 226A passed as a result of the Armed Forces Act 2006 s 219A (extended sentence for certain violent or sexual offenders aged 18 or over: see ARMED FORCES) (see the Criminal Justice Act 2003 s 237(1B)(ba) (s 237(1B) as so added; s 237(1B)(ba), (bb) added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 127, Sch 22 Pt 2 para 21));
- (c) to a sentence under the Criminal Justice Act 2003 s 226B include a sentence under s 226B passed as a result of the Armed Forces Act 2006 s 221A (extended sentence for certain violent or sexual offenders aged under 18: see ARMED FORCES) (see the Criminal Justice Act 2003 s 237(1B)(bb) (as so added));
- (d) to a sentence under the Criminal Justice Act 2003 s 227 include a sentence under s 227 passed as a result of the Armed Forces Act 2006 s 220 (repealed) (certain violent or sexual offences (offenders aged 18 or over): see ARMED FORCES vol 3 (2011) PARA 611) (see the Criminal Justice Act 2003 s 237(1B)(c) (as so added));
- (e) references to a sentence under the Criminal Justice Act 2003 s 228 include a sentence under s 228 passed as a result of the Armed Forces Act 2006 s 222 (repealed) (certain violent or sexual offences (offenders aged under 18): see ARMED FORCES vol 3 (2011) PARA 611) (see the Criminal Justice Act 2003 s 237(1B)(d) (as so added)).

As to the effect of s 237(1B) see note 3.

The amendments made by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 117 apply in relation to any person who falls to be released under the Criminal Justice Act 2003 Pt 12 Ch 6 on or after 3 December 2012 (ie on or after the commencement date, being the day appointed under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 151 for the coming into force of s 117: see the Legal

Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d)): see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 120, Sch 15 paras 1, 2(2). The provision made by s 117 preserves the effect of the Criminal Justice Act 2003 (Sentencing) (Transitory Provisions) Order 2005, SI 2005/643, art 3(1), (7), (10)–(15), (17)(a), (b), which has been repealed by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 117(11). As to the reform to the sentencing regime which led to the abolition of the Criminal Justice Act 2003 ss 227, 228 and the introduction of ss 226A, 226B see PARA 761 notes 1–2.

- 5 See the Criminal Justice Act 2003 s 237(2). Accordingly, for the purposes of Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 782 et seq), ‘prisoner’ is to be read in accordance with s 237(2): see s 268.
- 6 See the Criminal Justice Act 2003 s 237(2). Accordingly, for the purposes of Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 782 et seq), ‘prison’ is to be read in accordance with s 237(2): see s 268.

782. Treatment of concurrent terms under the Criminal Justice Act 2003. Where a person (the ‘offender’) has been sentenced to two or more terms of imprisonment¹ which are wholly or partly concurrent², and where the sentences were passed on the same occasion (or, where they were passed on different occasions, the person has not been released under Chapter 6 of Part 12 of the Criminal Justice Act 2003³ at any time during the period beginning with the first and ending with the last of those occasions)⁴, then:

- (1) nothing in Chapter 6 of Part 12 of the Criminal Justice Act 2003⁵ requires the Secretary of State⁶ to release the offender in respect of any of the terms unless and until he is required to release him in respect of each of the others⁷;
- (2) the offender’s release is to be unconditional if the provisions governing the automatic unconditional release of prisoners serving less than 12 months so requires⁸ in respect of each of the sentences (and in any other case is to be on licence)⁹;
- (3) the Secretary of State’s statutory power to release on home detention curfew¹⁰ does not authorise him to release the offender on licence¹¹ in respect of any of the terms unless and until the statutory provisions authorise him¹² to do so in respect of each of the others to which those provisions apply¹³;
- (4) on and after his release under Chapter 6 of Part 12 of the Criminal Justice Act 2003¹⁴ (unless that release is unconditional), the offender is to be on licence¹⁵: (a) until the last date on which the offender is required to be on licence in respect of any of the terms¹⁶; and (b) subject to such conditions as are required by Chapter 6 of Part 12 in respect of any of the sentences¹⁷.

The Prison Service Instructions System¹⁸ gives guidance and deals with basic matters of policy relating to sentence calculation¹⁹.

1 For this purpose, ‘term of imprisonment’ includes:

- (1) a determinate sentence of detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (sentence of detention for a specified period passed on a person aged under 18 who has committed a serious offence: see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1307; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 78) or s 96 (prospectively repealed) (detention in young offender institution for a person aged between 18 and 21: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 85) (see the Criminal Justice Act 2003 s 263(4) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ss 117(1), (7)(a), (b), 125(4), Sch 20 paras 1, 11)); or
- (2) a determinate sentence of detention under the Criminal Justice Act 2003 s 227 (repealed with savings) (extended sentence for certain violent or sexual offences

(persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 75, 88) or s 228 (repealed with savings) (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 84) (see s 263(4) (as so amended)); or

- (3) a sentence of detention in a young offender institution under the Powers of Criminal Courts (Sentencing) Act 2000 s 96 (prospectively repealed) or under the Criminal Justice Act 2003 s 226A (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS), s 226B (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS), s 227 (repealed with savings) (extended sentence of detention in a young offender institution: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 75, 88) (see s 263(4) (as so amended)).

References in Pt 12 Ch 6 (ss 237–268) (sentencing: release, licences and recall) (see also PARAS 769, 772, 781, 783 et seq) to a sentence of detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 96 (prospectively repealed) (see head (1) above) or under the Criminal Justice Act 2003 s 226A (see head (3) above) or s 227 (see head (2) above) are references to a sentence of detention in a young offender institution: see s 237(3); and PARA 781 note 4. The amendments made by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 117 apply in relation to any person who falls to be released under the Criminal Justice Act 2003 Pt 12 Ch 6 on or after 3 December 2012 (ie on or after the commencement date, being the day appointed under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 151 for the coming into force of s 117: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d)): see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 120, Sch 15 paras 1, 2(2).

With effect from 3 December 2012, the Criminal Justice Act 2003 s 263 is subject to the transitional arrangements contained in s 267B, Sch 20B para 21 (prisoners serving 1991 Act sentences etc: concurrent or consecutive terms: see PARA 793), Sch 20B paras 31 and 32 (prisoners serving 1967 Act sentences: concurrent or consecutive terms: see PARA 793): see s 263(5) (added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(6), Sch 17 paras 1, 7).

The Criminal Justice Act 2003 ss 243A–264 do not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of ‘England’ and ‘Wales’ see PARA 763 note 1.

- 2 See the Criminal Justice Act 2003 s 263(1)(a) (amended by the Armed Forces Act 2006 s 378, Sch 16 para 226, Sch 17). See note 1.
- 3 Ie under the Criminal Justice Act 2003 Pt 12 Ch 6 (ss 237–268) (sentencing: release, licences and recall) (see also PARAS 769, 772, 781, 783 et seq): see s 263(1)(b).
- 4 See the Criminal Justice Act 2003 s 263(1)(b). See note 1. See *R v Secretary of State for the Home Department and the Governor of HMP Swaledale, ex p Francois* [1999] 1 AC 43, [1998] 1 All ER 929, HL (considering the position under the Criminal Justice Act 1991, whose provisions concerning the treatment of consecutive or concurrent terms of imprisonment were held not to have the effect of imposing a heavier penalty than the one that was applicable at the time the criminal offence was committed, even if sentences were imposed by different courts on different occasions, since the sentence was not changed, although a longer part of the original sentence would be spent in prison owing to the change in period of early release).
- 5 Ie nothing in the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781, 783 et seq): see s 263(2)(a).
- 6 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.
- 7 Criminal Justice Act 2003 s 263(2)(a). See note 1.
- 8 Ie if the Criminal Justice Act 2003 s 243A (unconditional release of prisoners serving less than 12 months: see PARA 784) so requires: see s 263(2)(aa) (added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 111(2), Sch 14 paras 5, 13(a)).
- 9 Criminal Justice Act 2003 s 263(2)(aa) (as added: see note 8). See note 1. As to the duration and conditions of licences see PARA 805 et seq.
- 10 Ie the Criminal Justice Act 2003 s 246 (power to release fixed-term prisoners before required term: see PARA 786): see s 263(2)(b) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 116(1), (8), Sch 14 paras 5, 13(b)).

- 11 Ie under the Criminal Justice Act 2003 s 246 (power to release fixed-term prisoners before required term: see PARA 786): see s 263(2)(b) (as amended: see note 10).
- 12 Ie unless and until the Criminal Justice Act 2003 s 246 (power to release fixed-term prisoners before required term: see PARA 786) authorises the Secretary of State: see s 263(2)(b) (as amended: see note 10).
- 13 Criminal Justice Act 2003 s 263(2)(b) (as amended: see note 10). See note 1.
- 14 Ie under the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781, 783 et seq): see s 263(2)(c) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 Sch 14 paras 5, 13(c)).
- 15 See the Criminal Justice Act 2003 s 263(2)(c) (as amended: see note 14). See note 1.
- 16 Criminal Justice Act 2003 s 263(2)(c)(i) (s 263(2)(c)(i), (ii) added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 116(1), (9)). See note 1.
- 17 Criminal Justice Act 2003 s 263(2)(c)(ii) (as added: see note 16). See note 1.
- 18 As to the system of central policy instructions and guidance contained eg in Prison Service Orders (PSOs) and Prison Service Instructions (PSIs) see PRISONS AND PRISONERS vol 85 (2012) PARA 406.
- 19 Accordingly, see eg: (1) Prison Service Order 6650 (Sentence Calculation); and (2) Prison Service Instruction 16/2010 (Confiscation Orders) (valid until 25 February 2014). See also SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 29 et seq.

783. Treatment of consecutive terms under the Criminal Justice Act 2003. Where a person (the ‘offender’) has been sentenced to two or more terms of imprisonment¹ which are to be served consecutively on each other², and where the sentences were passed on the same occasion (or, where they were passed on different occasions, the person has not been released under Chapter 6 of Part 12 of the Criminal Justice Act 2003³ at any time during the period beginning with the first and ending with the last of those occasions)⁴, then nothing in Chapter 6 of Part 12 of the Criminal Justice Act 2003⁵ requires the Secretary of State⁶ to release the offender until he has served a period equal in length to the aggregate of the length of the custodial periods in relation to each of the terms of imprisonment⁷.

Where the aggregate length of the terms of imprisonment is 12 months or more, the offender is, on and after his release under Chapter 6 of Part 12 of the Criminal Justice Act 2003⁸, to be on licence⁹:

- (1) until he would, but for his release, have served a term equal in length to the aggregate length of the terms of imprisonment¹⁰; and
- (2) subject to such conditions as are required by Chapter 6 of Part 12 in respect of each of those terms of imprisonment¹¹.

Where the aggregate length of the terms of imprisonment is less than 12 months, the offender’s release under Chapter 6 of Part 12 of the Criminal Justice Act 2003¹² is to be unconditional¹³.

A court sentencing a person to a term of imprisonment¹⁴ may not order or direct that the term is to commence on the expiry of any other sentence of imprisonment from which he has been released¹⁵ either under Chapter 6 of Part 12 of the Criminal Justice Act 2003¹⁶ or under Part II of the Criminal Justice Act 1991¹⁷.

The Prison Service Instructions System¹⁸ gives guidance and deals with basic matters of policy relating to sentence calculation¹⁹.

- 1 The Criminal Justice Act 2003 s 264 applies to:
 - (1) a determinate sentence of detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (sentence of detention for a specified period passed on a person aged under 18 who has committed a serious offence: see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1307; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 78) or s 96 (prospectively repealed) (detention in young offender institution for a person aged between 18 and 21: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 85) (see the Criminal Justice

Act 2003 s 264(7) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ss 111(2), 117(1), (8)(a), (b), 125(4), Sch 14 paras 5, 14(f), Sch 20 paras 1, 12(1), (3)); or

- (2) a determinate sentence of detention under the Criminal Justice Act 2003 s 227 (repealed with savings) (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 75, 88) or s 228 (repealed with savings) (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 84) (see s 264(7) (as so amended)); or
- (3) a sentence of detention in a young offender institution under the Powers of Criminal Courts (Sentencing) Act 2000 s 96 (prospectively repealed) or under the Criminal Justice Act 2003 s 226A (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS), s 226B (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS), s 227 (repealed with savings) (extended sentence of detention in a young offender institution: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 75, 88) (see s 264(7) (as so amended)),

as s 264 applies to a term of imprisonment (see s 264(7) (as so amended)). References in Pt 12 Ch 6 (ss 237–268) (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 784 et seq) to a sentence of detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 96 (prospectively repealed) (see head (1) above) or under the Criminal Justice Act 2003 s 226A (see head (3) above) or s 227 (see head (2) above) are references to a sentence of detention in a young offender institution: see s 237(3); and PARA 781 note 4.

With effect from 3 December 2012, the Criminal Justice Act 2003 s 264 is subject to the transitional arrangements contained in s 267B, Sch 20B paras 21, 22 (prisoners serving 1991 Act sentences etc: concurrent or consecutive terms: see PARA 793), Sch 20B paras 31, 32 and 33 (prisoners serving 1967 Act sentences: concurrent or consecutive terms: see PARA 793): see s 264(8) (added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(6), Sch 17 paras 1, 8).

The Criminal Justice Act 2003 ss 243A–264 do not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of ‘England’ and ‘Wales’ see PARA 763 note 1.

- 2 See the Criminal Justice Act 2003 s 264(1)(a).
- 3 *Ie* under the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 784 et seq): see s 264(1)(b).
- 4 See the Criminal Justice Act 2003 s 264(1)(b). See *R v Secretary of State for the Home Department and the Governor of HMP Swaledale, ex p Francois* [1999] 1 AC 43, [1998] 1 All ER 929, HL (cited in PARA 782 note 4).
- 5 *Ie* nothing in the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 784 et seq): see s 264(2) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 Sch 14 paras 5, 14(a)).
- 6 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.
- 7 See the Criminal Justice Act 2003 s 264(2) (as amended: see note 5). For these purposes, ‘custodial period’ means:
 - (1) in relation to an extended sentence imposed under s 226A (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS) or s 226B (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS), two-thirds of the appropriate custodial term determined by the court under whichever provision applies (see s 264(6)(a)(zi) (added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 Sch 20 paras 1, 12(1), (2)));
 - (2) in relation to an extended sentence imposed under the Criminal Justice Act 2003 s 227 (repealed with savings) (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 75, 88) or s 228 (repealed with savings) (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 84), one-half of the appropriate

custodial term determined under that provision (whichever applies) (s 264(6)(a)(i) (amended by the Criminal Justice and Immigration Act 2008 s 148(1), Sch 26 Pt 2 paras 59, 71));

- (3) in relation to any other sentence, one-half of the sentence (Criminal Justice Act 2003 s 264(6)(a)(ii) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 Sch 14 paras 5, 14(e))).

The Secretary of State may by order provide that any reference in the Criminal Justice Act 2003 s 264(6)(a)(ii) (see head (3) above) to a particular proportion of a prisoner's sentence is to be read as a reference to such other proportion of a prisoner's sentence as may be specified in the order: see s 267. As to the power conferred generally by the Criminal Justice Act 2003 on the Secretary of State to make an order or rules see s 330. At the date at which this volume states the law, no such order had been made.

As from 3 December 2012, the Criminal Justice Act 2003 s 264 applies for the purposes of Sch 20A (application of Pt 12 Ch 6 to pre-4 April 2005 cases: see PARA 794) as if the definition of 'custodial period' in s 264(6) included, in relation to an extended sentence imposed under the Powers of Criminal Courts (Sentencing) Act 2000 s 85 (repealed with savings) (extended sentences for violent or sexual offences committed before 4 April 2005: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 76), one-half of the custodial term determined under s 85: see the Criminal Justice Act 2003 s 267A, Sch 20A para 10 (s 267A, Sch 20A added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(5), Sch 16 paras 1–3).

- 8 Ie under the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 784 et seq): see s 264(3) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 Sch 14 paras 5, 14(b)).
- 9 See the Criminal Justice Act 2003 s 264(3) (as amended see note 8). As to the duration and conditions of licences see PARA 805 et seq.
- 10 Criminal Justice Act 2003 s 264(3)(a).

The provision made by s 264(3) only works on the footing (for the purpose of ascertaining licence expiry dates) that all the terms of imprisonment in question are aggregated so, where a criminal has been sentenced to two or more consecutive terms of imprisonment, s 264(3) determines the licence expiry date in every case where a prisoner is serving consecutive terms save one (viz. where all the offences in question were committed before 4 April 2005): *R (on the application of Elam) v Secretary of State for Justice* [2012] EWCA Civ 29, [2012] 1 WLR 2722 (prisoner sentenced to consecutive terms in respect of offences committed both before and after 4 April 2005).

- 11 Criminal Justice Act 2003 s 264(3)(b).
- 12 Ie under the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 784 et seq): see s 264(3A) (added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 Sch 14 paras 5, 14(c)).
- 13 Criminal Justice Act 2003 s 264(3A) (as added: see note 12).
- 14 For this purpose, 'sentence of imprisonment' includes:
- (1) a sentence of detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (sentence of detention for a specified period passed on a person aged under 18 who has committed a serious offence: see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1307; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 78) or s 96 (prospectively repealed) (detention in young offender institution for a person aged between 18 and 21: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 85) (see the Criminal Justice Act 2003 s 265(2) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ss 117(1), (9)(a), (b), Sch 20 paras 1, 13)); or
 - (2) a sentence of detention under the Criminal Justice Act 2003 s 227 (repealed with savings) (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 75, 88) or s 228 (repealed with savings) (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 84) (see s 265(2) (as so amended)); or
 - (3) a sentence of detention in a young offender institution under the Powers of Criminal Courts (Sentencing) Act 2000 s 96 (prospectively repealed) or under the Criminal Justice Act 2003 s 226A (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS), s 226B (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS), s 227 (repealed with

savings) (extended sentence of detention in a young offender institution: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 75, 88) (see s 265(2) (as so amended));

and 'term of imprisonment' is to be read accordingly (see s 265(2) (as so amended)). As to references to a sentence of detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 96 (prospectively repealed) (see head (1) above) or under the Criminal Justice Act 2003 s 226A (see head (3) above) or s 227 (see head (2) above) see note 1.

The amendments made by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 117 apply in relation to any person who falls to be released under the Criminal Justice Act 2003 Pt 12 Ch 6 on or after 3 December 2012 (ie on or after the commencement date, being the day appointed under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 151 for the coming into force of s 117: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d)): see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 120, Sch 15 paras 1, 2(2).

- 15 See the Criminal Justice Act 2003 s 265(1).
- 16 Criminal Justice Act 2003 s 265(1)(a) (s 265(1)(a), (b) added by the Criminal Justice and Immigration Act 2008 s 20(1), (4)(a)). As to the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall) see also PARAS 769, 772, 781 et seq, 784 et seq.
- 17 Criminal Justice Act 2003 s 265(1)(b) (as added: see note 16). As to the Criminal Justice Act 1991 Pt II (ss 32–51) (repealed with savings) see PARA 761.
- 18 As to the system of central policy instructions and guidance contained eg in Prison Service Orders (PSOs) and Prison Service Instructions (PSIs) see PRISONS AND PRISONERS vol 85 (2012) PARA 406.
- 19 Accordingly, see eg: (1) Prison Service Order 6650 (Sentence Calculation); and (2) Prison Service Instruction 16/2010 (Confiscation Orders) (valid until 25 February 2014). See also SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 29 et seq.

(ii) Release

784. Early release of prisoners serving a sentence of under 12 months. As soon as a fixed-term prisoner¹ who is serving a sentence which is for a term of less than twelve months² has served the requisite custodial period specified for these purposes³, it is the duty of the Secretary of State to release that person unconditionally⁴.

- 1 As to the meaning of 'fixed-term prisoner' for the purposes of the Criminal Justice Act 2003 Pt 12 Ch 6 (ss 237–268) (sentencing: release, licences and recall) see PARA 781.
- 2 Ie a prisoner to whom the Criminal Justice Act 2003 s 243A applies: see s 243A(2) (s 243A added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 111(1)). The Criminal Justice Act 2003 s 243A applies to a fixed-term prisoner who is serving a sentence which is for a term of less than twelve months: see s 243A(1) (as so added). The provision made by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 111 applies in relation to any person who falls to be released under the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 785 et seq) on or after 3 December 2012 (ie on or after the commencement date, being the day appointed under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 151 for the coming into force of s 111: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d)): see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 120, Sch 15 paras 1, 2(1)(c). As to the early release of fixed-term prisoners serving a sentence of 12 months or more see PARA 785 et seq. As to the calculation of sentences see PARAS 782, 783.

The Criminal Justice Act 2003 ss 243A–264 do not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of 'England' and 'Wales' see PARA 763 note 1.

- 3 Ie has served the requisite custodial period for the purposes of the Criminal Justice Act 2003 s 243A: see s 243A(2) (as added: see note 2).

For these purposes, the 'requisite custodial period' is:

- (1) one-half of the sentence, in relation to a person serving a sentence of imprisonment for a term of less than 12 months or any determinate sentence of

detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (sentence of detention for a specified period passed on a person aged under 18 who has committed a serious offence: see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1307; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 78) or s 96 (prospectively repealed) (detention in young offender institution for a person aged between 18 and 21) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 85) (Criminal Justice Act 2003 s 243A(3)(a) (as so added)); and

- (2) the period determined under s 263(2) (concurrent terms: see PARA 782) and s 264(2) (consecutive terms: see PARA 783), in relation to a person serving two or more concurrent or consecutive sentences (s 243A(3)(b) (as so added)).

The Secretary of State may by order provide that any reference in s 243A(3)(a) (see head (1) above) to a particular proportion of a prisoner's sentence is to be read as a reference to such other proportion of a prisoner's sentence as may be specified in the order: see s 267 (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 111(2), Sch 14 paras 5, 15). See note 2. As to the power conferred generally by the Criminal Justice Act 2003 on the Secretary of State to make an order or rules see s 330. At the date at which this volume states the law, no such order had been made. As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.

- 4 See the Criminal Justice Act 2003 s 243A(1), (2) (as added: see note 2). The provision made by s 243A is subject to s 256B (supervision of young offenders after release: see PARA 814) and s 267B, Sch 20B para 8 (transitional arrangements governing release of prisoners under the Criminal Justice Act 1991: see PARA 795), which displaces the Criminal Justice Act 2003 s 243A: see s 243A(4) (as so added).

785. Early release of fixed-term prisoners serving a sentence of 12 months or more. As soon as a fixed-term prisoner¹, who is serving a sentence which is for a term of 12 months or more², other than³:

- (1) a prisoner who is serving an extended determinate sentence⁴;
- (2) a prisoner who is serving an extended sentence under predecessor legislation⁵;
- (3) a prisoner who has been released on home detention curfew and recalled under the Criminal Justice Act 2003⁶,

has served the requisite custodial period specified for these purposes⁷, it is the duty of the Secretary of State to release that person on licence⁸.

1 As to the meaning of 'fixed-term prisoner' for the purposes of the Criminal Justice Act 2003 Pt 12 Ch 6 (ss 237–268) (sentencing: release, licences and recall) see PARA 781.

The Criminal Justice Act 2003 ss 243A–264 do not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of 'England' and 'Wales' see PARA 763 note 1.

2 Ie other than a prisoner to whom the Criminal Justice Act 2003 s 243A (unconditional release of prisoners serving less than 12 months: see PARA 784) applies: see s 244(1) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ss 111(2), 125(1), (2), Sch 14 paras 5, 6(1), (2)). The provision made by s 111 applies in relation to any person who falls to be released under the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 786 et seq) on or after 3 December 2012 (ie on or after the commencement date, being the day appointed under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 151 for the coming into force of s 111: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d)): see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 120, Sch 15 paras 1, 2(1)(c).

As to the calculation of sentences see PARAS 782, 783.

3 See the Criminal Justice Act 2003 s 244(1) (as amended: see note 2).

4 Ie other than a prisoner to whom the Criminal Justice Act 2003 s 246A (release on licence of prisoners serving extended sentence under s 226A or s 226B: see PARA 787) applies: see s 244(1) (as amended: see note 2).

5 Ie other than a prisoner to whom the Criminal Justice Act 2003 s 247 (release on licence of prisoners serving extended sentence under s 227 or s 228 (both repealed with savings): see

PARA 787) applies: see s 244(1) (as amended: see note 2). As to the historical development of various sentences of imprisonment for a determinate term see PARA 761 notes 1–2.

- 6 In other than a determinate sentence prisoner who has been released on licence and recalled under the Criminal Justice Act 2003 s 254 (see PARA 788), whose further release must be dealt with in accordance with ss 255B, 255C (re-release following recall: see PARA 790).
- 7 For the purposes of the Criminal Justice Act 2003 s 244, the ‘requisite custodial period’ means (see s 244(3) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 Sch 14 paras 5, 6(1), (3)(a))):
- (1) one-half of his sentence, in relation to a person serving a sentence of imprisonment for a term of 12 months or more or a determinate sentence of detention for such a term imposed under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (sentence of detention for a specified period passed on a person aged under 18 who has committed a serious offence: see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1307; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 78) or s 96 (prospectively repealed) (detention in young offender institution for a person aged between 18 and 21: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 85) (Criminal Justice Act 2003 s 244(3)(a) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 117(1), (4), Sch 14 paras 5, 6(1), (3)(b))); and
 - (2) the period determined under the Criminal Justice Act 2003 s 263(2) (concurrent terms: see PARA 782) and s 264(2) (consecutive terms: see PARA 783), in relation to a person serving two or more concurrent or consecutive sentences (s 244(3)(d) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 89(2), Sch 10 paras 12, 21(1)–(3)).

References in the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 786 et seq) to a sentence of detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 96 (prospectively repealed) (see head (1) above) are references to a sentence of detention in a young offender institution: see the Criminal Justice Act 2003 s 237(3); and PARA 781 note 4. The amendments made by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 117 apply in relation to any person who falls to be released under the Criminal Justice Act 2003 Pt 12 Ch 6 on or after 3 December 2012 (ie on or after the commencement date, being the day appointed under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 151 for the coming into force of s 117: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d)): see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 120, Sch 15 paras 1, 2(2).

The Secretary of State may by order provide that any reference in the Criminal Justice Act 2003 s 244(3)(a) (see head (1) above) to a particular proportion of a prisoner’s sentence is to be read as a reference to such other proportion of a prisoner’s sentence as may be specified in the order: see s 267. As to the power conferred generally by the Criminal Justice Act 2003 on the Secretary of State to make an order or rules see s 330. At the date at which this volume states the law, no such order had been made. As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.

- 8 Criminal Justice Act 2003 s 244(1) (as amended: see note 2). The release on licence referred to in the text takes place under s 244: see s 244(1) (as so amended). The provision made by s 244(1) does not apply, however, if the prisoner has been released early on licence incorporating a home detention curfew condition under s 246 (power to release fixed-term prisoners before required term: see PARA 786) and recalled under s 254 (recall of prisoners after release on licence: see PARA 788): see s 244(1A) (added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 114(2)). Provision for the release of such persons as are mentioned in the Criminal Justice Act 2003 s 244(1A) is made instead by s 255B and s 255C (see PARA 790): see s 244(1A) (as so added). The amendments made by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 114 apply in relation to any person recalled under the Criminal Justice Act 2003 s 254 on or after 3 December 2012 (ie on or after the commencement date, being the day appointed under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 151 for the coming into force of s 114: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d)): see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 120, Sch 15 paras 1, 6. As to the duration and conditions of licences generally see PARA 805 et seq.

The provision made by the Criminal Justice Act 2003 s 244 is subject to the transitional arrangements contained in s 267B, Sch 20B para 5 (initial duty to release on licence: see PARA 795), Sch 20B para 6 (duty to release on direction of Parole Board: see PARA 795), Sch 20B para 8 (duty to release extended sentence prisoners on licence: see PARA 795), Sch 20B para 25 (duty to release Criminal Justice Act 1967 sentence prisoners unconditionally: see PARA 797) and the Criminal Justice Act 2003 Sch 20B para 28 (duty to release Criminal Justice Act 1967 sentence prisoners on licence: see PARA 797), which displace the Criminal Justice Act 2003 s 244: see s 244(4) (added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(6), Sch 17 paras 1, 2).

786. Power to release fixed-term prisoners before required term on home detention curfew. The Secretary of State¹ may² release on licence³ incorporating a home detention curfew condition⁴ a fixed-term prisoner⁵, at any time during the period of 135 days⁶ ending with the day on which the prisoner will have served the requisite custodial period specified for these purposes⁷, except where⁸:

- (1) the sentence is an extended sentence imposed for certain violent or sexual offences⁹;
- (2) the sentence is for a term of four years or more¹⁰;
- (3) the sentence is imposed for an offence of remaining at large after temporary release¹¹;
- (4) the prisoner is subject to a hospital order, hospital direction or transfer direction¹²;
- (5) the sentence was imposed¹³ in a case where the prisoner has failed to comply with a curfew requirement of a community order¹⁴;
- (6) the prisoner is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003¹⁵;
- (7) the prisoner is liable to removal from the United Kingdom¹⁶;
- (8) the prisoner has been released on licence incorporating a home detention curfew condition¹⁷ at any time, and has been recalled to prison¹⁸ for failure to comply with a condition included in his licence, and where the revocation has not been cancelled¹⁹;
- (9) the prisoner has been released on licence during the currency of the sentence on compassionate grounds²⁰, and has been recalled to prison²¹;
- (10) the prisoner has at any time been returned to prison under a 'return to custody' order²²;
- (11) in the case of a prisoner whose time remanded in custody has been counted as time served²³, or to whom a direction regarding crediting of periods of remand relates²⁴, 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 days²⁵.

1 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.

2 Is subject to the Criminal Justice Act 2003 s 246(2)–(4) (see note 5; and the text and notes 8–25): see s 246(1).

The Criminal Justice Act 2003 ss 243A–264 do not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of 'England' and 'Wales' see PARA 763 note 1.

3 Is under the Criminal Justice Act 2003 s 246: see s 246(1)(a) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 Sch 10 para 23(1), (2)(a)).

- 4 A curfew condition complying with the Criminal Justice Act 2003 s 253 (home detention curfew: see PARA 807) must be included in a licence under s 246: see s 250(5); and PARA 807. As to the meaning of 'curfew condition' see PARA 807 note 4. As to the duration and conditions of licences see PARA 805 et seq.

There is no requirement for the discretion to release and recall in respect of home detention curfew to be exercised on the recommendation of a judicial body such as the Parole Board because home detention curfew operates during the part of the sentence when custody is compulsory and before the point at which a prisoner would be released or become eligible for release on the Board's recommendation: *R (on the application of Benson) v Secretary of State for Justice* [2007] EWHC 2055 (Admin), [2007] All ER (D) 120 (Aug); *Mason v Secretary of State for Justice* [2008] EWHC 1787 (QB), [2009] 1 All ER 1128, [2009] 1 WLR 509; *R (on the application of McAlinden) v Secretary of State for the Home Department* [2010] EWHC 1557 (Admin), [2010] All ER (D) 24 (Jul). Accordingly, the review of the lawfulness of detention demanded by the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 5(4) (see PARA 761 note 8), at least up to that point, had already been conducted by the sentencing court so that, during the compulsory part of the sentence, release or recall under the home detention curfew policy is simply the administrative implementation of the original sentence: *Mason v Secretary of State for Justice*; *R (on the application of Whiston) v Secretary of State for Justice* [2012] EWCA Civ 1374, [2012] All ER (D) 287 (Oct) (release on home detention curfew is much more closely integrated with the original sentence than is release as of right once the custodial period has been completed). The exercise of the discretion to release and recall under home detention curfew remains reviewable on general public law principles, however: *Mason v Secretary of State for Justice*.

- 5 As to the meaning of 'fixed-term prisoner' for the purposes of the Criminal Justice Act 2003 Pt 12 Ch 6 (ss 237–268) (sentencing: release, licences and recall) see PARA 781. The provision made by s 246(1)(a) (see the text and notes 3–7) does not apply in relation to a prisoner, however, unless:
- (1) the length of the requisite custodial period is at least six weeks (s 246(2)(a)); and
 - (2) he has served: (a) at least four weeks of that period (s 246(2)(b)(i) (s 246(2)(b) substituted by the Criminal Justice and Immigration Act 2008 s 24); and (b) at least one-half of that period (Criminal Justice Act 2003 s 246(2)(b)(ii) (as so substituted)).

For these purposes, the 'requisite custodial period', in relation to a person serving any sentence, has the meaning given by s 243A(3)(a) or (b) (unconditional release of prisoners serving less than 12 months: see PARA 784 note 3) or (as the case may be) s 244(3)(a) or (d) (release on licence of prisoners serving 12 months or more: see PARA 785 note 7): see s 246(6) (definition amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 89(2), Sch 10 paras 12, 23(1), (6)(b), Sch 14 paras 5, 7). As to the calculation of sentences see PARAS 782, 783.

The Secretary of State may by order amend the number of weeks for the time being specified in the Criminal Justice Act 2003 s 246(2)(a) (see head (1) above), or in s 246(2)(b)(i) (see head (2)(a) above) (s 246(5)(b)); and he may by order amend the fraction for the time being specified in s 246(2)(b)(ii) (see head (2)(b) above) (s 246(5)(c) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 Sch 10 paras 12, 23(1), (5)(b))). As to the power conferred generally by the Criminal Justice Act 2003 on the Secretary of State to make an order or rules see s 330. At the date at which this volume states the law, no such order had been made in relation to s 246(2)(a), (b)(i), (ii).

- 6 The Secretary of State may by order amend the number of days for the time being specified in the Criminal Justice Act 2003 s 246(1)(a): see s 246(5)(a) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 Sch 10 paras 12, 23(1), (5)(a)). As to the power conferred generally by the Criminal Justice Act 2003 on the Secretary of State to make an order or rules see s 330. At the date at which this volume states the law, no such order had been made.
- 7 See the Criminal Justice Act 2003 s 246(1)(a) (as amended : see note 3).
- 8 See the Criminal Justice Act 2003 s 246(4). The provision made by s 246(1) (see the text and notes 1–7) does not apply in the circumstances specified in s 246(4) (see heads (1) to (11) in the text): see s 246(4).
- 9 Criminal Justice Act 2003 s 246(4)(a) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 125(4), Sch 20 paras 1, 5(1), (2)). Head (1) in the text refers to a sentence imposed under the Criminal Justice Act 2003 s 226A (extended

sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS), s 227 (repealed with savings) (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 75, 88) or s 228 (repealed with savings) (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 84): see s 246(4)(a) (as so amended).

- 10 Criminal Justice Act 2003 s 246(4)(aa) (added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 112(1), (2))). Where the Criminal Justice Act 2003 s 246(4)(aa) applies to a prisoner who is serving two or more terms of imprisonment, the reference to the term of the sentence is:

- (1) 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 (s 246(4ZA)(a) (s 246(4ZA) added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 112(1), (5)));
- (2) if the terms are to be served consecutively, a reference to the aggregate of the terms (Criminal Justice Act 2003 s 246(4ZA)(b) (as so added)).

For the purposes of s 246, 'term of imprisonment' includes a determinate sentence of detention under:

- (a) the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (sentence of detention for a specified period passed on a person aged under 18 who has committed a serious offence: see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1307; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 78) or s 96 (prospectively repealed) (detention in young offender institution for a person aged between 18 and 21: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 85) (see the Criminal Justice Act 2003 s 246(6) (definition of 'term of imprisonment' added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 112(1), (6); and amended by Sch 20 paras 1, 5(1), (3))); or
- (b) the Criminal Justice Act 2003 s 226A (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS), s 226B (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS), s 227 (repealed with savings) (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 75, 88) or s 228 (repealed with savings) (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 84) (see the Criminal Justice Act 2003 s 246(6) (definition of 'term of imprisonment' as so added)).

The amendments made by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 112 do not affect the release under the Criminal Justice Act 2003 Pt 12 Ch 6 (ss 237–268) (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 787 et seq) of any prisoner before 3 December 2012 (ie before the commencement date, being the day appointed under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 151 for the coming into force of s 112: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d)): see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 120, Sch 15 paras 1, 4. The amendments made by s 112 synchronise the Criminal Justice Act 2003 s 246 with the HDC scheme under the Criminal Justice Act 1991 so that all HDC releases made on or after 3 December 2012 are made in accordance with the Criminal Justice Act 2003 s 246: see s 267A, Sch 20A para 4; and PARA 794.

- 11 Criminal Justice Act 2003 s 246(4)(b). Head (3) in the text refers to a sentence for an offence under the Prisoners (Return to Custody) Act 1995 s 1 (see PRISONS AND PRISONERS vol 85 (2012) PARA 429): see s 246(4)(b).
- 12 Criminal Justice Act 2003 s 246(4)(c). Head (4) in the text refers to orders or directions under the Mental Health Act 1983 s 37 (hospital orders: see MENTAL HEALTH AND CAPACITY vol 75 (2013) PARA 864; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 332, 333), s 45A (hospital and limitation directions: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 338), or s 47 (transfer directions: see MENTAL HEALTH AND CAPACITY vol 75 (2013) PARA 892): see the Criminal Justice Act 2003 s 246(4)(c).
- 13 Ie by virtue of the Criminal Justice Act 2003 s 179, Sch 8 para 9(1)(b), (c) (community order made by magistrates' court: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92

- (2010) PARA 178) or Sch 8 para 10(1)(b), (c) (community order made by Crown Court: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 179): see s 246(4)(d).
- 14 Criminal Justice Act 2003 s 246(4)(d). The reference in head (5) in the text to a community order includes a service community order or overseas community order under the Armed Forces Act 2006 (see ss 178, 182; and ARMED FORCES vol 3 (2011) PARAS 602, 608): see the Criminal Justice Act 2003 s 246(4A)(a) (s 246(4A) added by the Armed Forces Act 2006 s 378(1), Sch 16 para 221).
- 15 Criminal Justice Act 2003 s 246(4)(e). As to the notification requirements of the Sexual Offences Act 2003 Pt 2 (ss 80–136) see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 557 et seq.
- 16 Criminal Justice Act 2003 s 246(4)(f). As to persons liable to removal from the United Kingdom see PARA 818. As to the meaning of ‘United Kingdom’ see PARA 763 note 1.
- 17 *Ie* under the Criminal Justice Act 2003 s 246: see s 246(4)(g) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 112(1), (3)). See note 10.
- 18 *Ie* under the Criminal Justice Act 2003 s 255(1)(a) (see PARA 789): see s 246(4)(g) (as amended: see note 17).
- 19 Criminal Justice Act 2003 s 246(4)(g) (as amended: see note 17). The text refers to a revocation that has not been cancelled under s 255(3) (see PARA 789): see s 246(4)(g) (as so amended).
- 20 *Ie* under the Criminal Justice Act 2003 s 248 (see PARA 769): see s 246(4)(h) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 112(1), (4)).
- 21 Criminal Justice Act 2003 s 246(4)(h) (as amended: see note 20). The text refers to a recall to prison under s 254 (see PARA 788): see s 246(4)(h) (as so amended).
- 22 Criminal Justice Act 2003 s 246(4)(ha) (added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 112(1), (4)). See note 10. Head (10) in the text refers to a prisoner who has at any time been returned to prison under the Criminal Justice Act 1991 s 40 (repealed) or the Powers of Criminal Courts (Sentencing) Act 2000 s 116 (repealed with savings) (powers of courts to order return of prisoners who commit offences following release on licence: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 26): see the Criminal Justice Act 2003 s 246(4)(ha) (as so added). As to transitional arrangements that deal with cases of release on licence after a return to prison under a ‘return to custody’ order made prior to 3 December 2012 see s 267A, Sch 20A para 5(7); and PARA 794.
- 23 *Ie* a person to whom the Criminal Justice Act 2003 s 240ZA (time remanded in custody to count as time served: terms of imprisonment and detention: see SENTENCING AND DISPOSITION OF OFFENDERS) applies: see s 246(4)(i) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 110(1), (9)(a), Sch 10 paras 12, 23(1), (4)). The reference in head (11) in the text to the Criminal Justice Act 2003 s 240ZA includes the Armed Forces Act 2006 s 246 (crediting of time in service custody: terms of imprisonment and detention: see ARMED FORCES vol 3 (2011) PARA 596): see the Criminal Justice Act 2003 s 246(4A)(b) (s 246(4A) as added (see note 14); s 246(4A)(b) amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 110(1), (9)(b)).
- 24 *Ie* a person to whom a direction under the Criminal Justice Act 2003 s 240A (time remanded on bail to count as time served: terms of imprisonment and detention: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 37) relates: see s 246(4)(i) (as amended: see note 23).
- 25 See the Criminal Justice Act 2003 s 246(4)(i) (as amended: see note 23). The Secretary of State may by order amend the number of days for the time being specified in s 246(4)(i): see s 246(5)(a) (as amended: see note 6). At the date at which this volume states the law, no such order had been made.

787. Early release of fixed-term prisoners: extended sentences. In relation to a prisoner who is serving an extended determinate sentences (‘EDS’) imposed for certain violent or sexual offences¹, it is the duty of the Secretary of State² to release him on licence³ as soon as the prisoner has served the requisite custodial period specified for these purposes⁴, unless either or both of the following conditions are met⁵, namely:

- (1) the appropriate custodial term is ten years or more⁶;
- (2) the sentence was imposed in respect of a listed offence⁷.

If either or both of the conditions set out in head (1) and head (2) above are met, it is the duty of the Secretary of State to release the prisoner on licence in accordance with the following provisions⁸:

- (a) the Secretary of State must refer the prisoner's case to the Parole Board⁹: (i) as soon as the prisoner has served the requisite custodial period¹⁰; and (ii) where there has been a previous such reference of the prisoner's case to the Board¹¹ and where the Board did not direct his release, not later than the second anniversary of the disposal of that reference¹²;
- (b) it is the duty of the Secretary of State to release the prisoner on licence¹³ as soon as¹⁴: (i) the prisoner has served the requisite custodial period¹⁵; and (ii) the Board has directed his release¹⁶; and
- (c) it is the duty of the Secretary of State to release the prisoner on licence¹⁷ as soon as the prisoner has served the appropriate custodial term (unless the prisoner has previously been released on licence¹⁸ and recalled)¹⁹.

In relation to a prisoner who is serving an extended sentence imposed for certain violent or sexual offences under predecessor legislation²⁰, it is the duty of the Secretary of State to release him on licence²¹ as soon as the prisoner has served one-half of the appropriate custodial term²².

1 In an extended sentence imposed under the Criminal Justice Act 2003 s 226A (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS) or s 226B (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS); see s 246A(1) (s 246A added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 125(1), (3)). As to the historical development of various sentences of imprisonment for a determinate term see PARA 761 notes 1–2.

The Criminal Justice Act 2003 ss 243A–264 do not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of 'England' and 'Wales' see PARA 763 note 1.

2 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.

3 In under the Criminal Justice Act 2003 s 246A: see s 246A(2) (as added: see note 1). As to the duration and conditions of licences see PARA 805 et seq.

4 For the purposes of the Criminal Justice Act 2003 s 246A, the 'requisite custodial period' means:

- (1) two-thirds of the appropriate custodial term, in relation to a person serving one sentence (s 246A(8)(a) (as added: see note 1)); and
- (2) the period determined under s 263(2) (concurrent terms: see PARA 782) and s 264(2) (consecutive terms: see PARA 783), in relation to a person serving two or more concurrent or consecutive sentences (s 246A(8)(b) (as so added)),

where 'appropriate custodial term' means the term determined as such by the court, as appropriate, under s 226A (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS) or s 226B (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS) (see s 246A(8) (as so added)).

5 See the Criminal Justice Act 2003 s 246A(1), (2) (as added: see note 1).

6 Criminal Justice Act 2003 s 246A(2)(a) (as added: see note 1).

7 Criminal Justice Act 2003 s 246A(2)(b) (as added: see note 1). The text refers to an offence listed in s 246A, Sch 15B Pts 1–3 (offences listed for the purposes of ss 224A, 226A, 246A: see SENTENCING AND DISPOSITION OF OFFENDERS) of or in respect of offences that include one or more offences listed in Sch 15B Pts 1–3: see s 246A(2)(b) (as so added).

8 See the Criminal Justice Act 2003 s 246A(3) (as added: see note 1). The text refers to the prisoner's release on licence in accordance with s 246A(4)–(7) (see heads (a) to (c) in the text): see s 246A(3) (as so added).

9 See the Criminal Justice Act 2003 s 246A(4) (as added: see note 1). As to the constitution and functions of the Parole Board, continued by s 239(1), see PARA 772 et seq.

- 10 Criminal Justice Act 2003 s 246A(4)(a) (as added: see note 1).
- 11 *Ie* where there has been a previous reference of the prisoner's case to the Board under the Criminal Justice Act 2003 s 246A(4): see s 246A(4)(b) (as added: see note 1).
- 12 Criminal Justice Act 2003 s 246A(4)(b) (as added: see note 1).
- 13 *Ie* under the Criminal Justice Act 2003 s 246A: see s 246A(5) (as added: see note 1).
- 14 See the Criminal Justice Act 2003 s 246A(5) (as added: see note 1).
- 15 Criminal Justice Act 2003 s 246A(5)(a) (as added: see note 1).
- 16 Criminal Justice Act 2003 s 246A(5)(b) (as added: see note 1). The text refers to the prisoner's release on licence under s 246A following a direction of the Parole Board under s 246A: see s 246A(5)(b) (as so added). The Board must not give a direction under s 246A(5), however, unless: (1) the Secretary of State has referred the prisoner's case to the Board (s 246A(6)(a) (as so added)); and (2) the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined (s 246A(6)(b) (as so added)).
- 17 *Ie* under the Criminal Justice Act 2003 s 246A: see s 246A(7) (as added: see note 1).
- 18 *Ie* under the Criminal Justice Act 2003 s 246A: see s 246A(7) (as added: see note 1).
- 19 See the Criminal Justice Act 2003 s 246A(7) (as added: see note 1). The text refers to a person who has been recalled under s 254 (recall of prisoners after release on licence: see PARA 788): see s 246A(7) (as so added). Provision for the release of such persons is made by s 255C (release after recall: see PARA 790): see s 246A(7) (as so added).
- 20 *Ie* imposed under the Criminal Justice Act 2003 s 227 (repealed with savings) (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 75, 88) or s 228 (repealed with savings) (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 84): see s 247(1). See also PARA 761 notes 1–2.

In its application to a person serving a sentence imposed before 14 July 2008, s 247 is subject to the transitional arrangements contained in s 267B, Sch 20B para 15 (release on licence of certain extended sentence prisoners on direction of Parole Board: see PARA 796), which modifies s 247 for those purposes: see s 247(8) (added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(6), Sch 17 paras 1, 3). As to the significance of the date of 14 July 2008 see PARA 792 note 11.

- 21 See the Criminal Justice Act 2003 s 247(1), (2).
- 22 See the Criminal Justice Act 2003 s 247(2)(a) (amended by the Criminal Justice and Immigration Act 2008 ss 25(1), (2)(a), 149, Sch 28 Pt 2). For these purposes, the 'appropriate custodial term' means the period determined by the court as the appropriate custodial term under the Criminal Justice Act 2003 s 227 (repealed with savings) (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 75, 88) or s 228 (repealed with savings) (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 84): see s 247(7).

The Secretary of State may by order provide that any reference in s 247(2) to a particular proportion of a prisoner's sentence is to be read as a reference to such other proportion of a prisoner's sentence as may be specified in the order: see s 267. As to the power conferred generally by the Criminal Justice Act 2003 on the Secretary of State to make an order or rules see s 330. At the date at which this volume states the law, no such order had been made.

(iii) Recall

788. General power under the Criminal Justice Act 2003 to revoke licence and recall released person to prison. The Secretary of State¹ may, in the case of any determinate sentence prisoner who has been released on licence under the Criminal Justice Act 2003², revoke his licence and recall him to prison³. A person recalled to prison in this way⁴:

- (1) may make representations in writing with respect to his recall⁵; and
- (2) on his return to prison, he must be informed of the reasons for his recall and of his right to make representations⁶.

When a person's licence is revoked, he is liable to be detained in pursuance of his sentence and, if at large, is to be treated as being unlawfully

at large⁷. Such a revocation⁸ may be cancelled, however, by the Secretary of State, after considering any representations under head (1) above, or any other matters⁹, but only if he is satisfied that the person recalled has complied with all the conditions specified in the licence¹⁰. Where the revocation of a person's licence is so cancelled, the person is to be treated as if the recall¹¹ had not happened¹².

- 1 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.
- 2 Ie released on licence under the Criminal Justice Act 2003 Pt 12 Ch 6 (ss 237–268) (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 789 et seq): see s 254(1). As to the duration and conditions of licences see PARA 805 et seq. Indeterminate sentence prisoners are released and recalled under the Crime (Sentences) Act 1997 Pt II Ch II (ss 28–34) (life sentences): see PARA 780.

The Criminal Justice Act 2003 ss 243A–264 do not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of 'England' and 'Wales' see PARA 763 note 1.

- 3 Criminal Justice Act 2003 s 254(1). Nothing in s 254 applies in relation to a person recalled under s 255 (recall of prisoners released early under home detention curfew: see PARA 789), however: see s 254(7) (amended by the Criminal Justice and Immigration Act 2008 s 29(1)(b)). As to the interplay between the Criminal Justice Act 2003 s 254 and s 255 see PARA 789 note 5. Subject to this provision, s 254 governs the recall process in all cases of release after 4 April 2005: *R (on the application of Uttley) v Secretary of State for the Home Department* [2004] UKHL 38, [2004] 4 All ER 1, [2004] 1 WLR 2278; *R (on the application of Stellato) v Secretary of State for the Home Department* [2007] UKHL 5, [2007] 2 AC 70, [2007] 2 All ER 737; and see *R (on the application of Buddington) v Secretary of State for the Home Department* [2006] EWCA Civ 280, [2006] 2 Cr App Rep (S) 715, [2006] All ER (D) 402 (Mar); *R (on the application of Young) v Secretary of State for Justice* [2009] EWHC 2675 (Admin), [2009] All ER (D) 20 (Nov). As to the recall process in cases of release made before 4 April 2005 see PARAS 796, 798 et seq.

Recall occurs when the Secretary of State issues a determination to that effect, and is a natural corollary to revocation: *Roberts v Secretary of State for the Home Department* [2005] EWCA Civ 1663, [2006] 1 WLR 843, (2005) Times, 2 December (considering wording of the Criminal Justice Act 1991 s 39 (repealed)).

A prisoner recalled under the Criminal Justice Act 2003 s 254 is entitled to have the lawfulness of a decision to recall him determined speedily by a court: see *R (on the application of Smith) v Parole Board*, *R (on the application of West) v Parole Board* [2005] UKHL 1, [2005] 1 All ER 755, [2005] 1 WLR 350; the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 5(4) (ie everyone who is deprived of his liberty by arrest or detention is entitled to take proceedings by which the lawfulness of his detention is to be decided speedily by a court and his release ordered if the detention is not lawful: see PARA 761 note 8); and see PARA 773. The Convention is commonly referred to as the European Convention on Human Rights ('ECHR') and most of the rights and freedoms guaranteed thereby are incorporated into English law by means of the Human Rights Act 1998 s 1, Sch 1: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 122 et seq.

- 4 See the Criminal Justice Act 2003 s 254(2).
- 5 Criminal Justice Act 2003 s 254(2)(a). The right to make representations at any stage is a guard against arbitrary detention and it can be exercised on recall and before physical return to prison: *Roberts v Secretary of State for the Home Department* [2005] EWCA Civ 1663, [2006] 1 WLR 843, (2005) Times, 2 December (considering wording of the Criminal Justice Act 1991 s 39 (repealed)).
- 6 Criminal Justice Act 2003 s 254(2)(b).
- 7 See the Criminal Justice Act 2003 s 254(6). As to prisoners unlawfully at large see PRISONS AND PRISONERS vol 85 (2012) PARA 429.
- 8 Ie a revocation under the Criminal Justice Act 2003 s 254 (see the text and notes 1–3): see s 254(2A) (s 254(2A)–(2C) added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 113(1)). The amendments made by s 113 apply in relation to any person recalled under the Criminal Justice Act 2003 s 254 before 3 December 2012 (ie before the commencement date, being the day appointed under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 151 for the coming into force of

s 113: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d)), as well as in relation to any person so recalled on or after that date: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 120, Sch 15 paras 1, 5.

9 Criminal Justice Act 2003 s 254(2A) (as added: see note 8).

10 See the Criminal Justice Act 2003 s 254(2B) (as added: see note 8).

11 In the recall under the Criminal Justice Act 2003 s 254(1) (see the text and notes 1–3): see s 254(2C) (as added: see note 8).

12 Criminal Justice Act 2003 s 254(2C) (as added: see note 8).

789. Specific power to revoke licence and recall fixed-term prisoner released early under home detention curfew. If it appears to the Secretary of State¹, as regards a fixed-term prisoner² released on licence³ incorporating a home detention curfew condition⁴:

(1) that he has failed to comply with any condition included in his licence⁵; or

(2) that his whereabouts can no longer be electronically monitored at the place for the time being specified in the curfew condition included in his licence⁶,

the Secretary of State may, if the curfew condition is still in force, revoke the licence and recall the person to prison⁷. A person whose licence incorporating a home detention curfew condition⁸ is revoked in this way⁹:

(a) may make representations in writing with respect to the revocation¹⁰; and

(b) on his return to prison, must be informed of the reasons for the revocation and of his right to make representations¹¹.

The Secretary of State, after considering any representations under head (a) above or any other matters¹², may cancel a revocation so made¹³; and, where the revocation of a person's licence is cancelled in this way, the person is to be treated for the purposes of his release under home detention curfew¹⁴ as if he had not been recalled¹⁵ to prison¹⁶.

On the revocation of a person's licence following his release under home detention curfew¹⁷, he is liable to be detained in pursuance of his sentence and, if at large, is to be treated as being unlawfully at large¹⁸.

1 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.

2 As to the meaning of 'fixed-term prisoner' for the purposes of the Criminal Justice Act 2003 Pt 12 Ch 6 (ss 237–268) (sentencing; release, licences and recall) see PARA 781.

The Criminal Justice Act 2003 ss 243A–264 do not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of 'England' and 'Wales' see PARA 763 note 1.

3 If released on licence under the Criminal Justice Act 2003 s 246 (power to release prisoners before required term: see PARA 786): see s 255(1). A curfew condition complying with s 253 (home detention curfew: see PARA 807) must be included in a licence under s 246: see s 250(5); and PARA 807. As to the meaning of 'curfew condition' see PARA 807 note 4. As to the duration and conditions of licences see PARA 805 et seq.

4 See the Criminal Justice Act 2003 s 255(1).

5 Criminal Justice Act 2003 s 255(1)(a). There is no requirement for the case of a prisoner recalled under s 255 to have that decision reviewed by a court since release prior to completion of the requisite period is a matter of administrative discretion: *R (on the application of Benson) v Secretary of State for Justice* [2007] EWHC 2055 (Admin), [2007] All ER (D) 120 (Aug); *Mason v Secretary of State for Justice* [2008] EWHC 1787 (QB), [2009] 1 All ER 1128, [2009] 1 WLR 509; *R (on the application of McAlinden) v Secretary of State for the Home Department* [2010] EWHC 1557 (Admin), [2010] All ER (D) 24 (Jul). The power available under s 255 is not only applicable where there has been a breach of a curfew condition: see *R (on the application of Ramsden) v Secretary of State*

for the Home Department, *R (on the application of Naylor) v Secretary of State for the Home Department* [2006] EWHC 3502 (Admin) at [32], [2006] All ER (D) 167 (Dec) at [32] per Toulson J (obiter).

The consequences of recall are quite different under the Criminal Justice Act 2003 s 254 and s 255 because s 254 (general power to revoke licence and recall released person to prison: see PARA 788) is a stronger power and therefore subject to the scrutiny of the Parole Board, which decides in the first instance whether the recall should be confirmed, and, if so, determines when the prisoner should be released (see PARA 790 et seq), whilst under s 255 the Parole Board has no involvement and his recall continues until the point at which the prisoner becomes entitled to automatic release under s 244 (duty to release fixed-term prisoners: see PARA 785). On the proper construction of s 254 and s 255, it is clear that mutual exclusivity was not intended by the drafters so that the existence of powers under s 255 does not preclude the use of the powers under s 254: see *R (on the application of Ramsden) v Secretary of State for the Home Department*, *R (on the application of Naylor) v Secretary of State for the Home Department* at [32] per Toulson J (obiter). The guiding principle must be that, as with any exercise of public powers, the holder has to consider whether it is necessary and appropriate to use them in the particular circumstances; given that one set of powers is, in a practical sense, stronger than the other set, the stronger power should only be used if he judges that the public interest requires it but it would not be right for the weaker power to be ignored and so become a dead letter in circumstances where it may be adequate: see *R (on the application of Ramsden) v Secretary of State for the Home Department*, *R (on the application of Naylor) v Secretary of State for the Home Department* at [32] per Toulson J (obiter).

- 6 Criminal Justice Act 2003 s 255(1)(b). As to the home detention curfew scheme condition see note 3; and see also note 5.
- 7 See the Criminal Justice Act 2003 s 255(1). The licence is revoked and the recall made, as mentioned in the text, under s 255: see s 255(1). Because the procedure under s 255 incorporates an appeal process, and because any decision made under s 255 is amenable to judicial review under general public law principles, revocation under s 255 does not engage the guarantees of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 5(4) (ie that everyone who is deprived of his liberty by arrest or detention is entitled to take proceedings by which the lawfulness of his detention is to be decided speedily by a court and his release ordered if the detention is not lawful: see PARA 761 note 8), whose requirements are satisfied by the original sentencing court to the extent that a judicial body such as the Parole Board is not required to consider the matter: *R (on the application of Benson) v Secretary of State for Justice* [2007] EWHC 2055 (Admin), [2007] All ER (D) 120 (Aug) (judicial review of decision to recall prisoner for alleged breach of home detention curfew scheme conditions; ECHR art 5(4) does not apply); *R (on the application of McAlinden) v Secretary of State for the Home Department* [2010] EWHC 1557 (Admin), [2010] All ER (D) 24 (Jul); *R (on the application of Whiston) v Secretary of State for Justice* [2012] EWCA Civ 1374, [2012] All ER (D) 287 (Oct).
- 8 Is a licence under the Criminal Justice Act 2003 s 246 (power to release prisoners before required term: see PARA 786): see s 255(2).
- 9 See the Criminal Justice Act 2003 s 255(2). The text refers to a licence that has been revoked under s 255: see s 255(2).
- 10 Criminal Justice Act 2003 s 255(2)(a). As to the making of representations with respect to recall see PARA 788 note 5.
- 11 Criminal Justice Act 2003 s 255(2)(b).
- 12 See *R (on the application of Davies) v Secretary of State for the Home Department* [2000] All ER (D) 1856, (2000) Independent, 23 November, CA (ample material was available to enable a reasonable Secretary of State to take the view that it was necessary to revoke the applicant's licence and the applicant's denial and contradiction of that material was insufficient in the circumstances to require the Secretary of State to make any further enquiries before acting on it).
- 13 See the Criminal Justice Act 2003 s 255(3) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 113(2)). The amendments made by s 113 apply in relation to any person recalled under the Criminal Justice Act 2003 s 254 before 3 December 2012 (ie before the commencement date, being the day appointed under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 151 for the coming into force of s 113: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d)), as well as in relation to any person so recalled on or after that date: see the Legal Aid,

Sentencing and Punishment of Offenders Act 2012 s 120, Sch 15 paras 1, 5. As to transitional arrangements that are required to deal with cases where a prisoner has already been released on licence prior to 3 December 2012 and then breaches the conditions afterwards see the Criminal Justice Act 2003 s 267A, Sch 20A para 5(7); and PARA 794.

- 14 Ie for the purposes of the Criminal Justice Act 2003 s 246 (power to release prisoners before required term: see PARA 786): see s 255(4).
- 15 Ie under the Criminal Justice Act 2003 s 255: see s 255(4).
- 16 Criminal Justice Act 2003 s 255(4).
- 17 Ie on the revocation of a person's licence under the Criminal Justice Act 2003 s 246 (power to release prisoners before required term: see PARA 786): see s 255(5).
- 18 Criminal Justice Act 2003 s 255(5). As to prisoners unlawfully at large see PRISONS AND PRISONERS vol 85 (2012) PARA 429.

(iv) Further Release

790. Fixed-term recalls and re-release following recall. The Secretary of State¹ must, on recalling a person who is serving a determinate sentence (other than an extended sentence prisoner²), consider whether the person is suitable for automatic release³ (that is, release at the end of the period of 28 days beginning with the date on which the prisoner returns to custody)⁴. However, such a person is suitable for automatic release only if the Secretary of State is satisfied that he will not present a risk of serious harm to members of the public if he is released at the end of that period⁵.

A determinate sentence prisoner (other than an extended sentence prisoner) who has been recalled must be dealt with⁶:

- (1) in accordance with the automatic release provisions⁷, if he is suitable for automatic release⁸;
- (2) in accordance with the alternative provisions⁹ otherwise¹⁰.

Further to head (1) above, a prisoner who is suitable for automatic release¹¹:

- (a) must, on return to prison, be informed that he will be released¹²; and
- (b) must, at the end of the 28 day statutory period¹³, be released by the Secretary of State on licence under Chapter 6 of Part 12 of the Criminal Justice Act 2003¹⁴, unless he has already been released before that date¹⁵.

The Secretary of State may, at any time after such a prisoner is returned to prison, release him again on licence¹⁶; but the Secretary of State must not release a person in this way unless he is satisfied that it is not necessary for the protection of the public that the prisoner should remain in prison until the end of the period mentioned in head (b) above¹⁷. If a prisoner who is suitable for automatic release makes representations with respect to his recall¹⁸ before the end of that period, the Secretary of State must refer his case to the Parole Board¹⁹ on the making of those representations²⁰; and where, on such a reference, the Board directs the prisoner's immediate release on licence²¹, the Secretary of State must give effect to the direction²².

Where head (1) above does not apply, either because the prisoner is an extended sentence prisoner²³ or because he is not considered suitable for automatic release²⁴, the Secretary of State may, at any time after such a prisoner is returned to prison, release him again on licence under Chapter 6 of Part 12 of the Criminal Justice Act 2003²⁵. The Secretary of State must not release such a person in this way, however, unless he is satisfied that it is

not necessary for the protection of the public that the prisoner should remain in prison²⁶. The Secretary of State must refer such a case to the Parole Board²⁷:

- (i) if the prisoner makes representations in writing with respect to his recall²⁸ before the end of the period of 28 days beginning with the date on which he returns to custody²⁹, on the making of those representations³⁰; or
- (ii) if, at the end of that period, the prisoner has not been released again³¹ and has not made such representations, at that time³².

Where, on such a reference, the Parole Board directs the prisoner's immediate release on licence³³, the Secretary of State must give effect to the direction³⁴.

1 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.

2 A prisoner is an 'extended sentence prisoner' for these purposes if he is serving an extended sentence imposed under the Criminal Justice Act 2003 s 226A (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS), s 226B (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS), s 227 (repealed with savings) (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 75, 88) or s 228 (repealed with savings) (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 84), or under the Powers of Criminal Courts (Sentencing) Act 2000 s 85 (repealed) (extended sentences for violent or sexual offences committed before 4 April 2005: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 76); see the Criminal Justice Act 2003 s 255A(7) (ss 255A–255C substituted by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 114(1); the Criminal Justice Act 2003 s 255A(7) amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 125(4), Sch 20 para 7). The amendments made by s 114 apply in relation to any person recalled under the Criminal Justice Act 2003 s 254 (recall of prisoners after release on licence: see PARA 788) on or after 3 December 2012 (ie on or after the commencement date, being the day appointed under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 151 for the coming into force of s 114: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d)): see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 120, Sch 15 paras 1, 6.

The reference to the Powers of Criminal Courts (Sentencing) Act 2000 s 85 includes, in accordance with s 165, Sch 11 para 1(3), a reference to a sentence under the Crime and Disorder Act 1998 s 58 (repealed) (extended sentences for violent or sexual offences committed after 30 September 1998: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 76); see the Criminal Justice Act 2003 s 255A(7) (as so substituted). The Powers of Criminal Courts (Sentencing) Act 2000 s 85 applied between 30 September 1998 and 3 April 2005: see also PARA 761 note 1.

The Criminal Justice Act 2003 ss 243A–264 do not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of 'England' and 'Wales' see PARA 763 note 1.

3 Criminal Justice Act 2003 s 255A(2) (as substituted: see note 2).

The provision made by s 255A applies for the purpose of identifying which of s 255B (see the text and notes 11–22) or s 255C (see the text and notes 23–34) governs the further release of a person who has been recalled under s 254 (recall of prisoners after release on licence: see PARA 788): s 255A(1) (as so substituted).

4 For the purposes of the Criminal Justice Act 2003 s 255A, 'automatic release' means release at the end of the period of 28 days beginning with the date on which the prisoner returns to custody (see s 255A(3) (s 255A as substituted: see note 2)); and a person returns to custody for this purpose when that person, having been recalled, is detained (whether or not in prison) in pursuance of the sentence (see s 255A(6) (as so substituted)).

5 Criminal Justice Act 2003 s 255A(4) (as substituted: see note 2). As to the phrase 'risk of serious harm' in this context see *R (on the application of Bektas) v Probation Service*

- [2009] EWHC 2359 (Admin) at [23], [2009] All ER (D) 69 (Aug) at [23] per Rabinder Singh QC (sitting as a deputy High Court judge) (the provision is negatively expressed but the Secretary of State must be satisfied that the prisoner would not pose a risk if released). See also *R (on the application of Oakes) v Secretary of State for Justice* [2009] EWHC 3470 (Admin), [2010] All ER (D) 150 (Mar); affd [2010] EWCA Civ 1169, [2011] 1 WLR 321, [2010] All ER (D) 211 (Oct). Compare the phrase 'the protection of the public' which is used in the Criminal Justice Act 2003 s 255C(3) (see the text and note 26).
- 6 See the Criminal Justice Act 2003 s 255A(5) (as substituted: see note 2).
 - 7 In accordance with the Criminal Justice Act 2003 s 255B (see the text and notes 11–22); see s 255A(5)(a) (as substituted: see note 2).
 - 8 Criminal Justice Act 2003 s 255A(5)(a) (as substituted: see note 2).
 - 9 In accordance with the Criminal Justice Act 2003 s 255C (see the text and notes 23–34); see s 255A(5)(b) (as substituted: see note 2).
 - 10 See the Criminal Justice Act 2003 s 255A(5)(b) (as substituted: see note 2).
 - 11 See the Criminal Justice Act 2003 s 255B(1) (as substituted: see note 2).
 - 12 See the Criminal Justice Act 2003 s 255B(1)(a) (as substituted: see note 2). The release takes place under s 255B but is subject to s 255B(8), (9): see s 255B(1)(a) (as so substituted). Accordingly, if the Secretary of State, after the prisoner has been informed that he is to be released under s 255B, receives further information about the prisoner, whether or not relating to any time before the prisoner was recalled (see s 255B(8) (as so substituted)), then, if the Secretary of State determines, having regard to that and any other relevant information, that the prisoner is not suitable for automatic release (see s 255B(9) (as so substituted)):
 - (1) the Secretary of State must inform the prisoner that he is not to be released under s 255B (s 255B(9)(a) (as so substituted)); and
 - (2) the provisions of s 255C (see the text and notes 23–34) apply to the prisoner as if the Secretary of State had determined, on the prisoner's recall, that he was not suitable for automatic release (s 255B(9)(b) (as so substituted)).
 - 13 In at the end of the period that is mentioned in the Criminal Justice Act 2003 s 255A(3) (see note 4): see s 255B(1)(b) (as substituted: see note 2).
 - 14 In under the Criminal Justice Act 2003 Pt 12 Ch 6 (ss 237–268) (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 791 et seq): see s 255B(1)(b) (as substituted: see note 2). As to the duration and conditions of licences see PARA 805 et seq.
 - 15 See the Criminal Justice Act 2003 s 255B(1)(b) (as substituted: see note 2). The text refers to a prisoner who has already been released under s 255B(2) (see the text and note 16) or s 255B(5) (see the text and notes 21–22): see s 255B(1)(b) (as so substituted).
 - 16 See the Criminal Justice Act 2003 s 255B(2) (as substituted: see note 2). The prisoner is released again on licence as mentioned in the text under Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 791 et seq): see s 255B(2) (as so substituted).
 - 17 See the Criminal Justice Act 2003 s 255B(3) (as substituted: see note 2).
 - 18 In if he makes representations under the Criminal Justice Act 2003 s 254(2) (see PARA 788): see s 255A(4) (as substituted: see note 2).
 - 19 As to the constitution and functions of the Parole Board, continued by the Criminal Justice Act 2003 s 239(1), see PARA 772.
 - 20 See the Criminal Justice Act 2003 s 255B(4) (as substituted: see note 2).
 - 21 In under the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 791 et seq): see s 255B(5) (as substituted: see note 2). As to where the Board does not direct the prisoner's immediate release on licence on a reference under s 255B(4) see PARA 791.
 - 22 See the Criminal Justice Act 2003 s 255B(5) (as substituted: see note 2).

If the prisoner who is suitable for automatic release is recalled before the date on which he would (but for the earlier release) have served the requisite custodial period for the purposes of s 243A (unconditional release of prisoners serving less than 12 months: see PARA 784) or (as the case may be) s 244 (release on licence of prisoners serving 12 months or more: see PARA 785) (see s 255B(6) (as so substituted)), then:

 - (1) if the prisoner is released under s 255B before that date, his licence must include a curfew condition complying with s 253 (home detention curfew: see PARA 807) (s 255B(7)(a) (as so substituted)); and
 - (2) the prisoner is not to be so released, despite s 255B(1)(b) (see head (b) in the text)

and s 255B(5), unless the Secretary of State is satisfied that arrangements are in place to enable that condition to be complied with (s 255B(7)(b) (as so substituted)).

- 23 See the Criminal Justice Act 2003 s 255C(1)(a) (as substituted: see note 2).
- 24 See the Criminal Justice Act 2003 s 255C(1)(b) (as substituted: see note 2).
- 25 See the Criminal Justice Act 2003 s 255C(2) (as substituted: see note 2). As to Pt 12 Ch 6 (sentencing: release, licences and recall) see also PARAS 769, 772, 781 et seq, 791 et seq.
- 26 Criminal Justice Act 2003 s 255C(3) (as substituted: see note 2). As to the use of the expression 'protection of the public' for these purposes see *R (on the application of Oakes) v Secretary of State for Justice* [2010] EWCA Civ 1169, [2011] 1 WLR 321, [2010] All ER (D) 211 (Oct). Cf note 5.
- 27 See the Criminal Justice Act 2003 s 255C(4) (as substituted: see note 2).
- 28 If he makes representations under the Criminal Justice Act 2003 s 254(2) (see PARA 788): see s 255C(4)(a) (as substituted: see note 2).
- 29 For the purposes of the Criminal Justice Act 2003 s 255C, a prisoner to whom s 255C applies returns to custody when, having been recalled, he is detained (whether or not in prison) in pursuance of the sentence: see s 255C(8) (as so substituted).
- 30 Criminal Justice Act 2003 s 255C(4)(a) (as substituted: see note 2).
- 31 If under the Criminal Justice Act 2003 s 255C(2) (see the text and note 25): see s 255C(4)(b) (as substituted: see note 2).
- 32 Criminal Justice Act 2003 s 255C(4)(b) (as substituted: see note 2).
- 33 If under the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 791 et seq): see s 255C(5) (as substituted: see note 2). As to where the Board does not direct the prisoner's immediate release on licence on a reference under s 255C(4) see PARA 791.
- 34 See the Criminal Justice Act 2003 s 255C(5) (as substituted: see note 2).

If the prisoner mentioned in the text is recalled before the date on which he would (but for the earlier release) have served the requisite custodial period for the purposes of s 243A (unconditional release of prisoners serving less than 12 months: see PARA 784) or (as the case may be) s 244 (release on licence of prisoners serving 12 months or more: see PARA 785) (see s 255C(6) (as so substituted)), then: (1) if the prisoner is released under s 255C before that date, his licence must include a curfew condition complying with s 253 (home detention curfew: see PARA 807) (s 255C(7)(a) (as so substituted)); and (2) the prisoner is not to be so released, despite s 255C(5), unless the Secretary of State is satisfied that arrangements are in place to enable that condition to be complied with (s 255C(7)(b) (as so substituted)).

791. Further review following Parole Board's decision not to recommend immediate release of recalled prisoner. Where a case is referred to the Parole Board¹ of a recalled prisoner²:

- (1) who is suitable for automatic release³; or
- (2) who does not fall within head (1) above⁴, but who, within 28 days of his return to custody, either: (a) has made representations⁵; or (b) did not make representations and has not been released⁶,

and the Board does not direct his immediate release on licence under Chapter 6 of Part 12 of the Criminal Justice Act 2003⁷, the Board must either⁸:

- (i) fix a date for the person's release on licence⁹; or
- (ii) determine the reference by making no direction as to his release¹⁰.

Where the Board has fixed a date under head (i) above, it is the duty of the Secretary of State¹¹ to release the person on licence on that date¹².

Not later than the first anniversary of the determination of a reference by the Parole Board in accordance with either heads (i), (ii) above or heads (A) to (C) below¹³, the Secretary of State must refer the person's case to the Board¹⁴. However, at any time before that anniversary, the Secretary of State may refer the case¹⁵; and the Board may at any time recommend to the Secretary of State that a person's case be so referred¹⁶. On such a reference¹⁷, the Board must determine the reference by¹⁸:

- (A) directing the person's immediate release on licence under Chapter 6 of Part 12 of the Criminal Justice Act 2003¹⁹;
- (B) fixing a date for his release on licence²⁰; or
- (C) making no direction as to his release²¹.

Where the Board makes a direction under head (A) above for the person's immediate release on licence, the Secretary of State must give effect to the direction²². Where the Board fixes a release date under head (B) above, the Secretary of State must release the person on licence on that date²³.

- 1 As to the constitution and functions of the Parole Board, continued by the Criminal Justice Act 2003 s 239(1), see PARA 772.
- 2 See the Criminal Justice Act 2003 s 256(1) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ss 114(4), (5), 116(1), (3)(a)). The amendments made by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 114 apply in relation to any person recalled under the Criminal Justice Act 2003 s 254 on or after 3 December 2012 (ie on or after the commencement date, being the day appointed under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 151 for the coming into force of s 114: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d)): see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 120, Sch 15 paras 1, 6. The provision made by s 116 applies in relation to any person who falls to be released under the Criminal Justice Act 2003 Pt 12 Ch 6 (ss 237–268) (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 792 et seq) on or after the commencement date: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 120, Sch 15 paras 1, 2(1)(e).
The Criminal Justice Act 2003 ss 243A–264 do not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of 'England' and 'Wales' see PARA 763 note 1.
- 3 Ie on a reference under the Criminal Justice Act 2003 s 255B(4) (see PARA 790): see s 256(1) (as amended: see note 2). As to the meaning of 'automatic release' for these purposes see PARA 790 note 4.
- 4 Ie on a reference under the Criminal Justice Act 2003 s 255C(4) of a prisoner who is not considered suitable for automatic release or who is an extended sentence prisoner (see PARA 790): see s 256(1) (as amended: see note 2). As to the meaning of 'extended sentence prisoner' for these purposes see PARA 790 note 2.
- 5 Ie where the Criminal Justice Act 2003 s 255C(4)(a) applies (see PARA 790): see s 256(1) (as amended: see note 2).
- 6 Ie where the Criminal Justice Act 2003 s 255C(4)(b) applies (see PARA 790): see s 256(1) (as amended: see note 2).
- 7 Ie under the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 792 et seq): see s 256(1) (as amended: see note 2). As to the duration and conditions of licences see PARA 805 et seq.
- 8 See the Criminal Justice Act 2003 s 256(1) (as amended: see note 2).
- 9 See the Criminal Justice Act 2003 s 256(1)(a). Any date fixed under s 256(1)(a) must not be later than the first anniversary of the date on which the decision is taken: see s 256(2) (amended by the Criminal Justice and Immigration Act 2008 ss 30(1), (3), 149, Sch 28 Pt 2). The coming into force of ss 29, 30 is of no effect in relation to any person who is recalled under the Criminal Justice Act 2003 s 254(1) (recall of prisoners after release on licence: see PARA 788) before 14 July 2008: see the Criminal Justice and Immigration Act 2008 (Commencement No 2 and Transitional and Saving Provisions) Order 2008, SI 2008/1586, art 2(3), Sch 2 para 3.
- 10 See the Criminal Justice Act 2003 s 256(1)(b) (substituted by the Criminal Justice and Immigration Act 2008 s 30(1), (2); and amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 116(1), (3)(b)). See notes 2, 9.
- 11 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.
- 12 See the Criminal Justice Act 2003 s 256(4).
- 13 Ie a determination by the Parole Board under either the Criminal Justice Act 2003 s 256(1) (see the text and notes 1–10) or s 256A(4) (see the text and notes 17–21): see s 256A(1) (s 256A added by the Criminal Justice and Immigration Act 2008 s 30(6)). See note 9.
- 14 See the Criminal Justice Act 2003 s 256A(1) (as added: see note 13).

- 15 See the Criminal Justice Act 2003 s 256A(2) (as added: see note 13).
- 16 See the Criminal Justice Act 2003 s 256A(3) (as added: see note 13). The text refers to the Board's power at any time to recommend to the Secretary of State that a person's case be referred under s 256A(2) (see the text and note 15): see s 256A(3) (as so added).
- 17 It is on a reference under either the Criminal Justice Act 2003 s 256A(1) (see the text and notes 13–14) or s 256A(2) (see the text and note 15): see s 256A(4) (as added: see note 13).
- 18 See the Criminal Justice Act 2003 s 256A(4) (as added: see note 13).
- 19 Criminal Justice Act 2003 s 256A(4)(a) (s 256A as added (see note 13); s 256A(4)(a), (c) amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 116(1), (4)(a), (b)). See note 2.
- 20 Criminal Justice Act 2003 s 256A(4)(b) (as added: see note 13).
- 21 Criminal Justice Act 2003 s 256A(4)(c) (as added and amended: see note 19).
- 22 Criminal Justice Act 2003 s 256A(5)(a) (s 256A as added (see note 13); s 256A(5)(a) amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 116(1), (4)(c)). See note 2.
- 23 Criminal Justice Act 2003 s 256A(5)(b) (as added: see note 13).

(5) PRISONERS SERVING DETERMINATE SENTENCE FOR OFFENCE COMMITTED BEFORE 4 APRIL 2005

(i) Overview

792. Overview of transitional early release and recall arrangements. For a diminishing number of historical cases, where a prisoner is or was sentenced to a determinate term for an offence that was committed before 4 April 2005¹, the regimes that govern early release and recall are subject to transitional provisions². The Legal Aid, Sentencing and Punishment of Offenders Act 2012 brought into effect a simplified transitional regime³ which applies the Criminal Justice Act 2003 provisions that govern early release and recall⁴ to any person serving a determinate sentence for an offence committed before 4 April 2005⁵, whenever that sentence was or is imposed⁶, as follows:

- (1) where such a person has been released on licence under Part II of the Criminal Justice Act 1991 or under the Criminal Justice Act 1967, the Criminal Justice Act 2003 provisions apply with modifications⁷; but
- (2) where such a person has not been released from prison on licence previously (or where such a person has been released but recalled in certain circumstances), the Criminal Justice Act 2003 provisions are subject to new transitional provisions⁸.

Head (2) above applies to two broad categories of case:

- (a) certain persons serving 'Criminal Justice Act 1967 sentences'⁹;
- (b) certain persons serving 'Criminal Justice Act 1991 sentences'¹⁰.

The regime applicable under head (b) above applies also to certain 'Criminal Justice Act 2003 sentences' which are extended sentences¹¹.

- 1 As to an overview of early release and recall arrangements for prisoners sentenced to a determinate term for an offence that was committed on or after 4 April 2005 see PARA 761.
- 2 It is only with the passing of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 that the provision for such transitional cases has been addressed in a systematic and holistic manner: see the text and notes 3–11.

Before the Criminal Justice Act 2003 was amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, a very complex regime had grown up piecemeal to govern the early release of prisoners serving determinate sentences for offences committed before 4 April 2005, evolving from the successive transitional and provisional

arrangements that were put in place each time the sentencing regime itself was reformed. The statutory scheme substantially contained in the Criminal Justice Act 1991 Pt II (ss 32–51), which regulated the release of determinate sentence prisoners under that Act, subject to significant amendment by the Crime and Disorder Act 1998 and the Powers of Criminal Courts (Sentencing) Act 2000, was repealed by the Criminal Justice Act 2003 ss 303(a), 332, Sch 37 Pt 7, with effect from 4 April 2005: see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, art 2(1), Sch 1. However, transitional and saving provisions were made which preserved the effect of the Criminal Justice Act 1991 Pt II so that it could be applied to certain historical cases: see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2. The Criminal Justice Act 1991 had itself made transitional and saving arrangements in relation to release and recall provisions put in place by the Criminal Justice Act 1967, affecting prisoners sentenced to a term of more than 12 months before 1 October 1992 (ie before the Criminal Justice Act 1991 came into force) ('existing prisoners'): see the Criminal Justice Act 1991 s 101(1), Sch 12. These preserved regimes were further amended significantly by the Criminal Justice and Immigration Act 2008 (see note 11). As to criticism of the 'legislative morass' that resulted see especially *R (on application of Noone) v Governor of Drake Hall Prison* [2010] UKSC 30 at [86], [2010] 4 All ER 463 at [86], [2010] 1 WLR 1743 at [86] per Lord Judge LCJ. These transitional arrangements have been simplified and codified, but their effect preserved, by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 Pt 3 Ch 4 (ss 108–121): see note 3.

- 3 The Legal Aid, Sentencing and Punishment of Offenders Act 2012 Pt 3 Ch 4 introduced the regime that now applies to the release of a prisoner sentenced to a determinate term for an offence that was committed before 4 April 2005. The 2012 Act achieves this by making amendments to the Criminal Justice Act 2003, most notably to Pt 12 Ch 6 (ss 237–268) (sentencing: release, licences and recall) (see PARAS 769, 772, 781 et seq, 793 et seq), including the adding of ss 243A, 267A, 267B, Schs 20A, 20B (see PARA 792 et seq), so that all the transitional release and recall provisions that are to continue to apply to prisoners sentenced to determinate terms for offences committed before 4 April 2005 (see note 2) are brought together on the face of the Criminal Justice Act 2003, along with the release and recall provisions that continue to apply to prisoners sentenced to determinate terms for offences committed on or after 4 April 2005. Prisoners sentenced to a determinate term imposed on or after the commencement date of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 Pt 3 Ch 4 (ie on or after 3 December 2012: see note 9) will be serving a 'Criminal Justice Act 2003 sentence' for the purposes of the release regime regardless of the date of their offence (ie even where the offences for which they are sentenced were committed before 4 April 2005): see note 11.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 also introduced further reform to the determinate and indeterminate sentencing regimes: see Pt 3 Ch 1 (ss 63–89) (sentencing); Pt 3 Ch 5 (ss 122–128) (dangerous offenders); and PARA 761 notes 1–2.

- 4 Ie the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall): see PARAS 769, 772, 781 et seq, 793 et seq.
- 5 The Criminal Justice Act 2003 s 267A, Sch 20A paras 3–9 apply in relation to any person serving a sentence for an offence committed before 4 April 2005, whenever that sentence was imposed: see Sch 20A para 2; and PARA 794.
- 6 See the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(1); and PARA 794. In accordance with s 121(1), the repeal of the Criminal Justice Act 1991 Pt II (ss 32–51) which is made by the Criminal Justice Act 2003 s 303(a) has effect in relation to any person mentioned in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(1): see s 121(3)(a); and PARA 794.
- 7 See the transitional regime that is contained in the Criminal Justice Act 2003 s 267A, Sch 20A (added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(5), Sch 16 paras 1–3); and PARA 794.
- 8 See the transitional regime that is contained in the Criminal Justice Act 2003 s 267B, Sch 20B (added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(6), Sch 17 paras 1, 9, 10); and see also PARA 795 et seq.
- 9 Ie certain persons serving a 'Criminal Justice Act 1967 sentence', to whom the Criminal Justice Act 2003 Sch 20B Pt 3 (Sch 20B paras 23–33) (cited in PARAS 793, 797, 798) applies: see Sch 20B para 23(1) (as added: see note 8). The provision made by Pt 3 does not apply, however, to a person who:
- (1) has been released on licence (Sch 20B para 23(2)(a) (as so added));

- (2) has been recalled to prison (Sch 20B para 23(2)(b) (as so added)); and
- (3) (whether or not having returned to custody in consequence of that recall) is unlawfully at large on the commencement date (Sch 20B para 23(2)(c) (as so added)).

As to prisoners unlawfully at large see PRISONS AND PRISONERS vol 85 (2012) PARA 429. For the purposes of Sch 20B, a 'Criminal Justice Act 1967 sentence' is a sentence imposed before 1 October 1992: see Sch 20B para 1(8) (as so added). For these purposes:

- (a) the 'commencement date' means the date on which the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121 came into force (ie 3 December 2012: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d)) (see the Criminal Justice Act 2003 Sch 20B para 1(2) (as so added)); and
- (b) 1 October 1992 is the date on which the Criminal Justice Act 1991 Pt II (see note 2) came into force (see the Criminal Justice Act 2003 Sch 20B para 2 (as so added)).

- 10 In certain persons serving a 'Criminal Justice Act 1991 sentence', to whom the Criminal Justice Act 2003 Sch 20B Pt 2 (Sch 20B paras 3–22) (cited in PARAS 795–808) applies: see Sch 20B para 3(1) (as added: see note 8). The provision made by Pt 2 does not apply, however, to a person who:

- (1) has been released on licence under the Criminal Justice Act 1991 Pt II (see note 2) (Criminal Justice Act 2003 Sch 20B para 3(3)(a) (as so added));
- (2) has been recalled to prison (Sch 20B para 3(3)(b) (as so added)); and
- (3) (whether or not having returned to custody in consequence of that recall) is unlawfully at large on 3 December 2012 (ie 'the commencement date') (Sch 20B para 3(3)(c) (as so added)).

For the purposes of Sch 20B, a 'Criminal Justice Act 1991 sentence' is a sentence which is imposed:

- (a) on or after 1 October 1992 but before 4 April 2005 (Criminal Justice Act 2003 Sch 20B para 1(9)(a) (as so added)); or
- (b) on or after 4 April 2005 but before 3 December 2012 ('the commencement date') (Sch 20B para 1(9)(b) (as so added)), and is either: (i) imposed in respect of an offence committed before 4 April 2005 (Sch 20B para 1(9)(b)(i) (as so added)); or (ii) for a term of less than 12 months (Sch 20B para 1(9)(b)(ii) (as so added)).

For these purposes, 4 April 2005 is the date on which Pt 12 Ch 6 (sentencing: release, licences and recall) (see PARAS 769, 772, 781 et seq, 793 et seq) came into force: see Sch 20B para 2 (as so added). 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 Sch 20B to have been committed on the last of those days: see Sch 20B para 1(11) (as so added).

- 11 Accordingly, the Criminal Justice Act 2003 Sch 20B Pt 2 (cited in PARAS 795–808) applies also to a person serving a Criminal Justice Act 2003 sentence (see Sch 20B para 3(2) (as added: see note 8)) which is:

- (1) a 'section 85 extended sentence' (Sch 20B para 3(2)(a) (as so added)); or
- (2) an extended sentence imposed before 14 July 2008 under either s 227 (repealed with savings) (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 75, 88) or s 228 (repealed with savings) (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 84) (see Sch 20B para 3(2)(b) (as so added)).

For the purposes of Sch 20B, a 'Criminal Justice Act 2003 sentence' is a sentence which is imposed:

- (a) on or after the commencement date (Sch 20B para 1(10)(a) (as so added)); or
- (b) on or after 4 April 2005 but before 3 December 2012 ('the commencement date') (see Sch 20B para 1(10)(b) (as so added)), and is both: (i) imposed in respect of an offence committed on or after 4 April 2005 (Sch 20B para 1(10)(b)(i) (as so added)); and (ii) for a term of 12 months or more (Sch 20B para 1(10)(b)(ii) (as so added)).

A 'section 85 extended sentence' means an extended sentence under the Powers of Criminal Courts (Sentencing) Act 2000 s 85 (repealed) (extended sentences for violent or sexual offences committed before 4 April 2005: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 76) and includes, in accordance with s 165, Sch 11 para 1(3), a reference to a sentence under the Crime and Disorder Act 1998 s 58 (repealed) (extended sentences for violent or sexual offences committed after 30 September 1998: see

SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 76): see the Criminal Justice Act 2003 Sch 20B para 1(5) (as so added). In relation to a 'section 85 extended sentence', the 'custodial term' and the 'extension period' have the meanings given by the Powers of Criminal Courts (Sentencing) Act 2000 s 85 (repealed with savings) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 76): see the Criminal Justice Act 2003 Sch 20B para 1(6) (as so added). The Powers of Criminal Courts (Sentencing) Act 2000 s 85 applied between 30 September 1998 and 3 April 2005: see also PARA 761 note 1.

For the purposes of the Criminal Justice Act 2003 Sch 20B, 30 September 1998 is the date on which certain provisions of the Crime and Disorder Act 1998 came into force (further amending the sentencing regime, including the introduction of extended sentences, and making significant adjustments to the recall regime); and 14 July 2008 is the date on which certain provisions of the Criminal Justice and Immigration Act 2008 other than s 26 (repealed: see PARA 795 note 4) came into force: see the Criminal Justice Act 2003 Sch 20B para 2 (as so added). By virtue of the Criminal Justice and Immigration Act 2008, all determinate sentence prisoners who are recalled after 14 July 2008 are subject to recall under the Criminal Justice Act 2003 s 254 (see PARA 788).

793. Treatment of concurrent and consecutive terms: transitional arrangements. Where:

- (1) a person is serving two or more sentences of imprisonment imposed on or after 1 October 1992¹; and
- (2) either the sentences were passed on the same occasion² (or, where they were passed on different occasions, the person has not been released under Part II of the Criminal Justice Act 1991³ or under Chapter 6 of Part 12 of the Criminal Justice Act 2003⁴ at any time during the period beginning with the first and ending with the last of those occasions)⁵,

then:

- (a) if each of the sentences of imprisonment mentioned in head (1) above is a Criminal Justice Act 1991 sentence⁶, the usual Criminal Justice Act 2003 provisions governing the treatment of concurrent⁷ and consecutive terms⁸ do not apply in relation to the sentences⁹; and
- (b) where two or more of the sentences mentioned in head (1) above are to be served consecutively on each other¹⁰, and: (i) one or more of those sentences is a Criminal Justice Act 1991 sentence¹¹; and (ii) one or more of them is a Criminal Justice Act 2003 sentence¹², the Criminal Justice Act 2003 provisions governing the treatment of consecutive terms¹³ do not affect the length of the period which the person serving two or more such sentences must serve in prison in respect of the Criminal Justice Act 1991 sentence or sentences¹⁴.

If the person serving two or more sentences of imprisonment is also serving one or more Criminal Justice Act 1967 sentences, however, then head (b) above does not apply¹⁵. Accordingly, where head (2) above applies, but in relation to two or more sentences of imprisonment imposed before 1 October 1992¹⁶, then:

- (A) where each of the sentences of imprisonment is a Criminal Justice Act 1967 sentence¹⁷, or if: (aa) one or more of those sentences is a Criminal Justice Act 1967 sentence¹⁸; and (bb) one or more of them is a Criminal Justice Act 1991 sentence¹⁹, then the Criminal Justice Act 2003 provisions governing the treatment of concurrent²⁰ and consecutive terms²¹ do not apply in relation to those sentences²²; and
- (B) where two or more of the sentences are to be served consecutively

on each other²³, and: (aa) one or more of those sentences is a Criminal Justice Act 1967 sentence²⁴; and (bb) one or more of them is a Criminal Justice Act 2003 sentence²⁵, the Criminal Justice Act 2003 provisions governing the treatment of consecutive terms²⁶ do not affect the length of the period which the person serving two or more sentences of imprisonment must serve in prison in respect of the Criminal Justice Act 1967 sentence or sentences²⁷.

- 1 See the Criminal Justice Act 2003 s 267B, Sch 20B para 20 (s 267B, Sch 20B added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(6), Sch 17 paras 1, 9, 10). As to the application of the Criminal Justice Act 2003 Sch 20B Pt 2 (Sch 20B paras 3–22), and as to the significance of the date of 1 October 1992, see PARA 792 note 9.
- 2 See the Criminal Justice Act 2003 Sch 20B para 20(a) (as added: see note 1).
- 3 *Id* under the Criminal Justice Act 1991 Pt II (ss 32–51) (repealed: see PARA 792 note 2): see the Criminal Justice Act 2003 Sch 20B para 20(b) (as added: see note 1).
- 4 *Id* under the Criminal Justice Act 2003 Pt 12 Ch 6 (ss 237–268) (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 794 et seq): see Sch 20B para 20(b) (as added: see note 1).
- 5 See the Criminal Justice Act 2003 Sch 20B para 20(b) (as added: see note 1).
- 6 See the Criminal Justice Act 2003 Sch 20B para 21(1) (as added: see note 1). As to the meaning of ‘Criminal Justice Act 1991 sentence’ see PARA 792 note 10.
- 7 *Id* the Criminal Justice Act 2003 s 263 (see PARA 782): see Sch 20B para 21(2) (as added: see note 1).

With effect from 3 December 2012, s 263 is subject to the transitional arrangements contained in Sch 20B para 21 (see also the text and notes 6, 8–9), Sch 20B paras 31, 32 (see the text and notes 16–22): see s 263(5); and PARA 782.

- 8 *Id* the Criminal Justice Act 2003 s 264 (see PARA 783): see Sch 20B para 21(2) (as added: see note 1).

With effect from 3 December 2012, s 264 is subject to the transitional arrangements contained in Sch 20B paras 21, 22 (see also the text and notes 6–7, 9–15), Sch 20B paras 31, 32 and 33 (see the text and notes 16–27): see s 264(8); and PARA 783.

- 9 See the Criminal Justice Act 2003 Sch 20B para 21(2) (as added: see note 1). For the purposes of any reference in Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 794 et seq), however expressed, to the term of imprisonment to which the person serving two or more sentences of imprisonment has been sentenced (or which, or part of which, that person has served), the terms are to be treated as a single term: Sch 20B para 21(3) (as so added). If one or more of the sentences is a section 85 extended sentence:

- (1) for the purpose of determining the single term mentioned in Sch 20B para 21(3), the extension period or periods is or are to be disregarded (see Sch 20B para 21(4)(a) (as so added)); and
- (2) the period for which the person serving two or more such sentences is to be on licence in respect of the single term is to be increased in accordance with Sch 20B para 21(5) (see Sch 20B para 21(4)(b) (as so added)).

Accordingly, that period is to be increased: (a) if only one of the sentences is a section 85 extended sentence, by the extension period (Sch 20B para 21(5)(a) (as so added)); (b) if there is more than one such sentence and they are wholly or partly concurrent, by the longest of the extension periods (Sch 20B para 21(5)(b) (as so added)); (c) if there is more than one such sentence and they are consecutive, by the aggregate of the extension periods (Sch 20B para 21(5)(c) (as so added)). As to the meanings of a ‘section 85 extended sentence’, the ‘custodial term’ and the ‘extension period’ for these purposes see PARA 792 note 11.

- 10 See the Criminal Justice Act 2003 Sch 20B para 22(1) (as added: see note 1).
- 11 See the Criminal Justice Act 2003 Sch 20B para 22(1)(a) (as added: see note 1).
- 12 See the Criminal Justice Act 2003 Sch 20B para 22(1)(b) (as added: see note 1). As to the meaning of ‘Criminal Justice Act 2003 sentence’ see PARA 792 note 11.
- 13 *Id* the Criminal Justice Act 2003 s 264 (see PARA 783): see Sch 20B para 22(2) (as added: see note 1).
- 14 See the Criminal Justice Act 2003 Sch 20B para 22(2) (as added: see note 1). Nothing in Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 794 et seq) requires the Secretary of State to release such a person serving two or more sentences of imprisonment until that person has served a period equal in length to the

- aggregate of the length of the periods which he must serve in relation to each of the sentences mentioned in Sch 20B para 22(1) (see head (b) in the text): see Sch 20B para 22(3) (as so added). As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.
- 15 See the Criminal Justice Act 2003 Sch 20B para 22(4) (as added: see note 1). In the circumstances mentioned in the text, the provisions of Sch 20B paras 32, 33 (see the text and notes 18–27) apply instead of Sch 20B para 22 (see the text and notes 10–14): see Sch 20B para 22(4) (as so added). As to the meaning of ‘Criminal Justice Act 1967 sentence’ see PARA 792 note 9.
- 16 In the provisions of the Criminal Justice Act 2003 Sch 20B paras 31–33 (see the text and notes 17–27) apply where:
- (1) a person is serving two or more sentences of imprisonment (Sch 20B para 30 (as added: see note 1)); and
 - (2) either: (a) the sentences were passed on the same occasion (see Sch 20B para 30(a) (as so added)); or (b) where they were passed on different occasions, the person has not been released under the Criminal Justice Act 1991 Pt II (repealed: see PARA 792 note 2) or under the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 794 et seq) at any time during the period beginning with the first and ending with the last of those occasions (see Sch 20B para 30(b) (as so added)).
- 17 See the Criminal Justice Act 2003 Sch 20B para 31(1) (as added: see note 1).
- 18 See the Criminal Justice Act 2003 Sch 20B para 32(1)(a) (as added: see note 1).
- 19 See the Criminal Justice Act 2003 Sch 20B para 32(1)(b) (as added: see note 1).
- 20 In the Criminal Justice Act 2003 s 263 (see PARA 782): see Sch 20B paras 31(2), 32(2) (as added: see note 1).
- 21 In the Criminal Justice Act 2003 s 264 (see PARA 783): see Sch 20B paras 31(2), 32(2) (as added: see note 1).
- 22 See the Criminal Justice Act 2003 Sch 20B paras 31(2), 32(2) (as added: see note 1).
Where Sch 20B para 31 applies (see the text and notes 16–17), then for the purposes of any reference in Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 794 et seq), however expressed, to the term of imprisonment to which the person serving two or more sentences of imprisonment has been sentenced (or which, or part of which, that person has served), the terms are to be treated as a single term: Sch 20B para 31(3) (as so added).
Where Sch 20B para 32 applies, however (see the text and notes 16, 18–19), then the terms mentioned in heads (A)(aa) and (A)(bb) in the text are to be treated as a single term for those purposes (see Sch 20B para 32(3)(a) (as so added)), and that single term is to be treated as if it were a Criminal Justice Act 1967 sentence (see Sch 20B para 32(3)(b) (as so added)). If one or more of the sentences is a section 85 extended sentence:
- (1) for the purpose of determining the single term mentioned in Sch 20B para 32(3), the extension period or periods is or are to be disregarded (see Sch 20B para 32(4)(a) (as so added)); and
 - (2) the period for which the person serving two or more sentences of imprisonment is to be on licence in respect of the single term is to be increased in accordance with Sch 20B para 32(5) (see Sch 20B para 32(4)(b) (as so added)).
- Accordingly, that period is to be increased: (a) if only one of the sentences is a section 85 extended sentence, by the extension period (Sch 20B para 32(5)(a) (as so added)); (b) if there is more than one such sentence and they are wholly or partly concurrent, by the longest of the extension periods (Sch 20B para 32(5)(b) (as so added)); (c) if there is more than one such sentence and they are consecutive, by the aggregate of the extension periods (Sch 20B para 32(5)(c) (as so added)).
If the person serving two or more sentences of imprisonment is also serving a Criminal Justice Act 2003 sentence, Sch 20B para 32(3) is to be applied before the period mentioned in s 263(2)(c) (concurrent terms: see PARA 782) or Sch 20B para 33(3) (consecutive terms: see note 27) is calculated: see Sch 20B para 32(6) (as so added).
- 23 See the Criminal Justice Act 2003 Sch 20B para 33(1) (as added: see note 1).
- 24 See the Criminal Justice Act 2003 Sch 20B para 33(1)(a) (as added: see note 1).
- 25 See the Criminal Justice Act 2003 Sch 20B para 33(1)(b) (as added: see note 1).
- 26 In the Criminal Justice Act 2003 s 264 (see PARA 783): see Sch 20B para 33(2) (as added: see note 1).
- 27 See the Criminal Justice Act 2003 Sch 20B para 33(2) (as added: see note 1). Nothing in Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 794 et seq) requires the Secretary of State to release the person serving two or more

sentences of imprisonment until that person has served a period equal in length to the aggregate of the length of the periods which he must serve in relation to each of the sentences mentioned in Sch 20B para 33(1) (see the text and note 23): see Sch 20B para 33(3) (as so added).

(ii) **Application of Criminal Justice Act 2003 Provisions governing Early Release and Recall**

794. Application of the Criminal Justice Act 2003 early release and recall arrangements to sentences for offence committed before 4 April 2005. As from 3 December 2012¹, the usual Criminal Justice Act 2003 provisions that govern early release and recall² apply with modifications to any person serving a sentence for an offence committed before 4 April 2005³, whenever that sentence was or is imposed⁴. Subject to such modifications:

- (1) where the person has been released on licence under Part II of the Criminal Justice Act 1991⁵ or under the Criminal Justice Act 1967⁶ before 3 December 2012⁷, the person is to be treated as if the release had been under the Criminal Justice Act 2003 provisions⁸; and
- (2) where a person has been recalled under Part II of the Criminal Justice Act 1991⁹ before 3 December 2012¹⁰, the person is to be treated as if the recall had been under the Criminal Justice Act 2003¹¹.

Further provision is made in relation to: (a) persons removed from prison, before 3 December 2012, who were liable to removal from the United Kingdom¹²; and (b) persons extradited to the United Kingdom before 3 December 2012¹³.

In relation to certain other historical cases, where a person has not been released from prison on licence previously (or where such a person has been released but recalled in certain circumstances), the Criminal Justice Act 2003 provisions that govern early release and recall¹⁴ are displaced by other transitional arrangements¹⁵.

- 1 The Criminal Justice Act 2003 s 267A, Sch 20A (application of the Criminal Justice Act 2003 Pt 12 Ch 6 to pre-4 April 2005 cases) are added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(5), Sch 16 paras 1–3; and s 121(1), (3) makes related provision, as from 3 December 2012 ('the commencement date'), being the day appointed under s 151(1) (see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d), (n)).
- 2 In the Criminal Justice Act 2003 Pt 12 Ch 6 (ss 237–268) (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 795 et seq): see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(1).
- 3 In the Criminal Justice Act 2003 Sch 20A paras 3–9 (see the text and notes 5–13) are applied in relation to any person serving a sentence for an offence committed before 4 April 2005, whenever that sentence was imposed: see Sch 20A para 2 (as added: see note 1). As to the significance of the date of 4 April 2005 see PARA 792 note 10. As to the provision made by Sch 20A para 7 (rules made by virtue of the Criminal Justice Act 1991 s 42 (repealed) have effect as if made by virtue of the Criminal Justice Act 2003 s 257) see PRISONS AND PRISONERS vol 85 (2012) PARA 404.
- 4 See the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(1). In accordance with s 121(1), the repeal of the Criminal Justice Act 1991 Pt II (ss 32–51) (repealed), which is made by the Criminal Justice Act 2003 s 303(a) (see PARA 792 note 2) has effect in relation to any person mentioned in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(1): see s 121(3)(a).
- 5 In the Criminal Justice Act 1991 Pt II (see note 4): see the Criminal Justice Act 2003 Sch 20A para 5(1) (as added: see note 1).

- 6 Ie under the Criminal Justice Act 1967 s 60 (repealed) (release on licence of persons serving determinate sentences): see the Criminal Justice Act 2003 Sch 20A para 5(1) (as added: see note 1). Any period which would, but for the repeal of the Criminal Justice Act 1967 s 67 (repealed) (computation of sentences of imprisonment passed in England and Wales), be a 'relevant period' within the meaning of s 67 (see s 67(1A) (reduction of sentences by period spent in custody etc)) is to be treated, for the purposes of the Criminal Justice Act 2003 s 240ZA (time remanded in custody to count as time served: terms of imprisonment and detention: see SENTENCING AND DISPOSITION OF OFFENDERS), as if it were a period for which the offender was remanded in custody in connection with the offence: see Sch 20A para 3 (as so added).
- 7 Ie before the 'commencement date', which means the date on which the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121 came into force (see note 1): see the Criminal Justice Act 2003 Sch 20A paras 1, 5(1) (as added: see note 1). As to the application and modification of the definition of 'custodial period' in s 264(6) (consecutive terms) for these purposes see Sch 20A para 10; and PARA 783 note 7.
- 8 See the Criminal Justice Act 2003 Sch 20A para 5(1) (as added: see note 1). The text refers to the person being treated as if the release had been under Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 795 et seq): see Sch 20A para 5(1) (as so added).

In particular, the following provisions apply (Sch 20A para 5(2) (as so added)):

- (1) a licence under the Criminal Justice Act 1991 s 34A (repealed) (power to release short-term prisoners on licence) is to be treated as if it were a licence under the Criminal Justice Act 2003 s 246 (power to release fixed-term prisoners before required term: see PARA 786) (Sch 20A para 5(3) (as so added));
- (2) a licence under the Criminal Justice Act 1991 s 36 (repealed) (power to release prisoners on compassionate grounds) is to be treated as if it were a licence under the Criminal Justice Act 2003 s 248 (power to release fixed-term prisoners on compassionate grounds: see PARA 769) (Sch 20A para 5(4) (as so added));
- (3) any condition of a licence specified under the Criminal Justice Act 1991 s 37 (repealed) (duration of licences granted to short-term prisoners) is to have effect as if it were included under the Criminal Justice Act 2003 s 250 (licence conditions: see PARA 806), whether or not the condition is of a kind which could otherwise be included under s 250 (Sch 20A para 5(5) (as so added));
- (4) where the licence is, on the commencement date, subject to a suspension under the Criminal Justice Act 1991 s 38(2) (repealed) (effect of breach of licence conditions by short-term prisoners), the suspension continues to have effect for the period specified by the court despite the repeal of s 38 (Criminal Justice Act 2003 Sch 20A para 5(6) (as so added));
- (5) a licence under the Criminal Justice Act 1991 s 40A (repealed) (release on licence following return to prison) is to be treated as if it were a licence under the Criminal Justice Act 2003 Pt 12 Ch 6, except that in respect of any failure before or after 3 December 2012 (ie before or after 'the commencement date': see note 7) to comply with the conditions of the licence, the person is liable to be dealt with in accordance with the Criminal Justice Act 1991 s 40A(4)–(6), despite the repeal of s 40A, and is not liable to be dealt with in any other way (Criminal Justice Act 2003 Sch 20A para 5(7) (as so added)); and
- (6) Sch 20A para 5(1) does not affect the duration of the licence (Sch 20A para 5(8) (as so added)).

Further to head (1) above, s 246 applies for the purposes of Sch 20A, with modifications made to the operation of s 246(4): see Sch 20A para 4 (as so added).

- 9 Ie under the Criminal Justice Act 1991 Pt II (see note 4): see the Criminal Justice Act 2003 Sch 20A para 6(1) (as added: see note 1).
- 10 Ie before the 'commencement date' (see note 7): see the Criminal Justice Act 2003 Sch 20A para 6(1) (as added: see note 1).
- 11 See the Criminal Justice Act 2003 Sch 20A para 6(1) (as added: see note 1). The text refers to the person being treated as if the recall had been under s 254 (general power to recall of prisoners after release on licence: see PARA 788): see Sch 20A para 6(1) (as so added).
- In particular, the following provisions apply (Sch 20A para 6(2) (as so added)):
- (1) if the Secretary of State has not referred the person's case to the Board under the Criminal Justice Act 1991 s 39(4) (repealed) (recall of long-term and life prisoners while on licence) or s 44A (repealed) (re-release of prisoners serving extended sentences), the Secretary of State must refer the case under the Criminal Justice Act 2003 s 255C(4) (see PARA 790) (Sch 20A para 6(3) (as so added));

- (2) if the Secretary of State has referred the person's case to the Board under the Criminal Justice Act 1991 s 39(4) (repealed) or s 44A (repealed), that reference is to be treated as if it had been made under the Criminal Justice Act 2003 s 255C(4) (see PARA 790) (Sch 20A para 6(4) (as so added));
- (3) a determination of a reference under the Criminal Justice Act 1991 s 39(4) (repealed) or s 44A (repealed), is to be treated as a determination under the Criminal Justice Act 2003 s 256(1) (further review following Parole Board's decision not to recommend immediate release of recalled prisoner: see PARA 791) (Sch 20A para 6(5) (as so added)); and
- (4) if the person is released on licence, the duration of that licence is determined in accordance with s 249 (duration of licences granted to fixed-term prisoners: see PARA 805), subject to the transitional arrangements in s 267B, Sch 20B para 17 (duration of licences granted to prisoners serving certain Criminal Justice Act 1991 sentences: see PARA 808), Sch 20B para 19 (duration of licences granted to prisoners serving certain extended sentences: see PARA 808) and Sch 20B para 26 (duration of licences granted to prisoners serving Criminal Justice Act 1967 sentences: see PARA 809) (Sch 20A para 6(6) (as so added)).

As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.

- 12 See the Criminal Justice Act 2003 Sch 20A para 8; and PARA 818 note 4.
- 13 See the Criminal Justice Act 2003 Sch 20A para 9; and EXTRADITION vol 17(2) (Reissue) PARA 1282.
- 14 See the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 795 et seq).
- 15 See the Criminal Justice Act 2003 s 267B, Sch 20B; and PARAS 792, 795 et seq.

(iii) Early Release and Recall administered under Transitional Arrangements

A. RELEASE UNDER TRANSITIONAL ARRANGEMENTS WHERE CRIMINAL JUSTICE ACT 1991 SENTENCES AND CERTAIN EXTENDED SENTENCES APPLY

795. Initial duty to release. As soon as a prisoner¹:

- (1) who is serving a 'Criminal Justice Act 1991 sentence'², or who is serving an extended 'Criminal Justice Act 2003 sentence' (as defined for these purposes)³; and
- (2) who meets the statutory conditions for automatic release on licence⁴,

has served two-thirds of the sentence, it is the duty of the Secretary of State⁵ to release the person on licence⁶. Where these transitional provisions apply⁷, they apply in place of the usual Criminal Justice Act 2003 provisions⁸ which govern the release on licence of prisoners serving 12 months or more⁹. After a person who falls within heads (1) and (2) above¹⁰ has served one-half of the sentence, the Secretary of State must, if directed to do so by the Parole Board¹¹, release the person on licence¹². However, the Board must not give such a direction unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined¹³. Where such a direction is given by the Parole Board under transitional provisions¹⁴, they apply in place of the usual Criminal Justice Act 2003 provisions¹⁵ which govern the release on licence of prisoners serving 12 months or more¹⁶.

As soon as a person who¹⁷:

- (a) has been convicted of an offence committed on or after 30 September 1998 but before 4 April 2005¹⁸;
- (b) is serving a section 85 extended sentence in respect of that offence¹⁹;

(c) has not previously been released from prison on licence in respect of that sentence²⁰; and

(d) does not fall within heads (1) and (2) above²¹,

has served one-half of the custodial term, it is the duty of the Secretary of State to release the person on licence²². Where this transitional provision applies²³, it displaces the usual Criminal Justice Act 2003 provisions²⁴ which govern, as the case may be, the unconditional release of prisoners serving less than 12 months, and the release on licence of those serving 12 months or more²⁵.

1. It is a person to whom the Criminal Justice Act 2003 s 267B, Sch 20B para 4 applies (see note 4): see Sch 20B para 5(1) (s 267B, Sch 20B added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(6), Sch 17 paras 1, 9, 10). As to the application of the Criminal Justice Act 2003 Sch 20B Pt 2 (Sch 20B paras 3–22) see PARA 792 notes 10, 11.
2. It is where the Criminal Justice Act 2003 Sch 20B Pt 2 applies to a person by virtue of Sch 20B para 3(1): see PARA 792. As to persons to whom Pt 2 does not apply, and as to the meaning of ‘Criminal Justice Act 1991 sentence’ for these purposes, see PARA 792 note 10.
3. It is where the Criminal Justice Act 2003 Sch 20B Pt 2 applies to a person by virtue of Sch 20B para 3(2): see PARA 792. As to the meaning of ‘Criminal Justice Act 2003 sentence’ for these purposes see PARA 792 note 11.
4. It is a person to whom the Criminal Justice Act 2003 Sch 20B para 4 applies: see Sch 20B para 5(1) (as added: see note 1). The provision made by Sch 20B para 4 applies to a person in relation to whom (see Sch 20B para 4(1) (as so added)):
 - (1) all the conditions in Sch 20B para 4(2) are met (see Sch 20B para 4(1)(a) (as so added)), namely that:
 - (a) the person has been convicted of an offence committed before 4 April 2005 (see Sch 20B para 4(2)(a) (as so added));
 - (b) the person is serving a sentence of imprisonment imposed in respect of that offence on or after 1 October 1992 but before 3 December 2012 (see Sch 20B para 4(2)(b) (as so added));
 - (c) the sentence (or, in the case of a section 85 extended sentence, the ‘custodial term’) is for a term of four years or more (see Sch 20B para 4(2)(c) (as so added)); and
 - (d) the person has not previously been released from prison on licence in respect of that sentence (see Sch 20B para 4(2)(d) (as so added)); and
 - (2) the condition in any one or more of the following heads (a) to (c) below is met (see Sch 20B para 4(2)(b) (as so added)), namely:
 - (a) that the offence (or one of the offences) in respect of which the sentence was imposed is: (i) an offence specified in s 224, Sch 15 Pt 1 (violent offences) or Sch 15 Pt 2 (sexual offences) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 70–71) as Sch 15 had effect on 4 April 2005 (see Sch 20B para 4(3)(a) (as so added)); (ii) an offence under any of the Terrorism Act 2000 s 11 or s 12 (offences relating to proscribed organisations: see CRIMINAL LAW vol 25 (2010) PARAS 376–377), ss 15–18 (offences relating to terrorist property: see CRIMINAL LAW vol 25 (2010) PARAS 379–382), s 54 (weapons training: see CRIMINAL LAW vol 25 (2010) PARA 401) and ss 56–63 (directing terrorism, possessing things and collecting information for the purposes of terrorism, eliciting, publishing or communicating information about members of armed forces etc and terrorist bombing and finance offences: see CRIMINAL LAW vol 25 (2010) PARAS 403–404, 409–410, 415, 418–420) (see the Criminal Justice Act 2003 Sch 20B para 4(3)(b) (as so added)); (iii) an offence under any of the Anti-terrorism, Crime and Security Act 2001 s 47 (offence of causing nuclear explosion: see ARMED CONFLICT AND EMERGENCY vol 3 (2011) PARA 91), s 50 (assisting or inducing certain weapons-related acts overseas: see ARMED CONFLICT AND EMERGENCY vol 3 (2011) PARA 97) or s 113 (use of noxious substances or things: see CRIMINAL LAW vol 25 (2010) PARA 134) (see the Criminal Justice Act 2003 Sch 20B para 4(3)(c) (as so added)); (iv) an offence under the Sexual Offences Act 1956 s 12 (buggery) (repealed) (see the Criminal Justice Act 2003 Sch 20B para 4(3)(d) (as so added)); (v) an offence of aiding, abetting counselling, procuring or inciting

- the commission of an offence listed in any of heads (2)(a)(ii) to (2)(a)(iv) above (see the Criminal Justice Act 2003 Sch 20B para 4(3)(e) (as so added)); or (vi) an offence of conspiring or attempting to commit an offence listed in any of heads (2)(a)(ii) to (2)(a)(iv) above (see the Criminal Justice Act 2003 Sch 20B para 4(3)(f) (as so added));
- (b) that the person has served one-half of the sentence (or, in the case of a section 85 extended sentence, one-half of the ‘custodial term’) before 9 June 2008 (see Sch 20B para 4(4) (as so added));
- (c) that: (i) the person is serving the sentence by virtue of having been transferred to the United Kingdom in pursuance of a warrant under the Repatriation of Prisoners Act 1984 s 1 (see PRISONS AND PRISONERS vol 85 (2012) PARA 463) (see the Criminal Justice Act 2003 Sch 20B para 4(5)(a) (as so added)); (ii) the warrant was issued before 9 June 2008 (see Sch 20B para 4(5)(b) (as so added)); and (iii) the offence (or one of the offences) for which the person is serving the sentence corresponds to murder or to any offence specified in Sch 15 Pt 1 (violent offences) or Sch 15 Pt 2 (sexual offences) as Sch 15 had effect on 4 April 2005 (see Sch 20B para 4(5)(c) (as so added)).

The date of 3 December 2012 is known for these purposes as the ‘commencement date’, being the date on which the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121 came into force on the day appointed under s 151(1) (see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d), (o)): see the Criminal Justice Act 2003 Sch 20B para 1(1), (2) (as so added). For the purposes of Sch 20B, 9 June 2008 is the date on which the Criminal Justice and Immigration Act 2008 s 26 (repealed), which amended the Criminal Justice Act 1991 ss 33, 35, 37 (all repealed) and added s 37ZA (repealed) (duration and conditions of licences under section 33(1A) etc), came into force: see the Criminal Justice Act 2003 Sch 20B para 2 (as so added). As to the meanings of a ‘section 85 extended sentence’ and the ‘custodial term’ for these purposes see PARA 792 note 11. As to the meaning of ‘United Kingdom’ see PARA 763 note 1. As to the significance of the date of 1 October 1992 see PARA 792 note 9; and as to the significance of the date of 4 April 2005 see PARA 792 note 10. A prisoner serving a term of imprisonment of more than 12 months and less than four years (see head (1)(c) above) was known prior to 4 April 2005 as a ‘short-term’ prisoner and was eligible for automatic conditional release under the predecessor legislation.

- 5 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.
- 6 See the Criminal Justice Act 2003 Sch 20B para 5(1) (as added: see note 1). The release mentioned in the text is made under Sch 20B para 5: see Sch 20B para 5(1) (as so added). If the person is serving a section 85 extended sentence, the reference in Sch 20B para 5(1) to two-thirds of the sentence is a reference to two-thirds of the ‘custodial term’: Sch 20B para 5(2) (as so added). As to the duration and conditions of licences for these purposes see PARA 808 et seq.
- 7 It is where the Criminal Justice Act 2003 Sch 20B para 5(1), (2) applies (see the text and notes 1–6): see Sch 20B para 5(3) (as added: see note 1).
- 8 It is in place of the Criminal Justice Act 2003 s 244 (release on licence of prisoners serving 12 months or more: see PARA 785): see Sch 20B para 5(3) (as added: see note 1).
- 9 See the Criminal Justice Act 2003 Sch 20B para 5(3) (as added: see note 1).
- 10 It is after a person to whom the Criminal Justice Act 2003 Sch 20B para 4 applies (see note 4): see Sch 20B para 6(1) (as added: see note 1).
- 11 As to the constitution and functions of the Parole Board, continued by the Criminal Justice Act 2003 s 239(1), see PARA 772.
- 12 See the Criminal Justice Act 2003 Sch 20B para 6(1) (as added: see note 1). The release mentioned in the text is made under Sch 20B para 6: see Sch 20B para 6(1) (as so added). If the person is serving a section 85 extended sentence, the reference in Sch 20B para 6(1) to one-half of the sentence is a reference to one-half of the ‘custodial term’: Sch 20B para 6(3) (as so added).
- 13 See the Criminal Justice Act 2003 Sch 20B para 6(2) (as added: see note 1).
- 14 It is where the Criminal Justice Act 2003 Sch 20B para 6(1)–(3) applies (see the text and notes 10–13): see Sch 20B para 6(4) (as added: see note 1).
- 15 It is in place of the Criminal Justice Act 2003 s 244 (release on licence of prisoners serving 12 months or more: see PARA 785): see Sch 20B para 6(4) (as added: see note 1).
- 16 See the Criminal Justice Act 2003 Sch 20B para 6(4) (as added: see note 1).

- 17 It is as soon as a person to whom the Criminal Justice Act 2003 Sch 20B para 7 applies (see heads (a) to (d) in the text): see Sch 20B para 8(1) (as added: see note 1).
- 18 Criminal Justice Act 2003 Sch 20B para 7(1)(a) (as added: see note 1). As to the significance of the date of 30 September 1998 see PARA 792 note 11.
- 19 Criminal Justice Act 2003 Sch 20B para 7(1)(b) (as added: see note 1).
- 20 Criminal Justice Act 2003 Sch 20B para 7(1)(c) (as added: see note 1).
- 21 Criminal Justice Act 2003 Sch 20B para 7(1)(d) (as added: see note 1). Head (d) in the text refers to a person to whom Sch 20B para 4 does not apply (see note 4): see Sch 20B para 7(1)(d) (as so added).
- 22 See the Criminal Justice Act 2003 Sch 20B para 8(1) (as added: see note 1). The release mentioned in the text is made under Sch 20B para 8: see Sch 20B para 8(1) (as so added).
- 23 It is where the Criminal Justice Act 2003 Sch 20B para 8(1) applies (see the text and notes 17–22): see Sch 20B para 8(2) (as added: see note 1).
- 24 It is in place of either the Criminal Justice Act 2003 s 243A (unconditional release of prisoners serving less than 12 months: see PARA 784) or s 244 (release on licence of prisoners serving 12 months or more: see PARA 785): see Sch 20B para 8(2) (as added: see note 1).
- 25 See the Criminal Justice Act 2003 Sch 20B para 8(2) (as added: see note 1).

796. Release after recall. As soon as a person¹:

- (1) who has been convicted of an offence committed before 30 September 1998²;
- (2) who is serving a sentence of imprisonment imposed in respect of that offence on or after 1 October 1992³;
- (3) whose sentence is for a term of 12 months or more⁴;
- (4) who has been released on licence under Part II of the Criminal Justice Act 1991⁵; and
- (5) who has been recalled before 14 July 2008 (and has not been recalled after that date)⁶,

would (but for the earlier release) have served three-quarters of the sentence, it is the duty of the Secretary of State⁷ to release the person unconditionally⁸.

As soon as a person who⁹:

- (a) has been convicted of an offence committed on or after 30 September 1998 but before 4 April 2005¹⁰;
- (b) is serving a sentence of imprisonment for a term of 12 months or more imposed in respect of that offence¹¹;
- (c) has been released on licence under Part II of the Criminal Justice Act 1991¹²; and
- (d) has been recalled before 14 July 2008 (and has not been recalled after that date)¹³,

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 licence¹⁴.

Where a person who¹⁵:

- (i) has been convicted of an offence committed on or after 30 September 1998 but before 4 April 2005¹⁶;
- (ii) is serving a section 85 extended sentence in respect of that offence¹⁷;
- (iii) has been released on licence under Part II of the Criminal Justice Act 1991¹⁸; and
- (iv) has been recalled before 14 July 2008 (and has not been recalled after that date)¹⁹,

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 adding²⁰:

- (A) one-half of the custodial term (where the prisoner is serving a sentence with a custodial term of less than 12 months)²¹ or three-quarters of the custodial term (where the prisoner is serving a sentence with a custodial term of 12 months or more)²²; and
- (B) the extension period²³.

Where a person is serving an extended Criminal Justice Act 2003 sentence imposed before 14 July 2008 (which is not a section 85 extended sentence)²⁴, that person's release on licence is governed by the usual Criminal Justice Act 2003 provisions²⁵, but with modifications²⁶.

1. In a person to whom the Criminal Justice Act 2003 s 267B, Sch 20B para 9 applies (see heads (1) to (5) in the text): see Sch 20B para 10 (s 267B, Sch 20B added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(6), Sch 17 paras 1, 9, 10). The provisions of the Criminal Justice Act 2003 Sch 20B para 9 do not apply if the court by which the person was sentenced ordered that the Powers of Criminal Courts (Sentencing) Act 2000 s 86 (repealed) (extension of periods in custody and on licence in the case of certain sexual offences committed before 30 September 1998) should apply: see the Criminal Justice Act 2003 Sch 20B para 9(2) (as so added). References in Sch 20B to the Powers of Criminal Courts (Sentencing) Act 2000 s 86 (repealed) include, in accordance with s 165, Sch 11 para 1(3), the Criminal Justice Act 1991 s 44 (extended sentences for sexual or violent offenders) (repealed), as originally enacted: see the Criminal Justice Act 2003 Sch 20B para 1(7).

As to the application of the Criminal Justice Act 2003 Sch 20B Pt 2 (Sch 20B paras 3–22) see PARA 792 notes 10, 11.

2. Criminal Justice Act 2003 Sch 20B para 9(1)(a) (as added: see note 1). As to the significance of the date of 30 September 1998 see PARA 792 note 11.
3. Criminal Justice Act 2003 Sch 20B para 9(1)(b) (as added: see note 1). The provisions of Sch 20B Pt 2 apply to certain persons serving a 'Criminal Justice Act 1991 sentence' or a specified extended sentence falling within the definition of a 'Criminal Justice Act 2003 sentence': see PARA 792. As to the significance of the date of 1 October 1992 see PARA 792 note 9. As to the meaning of 'Criminal Justice Act 1991 sentence' for these purposes see PARA 792 note 10; and as to the meaning of 'Criminal Justice Act 2003 sentence' for these purposes see PARA 792 note 11.
4. Criminal Justice Act 2003 Sch 20B para 9(1)(c) (as added: see note 1).
5. Criminal Justice Act 2003 Sch 20B para 9(1)(d) (as added: see note 1). As to the Criminal Justice Act 1991 Pt II (ss 32–51) (repealed) see PARA 792 note 2.
6. Criminal Justice Act 2003 Sch 20B para 9(1)(e) (as added: see note 1). As to the significance of the date of 14 July 2008 see PARA 792 note 11.
7. As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.
8. See the Criminal Justice Act 2003 Sch 20B para 10 (as added: see note 1).
9. In a person to whom the Criminal Justice Act 2003 Sch 20B para 11 applies (see heads (a) to (d) in the text): see Sch 20B para 12 (as added: see note 1). The provisions of Sch 20B para 11 do not apply, however, if:
- (1) the person has been released and recalled more than once (see Sch 20B para 11(2) (as so added)); or
 - (2) the sentence is a section 85 extended sentence (see Sch 20B para 11(3) (as so added)).

Where head (2) above applies, Sch 20B para 13 (see the text and notes 15–19) applies to such a case instead of Sch 20B para 11: see Sch 20B para 11(3) (as so added). As to the meaning of a 'section 85 extended sentence' for these purposes see PARA 792 note 11.

10. Criminal Justice Act 2003 Sch 20B para 11(1)(a) (as added: see note 1). See note 9. As to the significance of the date of 4 April 2005 see PARA 792 note 10.
11. Criminal Justice Act 2003 Sch 20B para 11(1)(b) (as added: see note 1). See note 9.
12. Criminal Justice Act 2003 Sch 20B para 11(1)(c) (as added: see note 1). See note 9.
13. Criminal Justice Act 2003 Sch 20B para 11(1)(d) (as added: see note 1). See note 9.
14. See the Criminal Justice Act 2003 Sch 20B para 12 (as added: see note 1). As to the duration and conditions of licences for these purposes see PARA 808 et seq.
15. In a person to whom the Criminal Justice Act 2003 s 267B, Sch 20B para 13 applies (see heads (i) to (iv) in the text): see Sch 20B para 14(1) (as added: see note 1). The provision made by Sch 20B para 13 does not apply, however, if the person has been released and recalled more than once: see Sch 20B para 13(2) (as so added).

- 16 Criminal Justice Act 2003 Sch 20B para 13(1)(a) (as added: see note 1).
 17 Criminal Justice Act 2003 Sch 20B para 13(1)(b) (as added: see note 1).
 18 Criminal Justice Act 2003 Sch 20B para 13(1)(c) (as added: see note 1). See note 15.
 19 Criminal Justice Act 2003 Sch 20B para 13(1)(d) (as added: see note 1). See note 15.
 20 See the Criminal Justice Act 2003 Sch 20B para 14(1), (2) (as added: see note 1).
 21 See the Criminal Justice Act 2003 Sch 20B para 14(1)(a) (as added: see note 1). As to the meaning of 'custodial term' for these purposes see PARA 792 note 11.
 22 See the Criminal Justice Act 2003 Sch 20B para 14(2)(a) (as added: see note 1).
 23 See the Criminal Justice Act 2003 Sch 20B para 14(1)(b), (2)(b) (as added: see note 1). As to the meaning of 'extension period' for these purposes see PARA 792 note 11.
 24 In where a person is serving an extended sentence imposed before 14 July 2008 under either s 227 (repealed with savings) (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 75, 88) or s 228 (repealed with savings) (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 84): see Sch 20B para 15(1) (as added: see note 1).
 25 In the Criminal Justice Act 2003 s 247 (release on licence of prisoners serving extended sentence under s 227 or s 228 (both repealed with savings): see PARA 787) applies: see Sch 20B para 15(2) (as added: see note 1).
 26 See the Criminal Justice Act 2003 Sch 20B para 15(1), (2) (as added: see note 1). The specified modifications are that:
- (1) the Secretary of State must not release the prisoner under s 247(2) (see PARA 787) unless the Parole Board has directed his release under s 247(2) (see s 247(2)(b) as originally enacted) (see Sch 20B para 15(3) (as so added));
 - (2) the Parole Board must not give a direction under s 247(3) (as originally enacted) unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined (see Sch 20B para 15(4) (as so added)); and
 - (3) as soon as the prisoner has served the appropriate custodial term, the Secretary of State must release the prisoner on licence, unless he has previously been recalled under s 254 (recall of prisoners after release on licence: see PARA 788) (see Sch 20B para 15(5) (as so added)).

As to the constitution and functions of the Parole Board, continued by s 239(1), see PARA 772.

B. RELEASE UNDER TRANSITIONAL ARRANGEMENTS WHERE CRIMINAL JUSTICE ACT 1967 SENTENCES APPLY

797. Initial duty to release. As soon as a person¹:

- (1) who is serving a Criminal Justice Act 1967 sentence of imprisonment imposed before 1 October 1992²;
- (2) whose sentence is for a term of more than 12 months³; and
- (3) who has not previously been released from prison on licence in respect of that sentence⁴,

has served two-thirds of the sentence⁵, it is the duty of the Secretary of State⁶ to release that person unconditionally⁷; and the Secretary of State must, if directed to do so by the Parole Board⁸, release on licence a person who falls within heads (1) to (3) above⁹, after he has served one-third of the sentence or six months (whichever is longer)¹⁰. However, the Board must not give such a direction unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined¹¹. Where these transitional provisions apply¹², they displace the usual Criminal Justice Act 2003 provisions¹³ which govern the release on licence of prisoners serving 12 months or more¹⁴.

As soon as a person¹⁵:

- (a) who is serving a Criminal Justice Act 1967 sentence of imprisonment imposed before 1 October 1992¹⁶;
- (b) whose sentence is for a term of more than 12 months¹⁷;

- (c) on the passing of whose sentence an extended sentence certificate was issued¹⁸;
- (d) who has not previously been released from prison on licence in respect of that sentence¹⁹,

has served two-thirds of the sentence²⁰, it is the duty of the Secretary of State to release the person on licence²¹. After a person who falls within heads (a) to (d) above²² 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 Parole Board, release the person on licence²³. The Board must not give such a direction, however, unless it is satisfied that it is no longer necessary for the protection of the public that the person should be confined²⁴. Where these transitional provisions apply²⁵, they displace the usual Criminal Justice Act 2003 provisions²⁶ which govern the release on licence of prisoners serving 12 months or more²⁷.

- 1 Ie a person to whom the Criminal Justice Act 2003 s 267B, Sch 20B para 24 applies (see heads (1) to (3) in the text): see Sch 20B para 25(1) (s 267B, Sch 20B added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(6), Sch 17 paras 1, 9, 10). The Criminal Justice Act 2003 Sch 20B para 24 does not apply if, on the passing of the sentence, an extended sentence certificate (see note 18) was issued: Sch 20B para 24(3) (as so added). As to the application of Sch 20B Pt 3 (Sch 20B paras 23–33) see PARA 792 note 9.
- 2 Criminal Justice Act 2003 Sch 20B para 24(1)(a) (as added: see note 1). As to the meaning of ‘Criminal Justice Act 1967 sentence’ for these purposes, and as to the significance of the date of 1 October 1992, see PARA 792 note 9.
- 3 Criminal Justice Act 2003 Sch 20B para 24(1)(b) (as added: see note 1).
- 4 Criminal Justice Act 2003 Sch 20B para 24(1)(c) (as added: see note 1).
- 5 See the Criminal Justice Act 2003 Sch 20B para 25(1)(a) (as added: see note 1).
- 6 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.
- 7 See the Criminal Justice Act 2003 Sch 20B para 25(1) (as added: see note 1). The release mentioned in the text is made under Sch 20B para 25: see Sch 20B para 25(1) (as so added).
- 8 As to the constitution and functions of the Parole Board, continued by the Criminal Justice Act 2003 s 239(1), see PARA 772.
- 9 Ie a person falling within the Criminal Justice Act 2003 Sch 20B para 24(1) (see heads (1) to (3) in the text): see Sch 20B para 25(2) (as added: see note 1).
- 10 See the Criminal Justice Act 2003 Sch 20B para 25(2) (as added: see note 1). The release mentioned in the text is made under Sch 20B para 25: see Sch 20B para 25(2) (as so added). As to the duration and conditions of licences for these purposes see PARA 808 et seq.
- 11 See the Criminal Justice Act 2003 Sch 20B para 25(3) (as added: see note 1).
- 12 Ie where the Criminal Justice Act 2003 Sch 20B para 25(1)–(3) applies (see the text and notes 1–11): see Sch 20B para 25(4) (as added: see note 1).
- 13 Ie in place of the Criminal Justice Act 2003 s 244 (release on licence of prisoners serving 12 months or more: see PARA 785): see Sch 20B para 25(4) (as added: see note 1).
- 14 See the Criminal Justice Act 2003 Sch 20B para 25(4) (as added: see note 1).
- 15 Ie a person to whom the Criminal Justice Act 2003 Sch 20B para 27(1) applies (see heads (a) to (d) in the text): see Sch 20B para 28(1) (as added: see note 1).
- 16 Criminal Justice Act 2003 Sch 20B para 27(1)(a) (as added: see note 1).
- 17 Criminal Justice Act 2003 Sch 20B para 27(1)(b) (as added: see note 1).
- 18 Criminal Justice Act 2003 Sch 20B para 27(1)(c) (as added: see note 1). For these purposes, ‘extended sentence certificate’ means a certificate that was issued under the Powers of Criminal Courts Act 1973 s 28 (punishment of persistent offenders) (repealed by the Criminal Justice Act 1991 ss 5(2)(a), 101(2), Sch 13) stating that an extended term of imprisonment was imposed on the person under the Powers of Criminal Courts Act 1973 s 28: see the Criminal Justice Act 2003 Sch 20B para 27(3) (as so added).
- 19 Criminal Justice Act 2003 Sch 20B para 27(1)(d) (as added: see note 1).
- 20 See the Criminal Justice Act 2003 Sch 20B para 28(1)(a) (as added: see note 1).

- 21 See the Criminal Justice Act 2003 Sch 20B para 28(1) (as added: see note 1). The release mentioned in the text is made under Sch 20B para 28: see Sch 20B para 28(1) (as so added).
- 22 Ie after a person falling within the Criminal Justice Act 2003 Sch 20B para 27(1) (see heads (a) to (d) in the text): see Sch 20B para 28(2) (as added: see note 1).
- 23 Criminal Justice Act 2003 Sch 20B para 28(2) (as added: see note 1). The release mentioned in the text is made under Sch 20B para 28: see Sch 20B para 28(2) (as so added).
- 24 See the Criminal Justice Act 2003 Sch 20B para 28(3) (as added: see note 1).
- 25 Ie where the Criminal Justice Act 2003 Sch 20B para 28(1)–(3) apply (see the text and notes 20–24): see Sch 20B para 28(4) (as added: see note 1).
- 26 Ie in place of the Criminal Justice Act 2003 s 244 (release on licence of prisoners serving 12 months or more: see PARA 785): see Sch 20B para 28(4) (as added: see note 1).
- 27 See the Criminal Justice Act 2003 Sch 20B para 28(4) (as added: see note 1).

798. Release after recall. As soon as a person¹:

- (1) who is serving a Criminal Justice Act 1967 sentence of imprisonment imposed before 1 October 1992²;
- (2) whose sentence is for a term of more than 12 months³;
- (3) who has been released on licence under Part II of the Criminal Justice Act 1991⁴; and
- (4) who has been recalled before 14 July 2008 (and has not been recalled after that date)⁵,

would (but for the earlier release) have served two-thirds of the sentence⁶, it is the duty of the Secretary of State to release the person unconditionally⁷.

As soon as a person⁸:

- (a) who is serving a Criminal Justice Act 1967 sentence of imprisonment imposed before 1 October 1992⁹;
- (b) whose sentence is for a term of 12 months or more¹⁰;
- (c) on the passing of whose sentence an extended sentence certificate was issued¹¹;
- (d) who has been released on licence under Part II of the Criminal Justice Act 1991¹²; and
- (e) who has been recalled before 14 July 2008 (and has not been recalled after that date)¹³,

would (but for the earlier release) have served two-thirds of the sentence¹⁴, it is the duty of the Secretary of State to release the person on licence¹⁵.

- 1 Ie as soon as a person to whom the Criminal Justice Act 2003 s 267B, Sch 20B para 24(2) applies (see heads (1) to (4) in the text): see Sch 20B para 25(1) (s 267B, Sch 20B added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(6), Sch 17 paras 1, 9, 10). The Criminal Justice Act 2003 Sch 20B para 24 does not apply if, on the passing of the sentence, an extended sentence certificate was issued: Sch 20B para 24(3) (as so added). As to the meaning of 'extended sentence certificate' see PARA 797 note 18. As to extended sentence certificates see further the text and notes 8–15. As to the application of Sch 20B Pt 3 (Sch 20B paras 23–33) see PARA 792 note 9.
- 2 Criminal Justice Act 2003 Sch 20B para 24(2)(a) (as added: see note 1). As to the meaning of 'Criminal Justice Act 1967 sentence' for these purposes, and as to the significance of the date of 1 October 1992, see PARA 792 note 9.
- 3 Criminal Justice Act 2003 Sch 20B para 24(2)(b) (as added: see note 1).
- 4 Criminal Justice Act 2003 Sch 20B para 24(2)(c) (as added: see note 1). In Sch 20B Pt 3, references to release under the Criminal Justice Act 1991 Pt II (ss 32–51) (repealed) (see PARA 792 note 2) include release under the Criminal Justice Act 1967 s 60 (repealed with savings) (release on licence of persons serving determinate sentences): see the Criminal Justice Act 2003 Sch 20B para 23(3) (as so added).
- 5 Criminal Justice Act 2003 Sch 20B para 24(2)(d) (as added: see note 1). As to the significance of the date of 14 July 2008 see PARA 792 note 11.

If a person has been released under the Criminal Justice Act 1991 s 34A (repealed) and recalled under s 38A(1)(b) (repealed), or if a person has been released under the Criminal

Justice Act 2003 s 246 (power to release fixed-term prisoners before required term: see PARA 786), and recalled under s 255(1)(b) (ie where it is no longer possible to monitor whereabouts of a prisoner released on licence subject to a curfew condition: see PARA 789), the release and recall are to be disregarded for the purposes of Sch 20B para 24: see Sch 20B para 24(4) (as so added).

- 6 See the Criminal Justice Act 2003 Sch 20B para 25(1)(b) (as added: see note 1).
- 7 See the Criminal Justice Act 2003 Sch 20B para 25(1) (as added: see note 1). Such a release as is mentioned in the text is made under Sch 20B para 25: see Sch 20B para 25(1) (as so added).
- 8 Ie as soon as a person to whom the Criminal Justice Act 2003 Sch 20B para 27(2) applies (see heads (a) to (e) in the text): see Sch 20B para 28(1) (as added: see note 1).
- 9 Criminal Justice Act 2003 Sch 20B para 27(2)(a) (as added: see note 1).
- 10 Criminal Justice Act 2003 Sch 20B para 27(2)(b) (as added: see note 1).
- 11 Criminal Justice Act 2003 Sch 20B para 27(2)(c) (as added: see note 1).
- 12 Criminal Justice Act 2003 Sch 20B para 27(2)(d) (as added: see note 1). See note 4.
- 13 Criminal Justice Act 2003 Sch 20B para 27(2)(e) (as added: see note 1).
- 14 See the Criminal Justice Act 2003 Sch 20B para 28(1)(b) (as added: see note 1).
- 15 See the Criminal Justice Act 2003 Sch 20B para 28(1) (as added: see note 1). Such a release as is mentioned in the text is made under Sch 20B para 28: see Sch 20B para 28(1) (as so added).

(6) FINE DEFAULTERS AND CONTEMNORS

(i) Prisoner Committed or Detained on or after 4 April 2005

799. Early release of contemnors. As soon as a person who has been committed to prison for contempt of court or any kindred offence¹ has served one-half of the term for which he was committed, it is the duty of the Secretary of State² to release him unconditionally³. Where such a person is also serving one or more sentences of imprisonment⁴, however, the Secretary of State is not so required⁵ to release him until he is also required to release him in respect of that sentence or each of those sentences⁶.

The Secretary of State also may at any time release unconditionally such a person if he is satisfied that exceptional circumstances exist which justify the person's release on compassionate grounds⁷.

- 1 Ie a person to whom the Criminal Justice Act 2003 s 258 applies: see s 258(1)(b), (2). This section applies not only to contemnors (see s 258(1)(b)) but also to fine defaulters (see s 258(1)(a); and PARA 800).
The Criminal Justice Act 2003 ss 243A–264 do not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of 'England' and 'Wales' see PARA 763 note 1.
- 2 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.
- 3 See the Criminal Justice Act 2003 s 258(1)(b), (2). The provision made by s 258(2) is subject to the transitional arrangements contained in s 267B, Sch 20B para 35 (duty to release fine defaulters and contemnors unconditionally: see PARA 801): see s 258(2A) (added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(6), Sch 17 paras 1, 5(1), (2)). Where the transitional provisions do not apply, the Criminal Justice Act 2003 s 258 applies to any person who was, before 4 April 2005, committed to prison or to be detained under the Powers of Criminal Courts (Sentencing) Act 2000 s 108 (detention of persons aged at least 18 but under 21 for default or contempt: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 11) for contempt of court or any kindred offence: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(2)(b); and PARA 801 note 10.
- 4 The reference in the Criminal Justice Act 2003 s 258(3) to sentences of imprisonment includes sentences of detention:
 - (1) under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (sentence of detention for a specified period passed on a person aged under 18 who has

- committed a serious offence: see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1307; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 78) or s 96 (prospectively repealed) (detention in young offender institution for a person aged between 18 and 21: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 85) (see the Criminal Justice Act 2003 s 258(3A) (added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 117(1), (6); and amended by s 125(4), Sch 20 paras 1, 8)); or
- (2) under the Criminal Justice Act 2003 s 226A (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS), s 226B (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS), s 227 (repealed with savings) (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 75, 88) or s 228 (repealed with savings) (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 84) (see s 258(3A) (as so added)).
- The amendments made by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 117 apply in relation to any person who falls to be released under the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 800 et seq) on or after 3 December 2012 (ie on or after the commencement date, being the day appointed under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 151 for the coming into force of s 117: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d)): see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 120, Sch 15 paras 1, 2(2).
- 5 Ie nothing in the Criminal Justice Act 2003 s 258 or in the transitional arrangements contained in Sch 20B para 35 (duty to release fine defaulters and contemnors unconditionally: see note 3) so requires: see s 258(3) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 Sch 17 paras 1, 5(1), (3)).
- 6 See the Criminal Justice Act 2003 s 258(3) (as amended see note 5).
- 7 See the Criminal Justice Act 2003 s 258(4). As to the release of determinate sentence prisoners on compassionate grounds see PARA 769.

800. Early release of fine defaulters. As soon as a person who has been committed to prison in default of payment of a sum adjudged to be paid by a conviction¹ has served one-half of the term for which he was committed, it is the duty of the Secretary of State² to release him unconditionally³. Where such a person is also serving one or more sentences of imprisonment⁴, however, the Secretary of State is not so required⁵ to release him until he is also required to release him in respect of that sentence or each of those sentences⁶.

The Secretary of State also may at any time release unconditionally such a person if he is satisfied that exceptional circumstances exist which justify the person's release on compassionate grounds⁷.

- 1 Ie a person to whom the Criminal Justice Act 2003 s 258 applies: see s 258(1)(a), (2). This section applies not only to fine defaulters (see s 258(1)(a)) but also to contemnors (see s 258(1)(b); and PARA 799).
- The Criminal Justice Act 2003 ss 243A–264 do not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of 'England' and 'Wales' see PARA 763 note 1.
- 2 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.
- 3 See the Criminal Justice Act 2003 s 258(1)(a), (2).
- The provision made by s 258(2) is subject to the transitional arrangements contained in s 267B, Sch 20B para 35 (duty to release fine defaulters and contemnors unconditionally: see PARA 802): see s 258(2A) (added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(6), Sch 17 paras 1, 5(1), (2)).
- Where the transitional provisions do not apply, the Criminal Justice Act 2003 s 258 applies to any person who was, before 4 April 2005, committed to prison or to be

detained under the Powers of Criminal Courts (Sentencing) Act 2000 s 108 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 11) in default of payment of a sum adjudged to be paid by a conviction: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(2)(a); and PARA 802 note 10.

- 4 As to the meaning of references in the Criminal Justice Act 2003 s 258(3) to sentences of imprisonment see PARA 799 note 4.
- 5 It is nothing in the Criminal Justice Act 2003 s 258 or in the transitional arrangements contained in Sch 20B para 35 (duty to release fine defaulters and contemnors unconditionally: see note 3) so requires: see s 258(3) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 Sch 17 paras 1, 5(1), (3)).
- 6 See the Criminal Justice Act 2003 s 258(3) (as amended see note 5).
- 7 See the Criminal Justice Act 2003 s 258(4). As to the release of determinate sentence prisoners on compassionate grounds see PARA 769.

(ii) Prisoner Committed or Detained before 4 April 2005

801. Early release of contemnors. As soon as a person¹:

- (1) who has been committed to prison or to be detained under the Powers of Criminal Courts (Sentencing) Act 2000² for contempt of court or any kindred offence³;
- (2) who was so committed or detained before 4 April 2005⁴; and
- (3) whose term for which he was so committed or detained is 12 months or more⁵,

has served two-thirds of the term, it is the duty of the Secretary of State⁶ to release the person unconditionally⁷.

These transitional provisions governing the early release of contemnors⁸, where they apply, displace the usual Criminal Justice Act 2003 provisions⁹ governing the same¹⁰.

- 1 It is as soon as a person to whom the Criminal Justice Act 2003 s 267B, Sch 20B para 35 applies (see heads (1) to (3) in the text): see Sch 20B para 35(2) (s 267B, Sch 20B added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(6), Sch 17 paras 1, 9, 10).
- 2 It is under the Powers of Criminal Courts (Sentencing) Act 2000 s 108 (prospectively repealed) (detention of persons aged at least 18 but under 21 for default or contempt: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 11): see the Criminal Justice Act 2003 Sch 20B para 35(1)(a) (as added: see note 1).
- 3 See the Criminal Justice Act 2003 Sch 20B para 35(1)(a)(ii) (as added: see note 1).
- 4 Criminal Justice Act 2003 Sch 20B para 35(1)(b) (as added: see note 1). As to the significance of the date of 4 April 2005 see PARA 792 note 10.
- 5 Criminal Justice Act 2003 Sch 20B para 35(1)(c) (as added: see note 1).
- 6 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.
- 7 See the Criminal Justice Act 2003 Sch 20B para 35(2) (as added: see note 1).
- 8 It is the provision made by the Criminal Justice Act 2003 Sch 20B para 35(2) (see the text and notes 1–7): see Sch 20B para 35(3) (as added: see note 1).
- 9 It is the Criminal Justice Act 2003 s 258(2) (early release of contemnors: see PARA 799): see Sch 20B para 35(3) (as added: see note 1).
- 10 See the Criminal Justice Act 2003 Sch 20B para 35(3) (as added: see note 1). Where the transitional provisions do not apply, s 258 (early release of contemnors: see PARA 799) applies to any person who was, before 4 April 2005, committed to prison or to be detained under the Powers of Criminal Courts (Sentencing) Act 2000 s 108 (detention of persons aged at least 18 but under 21 for default or contempt: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 11) for contempt of court or any kindred offence: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(2)(b). See also PARA 792 note 11.

802. Early release of fine defaulters. As soon as a person¹:

- (1) who has been committed to prison or to be detained under the

Powers of Criminal Courts (Sentencing) Act 2000² in default of payment of a sum adjudged to be paid by a conviction³;

- (2) who was so committed or detained before 4 April 2005⁴; and
- (3) whose term for which he was so committed or detained is 12 months or more⁵,

has served two-thirds of the term, it is the duty of the Secretary of State⁶ to release the person unconditionally⁷.

These transitional provisions governing the early release of fine defaulters⁸, where they apply, displace the usual Criminal Justice Act 2003 provisions⁹ governing the same¹⁰.

- 1 Ie as soon as a person to whom the Criminal Justice Act 2003 s 267B, Sch 20B para 35 applies (see heads (1) to (3) in the text): see Sch 20B para 35(2) (s 267B, Sch 20B added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(6), Sch 17 paras 1, 9, 10).
- 2 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 108 (prospectively repealed) (detention of persons aged at least 18 but under 21 for default or contempt: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 11): see the Criminal Justice Act 2003 Sch 20B para 35(1)(a) (as added: see note 1).
- 3 See the Criminal Justice Act 2003 Sch 20B para 35(1)(a)(i) (as added: see note 1).
- 4 Criminal Justice Act 2003 Sch 20B para 35(1)(b) (as added: see note 1). As to the significance of the date of 4 April 2005 see PARA 792 note 10.
- 5 Criminal Justice Act 2003 Sch 20B para 35(1)(c) (as added: see note 1).
- 6 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.
- 7 See the Criminal Justice Act 2003 Sch 20B para 35(2) (as added: see note 1).
- 8 Ie the provision made by the Criminal Justice Act 2003 Sch 20B para 35(2) (see the text and notes 1–7): see Sch 20B para 35(3) (as added: see note 1).
- 9 Ie the Criminal Justice Act 2003 s 258(2) (early release of fine defaulters: see PARA 800): see Sch 20B para 35(3) (as added: see note 1).
- 10 See the Criminal Justice Act 2003 Sch 20B para 35(3) (as added: see note 1). Where the transitional provisions do not apply, s 258 (early release of fine defaulters: see PARA 800) applies to any person who was, before 4 April 2005, committed to prison or to be detained under the Powers of Criminal Courts (Sentencing) Act 2000 s 108 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 11) in default of payment of a sum adjudged to be paid by a conviction: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(2)(a). See also PARA 792 note 11.

(7) CONDITIONS OF RELEASE; SUPERVISION

(i) Prisoner Serving Indeterminate Sentence

803. Duration of licences granted to life prisoner. Where a life prisoner¹, other than a prisoner falling within heads (1) and (2) below², is released on licence³, the licence must, unless previously revoked⁴, remain in force until his death⁵. However, where a prisoner who⁶:

- (1) is serving one or more preventive sentences⁷; and
- (2) is not serving any other life sentence⁸,

has been released on licence under Chapter II of Part II of the Crime (Sentences) Act 1997⁹, and where the qualifying period has expired¹⁰, the Secretary of State¹¹ must, if directed to do so by the Parole Board¹², order that the licence is to cease to have effect¹³. Where:

- (a) the prisoner has been released on licence under Chapter II of Part II of the Crime (Sentences) Act 1997¹⁴;
- (b) the qualifying period has expired¹⁵; and
- (c) if he has made a previous application¹⁶, a period of at least 12 months has expired since the disposal of that application¹⁷,

the prisoner may make an application to the Parole Board¹⁸. Where such an application is made, the Parole Board must¹⁹:

- (i) 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 effect²⁰; or
- (ii) otherwise dismiss the application²¹.

Where a prisoner falling within heads (1) and (2) above²² is released on licence, the licence remains in force until his death unless either it is previously revoked²³, or it ceases to have effect in accordance with an order made by the Secretary of State²⁴.

- 1 As to the meaning of 'life prisoner' for the purposes of the Crime (Sentences) Act 1997 Pt II Ch II (ss 28–34) (life sentences) see PARA 778.
- 2 In other than a prisoner to whom the Crime (Sentences) Act 1997 s 31A applies (see the text and notes 6–21): see s 31(1) (amended by the Criminal Justice Act 2003 s 230, Sch 18 para 1(1), (2); and the Criminal Justice and Immigration Act 2008 s 149, Sch 28 Pt 2).
The Crime (Sentences) Act 1997 Pt II Ch II does not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of 'England' and 'Wales' see PARA 763 note 1.
- 3 As to licence conditions imposed on life prisoners see PARA 804. As to release, supervision and recall as they apply to indeterminate sentence prisoners see Prison Service Order 4700 (Indeterminate Sentence Prisoner Manual) Ch 13 (Release, Supervision and Recall). As to the system of central policy instructions and guidance contained eg in Prison Service Orders (PSOs) and Prison Service Instructions (PSIs) see PRISONS AND PRISONERS vol 85 (2012) PARA 406.
- 4 In under the Crime (Sentences) Act 1997 s 32 (see PARA 780): see s 31(1) (as amended: see note 2).
- 5 Crime (Sentences) Act 1997 s 31(1) (as amended: see note 2).
- 6 See the Crime (Sentences) Act 1997 s 31A(1), (2) (s 31A added by the Criminal Justice Act 2003 s 230, Sch 18 para 2).
- 7 Crime (Sentences) Act 1997 s 31A(1)(a) (as added: see note 6). For these purposes, 'preventive sentence' means a sentence of imprisonment or detention in a young offender institution for public protection under the Criminal Justice Act 2003 s 225 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 74) or a sentence of detention for public protection under s 226 (see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1300; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 82), including such a sentence of imprisonment or detention passed as a result of the Armed Forces Act 2006 s 219 (person aged at least 18 but under 21 convicted by Court Martial of offence of criminal conduct corresponding to a serious offence: see ARMED FORCES vol 3 (2011) PARA 611) or s 221 (required custodial sentences for dangerous offenders: see ARMED FORCES vol 3 (2011) PARA 611): see the Crime (Sentences) Act 1997 s 31A(5) (s 31A as so added; definition of 'preventive sentence' in s 31A(5) amended by the Armed Forces Act 2006 s 378(1), Sch 16 para 141; and the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 117(10)(a)). The amendments made by s 117 apply in relation to any person who falls to be released under the Crime (Sentences) Act 1997 Pt II Ch II (life sentences) (see also PARAS 770, 778 et seq, 804 et seq) on or after 3 December 2012 (ie on or after the commencement date, being the day appointed under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 151 for the coming into force of s 117: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d)): see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 120, Sch 15 paras 1, 2(2). As to young offender institutions see PRISONS AND PRISONERS vol 85 (2012) PARA 487 et seq.
- 8 Crime (Sentences) Act 1997 s 31A(1)(b) (as added: see note 6).
- 9 See the Crime (Sentences) Act 1997 s 31A(2)(a) (as added: see note 6). The text refers to release on licence under Pt II Ch II (life sentences) (see also PARAS 770, 778 et seq, 804 et seq): see s 31A(2)(a) (as so added).
- 10 See the Crime (Sentences) Act 1997 s 31A(2)(b) (as added: see note 6). For these purposes, the 'qualifying period', in relation to a prisoner who has been released on licence, means the period of 10 years beginning with the date of his release: see s 31A(5) (as so added).

- 11 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.
- 12 As to the constitution and functions of the Parole Board, continued by the Criminal Justice Act 2003 s 239(1), see PARA 772.
- 13 See the Crime (Sentences) Act 1997 s 31A(2) (as added: see note 6).
- 14 See the Crime (Sentences) Act 1997 s 31A(3)(a) (as added: see note 6). The text refers to release on licence under Pt II Ch II (life sentences) (see also PARAS 770, 778 et seq, 804 et seq): see s 31A(3)(a) (as so added).
- 15 See the Crime (Sentences) Act 1997 s 31A(3)(b) (as added: see note 6).
- 16 Ie a previous application to the Parole Board under the Crime (Sentences) Act 1997 s 31A(3): see s 31A(3)(c) (as added: see note 6).
- 17 See the Crime (Sentences) Act 1997 s 31A(3)(c) (as added: see note 6).
- 18 See the Crime (Sentences) Act 1997 s 31A(3) (as added: see note 6). The text refers to an application which is made under s 31A(3): see s 31A(3) (as so added).
- 19 See the Crime (Sentences) Act 1997 s 31A(4) (as added: see note 6).
- 20 See the Crime (Sentences) Act 1997 s 31A(4)(a) (as added: see note 6).
- 21 See the Crime (Sentences) Act 1997 s 31A(4)(b) (as added: see note 6).
- 22 Ie where a prisoner to whom the Crime (Sentences) Act 1997 s 31A applies (see the text and notes 6–21): see s 31(1A) (added by the Criminal Justice Act 2003 Sch 18 para 1(1), (3)).
- 23 Ie under the Crime (Sentences) Act 1997 s 32(1), (2) (see PARA 780): see s 31(1A) (as added: see note 22).
- 24 Crime (Sentences) Act 1997 s 31(1A) (as added: see note 22). The text refers to an order made by the Secretary of State under s 31A (see s 31A(2) (see the text and notes 11–13) and s 31A(4)(a) (see head (i) in the text): see s 31(1A) (as so added).

804. Licence conditions imposed on life prisoner. A life prisoner¹ subject to a licence² must comply with such conditions as may for the time being be specified in the licence³. The Secretary of State⁴ may make rules for regulating the supervision of any description of such persons⁵.

The Secretary of State may not include on release, or subsequently insert, a condition in the licence of a life prisoner, or vary or cancel any such condition, except in accordance with recommendations of the Parole Board⁶.

- 1 As to the meaning of ‘life prisoner’ for the purposes of the Crime (Sentences) Act 1997 Pt II Ch II (ss 28–34) (life sentences) see PARA 778.
The Crime (Sentences) Act 1997 Pt II Ch II does not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of ‘England’ and ‘Wales’ see PARA 763 note 1.
- 2 As to the duration of licences granted to life prisoners see PARA 803.
- 3 See the Crime (Sentences) Act 1997 s 31(2) (amended by the Crime and Disorder Act 1998 ss 119, 120(2), Sch 8 para 131(1), Sch 10). The conditions so specified must include on the prisoner’s release conditions as to his supervision by (see the Crime (Sentences) Act 1997 s 31(2A) (added by the Crime and Disorder Act 1998 Sch 8 para 131(2))):
 - (1) 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 (Crime (Sentences) Act 1997 s 31(2A)(a) (s 31(2A) as so added; s 31(2A)(a) amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt I para 4(1)(a), (2); and by SI 2005/886; SI 2008/912));
 - (2) 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 (Crime (Sentences) Act 1997 s 31(2A)(b) (s 31(2A) as so added; s 31(2A)(b) amended by the Children Act 2004 s 64, Sch 5 Pt 4)); or
 - (3) where the prisoner is under the age of 18, a member of a youth offending team established by that local authority under the Crime and Disorder Act 1998 s 39 (see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1193) (Crime (Sentences) Act 1997 s 31(2A)(c) (s 31(2A) as so added)).

As to the provision of Probation Services in England and Wales (currently in the process of being transferred from local probation boards to probation trusts and other public bodies) see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 733 et seq. As to local justice areas see MAGISTRATES vol 71 (2013) PARA 475.

In relation to a life prisoner who is liable to removal from the United Kingdom (within the meaning given by the Criminal Justice Act 2003 s 259: see PARA 818 note 3), the Crime (Sentences) Act 1997 s 31(2) has effect as if s 31(2A) were omitted: s 31(6) (amended by the Crime and Disorder Act 1998 Sch 8 para 131(3); and the Criminal Justice Act 2003 s 304, Sch 32 Pt 1 paras 82, 83(1), (4)). As to the meaning of 'United Kingdom' see PARA 763 note 1.

As to release, supervision and recall, including licence conditions, as they apply to indeterminate sentence prisoners see Prison Service Order 4700 (Indeterminate Sentence Prisoner Manual) Ch 13 (Release, Supervision and Recall). As to the system of central policy instructions and guidance contained eg in Prison Service Orders (PSOs) and Prison Service Instructions (PSIs) see PRISONS AND PRISONERS vol 85 (2012) PARA 406.

- 4 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.
- 5 See the Crime (Sentences) Act 1997 s 31(2) (as amended: see note 3). The power to make rules under s 31 is exercisable by statutory instrument (subject to annulment in pursuance of a resolution of either House of Parliament): s 31(5). However, at the date at which this volume states the law, no such rules had been made.
- 6 See the Crime (Sentences) Act 1997 s 31(3) (amended by the Criminal Justice Act 2003 Sch 32 Pt 1 paras 82, 83(1), (2)). As to the constitution and functions of the Parole Board, continued by the Criminal Justice Act 2003 s 239(1), see PARA 772.

(ii) Prisoner Serving Determinate Sentence for Offence Committed on or after 4 April 2005

A. DURATION OF LICENCES

805. Duration of licences granted to fixed-term prisoner. Where a fixed-term prisoner¹ (other than one who is serving a sentence of less than 12 months²) is released on licence³, the licence must, subject to any revocation⁴, remain in force for the remainder of his sentence⁵.

Where a fixed-term prisoner who is serving a sentence of less than 12 months⁶ is released on licence, the licence must, subject to any revocation⁷, remain in force until the date on which, but for the release, the prisoner would have served one-half of the sentence⁸.

The Prison Service Instructions System⁹ gives guidance and deals with basic matters of policy relating to the process of parole release and recall, including licence conditions imposed on fixed-term prisoners¹⁰.

- 1 As to the meaning of 'fixed-term prisoner' for the purposes of the Criminal Justice Act 2003 Pt 12 Ch 6 (ss 237–268) (sentencing: release, licences and recall) see PARA 781.
- 2 Ie other than one to whom the Criminal Justice Act 2003 s 243A (unconditional release of prisoners serving less than 12 months: see PARA 784) applies (see the text and notes 6–8): see s 249(1) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ss 89(2), 111(2), Sch 10 paras 12, 24(a), Sch 14 paras 5, 8(1), (2)). The amendment made by s 111 applies in relation to any person who falls to be released under the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 806 et seq) on or after 3 December 2012 (ie on or after the commencement date, being the day appointed under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 151 for the coming into force of s 111: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d)): see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 120, Sch 15 paras 1, 2(1)(c).

The Criminal Justice Act 2003 ss 243A–264 do not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of 'England' and 'Wales' see PARA 763 note 1.

- 3 As to licence conditions imposed on fixed-term prisoners see PARA 806. See also Prison Service Instruction 40/2012 (Licences and Licence Conditions) (valid until 30 November 2016). As to the system of central policy instructions and guidance contained eg in Prison Service Orders (PSOs) and Prison Service Instructions (PSIs) see PRISONS AND PRISONERS vol 85 (2012) PARA 406.
- 4 Ie under either the Criminal Justice Act 2003 s 254 (recall of prisoners after release on licence: see PARA 788) or s 255 (recall of early release prisoners: see PARA 789): see s 249(1) (as amended: see note 2).
- 5 See the Criminal Justice Act 2003 s 249(1) (as amended: see note 2). The provision made by s 249(1) is subject to s 249(3): see s 249(1) (as so amended). Accordingly, it has effect subject to s 263(2) (concurrent terms: see PARA 782) and s 264(3) (consecutive terms: see PARA 783): s 249(3) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 Sch 10 paras 12, 24(c), Sch 14 paras 5, 8(1), (4)). As from 3 December 2012, the Criminal Justice Act 2003 s 249 is subject also to the transitional arrangements contained in s 267B, Sch 20B para 17 (duration of licence where offence committed before 4 April 2005: see PARA 808), Sch 20B para 19 (duration of licence where extended sentence imposed for offence committed before 4 April 2005: see PARA 808) and Sch 20B para 26 (duration of licence where sentence imposed before 1 October 1992: see PARA 809): see s 249(5) (added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(6), Sch 17 paras 1, 4); the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d), (o).
- 6 Ie a prisoner to whom the Criminal Justice Act 2003 s 243A (unconditional release of prisoners serving less than 12 months: see PARA 784) applies: see s 249(1A) (added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 Sch 14 paras 5, 8(1), (3)). See note 2.
- 7 Ie under either the Criminal Justice Act 2003 s 254 (recall of prisoners after release on licence: see PARA 788) or s 255 (recall of early release prisoners: see PARA 789): see s 249(1A) (as added: see note 6).
- 8 Criminal Justice Act 2003 s 249(1A) (as added: see note 6). The provision made by s 249(1A) is subject to s 249(3) (see note 5): see s 249(1A) (as so added).
- 9 As to the system of central policy instructions and guidance contained eg in Prison Service Orders (PSOs) and Prison Service Instructions (PSIs) see PRISONS AND PRISONERS vol 85 (2012) PARA 406.
- 10 Accordingly, see eg: (1) Prison Service Order 6000 (Parole Release and Recall); (2) Prison Service Instruction 40/2012 (Licences and Licence Conditions) (valid until 30 November 2016).

B. LICENCE CONDITIONS

806. Licence conditions imposed on fixed-term prisoner. Any licence granted on release under Chapter 6 of Part 12 of the Criminal Justice Act 2003¹ in respect of a fixed-term prisoner² serving a sentence of imprisonment³ or detention in a young offender institution⁴:

- (1) must include the standard conditions⁵; and
- (2) may include any electronic monitoring⁶ or drug testing requirement⁷, and such other conditions of a kind prescribed by the Secretary of State for these purposes as the Secretary of State may for the time being specify in the licence⁸.

A licence granted on the release of a fixed-term prisoner before the required term⁹ must also include a curfew condition¹⁰.

A person subject to any such licence granted on release¹¹ must comply with such conditions as may for the time being be specified in the licence¹².

However, where:

- (a) the licence relates to a sentence of imprisonment passed by a service court¹³; and
- (b) the person is residing outside the British Islands¹⁴,

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 residing¹⁵.

The Prison Service Instructions System¹⁶ gives guidance and deals with basic matters of policy relating to the process of parole release and recall, including licence conditions imposed on fixed-term prisoners¹⁷.

- 1 Ie any licence under the Criminal Justice Act 2003 Pt 12 Ch 6 (ss 237–268) (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 807 et seq): see s 250(4) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ss 111(2), 117(1), (5), 125(4), Sch 14 paras 5, 9, Sch 20 paras 1, 6(1), (2)). The amendments made by ss 111, 117 apply in relation to any person who falls to be released under the Criminal Justice Act 2003 Pt 12 Ch 6 on or after 3 December 2012 (ie on or after the commencement date, being the day appointed under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 151 for the coming into force of ss 111, 117: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d)): see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 120, Sch 15 paras 1, 2(1)(c), (2). As to the duration of licences see PARA 805.

The Criminal Justice Act 2003 ss 243A–264 do not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of ‘England’ and ‘Wales’ see PARA 763 note 1.

- 2 As to the meaning of ‘fixed-term prisoner’ for the purposes of the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall) see PARA 781.

- 3 Ie including a sentence imposed under the Criminal Justice Act 2003 s 226A (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS) or s 227 (repealed with savings) (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 75, 88): see s 250(4) (as amended: see note 1).

The Criminal Justice Act 2003 s 250(1), (4), (5), (5A) (see also the text and notes 1, 2, 4–10) has effect subject to s 263(3) (concurrent terms: see PARA 782) and s 264(3) (consecutive terms: see PARA 783): see s 250(7) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 89(2), Sch 10 paras 12, 25, 40(1), (2)). See also *R (on the application of Miah) v Secretary of State for the Home Department* [2004] EWHC 2569 (Admin), [2005] ACD 133 (the prisoner’s sentence, and thus any licence period and the power to impose conditions, including the prospect of recall to prison, on a prisoner’s release on licence continued to run notwithstanding the transfer of that prisoner to a mental hospital before he was due to be released on licence) (cited also in MENTAL HEALTH AND CAPACITY vol 75 (2013) PARA 892).

- 4 See the Criminal Justice Act 2003 s 250(4) (as amended: see note 1). The text refers to any sentence of detention in a young offender institution:

- (1) under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (sentence of detention for a specified period passed on a person aged under 18 who has committed a serious offence: see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1307; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 78) or s 96 (prospectively repealed) (detention in young offender institution for a person aged between 18 and 21: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 85) (see s 250(4) (as so amended)); or

- (2) under the Criminal Justice Act 2003 s 226A (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS), s 226B (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS), s 227 (repealed with savings) (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 75, 88) or s 228 (repealed with savings) (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 84) (see s 250(4) (as so amended)).

References in Pt 12 Ch 6 (ss 237–268) (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 807 et seq) to a sentence of detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 96 (see head (1) above) or under the Criminal Justice Act 2003 s 226A (see head (2) above) or s 227 (see head (2) above) are references to a sentence of detention in a young offender institution: see s 237(3); and PARA 781 note

4. As to young offender institutions see PRISONS AND PRISONERS vol 85 (2012) PARA 487 et seq; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 85 et seq.
- 5 See the Criminal Justice Act 2003 s 250(4)(a). For these purposes, the ‘standard conditions’ means such conditions as may be prescribed for the purposes of s 250 as standard conditions; and ‘prescribed’ means prescribed by the Secretary of State by order: see s 250(1). In exercising his powers to prescribe standard conditions, or the other conditions referred to in s 250(4)(b)(ii) (see the text and note 8), the Secretary of State must have regard to the following purposes of the supervision of offenders while on licence under Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 807 et seq) (see s 250(8)):
- (1) the protection of the public (s 250(8)(a));
 - (2) the prevention of re-offending (s 250(8)(b)); and
 - (3) securing the successful re-integration of the prisoner into the community (s 250(8)(c)).

As to the power conferred generally by the Criminal Justice Act 2003 on the Secretary of State to make an order or rules see s 330. As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408. In exercise of the powers conferred upon him by ss 250(1), (4)(b)(ii), 330(4)(b) and, in relation to s 250(1), (4)(b)(ii), having regard to the purposes of the supervision of offenders set out in s 250(8) (see note 8), the Secretary of State has made the Criminal Justice (Sentencing) (Licence Conditions) Order 2005, SI 2005/648, which came into force on 4 April 2005 (see art 1(1)). Accordingly, the standard conditions prescribed for the purposes of the Criminal Justice Act 2003 s 250(1) are that the prisoner must (see the Criminal Justice (Sentencing) (Licence Conditions) Order 2005, SI 2005/648, art 2(1), (2)):

- (a) keep in touch with the responsible officer as instructed by him (art 2(2)(a));
- (b) receive visits from the responsible officer as instructed by him (art 2(2)(b));
- (c) permanently reside at an address approved by the responsible officer and obtain the prior permission of the responsible officer for any stay of one or more nights at a different address (art 2(2)(c));
- (d) undertake work (including voluntary work) only with the approval of the responsible officer and obtain his prior approval in relation to any change in the nature of that work (art 2(2)(d));
- (e) not travel outside the United Kingdom, the Channel Islands or the Isle of Man without the prior permission of the responsible officer, except where he is deported or removed from the United Kingdom in accordance with the Immigration Act 1971 or the Immigration and Asylum Act 1999 (art 2(2)(e));
- (f) be of good behaviour, and not behave in a way which undermines the purposes of the release on licence, which are to protect the public, prevent re-offending and promote successful re-integration into the community (art 2(2)(f));
- (g) not commit any offence (art 2(2)(g)).

As to deportation or removal from the United Kingdom in accordance with the Immigration Act 1971 or the Immigration and Asylum Act 1999 see IMMIGRATION AND ASYLUM vol 57 (2012) PARA 177 et seq. As to the meaning of ‘United Kingdom’ see PARA 763 note 1. The revocation of the Criminal Justice (Sentencing) (Licence Conditions) Order 2003, SI 2003/3337, does not affect the validity of conditions included in any licence granted under the Criminal Justice Act 2003 Pt 12 Ch 6 before 4 April 2005 and in force on that date: see the Criminal Justice (Sentencing) (Licence Conditions) Order 2005, SI 2005/648, art 4(1), (2).

Further to head (e) above, as to guidance relating to applications from offenders who are subject to post-release supervision on licence but wish to be relocated on a permanent basis outside of England and Wales (ie to Scotland, Northern Ireland, the Isle of Man or the Channel Islands) see Prison Service Instruction (PSI) 01/2013 (PI 02/2013) (Resettlement outside England and Wales on Licence) (valid until 10 January 2017). As to the system of central policy instructions and guidance contained eg in Prison Service Instructions (PSIs) see the text and notes 16–17.

Further to head (f) above, see *R (on the application of McDonagh) v Secretary of State for Justice* [2010] EWHC 369 (Admin), [2010] All ER (D) 165 (Mar) (words ‘to be well behaved’ in the context of a condition of release on licence meant at least to conduct oneself not merely lawfully but in a way that did not adversely affect, annoy, hinder, inconvenience or distress another or others in relation to their lawful activities or performance of their lawful duties, whether by action, omission or by a course of conduct; there was more than sufficient material available to the Probation Service and the

Secretary of State for them to conclude that the prisoner was 'attempting to flee the scene of what was potentially a very serious road traffic accident').

- 6 In any condition which is authorised by the Criminal Justice and Court Services Act 2000 s 62 (electronic monitoring: see PARA 811): see the Criminal Justice Act 2003 s 250(4)(b)(i).
- 7 See the Criminal Justice Act 2003 s 250(4)(b)(i). The text refers to any condition which is authorised by the Criminal Justice and Court Services Act 2000 s 64 (drug testing requirements see PARA 812): see the Criminal Justice Act 2003 s 250(4)(b)(i).
As from a day to be appointed under the Offender Management Act 2007 s 41(1), a licence may also include any condition authorised by s 28 (polygraph conditions: see PARA 813): see the Criminal Justice Act 2003 s 250(4)(b)(i) (prospectively amended by the Offender Management Act 2007 s 28(5)). At the date at which this volume states the law, no such day had been appointed but such a day had been appointed for s 28 to have effect in relation to certain specified police areas only for the period beginning on 19 January 2009 and ending on 31 March 2012 (see the Offender Management Act 2007 (Commencement No 3) Order 2009, SI 2009/32, arts 3–5).
- 8 See the Criminal Justice Act 2003 s 250(4)(b)(iii). The conditions of a kind prescribed for the purposes of s 250(4)(b)(ii) are those which impose on a prisoner (see the Criminal Justice (Sentencing) (Licence Conditions) Order 2005, SI 2005/648, art 3(1), (2)):
 - (1) a requirement that he reside at a certain place (art 3(2)(a));
 - (2) a requirement relating to his making or maintaining contact with a person (art 3(2)(b));
 - (3) a restriction relating to his making or maintaining contact with a person (art 3(2)(c));
 - (4) a restriction on his participation in, or undertaking of, an activity (art 3(2)(d));
 - (5) a requirement that he participate in, or co-operate with, a programme or set of activities designed to further one or more of the purposes referred to in the Criminal Justice Act 2003 s 250(8) (see note 5) (see the Criminal Justice (Sentencing) (Licence Conditions) Order 2005, SI 2005/648, art 3(2)(e));
 - (6) a requirement that he comply with a curfew arrangement (art 3(2)(f));
 - (7) a restriction on his freedom of movement (which is not a requirement referred to in head (6) above) (art 3(2)(g)).
 - (8) a requirement relating to his supervision in the community by a responsible officer (art 3(2)(h)).

For these purposes, 'curfew arrangement' means an arrangement under which a prisoner is required to remain at a specified place for a specified period of time which is not an arrangement contained in a condition imposed by virtue of the Criminal Justice Act 1991 s 37A(1) (repealed) or the Criminal Justice Act 2003 s 250(5) (see PARA 807): see the Criminal Justice (Sentencing) (Licence Conditions) Order 2005, SI 2005/648, art 3(3). As to exercise of the Secretary of State's powers to prescribe the other conditions referred to in the Criminal Justice Act 2003 s 250(4)(b)(ii), see s 250(8); and note 5.

In respect of a prisoner serving an extended sentence imposed under s 226A (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS) or s 226B (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS) whose release is directed by the Parole Board under s 246A(5) (initial release: see PARA 787), a licence under s 246A(5) or under s 255C (release after recall: see PARA 790), may not include conditions referred to in s 250(4)(b)(ii) unless the Parole Board directs the Secretary of State to include them: see s 250(5A) (added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 Sch 20 paras 1, 6(1), (3)). As to the constitution and functions of the Parole Board, continued by the Criminal Justice Act 2003 s 239(1), see PARA 772.

- 9 In a licence under the Criminal Justice Act 2003 s 246 (power to release fixed-term prisoners before required term: see PARA 786): see s 250(5); and PARA 807.
- 10 See the Criminal Justice Act 2003 s 250(5); and PARA 807. The text refers to a curfew condition complying with s 253 (see PARA 807): see s 250(5); and PARA 807. As to the meaning of 'curfew condition' see PARA 807 note 4.
- 11 In any licence under the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 807 et seq): see s 252(1) (s 252(1) numbered as such, s 252(2) added, by the Armed Forces Act 2006 s 378(1), Sch 16 para 224).
- 12 See the Criminal Justice Act 2003 s 252(1) (as renumbered: see note 11). See *R (on the application of Carman) v Secretary of State for the Home Department* [2004] EWHC

2400 (Admin), (2004) Times, 11 October, [2004] All ER (D) 591 (Jul) (per curiam) (challenges to licence conditions should be unusual; licence conditions and assessment of risk are matters of fine judgment for those in the prison and probation services, which were experienced in such matters, and the courts must be steadfastly astute not to interfere save in the most exceptional case); cf *R (on the application of Craven) v Secretary of State for the Home Department* [2001] EWHC Admin 850, [2001] All ER (D) 74 (Oct) (imposition of an exclusion zone on the movements of a convicted murderer, in order to minimise the risk of accidental contact between him and the family of his victim ought to be considered as being capable of being necessary in a democratic society under the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (Rome, 4 November 1950; TS 71 (1953); Cmd 8969; ETS no 5) art 8 (right to respect for private and family life, home and correspondence: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 149 et seq)).

- 13 Criminal Justice Act 2003 s 252(2)(a) (s 252(2) as added (see note 11); s 252(2)(a) amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 Sch 10 paras 12, 27(a)). As to the meaning of 'service court' see the Criminal Justice Act 2003 s 305(1); and PARA 781 note 3.
- 14 Criminal Justice Act 2003 s 252(2)(c) (as added: see note 11).
- 15 See the Criminal Justice Act 2003 s 252(2) (as added: see note 11).
- 16 As to the system of central policy instructions and guidance contained eg in Prison Service Orders (PSOs) and Prison Service Instructions (PSIs) see PRISONS AND PRISONERS vol 85 (2012) PARA 406.
- 17 Accordingly, see eg: (1) Prison Service Order 6000 (Parole Release and Recall); (2) Prison Service Instruction 40/2012 (Licences and Licence Conditions) (valid until 30 November 2016).

807. Home detention curfew conditions applied where prisoner released on licence before required term. A licence granted on the release of a fixed-term prisoner¹ before the required term² must also include a curfew condition³.

The curfew condition⁴ may specify different places or different periods for different days, but may not specify periods which amount to less than nine hours in any one day (excluding for this purpose the first and last days of the period for which the condition is in force)⁵.

The curfew condition is to remain in force until the date when the released person would (but for his release) fall to be released either unconditionally⁶ or on licence in due course⁷.

The curfew condition must include provision for making a person responsible for monitoring the whereabouts of the released person during the periods for the time being specified in the condition⁸.

The Prison Service Instructions System⁹ gives guidance and deals with matters of policy and administration relating to home detention curfew¹⁰.

- 1 As to the meaning of 'fixed-term prisoner' for the purposes of the Criminal Justice Act 2003 Pt 12 Ch 6 (ss 237–268) (sentencing: release, licences and recall) see PARA 781.
- 2 Ie a licence under the Criminal Justice Act 2003 s 246 (power to release fixed-term prisoners before required term: see PARA 786): see s 250(5). The provision made by s 250(5) (see also the text and notes 1, 3) has effect subject to s 263(3) (concurrent terms: see PARA 782) and s 264(3) (consecutive terms: see PARA 783): see s 250(7) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 89(2), Sch 10 paras 12, 25, 40(1), (2)).

The Criminal Justice Act 2003 ss 243A–264 do not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of 'England' and 'Wales' see PARA 763 note 1.

- 3 See the Criminal Justice Act 2003 s 250(5). The text refers to a curfew condition complying with s 253 (see the text and notes 4–8): see s 250(5).
- 4 For the purposes of the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 808 et seq), a 'curfew condition' is a condition which:

- (1) 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 the Offender Management Act 2007 s 13 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 745)) (Criminal Justice Act 2003 s 253(1)(a) (amended by SI 2008/912)); and
- (2) includes requirements for securing the electronic monitoring of his whereabouts during the periods for the time being so specified (Criminal Justice Act 2003 s 253(1)(b)).

However, nothing in s 253 is to be taken to require the Secretary of State to ensure that arrangements are made for the electronic monitoring of the whereabouts of released persons in any particular part of England and Wales: s 253(6). As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.

- 5 Criminal Justice Act 2003 s 253(2).
- 6 If released unconditionally under the Criminal Justice Act 2003 s 243A (unconditional release of prisoners serving less than 12 months: see PARA 784): see s 253(3) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 111(2), Sch 14 paras 5, 10). The amendment made by s 111 applies in relation to any person who falls to be released under the Criminal Justice Act 2003 Pt 12 Ch 6 on or after 3 December 2012 (ie on or after the commencement date, being the day appointed under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 151 for the coming into force of s 111: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d): see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 120, Sch 15 paras 1, 2(1)(c).
- 7 Criminal Justice Act 2003 s 253(3) (as amended: see note 6). The text refers the date when the released person would (but for his release) fall to be released on licence under s 244 (duty to release fixed-term prisoners: see PARA 785): see s 253(3) (as so amended).
- 8 Criminal Justice Act 2003 s 253(5). A person who is made so responsible under s 253(5) must be of a description specified in an order made by the Secretary of State: see s 253(5). As to the power conferred generally by the Criminal Justice Act 2003 on the Secretary of State to make an order or rules see s 330. In exercise of the powers conferred upon him by the Criminal Justice Act 2003 ss 253(5), 330(3)(a) (and by the Criminal Justice Act 1991 s 37A(4), (5)(b) (repealed)), the Secretary of State has made the Criminal Justice (Sentencing) (Curfew Condition) Order 2008, SI 2008/2768, which came into force on 20 October 2008 (see art 1(1)). Accordingly, the description of person responsible for monitoring the whereabouts of an offender subject to a curfew condition for the purposes of the Criminal Justice Act 2003 s 253(5) is:
 - (1) in relation to a curfew condition imposed on an offender residing in Scotland or in a police area specified in the Criminal Justice (Sentencing) (Curfew Condition) Order 2008, SI 2008/2768, art 2(a), Sch 1, one employed by Serco Limited, Serco House, 16 Bartley Wood Business Park, Bartley Way, Hook, Hampshire RG27 9UY (company number 00242246) to monitor offenders (see art 2(a)); and
 - (2) in relation to a curfew condition imposed on an offender residing in a police area specified in art 2(b), Sch 2, one employed by G4S Justice Services Limited, Sutton Park House, 15 Carshalton Road, Sutton, Surrey SML 4LD (company number 00390328) to monitor offenders (see art 2(b)).
- 9 As to the system of central policy instructions and guidance contained eg in Prison Service Orders (PSOs) and Prison Service Instructions (PSIs) see PRISONS AND PRISONERS vol 85 (2012) PARA 406.
- 10 Accordingly, see Prison Service Order 6700 (Home Detention Curfew). As to the policy guidance see *R v Secretary of State for the Home Department, ex p Willis* (2000) Times, 22 March, QBD; *R v Secretary of State for the Home Department, ex p Allen* [2000] All ER (D) 316, CA; *R (on the application of Cross) v Governor of HMP YOI Thorn Cross* [2004] EWHC 149 (Admin), [2004] All ER (D) 135 (Jan); *R (on the application of PA) v Governor of HMP Lewes* [2011] EWHC 704 (Admin), [2011] All ER (D) 17 (Mar); *R (on the application of Young) v Governor of HMP Highdown* [2011] EWHC 867 (Admin), [2011] All ER (D) 57 (Apr). See also Prison Service Order 6000 (Parole Release and Recall); Prison Service Instruction 40/2012 (Licences and Licence Conditions) (valid until 30 November 2016); and Prison Service Instruction 43/2012 (The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 – Home Detention Curfew (HDC)) (valid until 02 December 2016).

(iii) Prisoner Serving Determinate Sentence for Offence Committed before 4 April 2005

808. Duration of licences granted to prisoner serving Criminal Justice Act 1991 sentences and certain extended sentences. Where certain prisoners convicted of an offence committed before 4 April 2005¹ are released on licence for the first time under transitional provisions², or in accordance with the automatic release provisions of the Criminal Justice Act 2003³, the licence remains in force until the date on which the person would (but for the release) have served three-quarters of the sentence⁴. The class of prisoners subject to this provision include persons serving a ‘Criminal Justice Act 1991 sentence’⁵ (or serving a specified extended sentence which falls within the definition of a ‘Criminal Justice Act 2003 sentence’ for these purposes⁶), and who:

- (1) are persons meeting the statutory conditions for automatic release on licence⁷; or
- (2) are persons: (a) who have been convicted of an offence committed before 4 April 2005⁸; (b) who are serving a sentence of imprisonment imposed in respect of that offence on or after 1 October 1992 but before 3 December 2012⁹; (c) whose sentence is for a term of 12 months or more but less than four years¹⁰; and (d) who has not previously been released from prison on licence in respect of that sentence¹¹; or
- (3) are persons: (a) who have been convicted of an offence committed before 4 April 2005¹²; (b) who are serving a sentence of imprisonment imposed in respect of that offence on or after 1 October 1992¹³; (c) whose sentence is for a term of 12 months or more¹⁴; (d) who has been released on licence under Part II of the Criminal Justice Act 1991¹⁵; and (e) who has been recalled before 14 July 2008 (and has not been recalled after that date)¹⁶.

Where a person who¹⁷:

- (i) has been convicted of an offence committed on or after 30 September 1998 but before 4 April 2005¹⁸;
- (ii) is serving a section 85 extended sentence imposed in respect of that offence¹⁹; and
- (iii) has not previously been released from prison on licence in respect of that sentence²⁰,

is released on licence, the licence remains in force until the end of the period found by adding²¹:

- (A) one-half of the custodial term (where the prisoner is released on licence and the custodial term is less than 12 months)²² or three-quarters of the custodial term (where the prisoner is released on licence and the custodial term is 12 months or more)²³; and
- (B) the extension period²⁴.

These transitional provisions, governing the duration of licences granted to prisoners serving Criminal Justice Act 1991 sentences and certain extended sentences²⁵, where they apply, displace the usual Criminal Justice Act 2003 provisions²⁶ governing the same²⁷.

The Prison Service Instructions System²⁸ gives guidance and deals with basic matters of policy relating to the process of parole release and recall, including licences granted to fixed-term prisoners²⁹.

- 1 Ie where a person to whom the Criminal Justice Act 2003 s 267B, Sch 20B para 16 applies (see heads (1) to (3) in the text): see Sch 20B para 17(1) (s 267B, Sch 20B added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(6), Sch 17 paras 1, 9, 10). As to the application of the Criminal Justice Act 2003 Sch 20B Pt 2 (Sch 20B paras 3–22), and as to the significance of the date of 4 April 2005, see PARA 792 notes 10, 11.

The Criminal Justice Act 2003 Sch 20B para 16 does not apply if the person has been released and recalled more than once: Sch 20B para 16(4) (as so added). If a person has been released under the Criminal Justice Act 1991 s 34A (repealed) and recalled under s 38A(1)(b) (repealed), or if a person has been released under the Criminal Justice Act 2003 s 246 (power to release fixed-term prisoners before required term: see PARA 786), and recalled under s 255(1)(b) (ie where it is no longer possible to monitor whereabouts of a prisoner released on licence subject to a curfew condition: see PARA 789), the release and recall are to be disregarded for the purposes of Sch 20B para 16: see Sch 20B para 16(6) (as so added).

Nor does Sch 20B para 16 apply if:

- (1) the person is serving a section 85 extended sentence (see Sch 20B para 16(5)(a) (as so added)); or
- (2) the court by which the person was sentenced ordered that the Powers of Criminal Courts (Sentencing) Act 2000 s 86 (repealed) (extension of periods in custody and on licence in the case of certain sexual offences committed before 30 September 1998) should apply (see the Criminal Justice Act 2003 Sch 20B para 16(5)(b) (as so added)).

References in Sch 20B to the Powers of Criminal Courts (Sentencing) Act 2000 s 86 (repealed) include, in accordance with s 165, Sch 11 para 1(3), the Criminal Justice Act 1991 s 44 (extended sentences for sexual or violent offenders) (repealed), as originally enacted: see the Criminal Justice Act 2003 Sch 20B para 1(7). As to the meaning of a 'section 85 extended sentence' for these purposes, and as to the significance of the date of 30 September 1998, see PARA 792 note 11. As to the duration of licences granted to prisoners serving extended sentences see further the text and notes 17–27.

- 2 Ie released on licence under the Criminal Justice Act 2003 Sch 20B para 5 or Sch 20B para 6 (see PARA 795): see Sch 20B para 17(1) (as added: see note 1).
- 3 Ie under the Criminal Justice Act 2003 s 244 (release on licence of prisoners serving 12 months or more: see PARA 785): see Sch 20B para 17(1) (as added: see note 1).
- 4 Criminal Justice Act 2003 Sch 20B para 17(1) (as added: see note 1). The provision made by Sch 20B para 17(1) is subject to any revocation under s 254 (recall of prisoners while on licence: see PARA 788): see Sch 20B para 17(2) (as so added).
- 5 Ie where the Criminal Justice Act 2003 Sch 20B Pt 2 applies to a person by virtue of Sch 20B para 3(1): see PARA 792. As to the meaning of 'Criminal Justice Act 1991 sentence' for these purposes see PARA 792 note 10.
- 6 Ie where the Criminal Justice Act 2003 Sch 20B Pt 2 applies to a person by virtue of Sch 20B para 3(2): see PARA 792. As to the meaning of 'Criminal Justice Act 2003 sentence' for these purposes see PARA 792 note 11.
- 7 Ie where the Criminal Justice Act 2003 Sch 20B para 4 applies to a person (see PARA 795 note 4): see Sch 20B para 16(1) (as added: see note 1).
- 8 Criminal Justice Act 2003 Sch 20B para 16(2)(a) (as added: see note 1).
- 9 Criminal Justice Act 2003 Sch 20B para 16(2)(b) (as added: see note 1). The date of 3 December 2012 is known for these purposes as the 'commencement date', being the date on which the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121 came into force on the day appointed under s 151(1) (see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d), (o)): see the Criminal Justice Act 2003 Sch 20B para 1(1), (2) (as so added). As to the significance of the date of 1 October 1992 see PARA 792 note 9.
- 10 Criminal Justice Act 2003 Sch 20B para 16(2)(c) (as added: see note 1). A prisoner serving a term of imprisonment of more than 12 months and less than four years was known prior to 4 April 2005 as a 'short-term' prisoner and was eligible for automatic conditional release under the predecessor legislation.
- 11 Criminal Justice Act 2003 Sch 20B para 16(2)(d) (as added: see note 1).
- 12 Criminal Justice Act 2003 Sch 20B para 16(3)(a) (as added: see note 1).
- 13 Criminal Justice Act 2003 Sch 20B para 16(3)(b) (as added: see note 1).
- 14 Criminal Justice Act 2003 Sch 20B para 16(3)(c) (as added: see note 1).

- 15 Criminal Justice Act 2003 Sch 20B para 16(3)(d) (as added: see note 1). As to the Criminal Justice Act 1991 Pt II (ss 32–51) (repealed) see PARA 792 note 2.
- 16 Criminal Justice Act 2003 Sch 20B para 16(3)(e) (as added: see note 1). As to the significance of the date of 14 July 2008 see PARA 792 note 11.
- 17 Ie a person to whom the Criminal Justice Act 2003 Sch 20B para 18 applies (see heads (i) to (iii) in the text): see Sch 20B para 19(1), (2) (as added: see note 1).
- 18 Criminal Justice Act 2003 Sch 20B para 18(a) (as added: see note 1).
- 19 Criminal Justice Act 2003 Sch 20B para 18(b) (as added: see note 1).
- 20 Criminal Justice Act 2003 Sch 20B para 18(c) (as added: see note 1).
- 21 See the Criminal Justice Act 2003 Sch 20B para 19(1), (2) (as added: see note 1). The provision made by Sch 20B para 19(1), (2) is subject to any revocation under s 254 (recall of prisoners while on licence: see PARA 788): see Sch 20B para 19(3) (as so added).
- 22 See the Criminal Justice Act 2003 Sch 20B para 19(1)(a) (as added: see note 1). As to the meaning of ‘custodial term’ for these purposes see PARA 792 note 11.
- 23 See the Criminal Justice Act 2003 Sch 20B para 19(2)(a) (as added: see note 1).
- 24 See the Criminal Justice Act 2003 Sch 20B para 19(1)(b), (2)(b) (as added: see note 1). As to the meaning of ‘extension period’ for these purposes see PARA 792 note 11.
- 25 Ie the provision made by the Criminal Justice Act 2003 Sch 20B para 17(1), (2) (see the text and notes 1–16) or Sch 20B para 19(1)–(3) (see the text and notes 17–24): see Sch 20B paras 17(3), 19(4) (as added: see note 1).
- 26 Ie the Criminal Justice Act 2003 s 249 (duration of licence: see PARA 805): see Sch 20B paras 17(3), 19(4) (as added: see note 1).
- 27 See the Criminal Justice Act 2003 Sch 20B paras 17(3), 19(4) (as added: see note 1). Accordingly, as from 3 December 2012, s 249 (duration of licence: see PARA 805) is subject to the transitional arrangements contained in Sch 20B para 17 (see also the text and notes 1–16) and Sch 20B para 19 (see also the text and notes 17–24): see s 249(5); the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d), (o); and PARA 805. The provision made by the Criminal Justice Act 2003 s 257(2)(c) (additional days for disciplinary offences, allowing for the extension of licence periods where the licence period is shorter than the end of sentence: see PRISONS AND PRISONERS vol 85 (2012) PARA 404) also comes into force on 3 December 2012 in so far as it relates to Sch 20B paras 17, 19(2): see the Criminal Justice Act 2003 (Commencement No. 30 and Consequential Amendment) Order 2012, SI 2012/2905, art 2.
- 28 As to the system of central policy instructions and guidance contained e.g. in Prison Service Orders (PSOs) and Prison Service Instructions (PSIs) see PRISONS AND PRISONERS vol 85 (2012) PARA 406.
- 29 Accordingly, see eg: (1) Prison Service Order 6000 (Parole Release and Recall); (2) Prison Service Instruction 40/2012 (Licences and Licence Conditions) (valid until 30 November 2016).

809. Duration of licences granted to prisoner serving Criminal Justice Act 1967 sentences. Where certain persons who are serving Criminal Justice Act 1967 sentences¹ are released on licence under transitional provisions upon direction by the Parole Board², the licence remains in force until the date on which the person would (but for the release) have served two-thirds of the sentence³.

These transitional provisions governing the duration of licences⁴, where they apply, displace the usual Criminal Justice Act 2003 provisions⁵ governing the same⁶.

The Prison Service Instructions System⁷ gives guidance and deals with basic matters of policy relating to the process of parole release and recall, including licences granted to fixed-term prisoners⁸.

1 Ie where a person to whom the Criminal Justice Act 2003 s 267B, Sch 20B para 24(1) applies (see PARA 797): see Sch 20B para 26(1) (s 267B, Sch 20B added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(6), Sch 17 paras 1, 9, 10). As to the meaning of ‘Criminal Justice Act 1967 sentence’ for these purposes, and as to the application of the Criminal Justice Act 2003 Sch 20B Pt 3 (Sch 20B paras 23–33), see PARA 792 note 9.

- 2 Ie released on licence under the Criminal Justice Act 2003 Sch 20B para 25(2) (see PARA 797); see Sch 20B para 26(1) (as added: see note 1). As to the constitution and functions of the Parole Board, continued by s 239(1), see PARA 772.
- 3 Criminal Justice Act 2003 Sch 20B para 26(1) (as added: see note 1). The provision made by Sch 20B para 26(1) is subject to any revocation under s 254 (recall of prisoners while on licence: see PARA 788); see Sch 20B para 26(2) (as so added).
- 4 Ie the provision made by Sch 20B para 26(1), (2) (see the text and notes 1–3): see Sch 20B para 26(3) (as added: see note 1).
- 5 Ie the Criminal Justice Act 2003 s 249 (duration of licence: see PARA 805): see Sch 20B para 26(3) (as added: see note 1).
- 6 See the Criminal Justice Act 2003 Sch 20B para 26(3) (as added: see note 1). Accordingly, as from 3 December 2012, s 249 (duration of licence: see PARA 805) is subject to the transitional arrangements contained in Sch 20B para 26 (see also the text and notes 1–5): see s 249(5); the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d), (o); and PARA 805.
- 7 As to the system of central policy instructions and guidance contained eg in Prison Service Orders (PSOs) and Prison Service Instructions (PSIs) see PRISONS AND PRISONERS vol 85 (2012) PARA 406.
- 8 Accordingly, see eg: (1) Prison Service Order 6000 (Parole Release and Recall); (2) Prison Service Instruction 40/2012 (Licences and Licence Conditions) (valid until 30 November 2016).

810. Variation under transitional arrangements of licences granted on discretionary release by the Parole Board. The Secretary of State¹ must not²:

- (1) include on release, or subsequently insert, a condition in a Parole Board licence³; or
- (2) vary or cancel any such condition⁴,

except in accordance with directions of the Parole Board⁵.

Any licence is a ‘Parole Board licence’ if it falls within head (a) or head (b) below⁶, namely:

- (a) if the licence is or was granted to a person on his or her release (at any time) on the recommendation or direction of the Parole Board⁷, and if that person has not been released otherwise than on such a recommendation or direction⁸; or
- (b) if the licence is or was granted to a person on his or her release (at any time)⁹, and if one of two conditions (‘condition A’ or ‘condition B’) is met¹⁰.

For the purposes of head (b) above, ‘condition A’ is that, before 2 August 2010¹¹, the Board exercised the function under the Criminal Justice Act 1991¹² of making recommendations as to any condition to be included or inserted as a condition in a licence granted to the person so mentioned (including by making a recommendation that no condition should be included in such a licence)¹³; and ‘condition B’ is that, before 2 August 2010, the person mentioned in head (b) above was released on licence under the Criminal Justice Act 1991¹⁴ and the Parole Board exercised the function under the 1991 Act¹⁵ of making recommendations: (i) as to any condition to be included or inserted as a condition in a licence granted to the person so mentioned (including by making a recommendation that no condition should be included in such a licence)¹⁶; or (ii) as to the variation or cancellation of any such condition (including a recommendation that the condition should not be varied or cancelled)¹⁷.

The Prison Service Instructions System¹⁸ gives guidance and deals with basic matters of policy relating to the process of parole release and recall, including licences granted to fixed-term prisoners¹⁹.

- 1 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.
- 2 See the Criminal Justice Act 2003 s 267B, Sch 20B para 34(6) (s 267B, Sch 20B added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(6), Sch 17 paras 1, 9, 10).
- 3 Criminal Justice Act 2003 Sch 20B para 34(6)(a) (as added: see note 2). As to 'Parole Board licences' see the text and notes 6–17.
- 4 Criminal Justice Act 2003 Sch 20B para 34(6)(b) (as added: see note 2).
- 5 See the Criminal Justice Act 2003 Sch 20B para 34(6) (as added: see note 2). As to the constitution and functions of the Parole Board, continued by s 239(1), see PARA 772.
- 6 See the Criminal Justice Act 2003 Sch 20B para 34(1) (as added: see note 2). The text refers to a licence which falls within either Sch 20B para 34(2) (see head (a) in the text) or Sch 20B para 34(3) (see head (b) in the text): see Sch 20B para 34(1) (as so added).
- 7 Criminal Justice Act 2003 Sch 20B para 34(2)(a) (as added: see note 2).
- 8 Criminal Justice Act 2003 Sch 20B para 34(2)(b) (as added: see note 2).
- 9 Criminal Justice Act 2003 Sch 20B para 34(3)(a) (as added: see note 2).
- 10 Criminal Justice Act 2003 Sch 20B para 34(3)(b) (as added: see note 2).
- 11 For the purposes of the Criminal Justice Act 2003 Sch 20B, 2 August 2010 is the date on which the Coroners and Justice Act 2009 s 145 came into force: see the Criminal Justice Act 2003 Sch 20B para 2 (as added: see note 2). The Coroners and Justice Act 2009 s 145 amended the Criminal Justice Act 1991 Pt II (ss 32–51) (repealed), as it continued to apply to persons sentenced for offences committed before 4 April 2005, specifically ss 35(1), 37 (see notes 14, 15), which made a Parole Board recommendation to release binding for all categories of prisoner. The Coroners and Justice Act 2009 s 145 was repealed by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(5), Sch 16 para 21(a), with effect from 3 December 2012. As to the significance of the date of 4 April 2005, see PARA 792 note 10.
- 12 Ie under the Criminal Justice Act 1991 s 37(5) (duration and conditions of licences) (repealed): see the Criminal Justice Act 2003 Sch 20B para 34(4) (as added: see note 2).
- 13 See the Criminal Justice Act 2003 Sch 20B para 34(4) (as added: see note 2).
- 14 Criminal Justice Act 2003 Sch 20B para 34(5)(a) (as added: see note 2). The text refers specifically to release on licence under the Criminal Justice Act 1991 s 33(2) (repealed) (release of long-term prisoner who has served two-thirds of his sentence), s 33(3) (repealed) (re-release of recalled short-term or long-term prisoner who has served three-quarters of his sentence) or s 33(3A) (repealed) (duty to release short-term and long-term prisoners) or s 35(1) (repealed) (release on licence of long-term prisoner who has served one-half of his sentence): see the Criminal Justice Act 2003 Sch 20B para 34(5)(a) (as so added). See note 11.
- 15 Ie under the Criminal Justice Act 1991 s 37(5) (duration and conditions of licences) (repealed): see the Criminal Justice Act 2003 Sch 20B para 34(5)(b) (as added: see note 2). See note 11.
- 16 Criminal Justice Act 2003 Sch 20B para 34(5)(b)(i) (as added: see note 2).
- 17 Criminal Justice Act 2003 Sch 20B para 34(5)(b)(ii) (as added: see note 2).
- 18 As to the system of central policy instructions and guidance contained eg in Prison Service Orders (PSOs) and Prison Service Instructions (PSIs) see PRISONS AND PRISONERS vol 85 (2012) PARA 406.
- 19 Accordingly, see eg: (1) Prison Service Order 6000 (Parole Release and Recall); (2) Prison Service Instruction 40/2012 (Licences and Licence Conditions) (valid until 30 November 2016).

(iv) Supervision after Release

811. Condition for electronic monitoring of compliance with any other condition of release. Where a sentence of imprisonment¹ has been imposed on a person and, by virtue of any enactment²:

- (1) the Secretary of State³ is required to, or may, release⁴ the person from prison⁵; and
- (2) the release is required to be, or may be, subject to conditions (whether conditions of a licence or any other conditions, however expressed)⁶,

those conditions may include: (a) conditions for securing the electronic monitoring of his compliance with any other conditions of his release⁷; and (b) conditions for securing the electronic monitoring of his whereabouts (otherwise than for the purpose of securing his compliance with other conditions of his release)⁸. The Secretary of State may make rules about the conditions that may be imposed in this way⁹.

For these purposes, 'sentence of imprisonment' includes:

- (i) a detention and training order¹⁰;
- (ii) a sentence of detention in a young offender institution¹¹;
- (iii) a sentence of detention at Her Majesty's pleasure¹²;
- (iv) a sentence of detention for a specified period imposed on an offender aged under 18 convicted of a serious offence¹³;
- (v) a sentence of custody for life¹⁴;
- (vi) a sentence of detention for public protection¹⁵;
- (vii) an extended sentence for a violent or sexual offence¹⁶;
- (viii) a sentence of detention imposed on an offender aged under 18 convicted by the Court Martial of certain serious offences or murder¹⁷; and
- (ix) a detention and training order imposed by the Court Martial or the Service Civilian Court¹⁸.

The Prison Service Instructions System¹⁹ gives guidance and deals with basic matters of policy relating to licences granted to fixed-term prisoners²⁰.

1. It is a sentence of imprisonment that is specified for these purposes in the Criminal Justice and Court Services Act 2000 s 62(5) (see heads (i) to (ix) in the text).
2. See the Criminal Justice and Court Services Act 2000 s 62(1).
3. As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.
4. For the purposes of the Criminal Justice and Court Services Act 2000 Pt III (ss 43–70) (dealing with offenders), except in s 69 (repealed), references to 'release' include temporary release (as to which see PARA 764): see s 70(3).
5. Criminal Justice and Court Services Act 2000 s 62(1)(a). 'Prison' is construed according to the type of sentence which has been imposed (see heads (i) to (ix) in the text): see s 62(5).
6. Criminal Justice and Court Services Act 2000 s 62(1)(b). As to licence conditions imposed on life prisoners see PARA 804; and as to licence conditions imposed on fixed-term prisoners see PARAS 806, 807.
7. Criminal Justice and Court Services Act 2000 s 62(2)(a). In relation to a prisoner released under the Criminal Justice Act 2003 s 246 (power to release fixed-term prisoners before required term: see PARA 786), the monitoring referred to in the Criminal Justice and Court Services Act 2000 s 62(2)(a) does not include the monitoring of his compliance with conditions imposed under the Criminal Justice Act 2003 s 253 (curfew condition: see PARA 807): Criminal Justice and Court Services Act 2000 s 62(3) (substituted by the Criminal Justice Act 2003 s 304, Sch 32 Pt 1 paras 133, 136(1), (2)).
8. Criminal Justice and Court Services Act 2000 s 62(2)(b).
9. Criminal Justice and Court Services Act 2000 s 62(4). At the date at which this volume states the law, no such rules had been made.
10. Criminal Justice and Court Services Act 2000 s 62(5)(a). As to detention and training orders see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 89 et seq.
11. Criminal Justice and Court Services Act 2000 s 62(5)(b). As to determinate sentences of detention in a young offender institution see PARAS 761, 762.
12. Criminal Justice and Court Services Act 2000 s 62(5)(c). Head (iii) in the text refers to sentences of detention at Her Majesty's pleasure imposed under the Powers of Criminal Courts (Sentencing) Act 2000 s 90 (see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1308; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 81): see the Criminal Justice and Court Services Act 2000 s 62(5)(c).
13. Criminal Justice and Court Services Act 2000 s 62(5)(d). Head (iv) in the text refers to sentences of detention imposed under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (power to impose sentence of detention for a specified period on a person aged under 18 who has committed a serious offence: see CHILDREN AND YOUNG PERSONS

- vol 10 (2012) PARA 1307; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 78): see the Criminal Justice and Court Services Act 2000 s 62(5)(d).
- 14 Criminal Justice and Court Services Act 2000 s 62(5)(e). Head (v) in the text refers to sentences of custody for life imposed under the Powers of Criminal Courts (Sentencing) Act 2000 ss 93, 94 (both prospectively repealed) (see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1309; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 79) on a person aged under 21 convicted of murder or any other serious offence, or in certain other cases on a person aged between 18 and 21 where the offence would attract a sentence of imprisonment for life if committed by a person aged 21 years or over: see the Criminal Justice and Court Services Act 2000 s 62(5)(e).
- 15 Criminal Justice and Court Services Act 2000 s 62(5)(f) (added by the Criminal Justice Act 2003 Sch 32 Pt 1 paras 133, 136(1), (3); amended by the Armed Forces Act 2006 s 378(1), Sch 16 para 184(a); and the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ss 126, 127, Sch 21 Pt 1 paras 16, 17, Sch 22 Pt 2 paras 17, 18). Head (vi) in the text refers to sentences of detention for public protection under the Criminal Justice Act 2003 s 226 (see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1300; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 82), including one imposed as a result of the Armed Forces Act 2006 s 221 (required custodial sentences for dangerous offenders: see ARMED FORCES vol 3 (2011) PARA 611): see the Criminal Justice and Court Services Act 2000 s 62(5)(f) (as so added and amended).
- 16 Criminal Justice and Court Services Act 2000 s 62(5)(f) (as added and amended: see note 15). Head (vii) in the text refers to extended sentences of detention imposed under the Criminal Justice Act 2003 s 226B (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS), including a sentence passed as a result of the Armed Forces Act 2006 s 221A (extended sentence for certain violent or sexual offenders aged under 18: see ARMED FORCES) and a sentence imposed under the Criminal Justice Act 2003 s 228 (repealed with savings) (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 84), including a sentence passed as a result of the Armed Forces Act 2006 s 222 (repealed) (certain violent or sexual offences (offenders aged under 18): see ARMED FORCES vol 3 (2011) PARA 611): see the Criminal Justice and Court Services Act 2000 s 62(5)(f) (as so added and amended).
- 17 Criminal Justice and Court Services Act 2000 s 62(5)(g) (s 62(5)(g), (h) added by the Armed Forces Act 2006 Sch 16 para 184(b)). Head (viii) in the text refers to sentences imposed under the Armed Forces Act 2006 s 209 (detention for specified period: see ARMED FORCES vol 3 (2011) PARA 611) or s 218 (person aged under 18 convicted of murder sentenced to be detained during Her Majesty's pleasure: see ARMED FORCES vol 3 (2011) PARA 611): see the Criminal Justice and Court Services Act 2000 s 62(5)(g) (as so added).
- 18 Criminal Justice and Court Services Act 2000 s 62(5)(h) (as added: see note 17). Head (ix) in the text refers to orders under the Armed Forces Act 2006 s 211 (detention for specified period: see ARMED FORCES vol 3 (2011) PARA 611): see the Criminal Justice and Court Services Act 2000 s 62(5)(h) (as so added).
- 19 As to the system of central policy instructions and guidance contained eg in Prison Service Orders (PSOs) and Prison Service Instructions (PSIs) see PRISONS AND PRISONERS vol 85 (2012) PARA 406.
- 20 Accordingly, see eg: (1) Prison Service Order 6000 (Parole Release and Recall); (2) Prison Service Instruction 40/2012 (Licences and Licence Conditions) (valid until 30 November 2016).

812. Drug testing requirements for monitoring compliance with conditions following release on licence. In circumstances where:

- (1) the Secretary of State¹ releases² from prison³ a person aged 18 or over on whom a sentence of imprisonment⁴ has been imposed for a trigger offence⁵; and
- (2) the release is subject to conditions (whether conditions of a licence or any other conditions, however expressed)⁶,

then, for the purpose of determining whether the person is complying with any of the conditions, those conditions may include the requirement⁷ that the person must provide, when instructed⁸ to do so by an officer of a local probation board, an officer of a provider of probation services, or a person

authorised by the Secretary of State, any sample mentioned in the instruction for the purpose of ascertaining whether he has any specified Class A drug in his body⁹.

For these purposes, 'sentence of imprisonment' includes:

- (a) a detention and training order¹⁰;
- (b) a sentence of detention in a young offender institution¹¹;
- (c) a sentence of detention at Her Majesty's pleasure¹²;
- (d) a sentence of detention for a specified period imposed on an offender aged under 18 for a serious offence¹³;
- (e) until a day to be appointed¹⁴, a sentence of custody for life¹⁵;
- (f) a sentence of detention imposed on an offender aged under 18 convicted by the Court Martial of certain serious offences or murder¹⁶; and
- (g) a detention and training order imposed by the Court Martial or the Service Civilian Court¹⁷.

1 As to the Secretary of State for these purposes see *PRISONS AND PRISONERS* vol 85 (2012) PARA 408.

2 As to the meaning of 'release' for these purposes see PARA 811 note 4.

3 'Prison' is construed according to the type of sentence which has been imposed (see heads (a) to (g) in the text): see the Criminal Justice and Court Services Act 2000 s 64(5).

4 Is a sentence of imprisonment that is specified for these purposes in the Criminal Justice and Court Services Act 2000 s 64(5) (see heads (a) to (g) in the text).

5 Criminal Justice and Court Services Act 2000 s 64(1)(a). For the purposes of Pt III (ss 43–70) (dealing with offenders), 'trigger offence' has the meaning given by s 70(1), Sch 6: see s 70(1). Accordingly, a 'trigger offence' is:

- (1) an offence under the Theft Act 1968 s 1 (theft: see *CRIMINAL LAW* vol 25 (2010) PARA 278), s 8 (robbery: see *CRIMINAL LAW* vol 25 (2010) PARA 289), s 9 (burglary: see *CRIMINAL LAW* vol 25 (2010) PARA 290), s 10 (aggravated burglary: see *CRIMINAL LAW* vol 25 (2010) PARA 291), s 12 (taking motor vehicle or other conveyance without authority: see *CRIMINAL LAW* vol 25 (2010) PARA 294), s 12A (aggravated vehicle-taking: see *CRIMINAL LAW* vol 25 (2010) PARA 295), s 22 (handling stolen goods: see *CRIMINAL LAW* vol 25 (2010) PARA 298) or s 25 (going equipped for stealing, etc: see *CRIMINAL LAW* vol 25 (2010) PARA 292) (see the Criminal Justice and Court Services Act 2000 Sch 6 para 1 (amended by the Fraud Act 2006 s 14, Sch 1 para 32(1), Sch 3, and SI 2004/1892));
- (2) an offence (if committed in respect of a specified Class A drug) under the Misuse of Drugs Act 1971 s 4 (production or supply of a controlled drug: see *CRIMINAL LAW* vol 26 (2010) PARA 725; and *MEDICAL PRODUCTS AND DRUGS* vol 75 (2013) PARA 492) or s 5(2), (3) (possession of a controlled drug with and without intent to supply it to another: see *MEDICAL PRODUCTS AND DRUGS* vol 75 (2013) PARA 495) (see the Criminal Justice and Court Services Act 2000 Sch 6 para 2);
- (3) an offence under the Fraud Act 2006 s 1 (fraud: see *CRIMINAL LAW* vol 25 (2010) PARA 305), s 6 (possession etc of articles for use in frauds: see *CRIMINAL LAW* vol 25 (2010) PARA 306), or s 7 (making or supplying articles for use in frauds: see *CRIMINAL LAW* vol 25 (2010) PARA 307) (see the Criminal Justice and Court Services Act 2000 Sch 6 para 3 (added by the Fraud Act 2006 Sch 1 para 32(2)));
- (4) an offence under the Criminal Attempts Act 1981 s 1(1) (see *CRIMINAL LAW* vol 25 (2010) PARA 86) if committed in respect of an offence under the Theft Act 1968 s 1, 8, 9 or 22 (see head (1) above), or if committed under the Fraud Act 2006 s 1 (see head (3) above) (see the Criminal Justice and Court Services Act 2000 Sch 6 para 3A (added by SI 2004/1892; substituted by SI 2007/2171)); and
- (5) an offence under the Vagrancy Act 1824 s 3 (begging: see *CRIMINAL LAW* vol 26 (2010) PARA 772) or s 4 (persistent begging: see *CRIMINAL LAW* vol 26 (2010) PARA 773) (see the Criminal Justice and Court Services Act 2000 Sch 6 para 4 (added by SI 2004/1892)).

For the purposes of the Criminal Justice and Court Services Act 2000 Pt III, 'Class A drug' has the same meaning as in the Misuse of Drugs Act 1971 (see *CRIMINAL LAW* vol 26 (2010) PARA 723; and *MEDICAL PRODUCTS AND DRUGS* vol 75 (2013) PARA 483); and

‘specified’, in relation to a Class A drug, means specified by an order made by the Secretary of State: see the Criminal Justice and Court Services Act 2000 s 70(1). As to the Secretary of State’s power to make regulations, rules or an order under the Criminal Justice and Court Services Act 2000 see s 76 (amended by the Constitutional Reform Act 2005 s 146, Sch 18 Pt 2). In exercise of the power conferred on him by the Criminal Justice and Court Services Act 2000 s 70(1), the Secretary of State has made the Criminal Justice (Specified Class A Drugs) Order 2001, SI 2001/1816. Accordingly, for these purposes, the term ‘specified class A drugs’ refers to cocaine, its salts and any preparation or other product containing cocaine or its salts (see art 2(a)); and diamorphine, its salts and any preparation or other product containing diamorphine or its salts (see art 2(b)).

The Secretary of State may by order amend the Criminal Justice and Court Services Act 2000 Sch 6 so as to add, modify or omit any description of offence: s 70(2). In exercise of this power, the Secretary of State has made the Criminal Justice and Court Services Act 2000 (Amendment) Order 2004, SI 2004/1892; and the Criminal Justice and Court Services Act 2000 (Amendment) Order 2007, SI 2007/2171, accordingly (see heads (1), (4), (5) above).

- 6 Criminal Justice and Court Services Act 2000 s 64(1)(b).
- 7 See the Criminal Justice and Court Services Act 2000 s 64(2).
- 8 The function of giving such an instruction is to be exercised in accordance with guidance given from time to time by the Secretary of State; and regulations made by the Secretary of State may regulate the provision of samples in pursuance of such an instruction: Criminal Justice and Court Services Act 2000 s 64(4). At the date at which this volume states the law, no such regulations had been made.
- 9 Criminal Justice and Court Services Act 2000 s 64(3) (amended by SI 2008/912). As to the provision of Probation Services in England and Wales (currently in the process of being transferred from local probation boards to probation trusts and other public bodies) see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 733 et seq.
- 10 Criminal Justice and Court Services Act 2000 s 64(5)(a). As to detention and training orders see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 89 et seq.
- 11 Criminal Justice and Court Services Act 2000 s 64(5)(b). As to determinate sentences of detention in a young offender institution see PARAS 761, 762.
- 12 Criminal Justice and Court Services Act 2000 s 64(5)(c). Head (c) in the text refers to sentences of detention at Her Majesty’s pleasure imposed under the Powers of Criminal Courts (Sentencing) Act 2000 s 90 (see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1308; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 81); see the Criminal Justice and Court Services Act 2000 s 64(5)(c).
- 13 Criminal Justice and Court Services Act 2000 s 64(5)(d). Head (d) in the text refers to sentences of detention imposed under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (power to impose sentence of detention for a specified period on a person aged under 18 who has committed a serious offence: see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1307; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 78); see the Criminal Justice and Court Services Act 2000 s 64(5)(d).
- 14 The Criminal Justice and Court Services Act 2000 s 64(5)(e) is repealed by the Criminal Justice Act 2003 s 332, Sch 37 Pt 7, as from a day to be appointed under s 336(3). However, at the date at which this volume states the law, no such day had been appointed.
- 15 Criminal Justice and Court Services Act 2000 s 64(5)(e) (prospectively repealed: see note 14). Head (e) in the text refers to sentences of custody for life imposed under the Powers of Criminal Courts (Sentencing) Act 2000 ss 93, 94 (both prospectively repealed) (see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1309; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 79) on a person aged under 21 convicted of murder or any other serious offence, or in certain other cases on a person aged between 18 and 21 where the offence would attract a sentence of imprisonment for life if committed by a person aged 21 years or over: see the Criminal Justice and Court Services Act 2000 s 64(5)(e) (prospectively repealed).
- 16 Criminal Justice and Court Services Act 2000 s 64(5)(g) (s 64(5)(g), (h) added by the Armed Forces Act 2006 Sch 16 para 185(b)). Head (f) in the text refers to sentences imposed under the Armed Forces Act 2006 s 209 (detention for specified period: see ARMED FORCES vol 3 (2011) PARA 611) and s 218 (person aged under 18 convicted of murder sentenced to be detained during Her Majesty’s pleasure: see ARMED FORCES vol 3 (2011) PARA 611): see the Criminal Justice and Court Services Act 2000 s 64(5)(g) (as so added).
- 17 Criminal Justice and Court Services Act 2000 s 64(5)(h) (as added: see note 16). Head (g) in the text refers to orders imposed under the Armed Forces Act 2006 s 211 (detention for

specified period: see ARMED FORCES vol 3 (2011) PARA 611): see the Criminal Justice and Court Services Act 2000 s 64(5)(h) (as so added).

813. Polygraph conditions for certain offenders released on licence. As from a day to be appointed¹, the Secretary of State² may include a polygraph condition³ in the licence of a person⁴ who is serving a relevant custodial sentence⁵ in respect of a relevant sexual offence⁶ who⁷:

- (1) is released on licence by the Secretary of State under any enactment⁸; and
- (2) is not aged under 18 on the day on which he is released⁹.

For these purposes, 'relevant custodial sentence' means:

- (a) a sentence of imprisonment for a term of 12 months or more (including an extended sentence of detention)¹⁰;
- (b) a sentence of detention in a young offender institution for a term of 12 months or more¹¹;
- (c) a sentence of detention at Her Majesty's pleasure¹²;
- (d) a sentence of detention for a period of 12 months or more imposed on an offender aged under 18 for a serious offence¹³;
- (e) a sentence of custody for life¹⁴;
- (f) a sentence of detention for public protection¹⁵.

For these purposes, 'relevant sexual offence' means a specified sexual offence¹⁶.

Evidence of any matter mentioned in heads (i) and (ii) below may not be used in any proceedings against a released person for an offence¹⁷, those matters being: (i) any statement made by the released person while participating in a polygraph session¹⁸; or (ii) any physiological reactions of the released person while being questioned in the course of a polygraph examination¹⁹.

- 1 The Offender Management Act 2007 ss 28, 29 (see the text and notes 2–16) come into effect as from a day to be appointed under s 41(1). At the date at which this volume states the law, no such day had been appointed but such a day had been appointed for ss 28, 29 to have effect, in relation to certain specified police areas only, for the period beginning on 19 January 2009 and ending on 31 March 2012 (see the Offender Management Act 2007 (Commencement No 3) Order 2009, SI 2009/32, arts 3–5).
- 2 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.
- 3 For the purposes of the Offender Management Act 2007 s 28, a 'polygraph condition' is a condition which requires the released person:
 - (1) to participate in polygraph sessions conducted with a view to: (a) monitoring his compliance with the other conditions of his licence (see s 29(1)(a)(i) (not yet in force)); or (b) improving the way in which he is managed during his release on licence (see s 29(1)(a)(ii) (not yet in force));
 - (2) to participate in those polygraph sessions at such times as may be specified in instructions given by an appropriate officer (see s 29(1)(b) (not yet in force)); and
 - (3) while participating in a polygraph session, to comply with instructions given to him by the person conducting the session (the 'polygraph operator') (see s 29(1)(c) (not yet in force)).

In head (2) above, 'appropriate officer' means an officer of a provider of probation services or an officer of a local probation board (see s 29(4) (not yet in force)); and such an officer, when giving instructions as mentioned in head (2) above, must have regard to any guidance issued by the Secretary of State (see s 29(5) (not yet in force)). As to the provision of Probation Services in England and Wales (currently in the process of being transferred from local probation boards to probation trusts and other public bodies) see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 733 et seq.

A 'polygraph session' is a session during which the polygraph operator conducts one or more polygraph examinations of the released person, and interviews the released person in

preparation for, or otherwise in connection with, any such examination: see s 29(2) (not yet in force). For the purposes of s 29(2), a 'polygraph examination' is a procedure in which:

- (i) the polygraph operator questions the released person (see s 29(3)(a) (not yet in force));
- (ii) the questions and the released person's answers are recorded (see s 29(3)(b) (not yet in force)); and
- (iii) physiological reactions of the released person while being questioned are measured and recorded by means of equipment of a type approved by the Secretary of State (see s 29(3)(c) (not yet in force)).

The Secretary of State may make rules relating to the conduct of polygraph sessions (see s 29(6) (not yet in force)); and this power to make rules is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament (see s 29(8) (not yet in force)). The rules may, in particular:

- (A) require polygraph operators to be persons who satisfy such requirements as to qualifications, experience and other matters as are specified in the rules (see s 29(7)(a) (not yet in force));
- (B) make provision about the keeping of records of polygraph sessions (see s 29(7)(b) (not yet in force)); and
- (C) make provision about the preparation of reports on the results of polygraph sessions (see s 29(7)(c) (not yet in force)).

In exercise of the power conferred by s 29(6), the Secretary of State has made the Polygraph Rules 2009, SI 2009/619, which apply to all polygraph sessions held pursuant to a polygraph condition (see r 2); and make provision in relation to: (aa) suitable qualifications for polygraph operators (see r 3); (bb) the requirement for polygraph operators to be independent (see r 4); (cc) the requirements to be met by a polygraph session (see rr 5, 6); (dd) the duties of a polygraph supervisor (see r 7, Sch 1); and (ee) reports of polygraph sessions (see r 8).

- 4 See the Offender Management Act 2007 s 28(1). The text refers to the licence of a person to whom s 28 applies (see s 28(2); and the text and notes 5–9): see s 28(1).
- 5 Is a sentence that is specified in the Offender Management Act 2007 s 28(3) ('relevant custodial sentence') (see heads (a) to (f) in the text): see s 28(2).
- 6 Is a sentence that is specified in the Offender Management Act 2007 s 28(4) ('relevant sexual offence') (see note 16): see s 28(2).
- 7 See the Offender Management Act 2007 s 28(2).
- 8 Offender Management Act 2007 s 28(2)(a).
- 9 Offender Management Act 2007 s 28(2)(b).
- 10 Offender Management Act 2007 s 28(3)(a) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 126, Sch 21 Pt 1 para 32(1), (2)). Head (a) in the text includes a sentence of imprisonment imposed under the Criminal Justice Act 2003 s 226A (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS) or s 227 (repealed with savings) (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 75, 88): see the Offender Management Act 2007 s 28(3)(a) (as so amended).
- 11 Offender Management Act 2007 s 28(3)(b). As to determinate sentences of detention in a young offender institution see PARAS 761, 762.
- 12 Offender Management Act 2007 s 28(3)(c). Head (c) in the text refers to sentences of detention at Her Majesty's pleasure imposed under the Powers of Criminal Courts (Sentencing) Act 2000 s 90 (see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1308; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 81): see the Offender Management Act 2007 s 28(3)(c).
- 13 Offender Management Act 2007 s 28(3)(d). Head (d) in the text refers to sentences of detention imposed under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (power to impose sentence of detention for a specified period on a person aged under 18 who has committed a serious offence: see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1307; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 78): see the Offender Management Act 2007 s 28(3)(d).
- 14 Offender Management Act 2007 s 28(3)(e). Head (e) in the text refers to sentences of custody for life imposed under the Powers of Criminal Courts (Sentencing) Act 2000 ss 93, 94 (both prospectively repealed) (see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1309; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 79) on a person aged under 21 convicted of murder or any other serious offence, or in certain other

cases on a person aged between 18 and 21 where the offence would attract a sentence of imprisonment for life if committed by a person aged 21 years or over: see the Offender Management Act 2007 s 28(3)(e).

- 15 Offender Management Act 2007 s 28(3)(f) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 Sch 21 Pt 1 para 32(1), (3)). Head (f) in the text refers to sentences of detention for public protection imposed under the Criminal Justice Act 2003 s 226 (see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1300; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 82), s 226B (extended sentence for certain violent or sexual offences (persons under 18); see SENTENCING AND DISPOSITION OF OFFENDERS) or s 228 (repealed with savings) (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 84): see the Offender Management Act 2007 s 28(3)(f) (as so amended).
- 16 See the Offender Management Act 2007 s 28(4). For these purposes, ‘relevant sexual offence’ means an offence that is specified in the Criminal Justice Act 2003 s 224, Sch 15 Pt 1 (violent offences) and Sch 15 Pt 2 (sexual offences) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 70–71): see the Offender Management Act 2007 s 28(4)(a). The definition includes equivalent offences under the law of Scotland (see s 28(4)(b)), and under the law of Northern Ireland (see s 28(4)(c)).
- 17 See the Offender Management Act 2007 s 30(1).
- 18 Offender Management Act 2007 s 30(2)(a). For these purposes, ‘polygraph session’ has the same meaning as in s 29 (see note 3): see s 30(3).
- 19 Offender Management Act 2007 s 30(2)(b). For these purposes, ‘polygraph examination’ has the same meaning as in s 29 (see note 3): see s 30(3).

814. Supervision of young offenders after release. Where a person (‘the offender’) is released under Chapter 6 of Part 12 of the Criminal Justice Act 2003¹ from a specified term of detention² which is for less than 12 months³, he is to be under the supervision of⁴:

- (1) an officer of a provider of probation services⁵;
- (2) a social worker of a local authority⁶; or
- (3) if the offender is under the age of 18 years at the date of release, a member of the youth offending team⁷.

The supervision period begins on the offender’s release and ends three months later (whether or not the offender is detained for a breach of his supervision requirements⁸ or otherwise during that period)⁹. 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 State¹⁰. Such requirements that may be specified in such a notice include¹¹:

- (a) requirements for securing the electronic monitoring of the offender’s compliance with any other requirements specified in the notice¹²;
- (b) requirements for securing the electronic monitoring of the offender’s whereabouts (otherwise than for the purpose of securing compliance with requirements specified in the notice)¹³;
- (c) in the following circumstances, namely where¹⁴:
 - (i) the offender has attained the age of 18 years¹⁵;
 - (ii) the offender’s term of detention was imposed for a trigger offence¹⁶; and
 - (iii) the requirements to provide samples are being imposed for the purpose of determining whether the offender is complying with any other requirements specified in the notice¹⁷,

requirements to provide, when instructed to do so by an officer of a provider of probation services or a person authorised by the Secretary of State, any sample mentioned in the instruction for the

purpose of ascertaining whether the offender has any specified Class A drug in his or her body¹⁸.

Where a young offender is under supervision¹⁹, and it appears on information to a justice of the peace that the offender has failed to comply with any of his supervision requirements²⁰, the justice may²¹ either issue a summons requiring the offender to appear at the place and time specified in the summons²² or (if the information is in writing and on oath) issue a warrant for the offender's arrest²³.

If it is proved to the satisfaction of the court that the offender has failed to comply with any of his supervision requirements²⁴, the court may²⁵ 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 specify²⁶, or the court may impose on the offender a fine not exceeding level 3 on the standard scale²⁷.

The Prison Service Instructions System²⁸ gives guidance and deals with basic matters of policy relating to the supervision of young offenders²⁹.

1 Ie under the Criminal Justice Act 2003 Pt 12 Ch 6 (ss 237–268) (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 805 et seq, 818 et seq): see s 256B(1) (ss 256B, 256C added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 115). The amendments made by s 115 apply in relation to any person who falls to be released under the Criminal Justice Act 2003 Pt 12 Ch 6 on or after 3 December 2012 (ie on or after the commencement date, being the day appointed under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 151 for the coming into force of s 115: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d)): see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 120, Sch 15 paras 1, 2(1)(d).

The Criminal Justice Act 2003 ss 256B, 256C achieve broadly the same effect as the Criminal Justice Act 1991 s 65, which is repealed by the Criminal Justice Act 2003 ss 304, 332, Sch 32 Pt 1 paras 62, 63, Sch 37 Pt 7, as from 3 December 2012, in so far as it relates to the Criminal Justice Act 1991 s 65(1), but on 1 May 2013 for all remaining purposes of s 65: see the Criminal Justice Act 2003 (Commencement No. 30 and Consequential Amendment) Order 2012, SI 2012/2905, art 3(1). The Criminal Justice Act 1991 s 65, apart from s 65(1), continues to apply to supervision periods imposed before 3 December 2012 but, as the maximum supervision period is only three months, total repeal operates from 1 May 2013, allowing for any breach proceedings to be brought before then. The provision made by s 65 is not set out in this work.

2 Ie from one of the following terms of detention:

- (1) a term of detention in a young offender institution (Criminal Justice Act 2003 s 256B(1)(a) (as added: see note 1));
- (2) a term of detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (power to impose sentence of detention for a specified period on a person aged under 18 who has committed a serious offence: see CHILDREN AND YOUNG PERSONS vol 10 (2012) PARA 1307; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 78) (Criminal Justice Act 2003 s 256B(1)(b) (as so added));
- (3) a term of detention under the Armed Forces Act 2006 s 209 (detention for specified period: see ARMED FORCES vol 3 (2011) PARA 611) (Criminal Justice Act 2003 s 256B(1)(c) (as so added)).

As to young offender institutions see PRISONS AND PRISONERS vol 85 (2012) PARA 487 et seq; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 85 et seq.

The Criminal Justice Act 2003 ss 243A–264 do not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of 'England' and 'Wales' see PARA 763 note 1.

3 See the Criminal Justice Act 2003 s 256B(1) (as added: see note 1).

4 See the Criminal Justice Act 2003 s 256B(2) (as added: see note 1).

5 Criminal Justice Act 2003 s 256B(2)(a) (as added: see note 1). Where the supervision is to be provided by an officer of a provider of probation services, he must be an officer acting

- in the local justice area in which the offender resides for the time being: s 256B(3) (as so added). As to local justice areas see *MAGISTRATES* vol 71 (2013) PARA 475. As to the provision of Probation Services in England and Wales (currently in the process of being transferred from local probation boards to probation trusts and other public bodies) see *SENTENCING AND DISPOSITION OF OFFENDERS* vol 92 (2010) PARA 733 et seq.
- 6 Criminal Justice Act 2003 s 256B(2)(b) (as added: see note 1). Where the supervision is to be provided by a social worker of a local authority, he must be a social worker of the local authority within whose area the offender resides for the time being: see s 256B(4)(a) (as so added).
 - 7 Criminal Justice Act 2003 s 256B(2)(c) (as added: see note 1). Where the supervision is to be provided by a member of a youth offending team, he must be a member of a youth offending team established by the local authority within whose area the offender resides for the time being: see s 256B(4)(b) (as so added). As to youth offending teams established by local authorities under the Crime and Disorder Act 1998 s 39 see *CHILDREN AND YOUNG PERSONS* vol 10 (2012) PARA 1193.
 - 8 Ie detained under the Criminal Justice Act 2003 s 256C (see the text and notes 19–27): see s 256B(5) (as added: see note 1).
 - 9 See the Criminal Justice Act 2003 s 256B(5) (as added: see note 1).
 - 10 See the Criminal Justice Act 2003 s 256B(6) (as added: see note 1). As to the Secretary of State for these purposes see *PRISONS AND PRISONERS* vol 85 (2012) PARA 408.
 - 11 See the Criminal Justice Act 2003 s 256B(7) (as added: see note 1).
 - 12 Criminal Justice Act 2003 s 256B(7)(a) (as added: see note 1).
 - 13 Criminal Justice Act 2003 s 256B(7)(b) (as added: see note 1).
 - 14 See the Criminal Justice Act 2003 s 256B(7)(c), (8) (as added: see note 1). The text refers to the circumstances mentioned in s 256B(8) (see heads (c)(i) to (c)(iii) in the text): see s 256B(7)(c) (as so added).
 - 15 Criminal Justice Act 2003 s 256B(8)(a) (as added: see note 1).
 - 16 Criminal Justice Act 2003 s 256B(8)(b) (as added: see note 1). For these purposes, ‘trigger offence’ has the same meaning as in the Criminal Justice and Court Services Act 2000 Pt III (ss 43–70) (mandatory and discretionary referral of young offenders) (see PARA 812 note 5): see the Criminal Justice Act 2003 s 256B(10) (as so added). However, if the offender’s term of detention was imposed for an offence under the Armed Forces Act 2006 s 42 (criminal conduct: see *ARMED FORCES* vol 3 (2011) PARA 587), ‘trigger offence’ means such an offence as respects which the corresponding offence under the law of England and Wales is a trigger offence within the meaning of the Criminal Justice and Court Services Act 2000 Pt III: see the Criminal Justice Act 2003 s 256B(10) (as so added).
 - 17 Criminal Justice Act 2003 s 256B(8)(c) (as added: see note 1).
 - 18 See the Criminal Justice Act 2003 s 256B(7)(c) (as added: see note 1). For these purposes, ‘specified Class A drug’ has the same meaning as in the Criminal Justice and Court Services Act 2000 Pt III (mandatory and discretionary referral of young offenders) (see PARA 812 note 5): see the Criminal Justice Act 2003 s 256B(10) (as so added).
The function of giving such an instruction as is mentioned in s 256B(7)(c) (see head (c) in the text) must be exercised in accordance with guidance given from time to time by the Secretary of State; and the Secretary of State may make rules about the requirements that may be imposed by virtue of s 256B(7) and the provision of samples in pursuance of such an instruction: s 256B(9) (as so added). At the date at which this volume states the law, no such rules had been made.
 - 19 Ie under the Criminal Justice Act 2003 s 256B (see the text and notes 1–18): see s 256C(1) (as added: see note 1).
 - 20 Ie with requirements under the Criminal Justice Act 2003 s 256B(6) (see the text and note 10): see s 256C(1) (as added: see note 1).
 - 21 See the Criminal Justice Act 2003 s 256C(1) (as added: see note 1).
 - 22 Criminal Justice Act 2003 s 256C(1)(a) (as added: see note 1). Any summons issued under s 256C must direct the offender to appear: (1) before a court acting for the local justice area in which the offender resides (see s 256C(2)(a) (as so added)); or (2) 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 (see s 256C(2)(b) (as so added)). Where the offender does not appear in answer to a summons issued under s 256C(1)(a), the court may issue a warrant for the offender’s arrest: s 256C(3) (as so added). For these purposes, ‘court’ means (if the offender has attained the age of 18 years at the date of release) a magistrates’ court other than a youth court or (if the offender is under the age of 18 years at the date of release) a youth court: see s 256C(8) (as so added). As to youth courts see *CHILDREN AND YOUNG PERSONS* vol 10 (2012) PARA 1225 et seq.

- 23 Criminal Justice Act 2003 s 256C(1)(b) (as added: see note 1). Any warrant issued under s 256C must direct the offender to be brought: (1) before a court acting for the local justice area in which the offender resides (see s 256C(2)(a) (as so added)); or (2) if it is not known where the offender resides, before a court acting for same local justice area as the justice who issued the warrant (see s 256C(2)(b) (as so added)).
- 24 In with requirements under the Criminal Justice Act 2003 s 256B(6) (see the text and note 10); see s 256C(4) (as added: see note 1).
- 25 See the Criminal Justice Act 2003 s 256C(4) (as added: see note 1).
- 26 See the Criminal Justice Act 2003 s 256C(4)(a) (as added: see note 1). An offender detained in pursuance of an order under s 256C(4)(a) is to be regarded as being in legal custody: s 256C(5) (as so added). An offender may appeal to the Crown Court against any order made under s 256C(4)(a): see s 256C(7) (as so added). As to legal custody see PRISONS AND PRISONERS vol 85 (2012) PARA 426.
- 27 See the Criminal Justice Act 2003 s 256C(4)(b) (as added: see note 1). As to the standard scale see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142.
A fine imposed under s 256C(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(6) (as so added). An offender may appeal to the Crown Court against any order made under s 256C(4)(b): see s 256C(7) (as so added).
- 28 As to the system of central policy instructions and guidance contained eg in Prison Service Orders (PSOs) and Prison Service Instructions (PSIs) see PRISONS AND PRISONERS vol 85 (2012) PARA 406.
- 29 See especially Prison Service Instruction 37/2012 (PI 19/2012) (Supervision of Young Offenders) (valid until 2 December 2016).

(8) DISCHARGE

815. Formalities. Once the legal requirements for release have been met, discharge from prison is largely an administrative matter in relation to which the Prison Service Instructions System¹ gives guidance and sets out basic matters of policy².

A prisoner who would³ be discharged on any Sunday, Christmas Day, Good Friday or on any day which is a bank holiday in England and Wales⁴ (and, in the case of a person who is serving a term of more than five days, any Saturday) is discharged on the next preceding day which is not one of those days⁵. Any power conferred by or under any enactment to release a person from a prison or other institution to which the Prison Act 1952 applies⁶ may be exercised notwithstanding that he is not for the time being detained in that institution; and a person so released⁷ must, after his release, be treated in all respects as if he had been released from that institution⁸.

The Secretary of State⁹ may make such payments to or in respect of persons released or about to be released from prison as he may, with Treasury consent, determine¹⁰. Where necessary, a prisoner or an inmate may be provided with suitable and adequate clothing on his release¹¹.

In general, a discharged prisoner is not subject to any legal disabilities as such¹², but there are restrictions upon his possession of firearms for a certain period after release¹³.

- 1 As to the system of central policy instructions and guidance contained eg in Prison Service Orders (PSOs) and Prison Service Instructions (PSIs) see PRISONS AND PRISONERS vol 85 (2012) PARA 406.
- 2 The overriding aim of the guidance is to ensure that the correct prisoner is discharged to the correct location on the correct date and time: see Prison Service Instruction 72/2011 (Discharge) (valid until 13 December 2015). As to after-care see:
 - (1) Prison Service Order 2300 (Resettlement); and Prison Service Instruction 12/2012 (Rehabilitation Services Specification: Custody) (valid until 31 March 2016);
 - (2) Prison Service Order 2350 (Housing Needs and Assessment Document);

- (3) Prison Service Order 4190 (Strategy for Working with the Voluntary and Community Sector);
- (4) Prison Service Order 4350 (Effective Regime Interventions);
- (5) Prison Service Order 4360 (Correctional Services Accreditation Panel); and
- (6) Prison Service Order 4615 (Prolific and Other Priority Offenders Strategy); and Prison Service Instruction 12/2010 (Prolific and Other Priority Offenders) (valid until 31 January 2014)).

As to the provision of Probation Services in England and Wales (currently in the process of being transferred from local probation boards to probation trusts and other public bodies) see *SENTENCING AND DISPOSITION OF OFFENDERS* vol 92 (2010) PARA 733 et seq. As to after-care see also *PRISONS AND PRISONERS* vol 85 (2012) PARAS 537, 538.

A person is to be treated as available for employment if he has been discharged from detention in a prison, remand centre or youth custody institution, and he is not given notice to participate in the Employment, Skills and Enterprise Scheme under the Jobseeker's Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011, SI 2011/917, reg 4(1) (see *SOCIAL SECURITY AND PENSIONS*), for one week commencing with the date of his discharge: see the Jobseeker's Allowance Regulations 1996, SI 1996/207, reg 14(1)(h); and *SOCIAL SECURITY AND PENSIONS* vol 44(2) (Reissue) PARA 281.

3. Ie apart from the Criminal Justice Act 1961 s 23(3): see s 23(3) (amended by the Criminal Justice Act 1982 s 77, Sch 14 para 10; and the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 89(2), Sch 10 para 2(a)). For these purposes, references to prisons and prisoners include references respectively to a young offender institution, secure training centres and remand centres and to persons detained in them: see the Criminal Justice Act 1961 s 23(4) (amended by the Criminal Justice and Public Order Act 1994 s 168(2), Sch 10 para 11; and by virtue of the Criminal Justice Act 1988 s 123, Sch 8 para 1). As from a day to be appointed under the Criminal Justice and Court Services Act 2000 s 80(1), the Criminal Justice Act 1961 s 23(4) is amended so that the reference to 'remand centres' is repealed: see s 23(4) (as so amended; prospectively further amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt II para 33). However, at the date at which this volume states the law, no such day had been appointed. As to remand centres see *PRISONS AND PRISONERS* vol 85 (2012) PARAS 485, 486. As to young offender institutions see *PRISONS AND PRISONERS* vol 85 (2012) PARA 487 et seq; and *SENTENCING AND DISPOSITION OF OFFENDERS* vol 92 (2010) PARA 85 et seq. As to secure training centres see *PRISONS AND PRISONERS* vol 85 (2012) PARA 491 et seq.

The Criminal Justice Act 1961 s 23(3) does not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 2(1)(c); and PARA 763. As to the meanings of 'England' and 'Wales' see PARA 763 note 1.
4. Ie under the Banking and Financial Dealings Act 1971 (see *TIME* vol 97 (2010) PARA 321): see the Criminal Justice Act 1961 s 23(3) (as amended: see note 3); and the Interpretation Act 1978 s 17(2).
5. See the Criminal Justice Act 1961 s 23(3) (as amended: see note 3); and the Interpretation Act 1978 s 17(2).
6. As to the application of the Prison Act 1952 see *PRISONS AND PRISONERS* vol 85 (2012) PARA 403 et seq.
7. Ie released by virtue of the Criminal Justice Act 1967 s 71: see s 71.
8. See the Criminal Justice Act 1967 s 71.
9. As to the Secretary of State for these purposes see *PRISONS AND PRISONERS* vol 85 (2012) PARA 408.
10. Prison Act 1952 s 30 (substituted by the Criminal Justice Act 1967 s 66(3)).
11. See the Prison Rules 1999, SI 1999/728, r 23(6); the Young Offender Institution Rules 2000, SI 2000/3371, r 19(4); and *PRISONS AND PRISONERS* vol 85 (2012) PARA 541.
12. As to disqualifications consequent on conviction see *CRIMINAL PROCEDURE* vol 27 (2010) PARA 63.
13. As to the possession and sale of firearms by persons convicted of crime see *CRIMINAL LAW* vol 26 (2010) PARAS 625–626.

(9) REMOVAL OF PRISONERS FROM THE UNITED KINGDOM

(i) Life Sentence Prisoners

816. Life sentence prisoner liable to removal from the United Kingdom.

The Secretary of State¹ may remove from prison² a life prisoner³:

- (1) in respect of whom a minimum term order⁴ has been made⁵; and
 - (2) who is liable to removal from the United Kingdom⁶,
- at any time after the prisoner has served the relevant part of the sentence⁷.

If such a prisoner is removed from prison in this way⁸:

- (a) he is so removed only for the purpose of enabling the Secretary of State to remove him from the United Kingdom under powers conferred by the Immigration Act 1971 or by the Immigration and Asylum Act 1999⁹; and
- (b) so long as remaining in the United Kingdom, he remains liable to be detained in pursuance of his sentence¹⁰.

So long as the prisoner, having been removed from prison¹¹, remains in the United Kingdom but has not been returned to prison, any duty or power of the Secretary of State to release him¹² is exercisable in relation to him as if he were in prison¹³.

The Prison Service Instructions System¹⁴ gives guidance relating to foreign national prisoners who are liable to deportation¹⁵.

1 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.

2 In the Crime (Sentences) Act 1997 s 32A: see s 32A(1) (s 32A added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 119). The provision made by s 119 applies in relation to any person who, on 1 May 2012, has served the relevant part of the sentence (as well as in relation to any person who, on that date, has not served that part): see s 120, Sch 15 para 7. For the purposes of the Crime (Sentences) Act 1997 s 32A, the 'relevant part' of a life prisoner's sentence has the meaning given by s 28 (duty to release certain life prisoners) (see s 28(1A); and PARA 779): see s 32A(5) (as so added). The date of 1 May 2012 is the day on which the Legal Aid, Sentencing and Punishment of Offenders Act 2012 was passed, s 119 having come into force on that day: see s 151(2)(b).

3 As to the meaning of 'life prisoner' for the purposes of the Crime (Sentences) Act 1997 Pt II Ch II (ss 28–34) (life sentences) see PARA 778.

The Crime (Sentences) Act 1997 Pt II Ch II does not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of 'England' and 'Wales' see PARA 763 note 1.

4 'Minimum term order' is defined for the purposes of the Crime (Sentences) Act 1997 s 28 (duty to release certain life prisoners): see s 28(8A); and PARA 779 note 2.

5 See the Crime (Sentences) Act 1997 s 32A(1)(a) (as added: see note 2). If the prisoner who falls within heads (1) and (2) in the text is serving two or more life sentences: (1) s 32A does not apply to him unless a minimum term order has been made in respect of each of those sentences (s 32A(2)(a) (as so added)); and (2) the Secretary of State may not remove him from prison under s 32A until he has served the relevant part of each of them (s 32A(2)(b) (as so added)).

6 See the Crime (Sentences) Act 1997 s 32A(1)(b) (as added: see note 2). For these purposes, 'liable to removal from the United Kingdom' has the meaning given by the Criminal Justice Act 2003 s 259 (persons liable to removal from the United Kingdom: see PARA 818 note 3): see the Crime (Sentences) Act 1997 s 32A(5) (as so added). As to the meaning of 'United Kingdom' see PARA 763 note 1.

7 See the Crime (Sentences) Act 1997 s 32A(1) (as added: see note 2). The provision made by s 32A(1) applies whether or not the Parole Board has directed the prisoner's release

under s 28 (duty to release certain life prisoners: see PARA 779): see s 32A(1) (as so added). As to the constitution and functions of the Parole Board, continued by the Criminal Justice Act 2003 s 239(1), see PARA 772.

- 8 See the Crime (Sentences) Act 1997 s 32A(3) (as added: see note 2). The text refers to a prisoner removed from prison under s 32A: see s 32A(3) (as so added).
- 9 Crime (Sentences) Act 1997 s 32A(3)(a) (as added: see note 2). Head (a) in the text refers to powers conferred by the Immigration Act 1971 ss 4, 5, Sch 2 (control on entry etc) or Sch 3 (deportation) (see IMMIGRATION AND ASYLUM vol 57 (2012) PARA 177 et seq) or by the Immigration and Asylum Act 1999 s 10 (removal of certain persons unlawfully in the United Kingdom: see IMMIGRATION AND ASYLUM vol 57 (2012) PARA 179): see the Crime (Sentences) Act 1997 s 32A(3)(a) (as so added).
- 10 Crime (Sentences) Act 1997 s 32A(3)(b) (as added: see note 2).
- 11 Ie having been removed from prison under the Crime (Sentences) Act 1997 s 32A: see s 32A(4) (as added: see note 2).
- 12 Ie under the Crime (Sentences) Act 1997 s 28 (duty to release certain life prisoners: see PARA 779) or under s 30 (power to release life prisoners on compassionate grounds: see PARA 770): see s 32A(4) (as added: see note 2).
- 13 Crime (Sentences) Act 1997 s 32A(4) (as added: see note 2).
- 14 As to the system of central policy instructions and guidance contained eg in Prison Service Orders (PSOs) and Prison Service Instructions (PSIs) see PRISONS AND PRISONERS vol 85 (2012) PARA 406.
- 15 Accordingly, see eg Prison Service Instruction 52/2011 (Immigration, Repatriation And Removal Services) (valid until 04 November 2015); Prison Service Instruction 65/2011 (PI 15/2011) (Foreign National Prisoners Liable to Deportation) (valid until 1 November 2015); Prison Service Instruction 18/2012 (AI 05/2012; PI 11/2012) (Tariff Expired Removal Scheme (TERS)) (valid until 1 May 2016); and Prison Service Instruction (PSI) 04/2013 (Early Removal Scheme and Release of Foreign National Prisoners) (valid until 10 February 2017).

817. Re-entry into the United Kingdom of life sentence prisoner removed previously. If a person, having been removed from prison¹, is removed from the United Kingdom² but then enters the United Kingdom³:

- (1) he is liable to be detained in pursuance of his sentence from the time of his entry into the United Kingdom⁴;
- (2) if no direction was given by the Parole Board⁵ before his removal from prison, the usual provisions that govern a life prisoner's release⁶ apply to him⁷;
- (3) if such a direction was given before that removal, the prisoner is to be treated as if he had been recalled to prison while on licence⁸.

A person who is liable to be detained by virtue of head (1) above⁹ is, if at large, to be taken for the purposes of the Prison Act 1952¹⁰ to be unlawfully at large¹¹. Head (1) above does not prevent the prisoner's further removal from the United Kingdom¹².

1 Ie under the Crime (Sentences) Act 1997 s 32A (see PARA 816): see s 32B(1) (s 32B added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 119). The provision made by s 119 applies in relation to any person who, on 1 May 2012, has served the relevant part of the sentence (as well as in relation to any person who, on that date, has not served that part): see s 120, Sch 15 para 7. The date of 1 May 2012 is the day on which the Legal Aid, Sentencing and Punishment of Offenders Act 2012 was passed, s 119 having come into force on that day: see s 151(2)(b). As to the meaning of the 'relevant part' of a life prisoner's sentence for these purposes see PARA 816 note 2.

The Crime (Sentences) Act 1997 Pt II Ch II (ss 28–34) (life sentences) does not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of 'England' and 'Wales' see PARA 763 note 1.

2 See the Crime (Sentences) Act 1997 s 32B(1) (as added: see note 1). As to the meaning of 'United Kingdom' see PARA 763 note 1.

3 See the Crime (Sentences) Act 1997 s 32B(2) (as added: see note 1).

- 4 Crime (Sentences) Act 1997 s 32B(2)(a) (as added: see note 1).
- 5 *Ie* under the Crime (Sentences) Act 1997 s 28(5) (see PARA 779): see s 32B(2)(b) (as added: see note 1). As to the constitution and functions of the Parole Board, continued by the Criminal Justice Act 2003 s 239(1), see PARA 772.
- 6 *Ie* the Crime (Sentences) Act 1997 s 28 (duty to release certain life prisoners: see PARA 779): see s 32B(2)(b) (as added: see note 1).
- 7 Crime (Sentences) Act 1997 s 32B(2)(b) (as added: see note 1).
- 8 Crime (Sentences) Act 1997 s 32B(2)(c) (as added: see note 1). The text refers to the prisoner being treated as if he had been recalled to prison under s 32 (recall of life prisoners while on licence: see PARA 780): see s 32B(2)(c) (as so added).
- 9 *Ie* by virtue of the Crime (Sentences) Act 1997 s 32B(2)(a) (see head (1) in the text): see s 32B(3) (as added: see note 1).
- 10 *Ie* for the purposes of the Prison Act 1952 s 49 (persons unlawfully at large: see PRISONS AND PRISONERS vol 85 (2012) PARA 429): see the Crime (Sentences) Act 1997 s 32B(3) (as added: see note 1).
- 11 Crime (Sentences) Act 1997 s 32B(3) (as added: see note 1).
- 12 Crime (Sentences) Act 1997 s 32B(4) (as added: see note 1).

(ii) Fixed-term Prisoners

A. OFFENCES COMMITTED ON OR AFTER 4 APRIL 2005

818. Fixed-term prisoner liable to removal from the United Kingdom.

Where a fixed-term prisoner¹, who has served at least one-half of the requisite custodial period², is liable to removal from the United Kingdom³, the Secretary of State may remove him from prison⁴ at any time during the period of 270 days ending with the day on which the prisoner will have served the requisite custodial period⁵. If a fixed-term prisoner serving an extended sentence⁶ is liable to removal from the United Kingdom⁷, and has not been removed from prison⁸ during the specified period of 270 days⁹, the Secretary of State may remove the prisoner from prison¹⁰ at any time after the end of that period¹¹.

A prisoner removed from prison in this way¹²:

- (1) is so removed only for the purpose of enabling the Secretary of State to remove him from the United Kingdom under powers conferred by the Immigration Act 1971 or by the Immigration and Asylum Act 1999¹³; and
- (2) so long as remaining in the United Kingdom, remains liable to be detained in pursuance of his sentence until he has served the requisite custodial period¹⁴.

So long as a prisoner who is removed from prison in this way¹⁵ remains in the United Kingdom but has not been returned to prison, any duty or power of the Secretary of State to release him¹⁶ is exercisable in relation to him as if he were in prison¹⁷.

In relation to certain historical cases, the usual Criminal Justice Act 2003 provisions¹⁸ are displaced by transitional arrangements¹⁹.

The Prison Service Instructions System²⁰ gives guidance relating to foreign national prisoners who are liable to deportation²¹.

- 1 As to the meaning of 'fixed-term prisoner' for the purposes of the Criminal Justice Act 2003 Pt 12 Ch 6 (ss 237–268) (sentencing: release, licences and recall) see PARA 781.
- 2 The Criminal Justice Act 2003 s 260(1) (see the text and notes 1, 3–5) is subject to s 260(2): see s 260(1) (amended by the Criminal Justice and Immigration Act 2008 s 34(1), (3), (4)(a); and by SI 2008/978). Accordingly, the Criminal Justice Act 2003 s 260(1) does not apply in relation to a prisoner unless he has served at least one-half of the requisite custodial period: see s 260(2) (substituted by the Criminal Justice and Immigration Act 2008 s 34(1), (3), (5)). For these purposes, 'requisite custodial period':

- (1) has the meaning given by the Criminal Justice Act 2003 s 246A(8)(a), (b) (definition of 'requisite custodial period': see PARA 787 note 4), in relation to a prisoner serving an extended sentence imposed under s 226A (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS) or s 226B (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS) (s 260(7)(za) (s 260(7) substituted by the Criminal Justice and Immigration Act 2008 s 34(1), (3), (9); the Criminal Justice Act 2003 s 260(7)(za) added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 125(4), Sch 20 paras 1, 9(1), (4));
- (2) means one-half of the appropriate custodial term (determined by the court under the applicable provision), in relation to a prisoner serving an extended sentence imposed under the Criminal Justice Act 2003 s 227 (repealed with savings) (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 75, 88) or s 228 (repealed with savings) (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 84) (s 260(7)(a) (as so substituted));
- (3) has the meaning given by s 243A(3)(a), (b) (definition of 'requisite custodial period' (prisoner serving less than 12 months): see PARA 784 note 3) or (as the case may be) by s 244(3)(a), (d) (definition of 'requisite custodial period': see PARA 785 note 7), in any other case (see s 260(7)(b) (s 260(7) as so substituted; s 260(7)(b) amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 111(2), Sch 10 paras 12, 29, Sch 14 paras 5, 11(b))).

See also note 4. The amendment made by s 111 applies in relation to any person who falls to be released under the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 805 et seq, 819 et seq) on or after 3 December 2012 (ie on or after the commencement date, being the day appointed under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 151 for the coming into force of s 111: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d): see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 120, Sch 15 paras 1, 2(1)(c).

The Secretary of State may by order amend the fraction for the time being specified in the Criminal Justice Act 2003 s 260(2): see s 260(6)(c) (amended by the Criminal Justice and Immigration Act 2008 ss 34(1), (3), (8)(c)). As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408. As to the power conferred generally by the Criminal Justice Act 2003 on the Secretary of State to make an order or rules see s 330. At the date at which this volume states the law, no such order had been made under s 260(6)(c).

The Criminal Justice Act 2003 ss 243A–264 do not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of 'England' and 'Wales' see PARA 763 note 1.

- 3 For the purposes of the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 805 et seq, 819 et seq), a person is liable to removal from the United Kingdom if:
 - (1) he is liable to deportation under the Immigration Act 1971 s 3(5) (grounds of public good or relationship to person ordered to be deported: see IMMIGRATION AND ASYLUM vol 57 (2012) PARA 181) and he has been notified of a decision to make a deportation order against him (Criminal Justice Act 2003 s 259(a));
 - (2) he is liable to deportation under the Immigration Act 1971 s 3(6) (recommendation by sentencing court: see IMMIGRATION AND ASYLUM vol 57 (2012) PARA 181) (Criminal Justice Act 2003 s 259(b));
 - (3) he has been notified of a decision to refuse him leave to enter the United Kingdom (Criminal Justice Act 2003 s 259(c));
 - (4) he is an illegal entrant within the meaning of the Immigration Act 1971 s 33(1) (see IMMIGRATION AND ASYLUM vol 57 (2012) PARA 176) (Criminal Justice Act 2003 s 259(d)); or
 - (5) he is liable to removal under the Immigration and Asylum Act 1999 s 10 (removal of certain persons unlawfully in the United Kingdom: see IMMIGRATION AND ASYLUM vol 57 (2012) PARA 179) (Criminal Justice Act 2003 s 259(e)).

As to the meaning of 'United Kingdom' see PARA 763 note 1.

- 4 Ie under the Criminal Justice Act 2003 s 260: see s 260(1) (as amended: see note 2). A person removed from prison under the Criminal Justice Act 1991 s 46A (repealed) before 3 December 2012 ('the commencement date': see PARA 794 note 1) is to be treated as having been removed from prison under the Criminal Justice Act 2003 s 260: see s 267A, Sch 20A para 8(1) (s 267A, Sch 20A added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(5), Sch 16 paras 1–3). The provisions of the Criminal Justice Act 2003 s 260 apply, accordingly, for the purposes of Sch 20A, with modifications to the operation of s 260(7) (see note 2), namely that the reference to an extended sentence imposed under s 227 (repealed with savings) or s 228 (repealed with savings) were a reference to an extended sentence imposed under the Powers of Criminal Courts (Sentencing) Act 2000 s 85 (repealed) (extended sentences for violent or sexual offences committed before 4 April 2005: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 76), and that the reference to the appropriate custodial term is modified accordingly: see the Criminal Justice Act 2003 Sch 20A para 8(2) (as so added).
- 5 See the Criminal Justice Act 2003 s 260(1) (as amended: see note 2). The Secretary of State may by order amend the number of days for the time being specified in s 260(1): see s 260(6)(a) (amended by the Criminal Justice and Immigration Act 2008 ss 34(1), (3), (8)(a), 149, Sch 28 Pt 2). As to the power conferred generally by the Criminal Justice Act 2003 on the Secretary of State to make an order or rules see s 330. In exercise of the powers conferred by s 260(6)(a), the Secretary of State has made the Early Removal of Fixed-Term Prisoners (Amendment of Eligibility Period) Order 2008, SI 2008/978 (see note 2).
- 6 Ie an extended sentence imposed under the Criminal Justice Act 2003 s 226A (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS) or s 226B (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS): see s 260(2A) (s 260(2A), (2B) added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 Sch 20 paras 1, 9(1), (2)).
- 7 See the Criminal Justice Act 2003 s 260(2A)(a) (as added: see note 6).
- 8 Ie under the Criminal Justice Act 2003 s 260: see s 260(2A)(b) (as added: see note 6).
- 9 See the Criminal Justice Act 2003 s 260(2A)(b) (as added: see note 6). The text refers to the period mentioned in s 260(1) (see the text and notes 1–5): see s 260(2A)(b) (as so added),
- 10 Ie under the Criminal Justice Act 2003 s 260: see s 260(2A) (as added: see note 6).
- 11 See the Criminal Justice Act 2003 s 260(2A) (as added: see note 6). The provision so made by s 260(2A) applies whether or not the Parole Board has directed the prisoner's release under s 246A (release on licence of prisoners serving extended sentence under s 226A or s 226B: see PARA 787): s 260(2B) (as so added). As to the constitution and functions of the Parole Board, continued by s 239(1), see PARA 772.
- 12 See the Criminal Justice Act 2003 s 260(4). The text refers to a prisoner removed from prison under s 260: see s 260(4).
- 13 Criminal Justice Act 2003 s 260(4)(a). Head (1) in the text refers to powers conferred by the Immigration Act 1971 ss 4, 5, Sch 2 (control on entry etc) or Sch 3 (deportation) (see IMMIGRATION AND ASYLUM vol 57 (2012) PARA 177 et seq) or by the Immigration and Asylum Act 1999 s 10 (removal of certain persons unlawfully in the United Kingdom: see IMMIGRATION AND ASYLUM vol 57 (2012) PARA 179): see the Criminal Justice Act 2003 s 260(4)(a).
- 14 Criminal Justice Act 2003 s 260(4)(b).
- 15 Ie under the Criminal Justice Act 2003 s 260: see s 260(5).
- 16 Ie under the Criminal Justice Act 2003 s 243A (unconditional release of prisoners serving less than 12 months: see PARA 784), s 244 (duty to release fixed-term prisoners: see PARA 785), s 246A (release on licence of prisoners serving extended sentence under s 226A or s 226B: see PARA 787), s 247 (release on licence of prisoner serving extended sentence under s 227 or s 228: see PARA 787) or s 248 (power to release fixed-term prisoners on compassionate grounds: see PARA 769): see s 260(5) (amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ss 116(1), (5), Sch 14 paras 5, 11(a), Sch 20 paras 1, 9(1), (3)). The provision made by s 116 applies in relation to any person who falls to be released under the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 805 et seq, 819 et seq) on or after 3 December 2012 ('the commencement date', being the day appointed under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 151 for the coming into force of s 116: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012

(Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d)): see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 120, Sch 15 paras 1, 2(1)(e).

- 17 See the Criminal Justice Act 2003 s 260(5) (as amended: see note 16).

As to exercise of the Secretary of State's powers under the Criminal Justice Act 1991 (repealed) see *R (on the application of Clift) v Secretary of State for the Home Department*, *R (on the application of Hindawi) v Secretary of State for the Home Department* [2006] UKHL 54, [2007] 1 AC 484, [2007] 2 All ER 1; and Application 7205/07 *Clift v United Kingdom* (2010) Times, 21 July, [2010] ECHR 7205/07, ECtHR. See also *R (on the application of Hindawi) v Parole Board* [2012] EWHC 3894 (Admin), [2012] All ER (D) 153 (Dec) (judicial review of Board's risk assessment, that, if deported to Jordan where the monitoring capacity was inadequate, claimant might become active in and/or incite terrorist activities, although the risk he presented if released in the UK was minimal: Board entitled to conclude that the claimant might present a greater risk in Jordan than in the UK and further, the failure to consider how the Jordanian authorities would respond did not render the decision irrational).

- 18 *Ie* the Criminal Justice Act 2003 s 260 (see the text and notes 1–17).

- 19 The transitional arrangements contained in the Criminal Justice Act 2003 s 267B, Sch 20B paras 36, 37 (early removal of prisoners liable to removal from UK: see PARA 820) make further provision about early removal of certain prisoners: see s 260(8) (added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(6), Sch 17 paras 1, 6).

- 20 As to the system of central policy instructions and guidance contained eg in Prison Service Orders (PSOs) and Prison Service Instructions (PSIs) see PRISONS AND PRISONERS vol 85 (2012) PARA 406.

- 21 Accordingly, see eg Prison Service Instruction 52/2011 (Immigration, Repatriation And Removal Services) (valid until 04 November 2015); Prison Service Instruction 65/2011 (PI 15/2011) (Foreign National Prisoners Liable to Deportation) (valid until 1 November 2015); and Prison Service Instruction (PSI) 04/2013 (Early Removal Scheme and Release of Foreign National Prisoners) (valid until 10 February 2017). See *R (on the application of Francis) v Secretary of State for Justice* [2012] EWCA Civ 1200, 176 CL & J 562, [2012] All ER (D) 95 (Sep) (consideration had not been given to a grant of HDC in the erroneous belief that it had been barred by the subject's detention under Immigration Act 1971 powers) (discussing guidance which has now been replaced by PSI 52/2011).

819. Re-entry into the United Kingdom of fixed-term prisoner removed before serving the requisite custodial period. If a person who, after being removed from prison¹, has been removed from the United Kingdom² before he has served the requisite custodial period³, but enters the United Kingdom at any time before his sentence expiry date⁴, he is liable to be detained in pursuance of his sentence from the time of his entry into the United Kingdom until whichever is the earlier of the following⁵:

- (1) the end of a period (the 'further custodial period') beginning with that time and equal in length to the outstanding custodial period⁶; and
- (2) his sentence expiry date⁷;

and such a person may be further removed from the United Kingdom⁸.

A person who is liable to be detained in this way⁹ is, if at large, to be taken for the purposes of the Prison Act 1952¹⁰ to be unlawfully at large¹¹.

- 1 *Ie* under the Criminal Justice Act 2003 s 260 (see PARA 818): see s 261(1).

The Criminal Justice Act 2003 ss 243A–264 do not apply in relation to a person detained in England and Wales in pursuance of a sentence of the International Criminal Court: see the International Criminal Court Act 2001 s 42(6), Sch 7 paras 1, 3(1); and PARA 763. As to the meanings of 'England' and 'Wales' see PARA 763 note 1.

- 2 As to the meaning of 'United Kingdom' see PARA 763 note 1.

- 3 See the Criminal Justice Act 2003 s 261(1). For these purposes, 'requisite custodial period':
 (1) has the meaning given by the definition of 'requisite custodial period' in s 246A(8)(a), (b) (definition of 'requisite custodial period': see PARA 787 note 4), in relation to a prisoner serving an extended sentence imposed under s 226A (extended sentence for certain violent or sexual offences (persons 18 or over): see

- SENTENCING AND DISPOSITION OF OFFENDERS) or s 226B (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS) (s 261(6)(za) (added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 125(4), Sch 20 paras 1, 10(1), (3)));
- (2) means one-half of the appropriate custodial term (determined by the court under the applicable provision), in relation to a prisoner serving an extended sentence imposed under the Criminal Justice Act 2003 s 227 (repealed with savings) (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 75, 88) or s 228 (repealed with savings) (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 84) (s 261(6)(a) (s 261(6)(a), (b) added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 116(1), (7)));
- (3) has the meaning given by the Criminal Justice Act 2003 s 243A(3)(a), (b) (definition of 'requisite custodial period' (prisoner serving less than 12 months): see PARA 784 note 3) or (as the case may be) by s 244(3)(a), (d) (definition of 'requisite custodial period': see PARA 785 note 7), in any other case (s 261(6)(b) (as so added; amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ss 89(2), 111(2), Sch 10 paras 12, 30, Sch 14 paras 5, 12(1), (3)(a))).
- The amendments made by ss 111, 116 apply in relation to any person who falls to be released under the Criminal Justice Act 2003 Pt 12 Ch 6 (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 805 et seq, 818, 820) on or after 3 December 2012 (ie on or after the commencement date, being the day appointed under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 151 for the coming into force of ss 111, 116: see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012, SI 2012/2906, art 2(d)): see the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 120, Sch 15 paras 1, 2(1)(c), (e).
- 4 In relation to a person to whom the Criminal Justice Act 2003 s 261 applies (see s 261(1); and the text and notes 1–3), 'sentence expiry date' means the date on which, but for his release from prison and removal from the United Kingdom, he would have served the whole of the sentence: see s 261(6) (definition of 'sentence expiry date' amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 Sch 14 paras 5, 12(1), (3)(b)). See note 3.
- 5 See the Criminal Justice Act 2003 s 261(2).
- 6 Criminal Justice Act 2003 s 261(2)(a). Accordingly, 'further custodial period' has the meaning given by s 261(2)(a): see s 261(6). In relation to a person to whom s 261 applies (see s 261(1); and the text and notes 1–3), 'outstanding custodial period' means the period beginning with the date of his removal from the United Kingdom and ending with the date on which he would, but for his removal, have served the requisite custodial period: see s 261(6). Where, in the case of a person returned to prison by virtue of s 261(2), the further custodial period ends before the sentence expiry date (see note 4):
- (1) if the person is serving an extended sentence imposed under s 227 (repealed with savings) (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 75, 88) or s 228 (repealed with savings) (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 84), s 247 (release on licence of prisoner serving extended sentence under s 227 or s 228: see PARA 787) has effect in relation to that person as if the reference to one-half of the appropriate custodial term were a reference to the further custodial period (s 261(5)(a) (s 261(5)(a), (b) added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 116(1), (6))); and
- (2) in any other case, either the Criminal Justice Act 2003 s 243A (unconditional release of prisoners serving less than 12 months: see PARA 784) or (as the case may be) s 244 (release on licence of prisoners serving 12 months or more: see PARA 785) or s 246A (initial release of fixed-term prisoners (extended sentences): see PARA 787) has effect in relation to that person as if the reference to the requisite custodial period were a reference to the further custodial period (261(5)(b) (as so added; amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 Sch 14 para 12(1), (2), Sch 20 paras 1, 10(1), (2))).
- See note 3.
- 7 Criminal Justice Act 2003 s 261(2)(b). See note 4.

- 8 See the Criminal Justice Act 2003 s 261(4). The provision made by s 261(2) (see the text and notes 4–7) does not prevent the further removal from the United Kingdom of a person falling within s 261(2): see s 261(4).
- 9 *Ie* by virtue of the Criminal Justice Act 2003 s 261(2) (see the text and notes 4–7): see s 261(3).
- 10 *Ie* for the purposes of the Prison Act 1952 s 49 (persons unlawfully at large: see PRISONS AND PRISONERS vol 85 (2012) PARA 429): see the Criminal Justice Act 2003 s 261(3).
- 11 See the Criminal Justice Act 2003 s 261(3).

B. OFFENCES COMMITTED BEFORE 4 APRIL 2005

820. Early removal of extended sentence prisoner liable to removal from the United Kingdom. If a person who¹:

- (1) has served one-half of a sentence of imprisonment²; and
- (2) has not been released on licence under Chapter 6 of Part 12 of the Criminal Justice Act 2003³,

is liable to removal from the United Kingdom⁴, and has not been removed from prison under the usual Criminal Justice Act 2003 provisions⁵ during the specified period of 270 days⁶, the Secretary of State⁷ may remove the person from prison under those provision⁸ at any time after the end of that period⁹.

- 1 *Ie* if a person to whom the Criminal Justice Act 2003 s 267B, Sch 20B para 36 applies (see heads (1) and (2) in the text): see Sch 20B para 37(1) (s 267B, Sch 20B added by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 121(6), Sch 17 paras 9, 10).
- 2 Criminal Justice Act 2003 Sch 20B para 36(1)(a) (as added: see note 1). The reference in head (1) in the text to one-half of a sentence is:
 - (1) in the case of a section 85 extended sentence, a reference to one-half of the custodial term (Sch 20B para 36(2)(a) (as so added)); and
 - (2) in the case of an extended sentence imposed under s 227 (repealed with savings) (extended sentence for certain violent or sexual offences (persons 18 or over): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 75, 88) or s 228 (repealed with savings) (extended sentence for certain violent or sexual offences (persons under 18): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 84), a reference to one-half of the appropriate custodial term (Sch 20B para 36(2)(b) (as so added)).

As to the meanings of a ‘section 85 extended sentence’ and the ‘custodial term’ for these purposes see PARA 792 note 11.
- 3 Criminal Justice Act 2003 Sch 20B para 36(1)(b) (as added: see note 1). The text refers to release on licence under Pt 12 Ch 6 (ss 237–268) (sentencing: release, licences and recall) (see also PARAS 769, 772, 781 et seq, 805 et seq, 818, 819): see Sch 20B para 36(1)(b) (as so added).
- 4 See the Criminal Justice Act 2003 Sch 20B para 37(1)(a) (as added: see note 1). As to the meaning of ‘United Kingdom’ see PARA 763 note 1.
- 5 *Ie* under the Criminal Justice Act 2003 s 260 (persons liable to removal from the United Kingdom: see PARA 818): see Sch 20B para 37(1)(b) (as added: see note 1).
- 6 See the Criminal Justice Act 2003 Sch 20B para 37(1)(b) (as added: see note 1). The text refers to the period mentioned in s 260(1) (persons liable to removal from the United Kingdom: see PARA 818): see Sch 20B para 37(1)(b) (as so added).
- 7 As to the Secretary of State for these purposes see PRISONS AND PRISONERS vol 85 (2012) PARA 408.
- 8 *Ie* under the Criminal Justice Act 2003 s 260 (persons liable to removal from the United Kingdom: see PARA 818): see Sch 20B para 37(1) (as added: see note 1).
- 9 See the Criminal Justice Act 2003 Sch 20B para 37(1) (as added: see note 1). The provision made by Sch 20B para 37(1) applies whether or not the Parole Board has directed the person’s release under Sch 20B para 6 (duty to release on direction of Parole Board (transitional provisions): see PARA 795), Sch 20B para 15 (release on licence of certain extended sentence prisoners on direction of Parole Board (transitional provisions): see PARA 796), Sch 20B para 25 (duty to release Criminal Justice Act 1967 sentence prisoners unconditionally (transitional provisions): see PARA 797) or Sch 20B para 28 (duty to release Criminal Justice Act 1967 sentence prisoners on licence (transitional provisions):

see PARA 797): see Sch 20B para 37(2) (as so added). As to the constitution and functions of the Parole Board, continued by s 239(1), see PARA 772.

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Words in parentheses indicate the context in which the word or phrase is used

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