



Crime and Disorder Act 1998

1998 CHAPTER 37

PART V

MISCELLANEOUS AND SUPPLEMENTAL

Release and recall of prisoners

99 Power to release short-term prisoners on licence.

Immediately before section 35 of the 1991 Act there shall be inserted the following section—

“34A Power to release short-term prisoners on licence.

- (1) Subject to subsection (2) below, subsection (3) below applies where a short-term prisoner aged 18 or over 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 section 58 of the Crime and Disorder Act 1998;
 - (b) the sentence is for an offence under section 1 of the ^{M1}Prisoners (Return to Custody) Act 1995;
 - (c) the sentence was imposed under paragraph 3(1)(d) or 4(1)(d) of Schedule 2 to this Act 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 ^{M2}Mental Health Act 1983;
 - (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;

Status: Point in time view as at 03/07/2000.

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- (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 section 40 below 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 eight months, a period equal to one-quarter of the term;
 - (c) for a term of eight months or more, a period that is 60 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.”

Marginal Citations

M1 1995 c.16.

M2 1983 c.20.

100 Curfew condition to be included in licence.

(1) After section 37 of the 1991 Act there shall be inserted the following section—

“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
 - (b) includes requirements for securing the electronic monitoring of his whereabouts during the periods for the time being so specified.

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- (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."
- (2) Immediately before section 39 of the 1991 Act there shall be inserted the following section—

“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.
- (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.

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- (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."

Commencement Information

- II** S. 100 wholly in force at 28.1.1999; S. 100 not in force at Royal Assent see s. 121; S. 100(1) in force at 30.9.1998 for the purpose of making orders under s. 37A of the 1991 Act by S.I. 1998/2327, art. 2(1) (subject to savings in arts. 5-8); S. 100 in force at 28.1.1999 by S.I. 1998/3263, art. 3

101 Early release: two or more sentences.

- (1) For subsection (2) of section 51 of the 1991 Act (interpretation of Part II) there shall be substituted the following subsections—
- “(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 if—
- (a) the sentences were passed on the same occasion; or
 - (b) where they were passed on different occasions, the person has not been released under this Part at any time during the period beginning with the first and ending with the last of those occasions.
- (2A) Where a suspended sentence of imprisonment is ordered to take effect, with or without any variation of the original term, the occasion on which that order is made shall be treated for the purposes of subsection (2) above as the occasion on which the sentence is passed.
- (2B) Where a person has been sentenced to two or more terms of imprisonment which are wholly or partly concurrent and do not fall to be treated as a single term—
- (a) nothing in this Part shall require the Secretary of State to release him in respect of any of the terms unless and until the Secretary of State is required to release him in respect of each of the others;
 - (b) nothing in this Part shall require the Secretary of State or the Board to consider his release in respect of any of the terms unless and until the Secretary of State or the Board is required to consider his release, or the Secretary of State is required to release him, in respect of each of the others;
 - (c) on and after his release under this Part he shall be on licence for so long, and subject to such conditions, as is required by this Part in respect of any of the sentences; and
 - (d) the date mentioned in section 40(1) above shall be taken to be that on which he would (but for his release) have served each of the sentences in full.

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(2C) Where a person has been sentenced to one or more terms of imprisonment and to one or more life sentences (within the meaning of section 34 of the ^{M3}Crime (Sentences) Act 1997), nothing in this Part shall—

- (a) require the Secretary of State to release the person in respect of any of the terms unless and until the Secretary of State is required to release him in respect of each of the life sentences; or
- (b) require the Secretary of State or the Board to consider the person's release in respect of any of the terms unless and until the Secretary of State or the Board is required to consider his release in respect of each of the life sentences.

(2D) Subsections (2B) and (2C) above shall have effect as if the term of an extended sentence (within the meaning of section 58 of the Crime and Disorder Act 1998) included the extension period (within the meaning of that section).”

(2) After subsection (3) of section 34 of the 1997 Act (interpretation of Chapter II) there shall be inserted the following subsection—

“(4) Where a person has been sentenced to one or more life sentences and to one or more terms of imprisonment, nothing in this Chapter shall require the Secretary of State to release the person in respect of any of the life sentences unless and until the Secretary of State is required to release him in respect of each of the terms.”

Commencement Information

I2 S. 101 wholly in force; S. 101 not in force at Royal Assent see s. 121; In force at 30.9.1998 by S.I. 1998/2327, art. 2(1) (subject to savings in arts. 5-8)

Marginal Citations

M3 1997 c.43.

102 Restriction on consecutive sentences for released prisoners.

- (1) A court sentencing a person to a term of imprisonment shall not order or direct that the term shall commence on the expiration of any other sentence of imprisonment from which he has been released under Part II of the 1991 Act.
- (2) Expressions used in this section shall be construed as if they were contained in that Part.

Commencement Information

I3 S. 102 wholly in force; S. 102 not in force at Royal Assent see s. 121; In force at 30.9.1998 by S.I. 1998/2327, art. 2(1) (subject to savings in arts. 5-8)

103 Recall to prison of short-term prisoners.

- (1) This section has effect for the purpose of securing that, subject to section 100(2) above, the circumstances in which prisoners released on licence under Part II of the 1991

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Act may be recalled to prison are the same for short-term prisoners as for long-term prisoners.

- (2) Section 38 of the 1991 Act (breach of licence conditions by short-term prisoners) shall cease to have effect.
- (3) In subsection (1) of section 39 of the 1991 Act (recall of long-term prisoners while on licence), after the words “in the case of a” there shall be inserted the words “ short-term or ”.

104 Release on licence following recall to prison.

- (1) In subsection (3) of section 33 of the 1991 Act (duty to release short-term and long-term prisoners), for the word “unconditionally” there shall be substituted the words “ on licence ”.
- (2) After subsection (1) of section 37 of that Act (duration and conditions of licences) there shall be inserted the following subsection—

“(1A) Where a prisoner is released on licence under section 33(3) or (3A) above, subsection (1) above shall have effect as if for the reference to three-quarters of his sentence there were substituted a reference to the whole of that sentence.”

Commencement Information

I4 S. 104 wholly in force; S. 104 not in force at Royal Assent see s. 121; In force at 30.9.1998 by S.I. 1998/2327, art. 2(1) (subject to savings in arts. 5-8)

105 Release on licence following return to prison.

After section 40 of the 1991 Act there shall be inserted the following section—

“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.

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- (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.”

Commencement Information

I5 S. 105 wholly in force; S. 105 not in force at Royal Assent see s. 121; In force at 30.9.1998 by S.I. 1998/2327, art. 2(1) (subject to savings in arts. 5-8)

Status:

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