



# Criminal Justice Act 1991

## 1991 CHAPTER 53

### PART II

#### EARLY RELEASE OF PRISONERS

##### *Misbehaviour after release*

<sup>F1</sup>38 .....

#### Textual Amendments

<sup>F1</sup> S. 38 repealed (1.1.1999) by 1998 c. 37 ss. 103(1)(2), 120(2), Sch.10 (with Sch. 9 para. 12); S.I. 1998/3263, art. 2(a)(d).

#### [<sup>F2</sup><sup>F2</sup>38A 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.

*Status: Point in time view as at 28/01/1999.*

*Changes to legislation: Criminal Justice Act 1991, Cross Heading: Misbehaviour after release is up to date with all changes known to be in force on or before 24 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (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.]

**Textual Amendments**  
**F2** S. 38A inserted (28.1.1999) by 1998 c. 37, s. 100(2); S.I. 1998/3263, art.3.

**F339 Recall of long-term and life prisoners while on licence.**

- (1) If recommended to do so by the Board in the case of a [F4short-term or] long-term F3 . . . 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—
  - F3(a) . . . . .
  - (b) recommends in the case of any F3 . . . person,
 his immediate release on licence under this section, the Secretary of State shall give effect to the F3 . . . recommendation.

[F5(5A) In the case of a prisoner to whom section 44A below applies, subsections (4)(b) and (5) of that section apply in place of subsection (5) above.]

- (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.

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#### Textual Amendments

- F3** S. 39(5)(a) and words in s. 39(1)(5)(b) repealed (1.10.1997) 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)** (subject to transitional provisions and savings in art. 5)
- F4** Words in s. 39(1) inserted (1.1.1999) by 1998 c. 37, s. 103(3) (with **Sch. 9** para. 12); S.I. 1998/3263, **art.2(a)**.
- F5** S. 39(5A) inserted (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8** para. 84; S.I. 1998/2327, **art. 2(1)(y)(2)(aa)**.

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

- C1** 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)**.  
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

- 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**.

## 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—
- 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
  - 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—
- begins with the date of the order; and
  - 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—
- 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
  - [<sup>F6</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 [<sup>F7</sup>to be dealt with under subsection (3A) below.]

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- [<sup>F8</sup>(3A) Where a person is committed to the Crown Court under subsection (3) above, the Crown Court may 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.
- (3B) Subsection (3)(b) above shall not be taken to confer on the magistrates' court a power to commit the person to the Crown Court for sentence for the new offence, but this is without prejudice to any such power conferred on the magistrates' court by any other enactment.]
- (4) The period for which a person to whom this section applies is ordered under [<sup>F9</sup>subsection (2) or (3A)]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.
- [<sup>F10</sup>(5) Where the new 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 shall be taken for the purposes of this section to have been committed on the last of those days.
- (6) For the purposes of any enactment conferring rights of appeal in criminal cases, any such order as is mentioned in subsection (2) or (3A) above made with regard to any person shall be treated as a sentence passed on him for the offence for which the sentence referred to in subsection (1) above was passed.]

#### Textual Amendments

- F6** 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.
- F7** Words in s. 40(3) substituted (30.9.1998) by virtue of 1998 c. 37, s.106, **Sch. 7 para. 43(1)**; S.I. 1998/2327, **art.2(1)(w)**.
- F8** S. 40(3A)(3B) inserted (30.9.1998) by 1998 c. 37, s.106, **Sch. 7 para. 43(2)**; S.I. 1998/2327, **art. 2(1)(w)**.
- F9** Words in s. 40(4) substituted (30.9.1998) by 1998 c. 37, s.106, **Sch. 7 para. 43(3)**; S.I. 1998/2327, **art.2(1)(w)**.
- F10** S. 40(5)(6) inserted (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para.85**; S.I. 1998/2327, **art.2(1)(y)(2)(aa)**.

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

- C2** 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

- 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**.

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[<sup>F11F11</sup>**40** **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**

**F11** 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)**

**C3** 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)

**Status:**

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