EXPLANATORY MEMORANDUM TO

THE DRAFT REMAND ON BAIL (DISAPPLICATION OF CREDIT PERIOD) RULES 2008

2008 No.

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This draft statutory instrument sets out the circumstances in which a court must not make a direction under section 240A of the Criminal Justice Act 2003 (credit for period of remand on bail: terms of imprisonment and detention) that any time spent on bail whilst subject to an electronically monitored curfew condition of 9 hours or more should count as time served by him as part of the sentence.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 Sections 21 to 23 of the Criminal Justice and Immigration Act 2008 insert section 240A into the Criminal Justice Act 2003 and make consequential and transitional provision.

4.2 Section 240A, when it comes in to force, will require the court, when sentencing an offender for an offence committed on or after 4 April 2005, to make a direction that any time that the offender was remanded on bail whilst subject to an electronically monitored curfew will count as time served as part of the subsequent custodial sentence. 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 Criminal Justice and Immigration Act 2008, and must have been subject to an electronically monitored curfew requirement for at least 9 hours per day. Each curfewed day will provide a potential credit against sentence of no more than half a day. 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.

4.3 Schedule 6 to the Criminal Justice and Immigration Act 2008 makes identical transitional provision in respect of those offenders who committed their offences prior to 4th April 2005, whose sentences are governed by the Criminal Justice Act 1991.

4.4 Sections 21 to 23 of and Schedule 6 to the Criminal Justice and Immigration Act 2008 will come into force on 3 November 2008. This draft instrument will come into force on the same day and as such will be made in advance of 3 November

2008 in reliance on section 13 of the Interpretation Act 1978, which concerns the anticipatory exercise of powers.

4.5 Section 240A (4)(a) of the Criminal Justice Act 2003 and paragraph 2(4)(a) of Schedule 6 to the Criminal Justice and Immigration Act 2008 allow the Secretary of State to make rules that disapply the requirement to direct that time spent on bail subject to an electronically monitored curfew is to count towards sentence. This is the first time these rule-making powers have been used.

4.6 The draft statutory instrument prevents credit being given in three circumstances:

4.7 Draft rule 2 prevents a court, when imposing wholly or partly concurrent or consecutive sentences, from making a direction in relation to a period of time, spent remanded on bail whilst subject to an electronically monitored curfew, that has already been directed to count against one of the other sentences. This prevents directions being given which will have the effect of counting any day twice.

4.8 Draft rule 3 prevents a court from making a direction in relation to any days spent on bail whilst subject to an electronically monitored curfew where the offender was also subject to an electronically monitored curfew as part of a community order, a suspended sentence or as a consequence of early release from prison.

4.9 Draft rule 4 prevents a court from making a direction in relation to a day spent on bail whilst subject to an electronically monitored curfew when that day was also spent on temporary release from a prison, young offender institution or secure training centre.

5. Extent

5 This draft instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 David Hanson, Minister of State at The Ministry of Justice, has made the following statement regarding Human Rights:

> "In my view the provisions of the Remand on Bail (Disapplication of Credit Period) Rules 2008 are compatible with the Convention rights".

7. Policy Background

7.1 As a result of Lord Carter's recommendations to help manage demand on prison spaces in the medium term, the provisions of section 240A of the Criminal Justice Act 2003 create new arrangements for allowing time spent on bail whilst subject to an electronically monitored curfew to be credited against a subsequent custodial sentence.

7.2 These new provisions will relate to sentences imposed on or after section 240A of the 2003 Act comes in to force for offences committed on or after 4 April 2005 where the offender was bailed under the new section 3(6ZAA) of the Bail Act 1976. Similarly, the transitional provisions in Schedule 6 to the Criminal Justice and Immigration Act 2008 will apply to sentences imposed after those transitional provisions come into force for offences committed prior to 4th April 2005, where the offender has been bailed under the new section 3(6ZAA).

7.3 The provisions will allow offenders to be credited on a similar, but not identical, basis as those remanded to custody. To reflect the position that being subject to a curfew does not equal a deprivation of liberty, whereas remand in custody clearly does, each curfewed day will provide a potential credit against sentence of no more than half a day.

7.4 This draft statutory instrument disapplies in certain circumstances the requirements to give credit for time on bail whilst subject to an electronically monitored curfew. It is consistent with the equivalent Rules made by the Secretary of State in relation to crediting periods of remand in custody (The Remand in Custody (Effect of Concurrent and Consecutive Sentences of Imprisonment) Rules 2005 S.I. 2005/2054).

7.5 The draft instrument ensures that offenders do not receive a double benefit by providing that the court cannot make a direction which would have the effect of counting any one day twice when sentencing an offender to consecutive or concurrent sentences.

7.6 To ensure the non-custodial sentencing regime is not undermined, the draft Rules also prevent a court from making a direction in relation to a day spent on bail whilst subject to an electronically monitored curfew where that day is also spent subject to an electronically monitored curfew as part of a community order, a suspended sentence or as a consequence of early release from prison. Similarly, a court will be prevented from directing any day spent on bail subject to an electronically monitored curfew that occurs at the same time as a period of temporary release from prison, young offender institution, or secure training centre. Although temporary release is time spent away from custody, offenders are still serving their sentence and as such the draft Rules ensure that offenders do not receive credit for any bail periods that were served at the same time as they were subject to a custodial sentence.

7.7 The Ministry has consulted the Criminal Procedure Rule Committee and has considered the minor comments raised by that Committee.

8. Impact

8.1 A regulatory impact assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

9.1 Helen Scott at the Ministry of Justice Tel: 0207 035 4125 or e-mail: helen.scott3@justice.gsi.gov.uk can answer any queries regarding the instrument.