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Changes to legislation: Criminal Justice Act 1991, Cross Heading: New arrangements for early release is up to date with all changes known to be in force on or before 13 September 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)



Criminal Justice Act 1991

1991 CHAPTER 53

PART II

EARLY RELEASE OF PRISONERS

VALID FROM 01/10/1992

New arrangements for early release

F133 [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.

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(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.]

Textual Amendments

- F1** S. 33 repealed (*prosp.*) by 1997 c. 43, ss. 56(2), 57(2), Sch.6 (subject to transitional provisions and savings in s. 56(1), **Sch. 5 para. 1**) (by 1998 c. 37, s. 120(2), **Sch.10** in the said Sch. 6 the entries relating to ss. 33-51 and 65 of this Act are repealed (30.9.1998); S.I. 1998/2327, **art.2(1)(aa)(3)(x)**).

Modifications etc. (not altering text)

- C1** 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)**.
- C2** 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)**.
- C3** 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)**.

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**.

VALID FROM 30/09/1998

[^{F2F2}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

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(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

F2 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)

C4 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)**.

34 Duty to release discretionary life prisoners.

- (1) A life prisoner is a discretionary life prisoner for the purposes of this Part if—
 - (a) his sentence was imposed for a violent or sexual offence the sentence for which is not fixed by law; and
 - (b) the court by which he was sentenced for that offence ordered that this section should apply to him as soon as he had served a part of his sentence specified in the order.
- (2) A part of a sentence so specified shall be such part as the court considers appropriate taking into account—
 - (a) the seriousness of the offence, or the combination of the offence and other offences associated with it; and
 - (b) the provisions of this section as compared with those of section 33(2) above and section 35(1) below.
- (3) As soon as, in the case of a discretionary life prisoner—
 - (a) he has served the part of his sentence specified in the order (“the relevant part”); and
 - (b) the Board has directed his release under this section,it shall be the duty of the Secretary of State to release him on licence.
- (4) The Board shall not give a direction under subsection (3) above with respect to a discretionary life prisoner unless—
 - (a) the Secretary of State has referred the prisoner’s case to the Board; and
 - (b) the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.
- (5) A discretionary life prisoner may require the Secretary of State to refer his case to the Board at any time—
 - (a) after he has served the relevant part of his sentence; and
 - (b) where there has been a previous reference of his case to the Board, after the end of the period of two years beginning with the disposal of that reference; and

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- (c) where he is also serving a sentence of imprisonment for a term, after he has served one-half of that sentence;
and in this subsection “previous reference” means a reference under subsection (4) above or section 39(4) below made after the prisoner had served the relevant part of his sentence.
- (6) In determining for the purpose of subsection (3) or (5) above whether a discretionary life prisoner has served the relevant part of his sentence, no account shall be taken of any time during which he was unlawfully at large within the meaning of section 49 of the ^{M1}Prison Act 1952 (“the 1952 Act”).
- (7) In this Part “life prisoner” means a person serving one or more sentences of life imprisonment; but—
- (a) a person serving 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
 - (b) subsections (3) and (5) above shall not apply in relation to such a person until after he has served the relevant part of each of those sentences.

Modifications etc. (not altering text)

C5 S. 34(3)(5) 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).

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**.

Marginal Citations

M1 15 & 16 Geo. 6 & 1 Eliz. 2 c. 52.

[^{F3}34A Power to release short-term prisoners on licence.

- (1) Subject to subsection (2) below, subsection (3) below applies where a short-term prisoner ^{F4}. . . 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 [^{F5}section 85 of the Powers of Criminal Courts (Sentencing) Act 2000];
 - (b) the sentence is for an offence under section 1 of the ^{M2}Prisoners (Return to Custody) Act 1995;
 - (c) the sentence was imposed under [^{F5} paragraph [^{F6}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 ^{M3}Mental Health Act 1983;
- [^{F7}(da) the prisoner is subject to the notification requirements of [^{F8}Part 2 of the Sexual Offences Act 2003] ;]

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- (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 [F5 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 [F9 eighteen months], a period equal to one-quarter of the term;
 - (c) for a term of [F10 eighteen months] or more, a period that is [F11 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.

Textual Amendments

- F3** S. 34A inserted (28.01.1999) by 1998 c. 37, s. 99 (with Sch. 9 para. 10); S.I. 1998/3263, art. 3.
- F4** 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
- F5** Words in s. 34A(2)(a)(c)(h) substituted (25.8.2000) by 2000 c. 6, ss. 165, 168(1), Sch. 9
- F6** Words in s. 34A(2)(c) substituted (*prosp.*) by 2000 c. 43, ss. 75, 80(1), Sch. 7 Pt. II para. 104
- F7** S. 34A(2)(da) inserted (1.3.2001) by 2000 c. 43, s. 65; S.I. 2001/340, art. 2
- F8** 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
- F9** 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)
- F10** 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)
- F11** 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)

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Modifications etc. (not altering text)

- C6 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)**.
- C7 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

- M2 1995 c.16.
M3 1983 c.20.

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.
- (2) If recommended to do so by the Board, the Secretary of State may, after consultation with the Lord Chief Justice together with the trial judge if available, release on licence a life prisoner who is not a discretionary life prisoner.
- (3) The Board shall not make a recommendation under subsection (2) above unless the Secretary of State has referred the particular case, or the class of case to which that case belongs, to the Board for its advice.

Modifications etc. (not altering text)

- C8 S. 35 modified (1.10.1992) by S.I. 1992/1829, **art.3**.
- C9 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).

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**.

36 Power to release prisoners on compassionate grounds.

- (1) The Secretary of State may at any time release a prisoner on licence if he is satisfied that exceptional circumstances exist which justify the prisoner's release on compassionate grounds.
- (2) Before releasing a long-term or life prisoner under subsection (1) above, the Secretary of State shall consult the Board, unless the circumstances are such as to render such consultation impracticable.

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**.

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,

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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.
- (3) Where a life prisoner is released on licence, the licence shall, unless previously revoked under section 39(1) or (2) below, remain in force until his death.
- (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 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.
- (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.

Modifications etc. (not altering text)

C10 S. 37 modified (1.10.1992) by S.I. 1992/1829, art.3.

C11 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).

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.

VALID FROM 30/09/1998

^{F12F12}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

F12 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.

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