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# Criminal Justice Act 1991

## 1991 CHAPTER 53

### PART II

#### EARLY RELEASE OF PRISONERS

##### *Special cases*

##### [<sup>F1</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.

<sup>F1</sup>(2) . . . . .]

(3) References in this Part to prisoners [<sup>F1</sup>. . . ], or to prison or imprisonment, shall be construed in accordance with [<sup>F2</sup>subsection (1)][<sup>F1</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, [<sup>F2</sup>section 37(4A)] 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.

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### Textual Amendments

- F1** S. 43 repealed (1.10.1997 in respect of s. 43(2) and words in s. 43(3) otherwise *prosp.*) by 1997 c. 43, ss. 56(2), 57(2), Sch. 6 (subject to transitional provisions and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)** (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c. 37, s. 120(2), **Sch.10** the entries in the said Sch. 6 of 1997 c. 43 relating to ss. 33-51 and 65 of this Act are repealed (30.9.1998); S.I. 1998/2327, **art.2(1)(aa)(3)(x)**).
- F2** Words in s. 43(3)(5) substituted (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 87(1)(2)**; S.I. 1998/2327, **art. 2(1)(y)(2)(bb)**.

### Modifications etc. (not altering text)

- C1** 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)**.

### 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**.

## [<sup>F3F3</sup>44 Extended sentences for sexual or violent offenders.

- (1) This section applies to a prisoner serving an extended sentence within the meaning of section 58 of the Crime and Disorder Act 1998.
- (2) Subject to the provisions of this section and section 51(2D) below, this Part, except sections 40 and 40A, shall have effect as if the term of the extended sentence did not include the extension period.
- (3) Where the prisoner is released on licence under this Part, the licence shall, subject to any revocation under section 39(1) or (2) above, remain in force until the end of the extension period.
- (4) Where, apart from this subsection, the prisoner would be released unconditionally—
  - (a) he shall be released on licence; and
  - (b) the licence shall, subject to any revocation under section 39(1) or (2) above, remain in force until the end of the extension period.
- (5) The extension period shall be taken to begin as follows—
  - (a) for the purposes of subsection (3) above, on the date given by section 37(1) above;
  - (b) for the purposes of subsection (4) above, on the date on which, apart from that subsection, the prisoner would have been released unconditionally.
- (6) Sections 33(3) and 33A(1) above and section 46 below shall not apply in relation to the prisoner.
- (7) For the purposes of sections 37(5) and 39(1) and (2) above the question whether the prisoner is a long-term or short-term prisoner shall be determined by reference to the term of the extended sentence.

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- (8) In this section “extension period” has the same meaning as in section 58 of the Crime and Disorder Act 1998.]

#### Textual Amendments

**F3** S. 44 substituted (30.9.1998) by 1998 c. 37, s.59; S.I. 1998/2327, art.2(1)(n).

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

**C2** S. 44 modified (30.9.1998) by 1998 c. 37, s. 120(1), Sch. 9 para. 12(7)(9); S.I. 1998/2327, art.2(1)(z).

### [<sup>F4</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.]

#### Textual Amendments

**F4** S. 44A inserted (30.9.1998) by 1998 c. 37, s.60; S.I. 1998/2327, art.2(1)(n).

### [<sup>F5</sup>45 Fine defaulters and contemnors.

- (1) Subject to subsection (2) below, this Part ([<sup>F6</sup>except sections 33A, 34A, 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.

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(3) In section 33 above, for [F7subsections (1) to (3)] 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 [F7section 39(1) or (2)] 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) <sup>F8</sup> . . .

- (b) any revocation under section [F9section 39(1) or (2)]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

**F5** 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)**.

**F6** Words in s. 45(1) substituted (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 88(1)**; S.I. 1998/2327, **art. 2(1)(y)(2)(cc)**.

**F7** Words in s. 45(3) substituted (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 88(2)(a)(b)**; S.I. 1998/2327, **art. 2(1)(y)(2)(cc)**.

**F8** Words in s. 45(4) repealed (1.1.1999) by 1998 c. 37, ss. 119, 120(2), Sch. 8 para. 88(3)(a), **Sch. 10** (with Sch. 9 para. 12); S.I. 1998/3263, **art. 2(b)(d)**.

**F9** Words in s. 45(4) substituted (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 88(3)(b)**; S.I. 1998/2327, **art. 2(1)(y)(2)(cc)**.

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

**C3** S. 45 modified (19.9.1998) by 1998 S.I. 1998/2327, **art. 5(3)(e)**.

**C4** S. 45(1) amended (30.9.1998) by 1998 c. 37, s. 120(1), **Sch. 9 para. 12(8)(9)**; S.I. 1998/2327, **art. 2(1)(z)**.

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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.

#### 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, <sup>F10</sup>section 37 above shall have effect as if subsection (4A) 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>M1</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.

#### Textual Amendments

**F10** Words in s. 46(2) substituted (30.9.1998) by 1998 c. 37, s. 119, Sch. 8 para.89; S.I. 1998/2327, art.2(1)(y)(2)(dd).

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

**C5** 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).

**C6** S. 46(3)(a) extended (2.10.2000) by S.I. 2000/2444, art. 5

#### 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.

#### Marginal Citations

**M1** 1971 c. 77.

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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>M2</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>M3</sup>Backing of Warrants (Republic of Ireland) Act 1965;
- (v) [<sup>F11</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>M4</sup>Extradition Act 1989;



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

#### Textual Amendments

**F11** 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)

**C7** 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

**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**.

#### Marginal Citations

**M2** 1989 c. 33.

**M3** 1965 c. 45.

**M4** 1989 c. 33.

### [<sup>F12</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>M5</sup>Criminal Justice Act 1961 or section 2 of the <sup>M6</sup>Colonial Prisoners Removal Act 1884; or
    - (ii) a warrant issued by the Secretary of State under the <sup>M7</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.]

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#### Textual Amendments

- F12** 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)).

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#### 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.

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#### Marginal Citations

- M5** 1961 c. 39.  
**M6** 1884 c. 31.  
**M7** 1984 c. 47.

**Status:**

Point in time view as at 01/01/1999. This version of this cross heading contains provisions that are not valid for this point in time.

**Changes to legislation:**

Criminal Justice Act 1991, Cross Heading: Special cases is up to date with all changes known to be in force on or before 16 January 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.