



Criminal Justice Act 1991

1991 CHAPTER 53

PART II

EARLY RELEASE OF PRISONERS

Misbehaviour after release

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
 - [^{F1}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 [^{F2}to be dealt with under subsection (3A) below.]
- [^{F3}(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—

Status: Point in time view as at 30/09/1998. This version of this provision has been superseded.

Changes to legislation: Criminal Justice Act 1991, Section 40 is up to date with all changes known to be in force on or before 23 July 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)

- (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 [F4subsection (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.
- [F5(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

- F1 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.
- F2 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)**.
- F3 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)**.
- F4 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)**.
- F5 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)

- C1 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

- I1 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:

Point in time view as at 30/09/1998. This version of this provision has been superseded.

Changes to legislation:

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