



# Criminal Justice Act 1991

## 1991 CHAPTER 53

### PART II **E+W**

#### EARLY RELEASE OF PRISONERS

##### *Misbehaviour after release*

**F1**38 ..... **E+W**

#### Textual Amendments

**F1** S. 38 repealed (1.1.1999) by 1998 c. 37 ss. 103(1)(2), 120(2), Sch.10 (with Sch. 9 para. 12); S.I. 1998/3263, art. 2(a)(d).

**[F2F2]**38A Breach of curfew condition. **E+W**

- (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*Status: Point in time view as at 25/08/2000.*

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- (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. E+W**

- (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**.

**F6 40** ..... **E+W**

#### Textual Amendments

- F6** S. 40 repealed (25.8.2000) by 2000 c. 6, ss. 165, 168(1), **Sch. 12 Pt. I** (with **Sch. 11** paras. 1, 2)

[**F7 40A** **F7** **Release on licence following return to prison.** **E+W**

- (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 [**F8**section 116 of the Powers of Criminal Courts (Sentencing) Act 2000]]; 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,

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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.

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**Textual Amendments**

**F7** 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).

**F8** Words in s. 40A(1)(a) substituted (25.8.2000) by 2000 c. 6, ss. 165, 168(1), para. 139

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

**C2** 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)

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