



<b>TITLE</b>	<b>CRIMINAL JUSTICE AND IMMIGRATION ACT 2008 (PROVISIONS COMMENCING ON 3 NOVEMBER 2008)</b>
<b>Issue date</b>	29 October 2008
<b>For more information</b>	See Annex at the end of this Circular
<b>This circular is addressed to</b>	Lord Chief Justice, Deputy Head of Criminal Justice, Senior Presiding Judge for England and Wales, Lords Justices of Appeal, Lords of Appeal in Ordinary, Queen's Bench Division, Crown Court Judges, Circuit Judges, Administrators and Group Judges, District Judges (Magistrates' Courts), Chairmen of the Justices, Chief Officers of Police in England and Wales, HM Prison Service Director-General, Director of Public Prosecutions, Chief Crown Prosecutors, Chief Probation Officers, Court Managers Crown Courts, HMCS Director of Criminal Operations, HMCS Area Directors, Clerks to the Justices, Judicial Studies Board.
<b>Copies are being sent to</b>	Council of Circuit Judges, Head of the Criminal Justice Delivery Unit, Magistrates' Association, Bar Council, Criminal Bar Association, Law Society, Justices' Clerks' Society, Victim Support, Association of Chief Police Officers, Association of Police Authorities
<b>Broad Subject</b>	Criminal Justice
<b>Sub Category</b>	Criminal Justice and Immigration Act 2008

Dear Colleague

**CRIMINAL JUSTICE AND IMMIGRATION ACT 2008 (COMMENCEMENT NO 3 AND TRANSITIONAL PROVISIONS) ORDER 2008 (SI 2008/2712)**

1. This circular provides details of some of the provisions in the Criminal Justice and Immigration Act 2008 (the '2008 Act') which come into force on 3 November 2008. A copy of the Commencement Order is available at [www.opsi.gov.uk/si/si200827](http://www.opsi.gov.uk/si/si200827)

**Section 21(1) and (3) to (7), sections 22 and 23, Schedule 6: Credit for period of remand on bail**

2. Sections 21 and 22 insert new section 240A into the Criminal Justice Act 2003 which requires the court, when sentencing an offender for an offence committed on or after 4 April 2005, to make a direction that time spent remanded on bail whilst subject to an electronically monitored curfew condition will count as time served as part of the subsequent custodial sentence. Section 23 and Schedule 6 contain parallel provisions in respect of offences committed before 4 April 2005.
3. To qualify for the credit, the offender must have been bailed in accordance with section 3(6ZAA) of the Bail Act 1976 which is introduced by Schedule 11 to the 2008 Act and must be subject to an electronically monitored curfew condition of at least 9 hours per day, as defined in the new section 240A(12). Each curfewed day will provide a potential credit of no more than half a day.
4. The court will have the discretion, if it considers it just in all the circumstances, not to count all or any of the available days.
5. New section 240A and Schedule 6 allow the Secretary of State to make Rules that set out the circumstances in which time spent on bail subject to an electronically monitored curfew will not count towards sentence. The Remand on Bail (Disapplication of Credit Period) Rules 2008 (SI 2008/2793) will also come into force on 3 November 2008. The Rules are available at [www.opsi.gov.uk/si/si200827](http://www.opsi.gov.uk/si/si200827).
6. The draft Rules disapply the requirement in section 240A(2) of the Criminal Justice Act 2003 (as amended) and paragraph 2(2) of Schedule 6 to the 2008 Act. Rule 2 provides that where an offender receives concurrent or consecutive sentences, the time spent on bail subject to an electronically monitored curfew condition should not be credited more than once. Rule 3 provides that the requirement in section 240A(2) of the 2003 Act or, where applicable, paragraph 2(2) of Schedule 6 to the 2008 Act, does not apply where the offender is on bail subject to an electronically monitored curfew condition and is at the same time subject to an electronically monitored curfew imposed as a consequence of early release from prison or as part of a community order or suspended sentence. Rule 4 provides that the requirement in section 240A(2) of the 2003 Act or, where applicable, paragraph 2(2) of Schedule 6 to the 2008 Act, does not apply where the offender is on bail subject to an electronically monitored curfew condition and is at the same time on temporary release from prison, a young offender institution or a secure training centre.
7. Guidance for court staff, including a form to record and calculate the number of days spent on electronically monitored bail, has been sent to courts. Court Managers have been asked to forward the guidance to their Resident Judges for information.
8. Prison staff will also be provided with appropriate information by way of a Prison Service Instruction.

### **Section 33: Removal under Criminal Justice Act 1991 and Section 34: Removal under Criminal Justice Act 2003**

9. The Commencement Order brings into force the provisions in sections 33 and 34 which remove the statutory exclusion of certain prisoners from the Early Removal Scheme (ERS). The ERS provides for foreign national prisoners who are subject to deportation or administrative removal from the United Kingdom to be released up to 270 days early for the purposes of deportation/removal. Prisoners who were excluded from the scheme will, from the date of commencement, become liable. Notably, this includes those serving an extended sentence and those subject to the registration requirement under the Sexual Offences Act 2003. This change is effected, in part, by section 33(6) of the 2008 Act which repeals section 46A(2) of the Criminal Justice Act 1991 which previously disapplied the ERS scheme for certain offenders.
10. The provisions in sections 33 and 34 which will introduce ERS for the purposes of resettlement (i.e. for prisoners who intend to settle permanently outside the UK) will be commenced at a later date.
11. Further guidance for prison staff on the commencement of sections 33 and 34 and the changes they introduce to the ERS will be provided in Prison Service Instructions.

### **Section 41: Disclosure of information for enforcing fines**

12. Section 41 provides enhanced access for Her Majesty's Court Service staff to the Department of Work and Pensions' Customer Information System database and will allow a designated officer for the magistrates' court to view information on an offender's benefit status. This will assist the court in determining whether an application for a deduction from benefit order should be made to satisfy a magistrates' court fine.

### **Section 51 and Schedule 11: Bail conditions: electronic monitoring**

13. Section 51 introduces Schedule 11. Schedule 11 makes amendments to the Bail Act 1976 to clarify the legislative framework for the application of electronic monitoring to support bail conditions imposed by the Courts on adults and those aged 17. The Bail Act 1976 was previously amended by the Criminal Justice and Police Act 2001 to make specific provision for the use of electronic monitoring to support bail conditions applied to children and young persons, that is those aged under 17. Schedule 11 makes similar provision for electronic monitoring in respect of those aged 17 or over.
14. New section 3AB of the Bail Act 1976 sets out the conditions that must be satisfied before the Courts can impose electronic monitoring on adults and those aged 17. One of these is that the Court must be satisfied that without the electronic monitoring the defendant would not be granted bail. This is intended to ensure that tagging is only used where necessary.
15. Section 3AC(2) of the Bail Act 1976 as amended requires the Secretary of State to make an order defining which persons may be made responsible for conducting electronic monitoring. An Order setting out who are responsible persons for electronic monitoring of adults in each police area, the Bail (Electronic Monitoring of Requirements) (Responsible Officer) Order 2008 (SI 2008/2713), has been made and will come into force on 3 November 2008. A copy is available at [www.opsi.gov.uk/si/si200827](http://www.opsi.gov.uk/si/si200827)

16. Section 3AC(3) provides for the Secretary of State to make Rules for regulating the electronic monitoring. No Rules are being made at this time under this provision.

#### **Section 60: Contents of an accused's defence statement**

17. Section 60 of the Act amends the laws relating to pre-trial defence disclosure. Under the Criminal Procedure and Investigations Act 1996 (the "1996 Act"), the accused is required to supply a defence statement in Crown Court cases, and has a discretion to do so in magistrates' courts cases. Section 60 amends the requirements as to the contents of a defence statement. It now requires defendants to set out, in advance, particulars of the matters of fact on which they intend to rely. The effect of the provision is to require defendants to disclose a factual narrative of their case. Section 60 also amends section 11 of the 1996 Act to provide for the usual sanctions (comment and inferences) to be available for breach of these requirements.

18. The effect of the transitional provisions is to apply the new requirements to any case to which Part 1 of the 1996 Act applies on or after commencement. The new requirements will not apply to cases where the investigation began before 4 April 2005 (or before 15 July 2005 in respect of Northern Ireland). However, they will apply to cases where the investigation began after 4 April 2005 (or, as the case may be, 15 July 2005), the defendant is charged before section 60 comes into force, and the case is sent, transferred or committed to the Crown Court (or in a summary case the defendant pleads not guilty) on or after that date.

#### **Sections 126 and 127 and Schedules 22 and 23 - Police misconduct and performance procedures**

19. Sections 126 and 127 and Schedules 22 and 23, together with associated regulations and rules, introduce new police officer misconduct and performance procedures. Parts of these Schedules will be commenced on 3 November 2008 for the purpose of making the necessary regulations and rules. The Home Office will issue guidance in support of the new regime which is expected to come into force on 1 December 2008 following a further commencement order.

#### **Section 129: Inspection of police authorities**

20. Section 129 extends Her Majesty's Inspectorate of Constabulary's powers of inspection of police authorities so that it may inspect the full range of an authority's functions, rather than limit their remit to the assessment of police authorities' compliance with best value in Part 1 of the Local Government Act 1999.

#### **Further information**

21. Copies of the Act and Explanatory Notes are available at [www.opsi.gov.uk/acts/acts2008a](http://www.opsi.gov.uk/acts/acts2008a)

22. Details of contact points are set out in the annex below.

Yours sincerely

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## CONTACTS

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