



# Criminal Justice Act 1991

## 1991 CHAPTER 53

### PART II

#### EARLY RELEASE OF PRISONERS

##### Modifications etc. (not altering text)

- C1** Pt. II (ss. 32-51) applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 8(4), 9(4), **9(5)**, Sch. 5 paras. 9(1)(c)(2)(c), 10(1)(d)(2)(c); S.I. 1997/2200, **art. 2(1)**.  
Pt. II (ss. 32-51) modified (*prosp.*) by 1997 c. 43, ss. 56(1), 57(2), **Sch. 5 para.2(3)** (by 1998 c. 37, s. 120(2), **Sch.10** in the said Sch. 5, paras. 1-4 are repealed (30.9.1998); S.I. 1998/2327, **art.2(1)(aa)(3)(x)**).  
Pt. II (ss. 32-51) applied (*prosp.*) by 1997 c. 43, ss. 56(1), 57(2), **Sch. 5 para. 2(6)** (by 1998 c. 37, s. 120(2), **Sch.10** in the said Sch. 5, paras. 1-4 are repealed (30.9.1998); S.I. 1998/2327, **art.2(1)(aa)(3)(x)**).  
Pt. II (ss. 32-51) excluded (*prosp.*) by 1997 c. 43, ss. 56(1), 57(2), Sch. 5 paras. 2(7), **3(6)** (by 1998 c. 37, s. 120(2), **Sch.10** in the said Sch. 5, paras. 1-4 are repealed (30.9.1998); S.I. 1998/2327, **art.2(1)(aa)(3)(x)**).  
Pt. II (ss. 32-51) modified (1.4.2000) by 1998 c. 37, **s.79(3)(4)**; S.I. 1999/3426, **art. 3** (subject to art. 4 of the said S.I.)  
Pt. II (ss. 32-51) applied (30.9.1998) by 1998 c. 37, **s.102**; S.I. 1998/2327, **art.2(1)(v)**.  
Pt. II (ss. 32-51) modified (25.8.2000) by 2000 c. 6, **ss. 116(6)(a)**, 168  
Pt. II (ss. 32-51) excluded (1.9.2001) by 2001 c. 17, s. 42, **Sch. 7 para. 3(1)** (with s. 78); S.I. 2001/2161, **art. 2**

##### Commencement Information

- II** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2** (as repealed (30.9.1998) by 1998 c. 37, s. 120(2), **Sch. 10**; S.I. 1998/2327, **art. 2(1)(aa)(3)(x)**).

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## Preliminary

### 32 The Parole Board.

- [<sup>F1</sup>(1) The Parole Board shall be, by that name, a body corporate and as such shall .
- [ be constituted in accordance with this Part; and
- <sup>F2</sup>(a)
- (b) have the functions conferred by Part II of the Crime (Sentences) Act 1997 (“Part II”).]
- (2) It shall be the duty of the Board to advise the Secretary of State with respect to any matter referred to it by him which is connected with the early release or recall of prisoners.
- (3) The Board shall deal with cases as respects which it makes recommendations under [<sup>F3</sup>Part II] on consideration of—
- (a) any documents given to it by the Secretary of State; and
- (b) any other oral or written information obtained by it,
- and 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 shall consider the report of the interview made by that member.
- (4) The Board shall deal with cases as respects which it gives directions under [<sup>F3</sup>Part II] on consideration of all such evidence as may be adduced before it.
- (5) Without prejudice to subsections (3) and (4) above, the Secretary of State may make rules with respect to the proceedings of the Board, including provision authorising cases to be dealt with by a prescribed number of its members or requiring cases to be dealt with at prescribed times.
- (6) 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 [<sup>F3</sup>Part II]; and in giving any such directions the Secretary of State shall in particular have regard to—
- (a) the need to protect the public from serious harm from offenders; and
- (b) the desirability of preventing the commission by them of further offences and of securing their rehabilitation.
- (7) Schedule 5 to this Act shall have effect with respect to the Board.

#### Textual Amendments

- F1** S. 32(1) substituted (1.7.1996) by 1994 c. 33, s. 149; S.I. 1996/1608, art. 2 (S.I. 1996/1530 having been revoked by S.I. 1996/1608, art. 3).
- F2** S. 32(1)(a)(b) substituted (1.10.1997 so far as relating to offences the sentences for which fall to be imposed under section 2(2) or 3(2) and otherwise *prosp.*) by 1997 c. 43, s. 55(2), Sch. 4, para. 15(1)(a); S.I. 1997/2200, art. 2(1)(2)(h).
- F3** Words in s. 32(3)(4)(6) substituted (1.10.1997 so far as relating to offences the sentences for which fall to be imposed under section 2(2) or 3(2) and otherwise *prosp.*) by 1997 c. 43, s. 55(2), Sch. 4 para. 15(1)(b); S.I. 1997/2200, art. 2(1)(2)(h).

#### Modifications etc. (not altering text)

- C2** S. 32 modified (8.9.1997) by S.I. 1997/2200, art. 5(3)(c).

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### Commencement Information

**I2** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

### *New arrangements for early release*

## **33 Duty to release short-term and long-term prisoners.**

- (1) As soon as a short-term prisoner has served one-half of his sentence, it shall be the duty of the Secretary of State—
  - (a) to release him unconditionally if that sentence is for a term of less than twelve months; and
  - (b) to release him on licence if that sentence is for a term of twelve months or more.
- (2) As soon as a long-term prisoner has served two-thirds of his sentence, it shall be the duty of the Secretary of State to release him on licence.
- (3) As soon as a short-term or long-term prisoner who—
  - (a) has been released on licence under subsection (1)(b) or (2) above or section 35 or 36(1) below; and
  - (b) has been recalled to prison under section 38(2) or 39(1) below,would (but for his release) have served three-quarters of his sentence, it shall be the duty of the Secretary of State to release him unconditionally.
- (4) Where a prisoner whose sentence is for a term of less than twelve months has been released on licence under section 36(1) below and recalled to prison under section 38(2) below, subsection (3) above shall have effect as if for the reference to three-quarters of his sentence there were substituted a reference to one-half of that sentence.
- (5) In this Part—

“long-term prisoner” means a person serving a sentence of imprisonment for a term of four years or more;

“short-term prisoner” means a person serving a sentence of imprisonment for a term of less than four years.

### Modifications etc. (not altering text)

- C3** S. 33 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 8(2), 9(2), Sch. 5 paras. 9(1) (a), **10(1)(b)**; S.I. 1997/2200, **art. 2(1)**.
- C4** S. 33(1)(b) amended (*retrospectively*) by 1984 c. 47, **Sch. para. 2** as modified (*retrospectively*) by 1997 c. 43, s. 42, **Sch. 2 para. 2(1)(2)**; S.I. 1997/2200, **art. 2(1)**.  
S. 33(1)(b) amended (1.10.1997) by 1984 c. 47, **Sch. para. 2** as modified (1.10.1997) by 1997 c. 43, s. 42, **Sch. 2 para. 3(1)(2)**; S.I. 1997/2200, **art. 2(1)**.
- C5** S. 33(2) amended (*retrospectively*) by 1984 c. 47, **Sch. para. 2** as modified (*retrospectively*) by 1997 c. 43, s. 42, **Sch. 2 para. 2(1)(2)**; S.I. 1997/2200, **art. 2(1)**.  
S. 33(2) amended (1.10.1997) by 1984 c. 47, **Sch. para. 2** as modified (1.10.1997) by 1997 c. 43, s. 42, **Sch. 2 para. 3(1)(2)**; S.I. 1997/2200, **art. 2(1)**.

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**Commencement Information**

**I3** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

VALID FROM 30/09/1998

**[<sup>F4F4</sup>33A Duty to release prisoners: special cases.**

- (1) As soon as a prisoner—
  - (a) whose sentence is for a term of less than twelve months; and
  - (b) who has been released on licence under section 34A(3) or 36(1) below and recalled to prison under section 38A(1) or 39(1) or (2) below,
 would (but for his release) have served one-half of his sentence, it shall be the duty of the Secretary of State to release him unconditionally.
  
- (2) As soon as a prisoner—
  - (a) whose sentence is for a term of twelve months or more; and
  - (b) who has been released on licence under section 34A(3) below and recalled to prison under section 38A(1) below,
 would (but for his release) have served one-half of his sentence, it shall be the duty of the Secretary of State to release him on licence.
  
- (3) In the case of a prisoner who—
  - (a) has been released on licence under this Part and recalled to prison under section 39(1) or (2) below; and
  - (b) has been subsequently released on licence under section 33(3) or (3A) above and recalled to prison under section 39(1) or (2) below,
 section 33(3) above shall have effect as if for the words “three-quarters” there were substituted the words “the whole” and the words “on licence” were omitted.]

**Textual Amendments**

**F4** S. 33A inserted (30.9.1998) by 1998 c. 37, s. 119, Sch. 8 para.81; S.I. 1998/2327, art.2(1)(y)(2)(y).

**Modifications etc. (not altering text)**

**C6** S. 33A modified (30.9.1998) by 1998 c. 37, s. 120(1), Sch. 9 para. 12(4)(9); S.I. 1998/2327, art.2(1)(z).  
S. 33A modified by S.I. 1998/2327, art. 5(3)(c).

**<sup>F5</sup>34** .....

**Textual Amendments**

**F5** S. 34 repealed (1.10.1997) by 1997 c. 43, s. 56(2), Sch.6; S.I. 1997/2200, art. 2(1)(p)(3)(a).

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### **[<sup>F6</sup>34A Power to release short-term prisoners on licence.**

- (1) Subject to subsection (2) below, subsection (3) below applies where a short-term prisoner<sup>F7</sup> . . . is serving a sentence of imprisonment for a term of three months or more.
- (2) Subsection (3) below does not apply where—
  - (a) the sentence is an extended sentence within the meaning of [<sup>F8</sup>section 85 of the Powers of Criminal Courts (Sentencing) Act 2000];
  - (b) the sentence is for an offence under section 1 of the<sup>M1</sup>Prisoners (Return to Custody) Act 1995;
  - (c) the sentence was imposed under [<sup>F8</sup> paragraph [<sup>F9</sup>4(1C)(d) or 5(1C)(d)] of Schedule 3 to the Powers of Criminal Courts (Sentencing) Act 2000] in a case where the prisoner had failed to comply with a requirement of a curfew order;
  - (d) the prisoner is subject to a hospital order, hospital direction or transfer direction under section 37, 45A or 47 of the<sup>M2</sup>Mental Health Act 1983;
  - [<sup>F10</sup>(da) the prisoner is subject to the notification requirements of [<sup>F11</sup>Part 2 of the Sexual Offences Act 2003] ;]
  - (e) the prisoner is liable to removal from the United Kingdom for the purposes of section 46 below;
  - (f) the prisoner has been released on licence under this section at any time and has been recalled to prison under section 38A(1)(a) below;
  - (g) the prisoner has been released on licence under this section or section 36 below during the currency of the sentence, and has been recalled to prison under section 39(1) or (2) below;
  - (h) the prisoner has been returned to prison under [<sup>F8</sup> section 116 of the Powers of Criminal Courts (Sentencing) Act 2000]at any time; or
  - (j) the interval between—
    - (i) the date on which the prisoner will have served the requisite period for the term of the sentence; and
    - (ii) the date on which he will have served one-half of the sentence, is less than 14 days.
- (3) After the prisoner has served the requisite period for the term of his sentence, the Secretary of State may, subject to section 37A below, release him on licence.
- (4) In this section “the requisite period” means—
  - (a) for a term of three months or more but less than four months, a period of 30 days;
  - (b) for a term of four months or more but less than [<sup>F12</sup>eighteen months] , a period equal to one-quarter of the term;
  - (c) for a term of [<sup>F13</sup>eighteen months] or more, a period that is [<sup>F14</sup>135 days] less than one-half of the term.
- (5) The Secretary of State may by order made by statutory instrument—
  - (a) repeal the words “aged 18 or over” in subsection (1) above;
  - (b) amend the definition of “the requisite period” in subsection (4) above; and
  - (c) make such transitional provision as appears to him necessary or expedient in connection with the repeal or amendment.
- (6) No order shall be made under subsection (5) above unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

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### Textual Amendments

- F6** S. 34A inserted (28.01.1999) by 1998 c. 37, s. 99 (with Sch. 9 para. 10); S.I. 1998/3263, art. 3.
- F7** Words in s. 34A(1) repealed (14.7.2003) by The Release of Short-Term Prisoners on Licence (Repeal of Age Restriction) Order 2003 (S.I. 2003/1691), art. 2
- F8** Words in s. 34A(2)(a)(c)(h) substituted (25.8.2000) by 2000 c. 6, ss. 165, 168(1), Sch. 9
- F9** Words in s. 34A(2)(c) substituted (*prosp.*) by 2000 c. 43, ss. 75, 80(1), Sch. 7 Pt. II para. 104
- F10** S. 34A(2)(da) inserted (1.3.2001) by 2000 c. 43, s. 65; S.I. 2001/340, art. 2
- F11** Words in s. 34A(2)(da) substituted (1.5.2004) by Sexual Offences Act 2003 (c. 42), ss. 139, 141; Sch. 6 para. 30; S.I. 2004/874, art. 2
- F12** Words in s. 34A(4)(b) substituted (14.7.2003) by The Release of Short-Term Prisoners on Licence (Amendment of Requisite Period) Order 2003 (S.I. 2003/1602), art. 3(1)
- F13** Words in s. 34A(4)(c) substituted (14.7.2003) by The Release of Short-Term Prisoners on Licence (Amendment of Requisite Period) Order 2003 (S.I. 2003/1602), art. 3(2)
- F14** Words in s. 34A(4)(c) substituted (14.7.2003) by The Release of Short-Term Prisoners on Licence (Amendment of Requisite Period) Order 2003 (S.I. 2003/1602), art. 3(2)

### Modifications etc. (not altering text)

- C7** S. 34A modified (30.9.1998) by 1998 c. 37, s. 120(1), Sch. 9 para. 12(5)(9); S.I. 1998/2327, art. 2(1)(z).
- C8** S. 34A modified (temp. from 24.3.2005) by The Criminal Justice Act 2003 (Commencement No. 8 and Transitional and Saving Provisions) Order 2005 (S.I. 2005/950), arts. 2, 4, Sch. 2 para. 22

### Marginal Citations

- M1** 1995 c.16.
- M2** 1983 c.20.

## [<sup>F15</sup>35 Power to release long-term and life prisoners.

- (1) After a long-term prisoner has served one-half of his sentence, the Secretary of State may, if recommended to do so by the Board, release him on licence.

<sup>F15</sup>(2) .....

<sup>F15</sup>(3) .....]

### Textual Amendments

- F15** S. 35 repealed (1.10.1997 as regards s. 35(2)(3) otherwise *prosp.*) by 1997 c. 43, ss. 56(2), 57(2), Sch. 6 (subject to transitional provisions and savings in s. 56(1), Sch. 5 para. 1); S.I. 1997/2200, art. 2(1)(p) (3)(b) (subject to transitional provisions and savings in art. 5) (but by 1998 c. 37, s. 120(2), Sch. 10 the entries in the said Sch. 6 of 1997 c. 43 relating to ss. 33-51 and 65 of this Act are repealed (30.9.1998); S. I. 1998/2327, art.2(1)(aa)(3)(x)).

### Modifications etc. (not altering text)

- C9** S. 35 modified (1.10.1992) by S.I. 1992/1829, art. 3.  
Ss. 34-37 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), 57(2), Sch. 1 Pt. II paras. 8, 9(2)(a), Sch. 5 paras. 9(2)(a), 10(2)(a); S.I. 1997/2200, art. 2(1).  
S. 35 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), 57(2), Sch. 1 Pt. II paras. 8, 9(2), Sch. 5 paras. 9(1)(a), 10(1)(b); S.I. 1997/2200, art. 2(1).
- C10** S. 35(1) amended (*retrospectively*) by 1984 c. 47, Sch. para. 2 as modified (*retrospectively*) by 1997 c. 43, s. 42, Sch. 2 para. 2(1)(2); S.I. 1997/2200, art. 2(1).

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S. 35(1) amended (1.10.1997) by 1984 c. 47, **Sch. para. 2** as modified (1.10.1997) by 1997 c. 43, s. 42, **Sch. 2 para. 3(1)(2)**; S.I. 1997/2200, **art. 2(1)**.

S. 35(1) excluded (*prosp.*) by 1997 c. 43, ss. 56(1), 57(2), **Sch. 5 para. 2(4)** (by 1998 c. 37, s. 210(2), **Sch. 10** the said Sch. 5 para. 2 was repealed (30.9.1998); S.I. 1998/2327, **art. 2(1)(aa)(3)(x)**).

#### Commencement Information

**I4** Pt. II (ss. 32-51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, **art. 2(2)**, **Sch. 2**.

### [<sup>F16</sup>36 Power to release prisoners on compassionate grounds.

[ The Secretary of State may at any time release a prisoner on licence if he is <sup>F16</sup>(1) satisfied that exceptional circumstances exist which justify the prisoner's release on compassionate grounds.]]

(2) Before releasing a long-term <sup>F16</sup>[. . . ]prisoner under subsection (1) above, the Secretary of State shall consult the Board, unless the circumstances are such as to render such consultation impracticable.

#### Textual Amendments

**F16** S. 36 repealed (1.10.1997 as regards s. 36(1) so far as relating to life prisoners, and words in s. 36(2) otherwise *prosp.*) by 1997 c. 43, ss. 56(2), 57(2), **Sch. 6** (subject to transitional provisions and savings in s. 56(1), **Sch. 5 para. 1**); S.I. 1997/2200, **art. 2(1)(p)(3)(c)** (subject to transitional provisions and savings in **art. 5**) (but by 1998 c. 37, s. 120(2), **Sch. 10** the entries in the said Sch. 6 of 1997 c. 43 relating to ss. 33-51 and 65 of this Act are repealed (30.9. 1998); S.I. 1998/ 2327, **art. 2(1)(aa)(3)(x)**).

#### Modifications etc. (not altering text)

**C11** Ss. 34-37 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), **Sch. 1 Pt. II paras. 8, 9(2)(a)**, **Sch. 5 paras. 9(2)(a)**, **10(2)(a)**; S.I. 1997/2200, **art. 2(1)**.

S. 36 applied (1.10.1997) by 1997 c. 43, ss. 44, 56(1), **Sch. 1 Pt. II paras. 8(2), 9(2)**, **Sch. 5 paras. 9(1)(a)**, **10(1)(b)**; S.I. 1997/2200, **art. 2(1)**.

#### Commencement Information

**I5** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, **art. 2(2)**, **Sch. 2**.

### [<sup>F17</sup>37 Duration and conditions of licences.

(1) Subject to subsection (2) below, where a short-term or long-term prisoner is released on licence, the licence shall, subject to any suspension under section 38(2) below or, as the case may be, any revocation under section 39(1) or (2) below, remain in force until the date on which he would (but for his release) have served three-quarters of his sentence.

(2) Where a prisoner whose sentence is for a term of less than twelve months is released on licence under section 36(1) above, subsection (1) above shall have effect as if for the reference to three-quarters of his sentence there were substituted a reference to one-half of that sentence.

<sup>F17</sup>(3) . . . . .

(4) A person subject to a licence shall comply with such conditions (which shall include on his release conditions as to his supervision by a probation officer) as may for the

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time being be specified in the licence; and the Secretary of State may make rules for regulating the supervision of any description of such persons.]

- <sup>F17</sup>(5) The Secretary of State shall not include on release, or subsequently insert, a condition in the licence of a long-term or life prisoner, or vary or cancel any such condition, except—
- (a) in the case of the inclusion of a condition in the licence of a discretionary life prisoner, in accordance with recommendations of the Board; and
  - (b) in any other case, after consultation with the Board.
- (6) For the purposes of subsection (5) above, the Secretary of State shall be treated as having consulted the Board about a proposal to include, insert, vary or cancel a condition in any case if he has consulted the Board about the implementation of proposals of that description generally or in that class of case.
- (7) The power to make rules under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F17** S. 37 repealed (1.10.1997 in respect of s. 37(3), and s. 37(4)(5) so far as relating to life prisoners, otherwise *prosp.*) by 1997 c. 43, ss. 56(2), 57(2), Sch.6 (subject to transitional provisions and savings in s. 56(1), **Sch. 5 para. 1**); S.I. 1997/2200, **art. 2(1)(p)(3)(d)** (subject to transitional provisions and savings in art. 5).

#### Modifications etc. (not altering text)

- C12** S. 37 modified (1.10.1992) by S.I. 1992/1829, **art. 3**.  
S. 37 applied (1.10.1997) by 1997 c. 43, ss. 44, 56(1), Sch. 1 Pt. II paras. 8(2)(4), 9(2)(b)(4), Sch. 5 paras. 9(1)(a)(b)(2)(b), **10(1)(b)(c)(2)(b)**; S.I. 1997/2200, **art. 2(1)**.  
Ss. 34-37 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 8, 9(2)(a), Sch. 5 paras. 9(2)(a), **10(2)(a)**; S.I. 1997/2200, **art. 2(1)**.  
S. 37 modified (19.9.1998) by S.I. 1998/2327, **art. 5(3)(d)**.
- C13** S. 37(1)(2) amended (*retrospectively*) by 1984 c. 47, **Sch. para. 2** as modified (*retrospectively*) by 1997 c. 43, s. 42, **Sch. 2 para. 2(1)(2)**; S.I. 1997/2200, art. 2(1).  
S. 37(1)(2) amended (1.10.1997) by 1984 c. 47, **Sch. para. 2** as modified (1.10.1997) by 1997 c. 43, s. 42, **Sch. 2 para. 2(1)(2)**; S.I. 1997/2200, art. 2(1).

#### Commencement Information

- I6** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, **art. 2(2)**, **Sch. 2**.

VALID FROM 30/09/1998

#### <sup>F18F18</sup>37A Curfew condition to be included in licence under section 34A.

- (1) A person shall not be released under section 34A(3) above unless the licence includes a condition (“the curfew condition”) which—
- (a) requires the released person to remain, for periods for the time being specified in the condition, at a place for the time being so specified (which may be an approved probation hostel); and



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- (b) includes requirements for securing the electronic monitoring of his whereabouts during the periods for the time being so specified.
- (2) The curfew condition may specify different places or different periods for different days, but shall not specify periods which amount to less than 9 hours in any one day (excluding for this purpose the first and last days of the period for which the condition is in force).
- (3) The curfew condition shall remain in force until the date when the released person would (but for his release) have served one-half of his sentence.
- (4) The curfew condition shall include provision for making a person responsible for monitoring the released person's whereabouts during the periods for the time being specified in the condition; and a person who is made so responsible shall be of a description specified in an order made by the Secretary of State.
- (5) The power conferred by subsection (4) above—
- (a) shall be exercisable by statutory instrument; and
  - (b) shall include power to make different provision for different cases or classes of case or for different areas.
- (6) Nothing in this section shall be taken to require the Secretary of State to ensure that arrangements are made for the electronic monitoring of released persons' whereabouts in any particular part of England and Wales;
- (7) In this section "approved probation hostel" has the same meaning as in the Probation Service Act 1993.]

#### Textual Amendments

**F18** S. 37A inserted (30.9.1998 for certain purposes by S.I. 1998/2327 and 28.1.1999 to the extent that it is not already in force by S.I. 1998/3263) by 1998 c. 37, s. 100(1); S.I. 1998/2327, art.2(1)(u); S.I. 1998/3263, art.3.

#### *Misbehaviour after release*

### **38 Breach of licence conditions by short-term prisoners.**

- (1) A short-term prisoner—
- (a) who is released on licence under this Part; and
  - (b) who fails to comply with such conditions as may for the time being be specified in the licence,
- shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) The magistrates' court by which a person is convicted of an offence under subsection (1) above may, whether or not it passes any other sentence on him—
- (a) suspend the licence for a period not exceeding six months; and
  - (b) order him to be recalled to prison for the period during which the licence is so suspended.

**Status:** Point in time view as at 01/10/1997. This version of this part contains provisions that are not valid for this point in time.

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- (3) On the suspension of the licence of any person under this section, he shall be liable to be detained in pursuance of his sentence and, if at large, shall be deemed to be unlawfully at large.

#### Modifications etc. (not altering text)

- C14** Ss. 35-39 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II, para. 8(2), **Sch. 5 para. 9(1)(a)**; S.I. 1997/2200, **art. 2(1)**.  
Ss. 35-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 9(2), **Sch. 5 para. 10(1)(b)**; S.I. 1997/2200, **art. 2(1)**.  
Ss. 37-39 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 8(4), **Sch. 5 para. 9(1)(b)**; S.I. 1997/2200, **art. 2(1)**.  
Ss. 37-40 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para.9(4), **Sch. 5 para. 10(1)(c)**; S.I. 1997/2200, **art. 2(1)**.

#### Commencement Information

- I7** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

VALID FROM 28/01/1999

#### [<sup>F19F19</sup>38] Breach of curfew condition.

- (1) If it appears to the Secretary of State, as regards a person released on licence under section 34A(3) above—
- (a) that he has failed to comply with the curfew condition;
  - (b) that his whereabouts can no longer be electronically monitored at the place for the time being specified in that condition; or
  - (c) that it is necessary to do so in order to protect the public from serious harm from him,
- the Secretary of State may, if the curfew condition is still in force, revoke the licence and recall the person to prison.
- (2) A person whose licence under section 34A(3) above is revoked under this section—
- (a) may make representations in writing with respect to the revocation;
  - (b) on his return to prison, shall be informed of the reasons for the revocation and of his right to make representations.
- (3) The Secretary of State, after considering any representations made under subsection (2)(b) above or any other matters, may cancel a revocation under this section.
- (4) Where the revocation of a person's licence is cancelled under subsection (3) above, the person shall be treated for the purposes of sections 34A(2)(f) and 37(1B) above as if he had not been recalled to prison under this section.
- (5) On the revocation under this section of a person's licence under section 34A(3) above, he shall be liable to be detained in pursuance of his sentence and, if at large, shall be deemed to be unlawfully at large.
- (6) In this section “the curfew condition” has the same meaning as in section 37A above.]

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### Textual Amendments

**F19** S. 38A inserted (28.1.1999) by 1998 c. 37, s. 100(2); S.I. 1998/3263, art.3.

## [<sup>F20</sup>39 Recall of long-term and life prisoners while on licence.

- (1) If recommended to do so by the Board in the case of a long-term <sup>F20</sup> . . . prisoner who has been released on licence under this Part, the Secretary of State may revoke his licence and recall him to prison.
- (2) The Secretary of State may revoke the licence of any such person and recall him to prison without a recommendation by the Board, where it appears to him that it is expedient in the public interest to recall that person before such a recommendation is practicable.
- (3) A person recalled to prison under subsection (1) or (2) above—
  - (a) may make representations in writing with respect to his recall; and
  - (b) on his return to prison, shall be informed of the reasons for his recall and of his right to make representations.
- (4) The Secretary of State shall refer to the Board—
  - (a) the case of a person recalled under subsection (1) above who makes representations under subsection (3) above; and
  - (b) the case of a person recalled under subsection (2) above.
- (5) Where on a reference under subsection (4) above the Board—
  - <sup>F20</sup>(a) . . . . .
  - (b) recommends in the case of any <sup>F20</sup> . . . person,  
his immediate release on licence under this section, the Secretary of State shall give effect to the <sup>F20</sup> . . . recommendation.
- (6) On the revocation of the licence of any person under this section, he shall be liable to be detained in pursuance of his sentence and, if at large, shall be deemed to be unlawfully at large.]

### Textual Amendments

**F20** S. 39 repealed (1.10.1997 in respect of words in s. 39(1)(5)(b), and s. 39(5)(a), otherwise *prosp.*) by 1997 c. 43, ss. 56(2), 57(2), Sch.6 (subject to transitional provisions and savings in s. 56(1), Sch. 5 para. 1); S.I. 1997/2200, art. 2(1)(3)(e)

### Modifications etc. (not altering text)

**C15** S. 39 modified (1.10.1992) by S.I. 1992/1829, art. 3.  
Ss. 35-39 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 8(2), Sch. 5 para. 9(1) (a); S.I. 1997/2200, art. 2(1).  
Ss. 35-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 9(2), Sch. 5 para. 10(1) (b); S.I. 1997/2200, art. 2(1).  
Ss. 37-39 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 8(4), Sch. 5 para. 9(1) (b); S.I. 1997/2200, art. 2(1).  
Ss. 37-40 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para.9(4), Sch. 5 para. 10(1) (c); S.I. 1997/2200, art. 2(1).

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S. 39 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 8, 9(2)(a)(4), Sch. 5 paras. 9(2)(a)(b), 10(2)(a)(b); S.I. 1997/2200, art. 2(1).

#### Commencement Information

**I8** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

## 40 Convictions during currency of original sentences.

- (1) This section applies to a short-term or long-term prisoner who is released under this Part if—
- (a) before the date on which he would (but for his release) have served his sentence in full, he commits an offence punishable with imprisonment; and
  - (b) whether before or after that date, he is convicted of that offence (“the new offence”).
- (2) Subject to subsection (3) below, the court by or before which a person to whom this section applies is convicted of the new offence may, whether or not it passes any other sentence on him, order him to be returned to prison for the whole or any part of the period which—
- (a) begins with the date of the order; and
  - (b) is equal in length to the period between the date on which the new offence was committed and the date mentioned in subsection (1) above.
- (3) A magistrates’ court—
- (a) shall not have power to order a person to whom this section applies to be returned to prison for a period of more than six months; but
  - (b) [<sup>F21</sup>subject to section 25 of the Criminal Justice and Public Order Act 1994,] may commit him in custody or on bail to the Crown Court for sentence [<sup>F22</sup>; and the Crown Court to which he has been so committed may make such an order with regard to him as is mentioned in subsection (2) above.]
- (4) The period for which a person to whom this section applies is ordered under subsection (2) above to be returned to prison—
- (a) shall be taken to be a sentence of imprisonment for the purposes of this Part;
  - (b) shall, as the court may direct, either be served before and be followed by, or be served concurrently with, the sentence imposed for the new offence; and
  - (c) in either case, shall be disregarded in determining the appropriate length of that sentence.

#### Textual Amendments

**F21** Words in s. 40(3)(b) inserted (10.4.1995) by 1994 c. 33, s. 168(1), Sch. 10 para.67; S.I. 1995/721, art. 2, Sch.1, Appendix A.

**F22** Words in s. 40(3)(b) substituted (3.2.1995) by 1994 c. 33, s. 168(1), Sch. 9 para. 47; S.I. 1995/127, art. 2(1), Sch. 1, Appendix 1.

#### Modifications etc. (not altering text)

**C16** Ss. 35-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 9(2), Sch. 5 para. 10(1)(b); S.I. 1997/2200, art. 2(1)

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#### Commencement Information

**I9** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

VALID FROM 30/09/1998

#### <sup>F23F23</sup> **40A Release on licence following return to prison.**

- (1) This section applies (in place of sections 33, 33A, 37(1) and 39 above) where a court passes on a person a sentence of imprisonment which—
  - (a) includes, or consists of, an order under section 40 above; and
  - (b) is for a term of twelve months or less.
- (2) As soon as the person has served one-half of the sentence, it shall be the duty of the Secretary of State to release him on licence.
- (3) Where the person is so released, the licence shall remain in force for a period of three months.
- (4) If the person fails to comply with such conditions as may for the time being be specified in the licence, he shall be liable on summary conviction—
  - (a) to a fine not exceeding level 3 on the standard scale; or
  - (b) to a sentence of imprisonment for a term not exceeding the relevant period, but not liable to be dealt with in any other way.
- (5) In subsection (4) above “the relevant period” means a period which is equal in length to the period between the date on which the failure occurred or began and the date of the expiry of the licence.
- (6) As soon as a person has served one-half of a sentence passed under subsection (4) above, it shall be the duty of the Secretary of State to release him, subject to the licence if it is still subsisting.]

#### Textual Amendments

**F23** S. 40A inserted (30.9.1998) by 1998 c. 37, s.105 (with Sch. 9 para. 14(1)); S.I. 1998/2327, art.2(1)(w).

#### Modifications etc. (not altering text)

**C17** S. 40A modified (30.9.1998) by 1998 c. 37, s. 120(1), Sch. 9 para. 12(6)(9); S.I. 1998/2327, art.2(1)(z)

*Remand time and additional days*

#### **41 Remand time to count towards time served.**

- (1) This section applies to any person whose sentence falls to be reduced under section 67 of the <sup>M3</sup>Criminal Justice Act 1967 (“the 1967 Act”) by any relevant period within the meaning of that section (“the relevant period”).
- (2) For the purpose of determining for the purposes of this Part—

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- (a) whether a person to whom this section applies has served one-half or two-thirds of his sentence; or
- (b) whether such a person would (but for his release) have served three-quarters of that sentence,

the relevant period shall, subject to subsection (3) below, be treated as having been served by him as part of that sentence.

- (3) Nothing in subsection (2) above shall have the effect of reducing the period for which a licence granted under this Part to a short-term or long-term prisoner remains in force to a period which is less than—
  - (a) one-quarter of his sentence in the case of a short-term prisoner; or
  - (b) one-twelfth of his sentence in the case of a long-term prisoner.

#### Modifications etc. (not altering text)

- C18** Ss. 41-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 8(2), **Sch. 5 para. 9(1)(a)**; S.I. 1997/2200, **art. 2(1)**.  
Ss. 35-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 9(2), **Sch. 5 para. 10(1)(b)**; S.I. 1997/2200, **art. 2(1)**.  
S. 41 modified (*prosp.*) by 1997 c. 43, ss. 56(1), 57(2), **Sch. 5 para. 4** (by 1998 c. 37, s. 120(2), **Sch. 10** and S.I. 1998/2327, **art. 2(1)(aa)(3)(x)** the said Sch. 5 paras. 1-4 were repealed (30.9.1998).

#### Commencement Information

- I10** Pt. II (ss. 32-51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, **art. 2(2)**, **Sch. 2**.

#### Marginal Citations

- M3** 1967 c. 80.

## 42 Additional days for disciplinary offences.

- (1) Prison rules, that is to say, rules made under section 47 of the 1952 Act, may include provision for the award of additional days—
  - (a) to short-term or long-term prisoners; or
  - (b) conditionally on their subsequently becoming such prisoners, to persons on remand,
 who (in either case) are guilty of disciplinary offences.
- (2) Where additional days are awarded to a short-term or long-term prisoner, or to a person on remand who subsequently becomes such a prisoner, and are not remitted in accordance with prison rules—
  - (a) any period which he must serve before becoming entitled to or eligible for release under this Part; and
  - (b) any period for which a licence granted to him under this Part remains in force, shall be extended by the aggregate of those additional days.

#### Modifications etc. (not altering text)

- C19** Ss. 41-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 8(2), **Sch. 5 para. 9(1)(a)**; S.I. 1997/2200, **art. 2(1)**.

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Ss. 35-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 9(2), **Sch. 5 para. 10(1)(b)**; S.I. 1997/2200, **art. 2(1)**.

#### Commencement Information

**III** Pt. II (ss. 32-51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

### Special cases

#### [<sup>F24</sup>43] Young offenders.

- (1) Subject to subsections (4) and (5) below, this Part applies to persons serving sentences of detention in a young offender institution, or determinate sentences of detention under section 53 of the 1933 Act, as it applies to persons serving equivalent sentences of imprisonment.
- (2) Subject to subsection (5) below, this Part applies to persons serving—
  - (a) sentences of detention during Her Majesty's pleasure or for life under section 53 of the 1933 Act; or
  - (b) sentences of custody for life under section 8 of the 1982 Act, as it applies to persons serving sentences of imprisonment for life.]
- (3) References in this Part to prisoners <sup>F24</sup>[. . .] or to prison or imprisonment, shall be construed in accordance with subsections (1) <sup>F24</sup>[. . .] above.
- (4) In relation to a short-term prisoner under the age of 18 years to whom subsection (1) of section 33 above applies, that subsection shall have effect as if it required the Secretary of State—
  - (a) to release him unconditionally if his sentence is for a term of twelve months or less; and
  - (b) to release him on licence if that sentence is for a term of more than twelve months.
- (5) In relation to a person under the age of 22 years who is released on licence under this Part, section 37(4) above shall have effect as if the reference to supervision by a probation officer included a reference to supervision by a social worker of a local authority social services department.]

#### Textual Amendments

**F24** S. 43 repealed (1.10.1997 in respect of s. 43(2) and words in s. 43(3), otherwise *prosp.*) by 1997 c. 43, ss. 56(2), 57(2), Sch.6 (subject to transitional provisions and savings in s. 56(1), **Sch. 5 para. 1**); S.I. 1997/2200, **art. 2(1)(p)(3)(f)**

#### Modifications etc. (not altering text)

**C20** S. 43 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 8, 9(4), Sch. 5 paras. 9(2)(a)(b), **10(2)(b)**; S.I. 1997/2200, **art. 2(1)**.  
Ss. 43-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 8(4), 9(2)(a)(4), **Sch. 5 paras. 9(1)(b)**, 10(1)(c)(2)(a); S.I. 1997/2200, **art. 2(1)**.  
Ss. 35-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 9(2), **Sch. 5 para. 10(1)(b)**; S.I. 1997/2200, **art. 2(1)**.  
Ss. 41-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 8(2), **Sch. 5 para. 9(1)(a)**; S.I. 1997/2200, **art. 2(1)**.

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#### Commencement Information

**I12** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

#### 44 Sexual offenders.

Where, in the case of a long-term or short-term prisoner—

- (a) the whole or any part of his sentence was imposed for a sexual offence; and
- (b) the court by which he was sentenced for that offence, having had regard to the matters mentioned in section 32(6)(a) and (b) above, ordered that this section should apply,

sections 33(3) and 37(1) above shall each have effect as if for the reference to three-quarters of his sentence there were substituted a reference to the whole of that sentence.

#### Modifications etc. (not altering text)

**C21** Ss. 41-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 8(2), Sch. 5 para. 9(1)(a); S.I. 1997/2200, art. 2(1).

Ss. 43-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 8(4), 9(2)(a)(4), Sch. 5 paras. 9(1)(b), 10(1)(c)(2)(a); S.I. 1997/2200, art. 2(1).

Ss. 35-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 9(2), Sch. 5 para. 10(1)(b); S.I. 1997/2200, art. 2(1).

#### Commencement Information

**I13** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(3), Sch. 2.

VALID FROM 30/09/1998

#### [<sup>F25</sup>44A Re-release of prisoners serving extended sentences.

- (1) This section applies to a prisoner serving an extended sentence within the meaning of section 58 of the Crime and Disorder Act 1998 who is recalled to prison under section 39(1) or (2) above.
- (2) Subject to subsection (3) below, the prisoner may require the Secretary of State to refer his case to the Board at any time.
- (3) Where there has been a previous reference of the prisoner's case to the Board (whether under this section or section 39(4) above), the Secretary of State shall not be required to refer the case until after the end of the period of one year beginning with the disposal of that reference.
- (4) On a reference—
  - (a) under this section; or
  - (b) under section 39(4) above,
 the Board shall direct the prisoner's release if satisfied that it is no longer necessary for the protection of the public that he should be confined (but not otherwise).
- (5) If the Board gives a direction under subsection (4) above it shall be the duty of the Secretary of State to release the prisoner on licence.]



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### Textual Amendments

**F25** S. 44A inserted (30.9.1998) by 1998 c. 37, s.60; S.I. 1998/2327, art.2(1)(n).

## <sup>F26</sup> 45 Fine defaulters and contemnors.

(1) Subject to subsection (2) below, this Part (except sections 35 and 40 above) applies to persons committed to prison or to be detained under section 9 of the 1982 Act—

- (a) in default of payment of a sum adjudged to be paid by a conviction; or
- (b) for contempt of court or any kindred offence,

as it applies to persons serving equivalent sentences of imprisonment; and references in this Part to short-term or long-term prisoners, or to prison or imprisonment, shall be construed accordingly.

(2) In relation to persons committed as mentioned in subsection (1) above, the provisions specified in subsections (3) and (4) below shall have effect subject to the modifications so specified.

(3) In section 33 above, for subsections (1) to (4) there shall be substituted the following subsections—

“(1) As soon as a person committed as mentioned in section 45(1) below has served the appropriate proportion of his term, that is to say—

- (a) one-half, in the case of a person committed for a term of less than twelve months;
- (b) two-thirds, in the case of a person committed for a term of twelve months or more,

it shall be the duty of the Secretary of State to release him unconditionally.

(2) As soon as a person so committed who—

- (a) has been released on licence under section 36(1) below; and
- (b) has been recalled under section 38(2) or 39(1) below,

would (but for his release) have served the appropriate proportion of his term, it shall be the duty of the Secretary of State to release him unconditionally.”

(4) In section 37 above, for subsections (1) to (3) there shall be substituted the following subsection—

“(1) Where a person committed as mentioned in section 45(1) below is released on licence under section 36(1) above, the licence shall, subject to—

- (a) any suspension under section 38(2) below; or
- (b) any revocation under section 39(1) below,

continue in force until the date on which he would (but for his release) have served the appropriate proportion of his term; and in this subsection “appropriate proportion” has the meaning given by section 33(1) above.”

### Textual Amendments

**F26** Ss. 43-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 8(4), 9(2)(a)(4), Sch. 5 paras. 9(1)(b), 10(1)(c)(2)(a); S.I. 1997/2200, art. 2(1).

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Ss. 41-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 8(2), **Sch. 5 para. 9(1)(a)**; S.I. 1997/2200, **art. 2(1)**.

Ss. 35-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 9(2), **Sch. 5 para. 10(1)(b)**; S.I. 1997/2200, **art. 2(1)**.

**Modifications etc. (not altering text)**

**C22** S. 45 modified (19.9.1998) by 1998 S.I. 1998/2327, **art.5(3)(e)**.

**Commencement Information**

**I14** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

**46 Persons liable to removal from the United Kingdom.**

- (1) In relation to a long-term prisoner who is liable to removal from the United Kingdom, section 35 above shall have effect as if the words “if recommended to do so by the Board” were omitted.
- (2) In relation to a person who is liable to removal from the United Kingdom, section 37(4) above shall have effect as if the words in parentheses were omitted.
- (3) A person is liable to removal from the United Kingdom for the purposes of this section if—
  - (a) he is liable to deportation under section 3(5) of the <sup>M4</sup>Immigration Act 1971 and has been notified of a decision to make a deportation order against him;
  - (b) he is liable to deportation under section 3(6) of that Act;
  - (c) he has been notified of a decision to refuse him leave to enter the United Kingdom; or
  - (d) he is an illegal entrant within the meaning of section 33(1) of that Act.

**Modifications etc. (not altering text)**

**C23** Ss. 43-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 8(4), 9(2)(a)(4), **Sch. 5 paras. 9(1)(b), 10(1)(c)(2)(a)**; S.I. 1997/2200, **art. 2(1)**.

Ss. 41-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 8(2), **Sch. 5 para. 9(1)(a)**; S.I. 1997/2200, **art. 2(1)**.

Ss. 35-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 9(2), **Sch. 5 para. 10(1)(b)**; S.I. 1997/2200, **art. 2(1)**.

S. 46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 8, 9(4), Sch. 5 paras. 9(2)(a)(b), **10(2)(b)**; S.I. 1997/2200, **art. 2(1)**.

**Commencement Information**

**I15** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

**Marginal Citations**

**M4** 1971 c. 77.

*Status:* Point in time view as at 01/10/1997. This version of this part contains provisions that are not valid for this point in time.

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VALID FROM 14/06/2004

#### **46A Early removal of persons liable to removal from United Kingdom**

- (1) Subject to subsection (2) below, where a short-term or long-term prisoner is liable to removal from the United Kingdom, the Secretary of State may under this section remove him from prison at any time after he has served the requisite period.
- (2) Subsection (1) above does not apply where—
  - (a) the sentence is an extended sentence within the meaning of section 85 of the Powers of Criminal Courts (Sentencing) Act 2000,
  - (b) the sentence is for an offence under section 1 of the Prisoners (Return to Custody) Act 1995,
  - (c) the prisoner is subject to a hospital order, hospital direction or transfer direction under section 37, 45A or 47 of the Mental Health Act 1983,
  - (d) the prisoner is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003, or
  - (e) the interval between—
    - (i) the date on which the prisoner will have served the requisite period for the term of the sentence, and
    - (ii) the date on which he will have served one-half of the sentence, is less than 14 days.
- (3) A prisoner removed from prison under this section—
  - (a) is so removed only for the purpose of enabling the Secretary of State to remove him from the United Kingdom under powers conferred by—
    - (i) Schedule 2 or 3 to the Immigration Act 1971, or
    - (ii) section 10 of the Immigration and Asylum Act 1999, and
  - (b) so long as remaining in the United Kingdom, remains liable to be detained in pursuance of his sentence until he falls to be released under section 33 or 35 above.
- (4) So long as a prisoner removed from prison under this section remains in the United Kingdom but has not been returned to prison, any duty or power of the Secretary of State under section 33, 35 or 36 is exercisable in relation to him as if he were in prison.
- (5) In this section “the requisite period” means—
  - (a) for a term of three months or more but less than four months, a period of 30 days;
  - (b) for a term of four months or more but less than 18 months, a period equal to one-quarter of the term;
  - (c) for a term of 18 months or more, a period that is 135 days less than one-half of the term.
- (6) The Secretary of State may by order made by statutory instrument—
  - (a) amend the definition of “the requisite period” in subsection (5) above,
  - (b) make such transitional provision as appears to him necessary or expedient in connection with the amendment.

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- (7) No order shall be made under subsection (6) above unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (8) In relation to any time before the commencement of sections 80 and 81 of the Sexual Offences Act 2003, the reference in subsection (2)(d) above to Part 2 of that Act is to be read as a reference to Part 1 of the Sex Offenders Act 1997.

VALID FROM 14/06/2004

#### **46B Re-entry into United Kingdom of offender removed early from prison**

- (1) This section applies in relation to a person who, after being removed from prison under section 46A above, has been removed from the United Kingdom before he has served one-half of his sentence.
- (2) If a person to whom this section applies enters the United Kingdom at any time before his sentence expiry date, 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 following—
  - (a) the end of a period (“the further custodial period”) beginning with that time and equal in length to the outstanding custodial period, and
  - (b) his sentence expiry date.
- (3) A person who is liable to be detained by virtue of subsection (2) above is, if at large, to be taken for the purposes of section 49 of the Prison Act 1952 (persons unlawfully at large) to be unlawfully at large.
- (4) Subsection (2) above does not prevent the further removal from the United Kingdom of a person falling within that subsection.
- (5) Where, in the case of a person returned to prison by virtue of subsection (2) above, the further custodial period ends before the sentence expiry date, subsections (1) and (2) of section 33 above apply in relation to him as if any reference to one-half or two-thirds of the prisoner’s sentence were a reference to the further custodial period.
- (6) If a person returned to prison by virtue of subsection (2) above falls by virtue of subsection (5) above to be released on licence under section 33(1) or (2) above after the date on which (but for his removal from the United Kingdom) he would have served three-quarters of his sentence, section 37(1) above has effect in relation to him as if for the reference to three-quarters of his sentence there were substituted a reference to the whole of his sentence.
- (7) If a person who is released on licence under section 33(1) or (2) above at the end of the further custodial period is recalled to prison under section 39(1) or (2) above, section 33A(3) above shall not apply, but it shall be the duty of the Secretary of State—
  - (a) if the person is recalled before the date on which (but for his removal from the United Kingdom) he would have served three-quarters of his sentence, to release him on licence on that date, and
  - (b) if he is recalled after that date, to release him on the sentence expiry date.

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(8) A licence granted by virtue of subsection (7)(a) above shall remain in force until the sentence expiry date.

(9) In this section—

“further custodial period” has the meaning given by subsection (2)(a) above;

“outstanding custodial period”, in relation to a person to whom this section applies, means the period beginning with the date on which he was removed from the United Kingdom and ending with the date on which (but for his removal) he would have served one-half of his sentence;

“sentence expiry date”, in relation to a person to whom this section applies, means the date on which (but for his removal from the United Kingdom) he would have served the whole of this sentence.

#### **47 Persons extradited to the United Kingdom.**

(1) A short-term or long-term prisoner is an extradited prisoner for the purposes of this section if—

(a) he was tried for the offence in respect of which his sentence was imposed—

(i) after having been extradited to the United Kingdom; and

(ii) without having first been restored or had an opportunity of leaving the United Kingdom; and

(b) he was for any period kept in custody while awaiting his extradition to the United Kingdom as mentioned in paragraph (a) above.

(2) If, in the case of an extradited prisoner, the court by which he was sentenced so ordered, section 67 of the 1967 Act (computation of sentences of imprisonment) shall have effect in relation to him as if a period specified in the order were a relevant period for the purposes of that section.

(3) The period that may be so specified is such period as in the opinion of the court is just in all the circumstances and does not exceed the period of custody mentioned in subsection (1)(b) above.

(4) In this section—

“extradited to the United Kingdom” means returned to the United Kingdom—

(i) in pursuance of extradition arrangements;

(ii) under any law of a designated Commonwealth country corresponding to the <sup>M5</sup>Extradition Act 1989;

(iii) under that Act as extended to a colony or under any corresponding law of a colony; or

(iv) in pursuance of a warrant of arrest endorsed in the Republic of Ireland under the law of that country corresponding to the <sup>M6</sup>Backing of Warrants (Republic of Ireland) Act 1965;

(v) [<sup>F27</sup>in pursuance of arrangements with a foreign state in respect of which an Order in Council under section 2 of the Extradition Act 1870 is in force;]

“extradition arrangements” has the meaning given by section 3 of the <sup>M7</sup>Extradition Act 1989;

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“designated Commonwealth country” has the meaning given by section 5(1) of that Act.

#### Textual Amendments

**F27** Para. (v) inserted (3.2.1995) in the definition of "extradited to the United Kingdom" in s. 47(4) by 1994 c. 33, s. 168(1), **Sch. 9 para. 48(1)**; S.I. 1995/127, art. 2(1), **Sch. 1**, Appendix 1.

#### Modifications etc. (not altering text)

**C24** S. 47 modified (*prosp.*) by 1997 c. 43, ss. 56(1), 57(2), **Sch. 5 para.4** (by 1998 c. 37, s. 120(2), **Sch. 10** and S.I. 1998/2327, art. 2(1)(aa)(3)(x)) the said Sch. 5 paras. 1-4 were repealed (30.9.1998).

#### Commencement Information

**I16** Pt. II (ss. 32-51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

#### Marginal Citations

**M5** 1989 c. 33.

**M6** 1965 c. 45.

**M7** 1989 c. 33.

### [<sup>F28</sup>48] Life prisoners transferred to England and Wales.

- (1) This section applies where, in the case of a transferred life prisoner, the Secretary of State, after consultation with the Lord Chief Justice, certifies his opinion that, if—
  - (a) he had been sentenced for his offence in England and Wales after the commencement of section 34 above; and
  - (b) the reference in subsection (1)(a) of that section to a violent or sexual offence the sentence for which is not fixed by law were a reference to any offence the sentence for which is not so fixed,
 the court by which he was so sentenced would have ordered that that section should apply to him as soon as he had served a part of his sentence specified in the certificate.
- (2) In a case to which this section applies, this Part except section 35(2) above shall apply as if—
  - (a) the transferred life prisoner were a discretionary life prisoner for the purposes of this Part; and
  - (b) the relevant part of his sentence within the meaning of section 34 of this Act were the part specified in the certificate.
- (3) In this section “transferred life prisoner” means a person—
  - (a) on whom a court in a country or territory outside England and Wales has imposed one or more sentences of imprisonment or detention for an indeterminate period; and
  - (b) who has been transferred to England and Wales, in pursuance of—
    - (i) an order made by the Secretary of State under section 26 of the <sup>M8</sup>Criminal Justice Act 1961 or section 2 of the <sup>M9</sup>Colonial Prisoners Removal Act 1884; or
    - (ii) a warrant issued by the Secretary of State under the <sup>M10</sup>Repatriation of Prisoners Act 1984,

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there to serve his sentence or sentences or the remainder of his sentence or sentences.

- (4) A person who is required so to serve the whole or part of two or more such sentences shall not be treated as a discretionary life prisoner for the purposes of this Part unless the requirements of subsection (1) above are satisfied as respects each of those sentences; and subsections (3) and (5) of section 34 above shall not apply in relation to such a person until after he has served the relevant part of each of those sentences.]

#### Textual Amendments

**F28** S. 48 repealed (1.10.1997) by 1997 c. 43, s. 56(2), 57 (2), Sch.6 (subject to transitional provisions and savings in s. 56(1), Sch. 5 para. 1); S.I. 1997/2200, art. 2(1)(p)(3)(g)(by 1998 c. 37, s. 120(2), Sch.10 in the said Sch. 6 the entries relating to ss. 33-51 and 65 of this Act are repealed (30.9.1998); S.I. 1998/2327, art.2(1)(aa)(3)(x)).

#### Commencement Information

**I17** Pt. II (ss. 32-51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

#### Marginal Citations

**M8** 1961 c. 39.

**M9** 1884 c. 31.

**M10** 1984 c. 47.

### Supplemental

#### 49 Alteration by order of relevant proportions of sentences.

- (1) The Secretary of State may by order made by statutory instrument provide—
- that the references in section 33(5) above to four years shall be construed as references to such other period as may be specified in the order;
  - that any reference in this Part to a particular proportion of a prisoner's sentence shall be construed as a reference to such other proportion of a prisoner's sentence as may be so specified.
- (2) An order under this section may make such transitional provisions as appear to the Secretary of State necessary or expedient in connection with any provision made by the order.
- (3) No order shall be made under this section unless a draft of the order has been laid before and approved by resolution of each House of Parliament.

#### Commencement Information

**I18** Pt. II (ss. 32-51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

#### 50 Transfer by order of certain functions to Board.

- (1) The Secretary of State, after consultation with the Board, may by order made by statutory instrument provide that, in relation to such class of case as may be specified

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in the order, the provisions of this Part specified in subsections [<sup>F29</sup>(2) or (3)] below shall have effect subject to the modifications so specified.

(2) In section 35 above, in subsection (1) for the word “may” there shall be substituted the word “shall”; but nothing in this subsection shall affect the operation of that subsection as it has effect in relation to a long-term prisoner who is liable to removal from the United Kingdom (within the meaning of section 46 above).

(3) In section 37 above, in subsection (5)(a) after the words “in the case of” there shall be inserted the words “the licence of a long-term prisoner or”, and subsection (6) shall be omitted.

<sup>F30</sup>(4) . . . . .

(5) No order shall be made under this section unless a draft of the order has been laid before and approved by resolution of each House of Parliament.

<p><b>Textual Amendments</b></p> <p><b>F29</b> Words in s. 50(1) substituted (3.11.1994) by 1994 c. 33, s.150.</p> <p><b>F30</b> S. 50(4) repealed (3.11.1994) by 1994 c. 33, s. 150, 168(3), Sch.11.</p> <p><b>Commencement Information</b></p> <p><b>I19</b> Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.</p>
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[<sup>F31</sup>51 **Interpretation of Part II.**

(1) In this Part—

“the Board” means the Parole Board;

[<sup>F31</sup>. . .]

[<sup>F31</sup>. . .]

“long-term prisoner” and “short-term prisoner” have the meanings given by section 33(5) above (as extended by sections 43(1) and 45(1) above);

“sentence of imprisonment” does not include a committal in default of payment of any sum of money, or 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.

“sexual offence” and “violent offence” have the same meanings as in Part I of this Act.

(2) For the purposes of any reference in this Part, however expressed, to the term of imprisonment to which a person has been sentenced or which, or part of which, he has served, consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term.

[<sup>F31</sup>(3) . . . . .]

(4) Subsections (2) and (3) of section 31 above shall apply for the purposes of this Part as they apply for the purposes of Part I of this Act.



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### Textual Amendments

**F31** S. 51 repealed (1.10.1997 in respect of certain definitions in s. 51(1), and s. 51(3), otherwise *prosp.*) by 1997 c. 43, ss. 56(2), 57(2), Sch.6 (subject to transitional provisions and savings in s. 56(1), Sch. 5 para. 1); S.I. 1997/2200, art. 2(1)(p)(3)(f) (subject to transitional provisions and savings in art. 5) (but by 1998 c. 37, s. 120(2), Sch.10 the entries in the said Sch. 6 of 1997 c. 43 relating to ss. 33-51 and 65 of this Act are repealed (30.9.1998); S.I. 1998/2327, art.2(1)(aa)(3)(x)).

### Commencement Information

**I20** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

## 51 Interpretation of Part II. **E+W**

(1) In this Part—

“the Board” means the Parole Board;

“discretionary life prisoner” has the meaning given by section 34 above (as extended by section 43(2) above);

“life prisoner” has the meaning given by section 34(7) above (as extended by section 43(2) above);

“long-term prisoner” and “short-term prisoner” have the meanings given by section 33(5) above (as extended by sections 43(1) and 45(1) above);

“sentence of imprisonment” does not include a committal in default of payment of any sum of money, or 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.

“sexual offence” and “violent offence” have the same meanings as in Part I of this Act.

(2) For the purposes of any reference in this Part, however expressed, to the term of imprisonment to which a person has been sentenced or which, or part of which, he has served, consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term.

(3) Nothing in this Part shall require the Secretary of State to release a person who is serving—

(a) a sentence of imprisonment for a term; and

(b) one or more sentences of imprisonment for life,

unless and until he is entitled under this Part to be released in respect of each of those sentences.

(4) Subsections (2) and (3) of section 31 above shall apply for the purposes of this Part as they apply for the purposes of Part I of this Act.

### Commencement Information

**I21** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

**Status:**

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**Changes to legislation:**

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