



# Criminal Justice and Public Order Act 1994

## 1994 CHAPTER 33

### PART VIII

#### PRISON SERVICES AND THE PRISON SERVICE

#### CHAPTER I

#### ENGLAND AND WALES

#### Extent Information

- E1** Ss. 93 to 101 extend to England and Wales only; ss. 93, 95 and 101(8) extend also to the British Islands so far as relating to the delivery of prisoners to or from premises situated in a part of the British Islands outside England and Wales see s. 172(7)(11)

#### *Prisoner escorts*

### **93 Arrangements for the provision of prisoner escorts.**

- (1) In subsection (1) of section 80 (arrangements for the provision of prisoner escorts) of the <sup>M1</sup>Criminal Justice Act 1991 (“the 1991 Act”)—
- (a) for paragraph (a) there shall be substituted the following paragraph—
    - “(a) the delivery of prisoners from one set of relevant premises to another;”;
  - (b) in paragraph (b), for the words “such premises” there shall be substituted the words “the premises of any court”; and
  - (c) for paragraphs (c) and (d) there shall be substituted the following paragraph—

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“(c) the custody of prisoners temporarily held in a prison in the course of delivery from one prison to another; and”.

(2) After that subsection there shall be inserted the following subsection—

“(1A) In paragraph (a) of subsection (1) above “relevant premises” means a court, prison, police station or hospital; and either (but not both) of the sets of premises mentioned in that paragraph may be situated in a part of the British Islands outside England and Wales.”.

(3) In subsection (3) of that section, for the words “a warrant of commitment” there shall be substituted the words “a warrant or a hospital order or remand” and for the words “that warrant” there shall be substituted the words “the warrant, order or remand”.

(4) After that subsection there shall be inserted the following subsection—

“(4) In this section—

“hospital” has the same meaning as in the <sup>M2</sup>Mental Health Act 1983;

“hospital order” means an order for a person’s admission to hospital made under section 37, 38 or 44 of that Act, section 5 of the <sup>M3</sup>Criminal Procedure (Insanity) Act 1964 or section 6, 14 or 14A of the <sup>M4</sup>Criminal Appeal Act 1968;

“hospital remand” means a remand of a person to hospital under section 35 or 36 of the Mental Health Act 1983;

“warrant” means a warrant of commitment, a warrant of arrest or a warrant under section 46, 47, 48, 50 or 74 of that Act.”.

(5) In subsection (1) of section 92 of that Act (interpretation of Part IV), for the definition of “prisoner” there shall be substituted the following definition—

““prisoner” means any person for the time being detained in legal custody as a result of a requirement imposed by a court or otherwise that he be so detained;”.

(6) In subsection (3) of that section—

(a) for the words from “kept” to “accommodation)” there shall be substituted the words “remanded or committed to local authority accommodation under section 23 of the 1969 Act”; and

(b) for the words “section 80(1)(c) to (e)” there shall be substituted the words “section 80(1)(c) or (e) or (1A)”.

(7) After that subsection there shall be inserted the following subsection—

“(4) In sections 80, 82 and 83 above, “prison”—

(a) so far as relating to the delivery of prisoners to or from a prison situated in Scotland, includes a remand centre or young offenders institution within the meaning of section 19 of the <sup>M5</sup>Prisons (Scotland) Act 1989; and

(b) so far as relating to the delivery of prisoners to or from a prison situated in Northern Ireland, includes a remand centre or young offenders centre.”.

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#### Extent Information

**E2** S. 93 extends to England and Wales and the British Islands see s. 172(7)(11)

#### Marginal Citations

**M1** 1991 c. 53.

**M2** 1983 c. 20.

**M3** 1964 c. 84.

**M4** 1968 c. 19.

**M5** 1989 c. 45.

## 94 Powers and duties of prisoner custody officers acting in pursuance of such arrangements.

(1) For subsection (4) of section 82 of the 1991 Act (powers and duties of prisoner custody officers acting in pursuance of such arrangements) there shall be substituted the following subsection—

“(4) Where a prisoner custody officer acting in pursuance of prisoner escort arrangements is on any premises in which the Crown Court or a magistrates’ court is sitting, it shall be his duty to give effect to any order of that court made—

- (a) in the case of the Crown Court, under section 34A of the 1973 Act (power of Court to order search of persons before it); or
- (b) in the case of a magistrates’ court, under section 80 of the 1980 Act (application of money found on defaulter).”.

(2) After subsection (2) of section 6 of the <sup>M6</sup>Imprisonment (Temporary Provisions) Act 1980 (detention in the custody of a police constable) there shall be inserted the following subsection—

“(3) Any reference in this section to a constable includes a reference to a prisoner custody officer (within the meaning of Part IV of the <sup>M7</sup>Criminal Justice Act 1991) acting in pursuance of prisoner escort arrangements (within the meaning of that Part).”.

#### Marginal Citations

**M6** 1980 c. 57.

**M7** 1991 c. 53.

## 95 Breaches of discipline by prisoners under escort.

For section 83 of the 1991 Act there shall be substituted the following section—

### “83 Breaches of discipline by prisoners under escort.

(1) This section applies where a prisoner for whose delivery or custody a prisoner custody officer has been responsible in pursuance of prisoner escort arrangements is delivered to a prison.

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- (2) For the purposes of such prison rules as relate to disciplinary offences, the prisoner shall be deemed to have been—
  - (a) in the custody of the governor of the prison; or
  - (b) in the case of a contracted out prison, in the custody of its director, at all times during the period for which the prisoner custody officer was so responsible.
- (3) In the case of any breach by the prisoner at any time during that period of such prison rules as so relate, a disciplinary charge may be laid against him by the prisoner custody officer.
- (4) Nothing in this section shall enable a prisoner to be punished under prison rules for any act or omission of his for which he has already been punished by a court.
- (5) In this section “prison rules”, in relation to a prison situated in a part of the British Islands outside England and Wales, means rules made under any provision of the law of that part which corresponds to section 47 of the 1952 Act.”.

#### **Extent Information**

**E3** [S. 95](#) extends to England and Wales and the British Islands see [s. 172\(7\)\(11\)](#)

*Contracted out prisons etc.*

## **96 Contracted out parts of prisons, etc.**

For section 84 of the 1991 Act there shall be substituted the following section—

### **“84 Contracting out prisons etc.**

- (1) The Secretary of State may enter into a contract with another person for the provision or running (or the provision and running) by him, or (if the contract so provides) for the running by sub-contractors of his, of any prison or part of a prison.
- (2) While a contract under this section for the running of a prison or part of a prison is in force—
  - (a) the prison or part shall be run subject to and in accordance with sections 85 and 86 below, the 1952 Act (as modified by section 87 below) and prison rules; and
  - (b) in the case of a part, that part and the remaining part shall each be treated for the purposes of sections 85 to 88A below as if they were separate prisons.
- (3) Where the Secretary of State grants a lease or tenancy of land for the purposes of any contract under this section, none of the following enactments shall apply to it, namely—
  - (a) Part II of the <sup>M8</sup>Landlord and Tenant Act 1954 (security of tenure);
  - (b) section 146 of the <sup>M9</sup>Law of Property Act 1925 (restrictions on and relief against forfeiture);

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- (c) section 19(1), (2) and (3) of the <sup>M10</sup>Landlord and Tenant Act 1927 and the <sup>M11</sup>Landlord and Tenant Act 1988 (covenants not to assign etc.); and
- (d) the <sup>M12</sup>Agricultural Holdings Act 1986.

In this subsection “lease or tenancy” includes an underlease or sub-tenancy.

(4) In this Part—

“contracted out prison” means a prison or part of a prison for the running of which a contract under this section is for the time being in force;

“the contractor”, in relation to a contracted out prison, means the person who has contracted with the Secretary of State for the running of it; and

“sub-contractor”, in relation to a contracted out prison, means a person who has contracted with the contractor for the running of it or any part of it.”.

#### Marginal Citations

- M8** 1954 c. 56.
- M9** 1925 c. 20.
- M10** 1927 c. 36
- M11** 1988 c. 26.
- M12** 1986 c. 5.

## 97 Temporary attachment of prison officers.

- (1) At the end of subsection (1) of section 85 of the 1991 Act (officers of contracted out prisons) there shall be inserted the words “ or a prison officer who is temporarily attached to the prison ”.
- (2) At the end of paragraph (b) of subsection (4) of that section there shall be inserted the words “ or prison officers who are temporarily attached to the prison ”.
- (3) For subsection (3) of section 87 of that Act (consequential modifications of 1952 Act) there shall be substituted the following subsection—
  - “(3) Section 8 (powers of prison officers) shall not apply in relation to a prisoner custody officer performing custodial duties at the prison.”.
- (4) After subsection (4) of that section there shall be inserted the following subsection—
  - “(4A) Section 11 (ejection of prison officers and their families refusing to quit) shall not apply.”.
- (5) At the end of subsections (6) and (7) of that section there shall be inserted the words “ or a prison officer who is temporarily attached to the prison ”.

## 98 Prisoners temporarily out of prison.

After subsection (1) of section 92 of the 1991 Act (interpretation of Part IV) there shall be inserted the following subsection—

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“(1A) Any reference in this Part to custodial duties at a contracted out prison includes a reference to custodial duties in relation to a prisoner who is outside such a prison for temporary purposes.”.

*Miscellaneous*

**99 Contracted out functions at directly managed prisons.**

After section 88 of the 1991 Act there shall be inserted the following section—

*“Contracted out functions*

**88A Contracted out functions at directly managed prisons.**

- (1) The Secretary of State may enter into a contract with another person for any functions at a directly managed prison to be performed by prisoner custody officers who are provided by that person and are authorised to perform custodial duties.
- (2) Section 86 above shall apply in relation to a prisoner custody officer performing contracted out functions at a directly managed prison as it applies in relation to such an officer performing custodial duties at a contracted out prison.
- (3) In relation to a directly managed prison—
  - (a) the reference in section 13(2) of the 1952 Act (legal custody of prisoners) to an officer of the prison; and
  - (b) the reference in section 14(2) of that Act (cells) to a prison officer,
 shall each be construed as including a reference to a prisoner custody officer performing custodial duties at the prison in pursuance of a contract under this section.
- (4) Any reference in subsections (1) to (3) above to the performance of functions or custodial duties at a directly managed prison includes a reference to the performance of functions or such duties for the purposes of, or for purposes connected with, such a prison.
- (5) In this Part—
 

“contracted out functions” means any functions which, by virtue of a contract under this section, fall to be performed by prisoner custody officers;

“directly managed prison” means a prison which is not a contracted out prison.”.

**100 Provision of prisons by contractors.**

- (1) For subsection (2) of section 33 of the <sup>M13</sup>Prison Act 1952 (power to declare buildings etc. to be prisons) there shall be substituted the following subsection—

“(2) The Secretary of State may provide new prisons by declaring to be a prison—

- (a) any building or part of a building built for the purpose or vested in him or under his control; or

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- (b) any floating structure or part of such a structure constructed for the purpose or vested in him or under his control.”.
- (2) Subsections (3) and (4) below apply where the Secretary of State enters into a contract with another person (“the contractor”) for the provision by him of a prison.
- (3) Section 33(2) of the <sup>M14</sup>Prison Act 1952 shall have effect as if it also included references to—
- (a) any building or part of a building built by the contractor for the purpose or vested in him or under his control; and
- (b) any floating structure or part of such a structure constructed by the contractor for the purpose or vested in him or under his control.
- (4) Nothing in section 35(1) of that Act (prison property to be vested in the Secretary of State) shall require the prison or any real or personal property belonging to the prison to be vested in the Secretary of State.

**Marginal Citations**

- M13** 1952 c. 52.  
**M14** 1952 c. 52.

*Supplemental*

**101 Minor and consequential amendments.**

- (1) In subsection (5) of section 85 of the 1991 Act (officers of contracted out prisons), for the words “The contractor shall” there shall be substituted the words “ The contractor and any sub-contractor of his shall each ”.
- (2) In subsection (3)(b) of section 88 of that Act (intervention by the Secretary of State), for the words “the contractor shall” there shall be substituted the words “ the contractor and any sub-contractor of his shall each ”.
- (3) In subsection (5) of that section, after the words “the contractor,” there shall be inserted the words “ any sub-contractor of his, ”.
- (4) In subsection (3) of section 89 of that Act (certification of prisoner custody officers), for the words “contracted out prison” there shall be substituted the words “ contracted out or directly managed prison ”.
- (5) In subsections (1) and (3) of section 90 of that Act (protection of prisoner custody officers), for the words from “acting” to “prison” there shall be substituted the words—
- “(a) acting in pursuance of prisoner escort arrangements;
- (b) performing custodial duties at a contracted out prison; or
- (c) performing contracted out functions at a directly managed prison.”.
- (6) In subsection (1) of section 91 of that Act (wrongful disclosure of information), for the words from “is or has been” to “prison” there shall be substituted the words—
- “(a) is or has been employed (whether as a prisoner custody officer or otherwise) in pursuance of prisoner escort arrangements, or at a contracted out prison; or

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- (b) is or has been employed to perform contracted out functions at a directly managed prison.”.
- (7) In subsection (1) of section 92 of that Act (interpretation of Part IV)—
- (a) after the words “In this Part” there shall be inserted the words “ unless the context otherwise requires ”;
  - (b) in the definitions of “contracted out prison” and “contractor”, for the words “section 84(2)” there shall be substituted the words “ section 84(4) ”;
  - (c) after those definitions there shall be inserted the following definitions—
 

““contracted out functions” and “directly managed prison” have the meanings given by section 88A(5) above;”;
  - (d) after the definition of “prison” there shall be inserted the following definitions—
 

““prison officer” means an officer of a directly managed prison;

“prison rules” means rules made under section 47 of the 1952 Act;”;

and
  - (e) after the definition of “prisoner escort arrangements” there shall be inserted the following definition—
 

““sub-contractor” has the meaning given by section 84(4) above.”.
- (8) After subsection (7) of section 102 of the 1991 Act (short title, commencement and extent) there shall be inserted the following subsection—
- “(7A) Sections 80, 82 and 83 above, so far as relating to the delivery of prisoners to or from premises situated in a part of the British Islands outside England and Wales, extend to that part of those Islands.”.
- (9) For sub-paragraph (1) of paragraph 3 of Schedule 10 to that Act (certification of prisoner custody officers) there shall be substituted the following sub-paragraph—
- “(1) This paragraph applies where at any time—
- (a) in the case of a prisoner custody officer acting in pursuance of prisoner escort arrangements, it appears to the prisoner escort monitor for the area concerned that the officer is not a fit and proper person to perform escort functions;
  - (b) in the case of a prisoner custody officer performing custodial duties at a contracted out prison, it appears to the controller of that prison that the officer is not a fit and proper person to perform custodial duties; or
  - (c) in the case of a prisoner custody officer performing contracted out functions at a directly managed prison, it appears to the governor of that prison that the officer is not a fit and proper person to perform custodial duties.”.
- (10) In sub-paragraph (2) of that paragraph, for the words “or controller” there shall be substituted the words “ controller or governor ”.



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**Extent Information**

- E4** S. 101 extends to England and Wales only except that s. 101(8) extends also to the British Islands see s. 172(7)(11)

## CHAPTER II

### SCOTLAND

**Extent Information**

- E5** Pt. VIII Chapter II extends to Scotland only except that ss. 102(1) to (3), 104, 105 and 117 extend also to the British Islands so far as relating to the transfer of prisoners to or from premises situated in a part of the British Islands outside Scotland see s. 172(12)

#### *Prisoner escorts*

### **102 Arrangements for the provision of prisoner escorts.**

- (1) The Secretary of State may make arrangements for any of the functions specified in subsection (2) below (“escort functions”) to be performed in such cases as may be determined by or under the arrangements by prisoner custody officers who are authorised to perform such functions.
- (2) Those functions are—
  - (a) the transfer of prisoners from one set of relevant premises to another;
  - (b) the custody of prisoners held on court premises (whether or not they would otherwise be in the custody of the court) and their production before the court;
  - (c) the custody of prisoners temporarily held in a prison in the course of transfer from one prison to another; and
  - (d) the custody of prisoners while they are outside a prison for temporary purposes.
- (3) In paragraph (a) of subsection (2) above, “relevant premises” means—
  - (a) the premises of any court, prison, police station or hospital; or
  - (b) the premises of any other place from or to which a prisoner may be required to be taken under the <sup>M15</sup>Criminal Procedure (Scotland) Act 1975 or the <sup>M16</sup>Mental Health (Scotland) Act 1984;and either (but not both) of the sets of premises mentioned in that paragraph may be situated in a part of the British Islands outside Scotland.
- (4) Arrangements made by the Secretary of State under this section (“prisoner escort arrangements”) may include entering into contracts with other persons for the provision by them of prisoner custody officers.
- (5) Any person who, under a warrant or hospital order, is responsible for the performance of any such function as is mentioned in subsection (2) above shall be deemed to have complied with that warrant or order if he does all that he reasonably can to secure that

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the function is performed by a prisoner custody officer acting in pursuance of prisoner escort arrangements.

(6) In this section—

“hospital” has the same meaning as in the Mental Health (Scotland) Act 1984;

“hospital order” means an order for a person’s detention in, or admission to and detention in, a hospital under section 174, 174A, 175, 375A or 376 of the Act of 1975 or section 70 of the Act of 1984; and

“warrant” means a warrant for committal, a warrant for arrest, a warrant under section 69, 73, 74 or 75 of the Act of 1984, a transfer direction under section 71 of that Act or any other warrant, order or direction under the Act of 1975 or the Act of 1984 requiring a person to be taken to a particular place.

#### Extent Information

**E6** S. 102 extends to Scotland only; s. 102(1) to (3) extends also to the British Islands see s. 172(12)

#### Marginal Citations

**M15** 1975 c. 21.

**M16** 1984 c. 36.

### 103 Monitoring of prisoner escort arrangements.

(1) Prisoner escort arrangements shall include the appointment of a prisoner escort monitor, that is to say, a Crown servant whose duty it shall be—

- (a) to keep the arrangements under review and to report on them to the Secretary of State;
- (b) to investigate and report to the Secretary of State on any allegations made against prisoner custody officers acting in pursuance of the arrangements; and
- (c) to report to the Secretary of State on any alleged breaches of discipline on the part of prisoners for whose transfer or custody such officers so acting are responsible.

(2) In section 7(2) (functions of Her Majesty’s Chief Inspector of Prisons for Scotland) of the 1989 Act—

- (a) after “Inspector” there shall be inserted “—(a)”; and
- (b) at the end there shall be inserted—

“; and

- (b) to inspect the conditions in which prisoners are transported or held in pursuance of prisoner escort arrangements (within the meaning of section 102 of the<sup>M17</sup>Criminal Justice and Public Order Act 1994) and to report to the Secretary of State on them.”.

#### Marginal Citations

**M17** 1994 c. 33.

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#### **104 Powers and duties of prisoner custody officers performing escort functions.**

- (1) A prisoner custody officer acting in pursuance of prisoner escort arrangements shall have power to search—
  - (a) any prisoner for whose transfer or custody he is responsible in accordance with the arrangements; and
  - (b) any other person who is in or is seeking to enter any place where any such prisoner is or is to be held and any article in the possession of such a person.
- (2) The power conferred by subsection (1)(b) above to search a person shall not be construed as authorising a prisoner custody officer to require a person to remove any of his clothing other than an outer coat, jacket, headgear and gloves.
- (3) A prisoner custody officer shall, as respects prisoners for whose transfer or custody he is responsible in pursuance of prisoner escort arrangements, have the duty—
  - (a) to prevent their escape from legal custody;
  - (b) to prevent, or detect and report on, the commission or attempted commission by them of other unlawful acts;
  - (c) to ensure good order and discipline on their part;
  - (d) to attend to their wellbeing; and
  - (e) to give effect to any directions as to their treatment which are given by a court.
- (4) Where a prisoner custody officer acting in pursuance of prisoner escort arrangements is on any premises in which a court of summary jurisdiction is sitting he shall have the duty to give effect to any order of the court under section 395(2) of the <sup>M18</sup>Criminal Procedure (Scotland) Act 1975 requiring an offender to be searched.
- (5) The powers conferred by subsection (1) above and the powers arising by virtue of subsections (3) and (4) above shall include power to use reasonable force where necessary.
- (6) Prison rules may make provision in relation to—
  - (a) the power conferred by subsection (1) above; and
  - (b) the duty imposed by subsection (3)(d) above.

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##### **Extent Information**

**E7** [S. 104](#) extends to Scotland and the British Islands see [s. 172\(12\)](#)

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##### **Marginal Citations**

**M18** [1975 c. 21.](#)

#### **105 Breaches of discipline by prisoners under escort.**

- (1) Where a prisoner for whose transfer or custody a prisoner custody officer has been responsible in pursuance of prisoner escort arrangements is delivered to a prison, he shall be deemed, for the purposes of such prison rules as relate to breaches of discipline, to have been—
  - (a) in the custody of the governor of the prison; or
  - (b) in the case of a contracted out prison, in the custody of its director,

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at all times during the period for which that officer was so responsible, and that officer may bring a charge of breach of such rules as so relate against the prisoner in respect of any such time.

- (2) Nothing in subsection (1) above shall render a prisoner liable to be punished under prison rules for any act or omission of his for which he has already been punished by a court.
- (3) In this section “prison rules”, in relation to a prison situated in a part of the British Islands outside Scotland, means rules made under any provision of the law of that part which corresponds to section 39 of the 1989 Act.

#### Extent Information

**E8** [S. 105](#) extends to Scotland and the British Islands see [s. 172\(12\)](#)

### *Contracted out prisons*

#### **106 Contracting out of prisons.**

- (1) The Secretary of State may enter into a contract with another person for the provision or running (or the provision and running) by him, or (if the contract so provides) for the running by sub-contractors of his, of any prison or part of a prison in Scotland.
- (2) While a contract under this section for the running of a prison or part of a prison is in force—
  - (a) the prison or part shall be run subject to and in accordance with—
    - (i) sections 107 and 108 below; and
    - (ii) the 1989 Act and prison rules and directions made under or by virtue of that Act (all as modified by section 110 below); and
  - (b) in the case of a part, that part and the remaining part shall each be treated for the purposes of sections 107 to 112 below as if they were separate prisons.
- (3) Where the Secretary of State grants a lease for the purpose of any contract under this section, none of the following enactments shall apply to it—
  - (a) sections 4 to 7 of the <sup>M19</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (irritancy clauses); and
  - (b) the <sup>M20</sup>Agricultural Holdings (Scotland) Act 1991.

In this subsection “lease” includes a sub-lease.

- (4) In this Chapter—
  - “contracted out prison” means a prison or part of a prison for the running of which a contract under this section is for the time being in force;
  - “the contractor”, in relation to a contracted out prison, means the person who has contracted with the Secretary of State for the running of it; and
  - “sub-contractor”, in relation to a contracted out prison, means a person who has contracted with the contractor for the running of it or any part of it.

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#### Marginal Citations

M19 1985 c.73.

M20 1991 c.55.

### 107 Officers of contracted out prisons.

- (1) Instead of a governor, every contracted out prison shall have—
  - (a) a director, who shall be a prisoner custody officer appointed by the contractor and specially approved for the purposes of this section by the Secretary of State; and
  - (b) a controller, who shall be a Crown servant appointed by the Secretary of State, and every officer of such a prison who performs custodial duties shall be a prisoner custody officer who is authorised to perform such duties or a prison officer who is temporarily attached to the prison.
- (2) Subject to subsection (3) below, the director shall have the same functions as are conferred on a governor by the 1989 Act and by prison rules.
- (3) The director shall not—
  - (a) have any function which is conferred on a controller by virtue of subsection (4) below;
  - (b) inquire into a disciplinary charge brought against a prisoner, conduct the hearing of such a charge or make, remit or mitigate an award in respect of such a charge; or
  - (c) except in cases of urgency, order the removal of a prisoner from association with other prisoners, the temporary confinement of a prisoner in a special cell or the application to a prisoner of any other special control or restraint.
- (4) The controller shall have such functions as may be conferred on him by prison rules and shall be under a duty—
  - (a) to keep under review, and report to the Secretary of State on, the running of the prison by or on behalf of the director; and
  - (b) to investigate, and report to the Secretary of State on, any allegations made against prisoner custody officers performing custodial duties at the prison or prison officers who are temporarily attached to the prison.
- (5) The contractor and any sub-contractor of his shall each be under a duty to do all that he reasonably can (whether by giving directions to the officers of the prison or otherwise) to facilitate the exercise by the controller of all such functions as are mentioned in or conferred by subsection (4) above.
- (6) Every contracted out prison shall have a medical officer, who shall be a registered medical practitioner appointed by the contractor or, if the contract provides for the running of the prison by a sub-contractor, by the sub-contractor.

### 108 Powers and duties of prisoner custody officers employed at contracted out prisons.

- (1) A prisoner custody officer performing custodial duties at a contracted out prison shall have power to search—

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*Status: Point in time view as at 03/02/1995. This version of this part contains provisions that are not valid for this point in time.*

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- (a) any prisoner who is confined in the prison or for whose custody he is responsible; and
  - (b) any other person who is in or is seeking to enter the prison and any article in the possession of such a person.
- (2) The power conferred by subsection (1)(b) above to search a person shall not be construed as authorising a prisoner custody officer to require a person to remove any of his clothing other than an outer coat, jacket, headgear and gloves.
- (3) A prisoner custody officer performing custodial duties at a contracted out prison shall, as respects the prisoners for whose custody he is responsible, have the duty—
- (a) to prevent their escape from legal custody;
  - (b) to prevent, or detect and report on, the commission or attempted commission by them of other unlawful acts;
  - (c) to ensure good order and discipline on their part; and
  - (d) to attend to their wellbeing.
- (4) The powers conferred by subsection (1) above and the powers arising by virtue of subsection (3) above shall include power to use reasonable force where necessary.

#### **109 Breaches of discipline by prisoners temporarily out of contracted out prison.**

- (1) This section applies where a prisoner custody officer who performs custodial duties at a contracted out prison is responsible for the custody of a prisoner who is outside the prison for temporary purposes.
- (2) For the purposes of such prison rules as relate to breaches of discipline the prisoner shall be deemed to have been in the custody of the director of the prison at all times during the period for which the prisoner custody officer was so responsible, and that officer may bring a charge of breach of such rules as so relate against the prisoner in respect of any such time.
- (3) Nothing in subsection (1) above shall render a prisoner liable to be punished under prison rules for any act or omission of his for which he has already been punished by a court.

#### **110 Consequential modifications of 1989 Act, prison rules and directions.**

- (1) In relation to a contracted out prison, the provisions specified in subsections (2) to (7) below shall have effect subject to the modifications so specified.
- (2) In section 3 of the 1989 Act (general superintendence of prisons)—
- (a) in subsection (1), the words from “who shall appoint” to the end shall be omitted; and
  - (b) subsection (3) shall not apply.
- (3) In sections 9(5), 11(4), 15(1) and (3) (various functions of the governor of a prison), 33A (power of governor to delegate functions), 34 (duty of governor where prisoner dies), 39(8) and (12) (prison rules), 41(4) (detention of person suspected of bringing prohibited article into prison) and 41B(3) (testing prisoners for drugs) of that Act, in prison rules and in directions made by virtue of section 39(8) of that Act the reference to the governor shall be construed as a reference to the director.

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- (4) In sections 11(4) (execution of certain warrants by prison officers etc.), 13(b) (legal custody of prisoners), 33A (power of governor to delegate functions), 40(1) (persons unlawfully at large), 41(3), (4), (6) and (8) (detention of person suspected of bringing prohibited article into prison) and 41B(1) (testing prisoners for drugs) of that Act, the reference to an officer of a prison (or, as the case may be, a prison officer) shall be construed as a reference to a prisoner custody officer performing custodial duties at the prison or a prison officer temporarily attached to the prison.
- (5) Section 36 of that Act (vesting of prison property in Secretary of State) shall have effect subject to the provisions of the contract entered into under section 106 above.
- (6) Sections 37 (discontinuance of prison), 41(2A) and (2B) (power to search for prohibited articles) and 41A (powers of search by authorised employees) of that Act shall not apply.
- (7) In prison rules, in subsection (8) of section 39 of that Act (directions supplementing prison rules) and in any direction made by virtue of that subsection, the reference to an officer of a prison (or, as the case may be, a prison officer) shall be construed as including a reference to a prisoner custody officer performing custodial duties at the prison.

## **111 Intervention by the Secretary of State.**

- (1) This section applies where, in the case of a contracted out prison, it appears to the Secretary of State—
  - (a) that the director has lost or is likely to lose effective control of the prison or any part of it; and
  - (b) that the making of an appointment under subsection (2) below is necessary in the interests of preserving the safety of any person or preventing serious damage to any property.
- (2) The Secretary of State may appoint a Crown servant to act as governor of the prison for the period—
  - (a) beginning with the time specified in the appointment; and
  - (b) ending with the time specified in the notice of termination under subsection (4) below.
- (3) During that period—
  - (a) all the functions which would otherwise be exercisable by the director or the controller shall be exercisable by the governor;
  - (b) the contractor and any sub-contractor of his shall each do all that he reasonably can to facilitate the exercise by the governor of those functions; and
  - (c) the officers of the prison shall comply with any directions given by the governor in the exercise of those functions.
- (4) Where the Secretary of State is satisfied—
  - (a) that the governor has secured effective control of the prison or, as the case may be, the relevant part of it; and
  - (b) that the governor's appointment is no longer necessary as mentioned in subsection (1)(b) above,he shall, by a notice to the governor, terminate the appointment at a time specified in the notice.

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- (5) As soon as practicable after making or terminating an appointment under this section, the Secretary of State shall give a notice of the appointment, or a copy of the notice of termination, to the contractor, any sub-contractor of his, the director and the controller.

### *Contracted out functions*

## **112 Contracted out functions at directly managed prisons.**

- (1) The Secretary of State may enter into a contract with another person for any functions at a directly managed prison to be performed by prisoner custody officers who are provided by that person and are authorised to perform custodial duties.
- (2) Sections 108 and 109 above shall apply in relation to a prisoner custody officer performing contracted out functions at a directly managed prison as they apply in relation to such an officer performing custodial duties at a contracted out prison, but as if the reference in section 109(2) to the director of the contracted out prison were a reference to the governor of the directly managed prison.
- (3) In relation to a directly managed prison, the references to an officer of a prison (or, as the case may be, a prison officer) in the provisions specified in subsection (4) below shall each be construed as including a reference to a prisoner custody officer performing custodial duties at the prison in pursuance of a contract under this section.
- (4) Those provisions are—
- (a) section 11(4) of the 1989 Act (execution of certain warrants by prison officers etc.);
  - (b) section 13(b) of that Act (legal custody of prisoners);
  - (c) section 33A of that Act (power of governor to delegate functions);
  - (d) subsection (8) of section 39 of that Act (directions supplementing prison rules) and directions made by virtue of that subsection;
  - (e) section 40(1) of that Act (persons unlawfully at large);
  - (f) section 41(3), (4), (6) and (8) of that Act (prohibited articles); and
  - (g) prison rules.
- (5) Section 41(2A) and (2B) of the 1989 Act (search of person suspected of bringing prohibited article into prison) shall not apply in relation to a prisoner custody officer performing contracted out functions at a directly managed prison.
- (6) Any reference in the foregoing provisions of this section to the performance of functions or custodial duties at a directly managed prison includes a reference to the performance of functions or such duties for the purposes of, or for purposes connected with, such a prison.
- (7) In this Chapter—
- “contracted out functions” means any functions which, by virtue of a contract under this section, fall to be performed by prisoner custody officers; and
- “directly managed prison” means a prison which is not a contracted out prison.



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### *Provision of new prisons*

#### **113 Provision of new prisons.**

- (1) The Secretary of State may declare to be a prison—
  - (a) any building or part of a building built or adapted for the purpose; and
  - (b) any floating structure or part of such a structure constructed or adapted for the purpose,whether vested in, or under the control of, the Secretary of State or any other person.
- (2) Section 106(1) and subsection (1) above are without prejudice to the Secretary of State's powers under the 1989 Act with respect to the provision of prisons.
- (3) A declaration under subsection (1) above—
  - (a) shall have effect for the purposes of the 1989 Act and any other enactment (including an enactment contained in subordinate legislation);
  - (b) shall not be sufficient to vest the legal estate in any building or structure in the Secretary of State; and
  - (c) may be revoked by the Secretary of State at any time other than a time when the prison to which it relates is a contracted out prison.
- (4) Nothing in section 36 of the 1989 Act (prison property to be vested in the Secretary of State) shall require the legal estate in—
  - (a) any prison provided under a contract entered into under section 106(1) above;
  - (b) any prison declared to be such under subsection (1) above and not vested in the Secretary of State; or
  - (c) any heritable or moveable property belonging to any prison mentioned in paragraph (a) or (b) above,to be vested in the Secretary of State.

### *Supplemental*

#### **114 Prisoner custody officers: general provisions.**

- (1) In this Chapter “prisoner custody officer” means a person in respect of whom a certificate is for the time being in force certifying—
  - (a) that he has been approved by the Secretary of State for the purpose of performing escort functions or custodial duties or both; and
  - (b) that he is accordingly authorised to perform them.
- (2) Schedule 6 to this Act shall have effect with respect to the certification of prisoner custody officers.
- (3) Prison rules may make provision regarding the powers and duties of prisoner custody officers performing custodial duties.

#### **115 Wrongful disclosure of information.**

- (1) A person who—
  - (a) is or has been employed (whether as a prisoner custody officer or otherwise) in pursuance of prisoner escort arrangements, or at a contracted out prison; or

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(b) is or has been employed to perform contracted out functions at a directly managed prison,

shall be guilty of an offence if he discloses, otherwise than in the course of his duty or as authorised by the Secretary of State, any information which he acquired in the course of his employment and which relates to a particular prisoner.

(2) A person guilty of an offence under subsection (1) above shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

## 116 Minor and consequential amendments.

(1) In section 19(4)(b) of the 1989 Act (remand centres and young offenders institutions), for “33” there shall be substituted “ 33A ”.

(2) Section 33 of that Act (miscellaneous duties of prison governor) shall cease to have effect.

(3) After section 33 of that Act there shall be inserted the following section—

### “33A Power of governor to delegate functions.

Rules made under section 39 of this Act may permit the governor of a prison to authorise an officer of the prison, or a class of such officers, to exercise on his behalf such of the governor’s functions as the rules may specify.”.

(4) In section 39 of that Act (prison rules)—

(a) in subsection (1), after “Act” there shall be inserted “ or any other enactment ”;

(b) in subsection (8), for “the purpose so specified” there shall be substituted “ any purpose specified in the rules ”; and

(c) after subsection (11), there shall be inserted the following subsection—

“(12) Rules made under this section may (without prejudice to the generality of subsection (1) above) confer functions on a governor.”.

## 117 Interpretation of Chapter II.

(1) In this Chapter, except where otherwise expressly provided—

“the 1989 Act” means the <sup>M21</sup>Prisons (Scotland) Act 1989;

“contracted out prison” and “the contractor” have the meanings given by section 106(4) above;

“contracted out functions” and “directly managed prison” have the meanings given by section 112(7) above;

“custodial duties” means custodial duties at a contracted out or a directly managed prison;

“escort functions” has the meaning given by section 102(1) above;

“prison” includes—

(a) any prison other than a naval, military or air force prison; and

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- (b) a remand centre or young offenders institution within the meaning of section 19 of the 1989 Act;
  - “prison officer” means an officer of a directly managed prison;
  - “prison rules” means rules made under section 39 of the 1989 Act;
  - “prisoner” means any person who is in legal custody or is deemed to be in legal custody under section 215 or 426 of the <sup>M22</sup>Criminal Procedure (Scotland) Act 1975;
  - “prisoner custody officer” has the meaning given by section 114(1) above;
  - “prisoner escort arrangements” has the meaning given by section 102(4) above; and
  - “sub-contractor” has the meaning given by section 106(4) above.
- (2) Any reference in this Chapter to custodial duties at a contracted out or directly managed prison includes a reference to custodial duties in relation to a prisoner who is outside such a prison for temporary purposes.
- (3) In sections 102(1) to (3), 104 and 105 above, “prison”—
  - (a) so far as relating to the transfer of prisoners to or from a prison situated in England and Wales, includes a young offender institution and a remand centre; and
  - (b) so far as relating to the transfer of prisoners to or from a prison situated in Northern Ireland, includes a young offenders centre and a remand centre.

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**Extent Information**

**E9** [S. 117](#) extends to Scotland and the British Islands see [s. 172\(12\)](#)

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**Marginal Citations**

**M21** [1989 c. 45.](#)

**M22** [1975 c. 21.](#)

VALID FROM 10/04/1995

**CHAPTER III**

NORTHERN IRELAND

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**Extent Information**

**E10** [Pt. VIII Chapter III](#) extends to Northern Ireland only except that ss. 118, 120, 121 and 125 extend also to the British Islands so far as relating to the delivery of prisoners situated in a part of the british Islands outside Northern Ireland see [s. 172\(14\)](#)

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### *Prisoner escorts*

#### **118 Arrangements for the provision of prisoner escorts.**

(1) The Secretary of State may make arrangements for any of the following functions, namely—

- (a) the delivery of prisoners from one set of relevant premises to another;
- (b) the custody of prisoners held on the premises of any court (whether or not they would otherwise be in the custody of the court) and their production before the court;
- (c) the custody of prisoners temporarily held in a prison in the course of delivery from one prison to another; and
- (d) the custody of prisoners while they are outside a prison for temporary purposes;

to be performed in such cases as may be determined by or under the arrangements by prisoner custody officers who are authorised to perform such functions.

(2) In paragraph (a) of subsection (1) above, “relevant premises” means a court, prison, police station or hospital; and either (but not both) of the sets of premises mentioned in that paragraph may be situated in a part of the British Islands outside Northern Ireland.

(3) Arrangements made by the Secretary of State under this section (“prisoner escort arrangements”) may include entering into contracts with other persons for the provision by them of prisoner custody officers.

(4) Any person who, under a warrant or a hospital order or remand, is responsible for the performance of any such function as is mentioned in subsection (1) above shall be deemed to have complied with that warrant, order or remand if he does all that he reasonably can to secure that the function is performed by a prisoner custody officer acting in pursuance of prisoner escort arrangements.

(5) In this section—

“hospital” has the same meaning as in the <sup>M23</sup>Mental Health (Northern Ireland) Order 1986;

“hospital order” means an order for a person’s admission to hospital under Article 44, 45, 49 or 50 of that Order, or section 11 or 13 of the <sup>M24</sup>Criminal Appeal (Northern Ireland) Act 1980;

“hospital remand” means a remand of a person to hospital under Article 42 or 43 of the Mental Health (Northern Ireland) Order 1986;

“warrant” means a warrant of commitment, a warrant of arrest or a warrant under Article 52, 53, 54, 56 or 79 of that Order.

#### **Extent Information**

**E11** S. 118 extends to Northern Ireland and the British Islands see s. 172(14)

#### **Marginal Citations**

**M23** S.I. 1986/595 (N.I. 4).

**M24** 1980 c. 47.

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### **119 Monitoring etc. of prisoner escort arrangements.**

- (1) Prisoner escort arrangements shall include the appointment of a prisoner escort monitor, that is to say, a Crown servant whose duty it shall be to keep the arrangements under review and to report on them to the Secretary of State.
- (2) It shall also be the duty of a prisoner escort monitor to investigate and report to the Secretary of State on—
  - (a) any allegations made against prisoner custody officers acting in pursuance of the arrangements; and
  - (b) any alleged breaches of discipline on the part of prisoners for whose delivery or custody such officers so acting are responsible.

### **120 Powers and duties of prisoner custody officers acting in pursuance of such arrangements.**

- (1) A prisoner custody officer acting in pursuance of prisoner escort arrangements shall have the following powers, namely—
  - (a) to search in accordance with rules made by the Secretary of State any prisoner for whose delivery or custody he is responsible in accordance with the arrangements; and
  - (b) to search any other person who is in or is seeking to enter any place where any such prisoner is or is to be held and any article in the possession of such a person.
- (2) The powers conferred by subsection (1)(b) above to search a person shall not be construed as authorising a prisoner custody officer to require a person to remove any of his clothing other than an outer coat, hat, jacket or gloves.
- (3) A prisoner custody officer shall have the following duties as respects prisoners for whose delivery or custody he is responsible in pursuance of prisoner escort arrangements, namely—
  - (a) to prevent their escape from lawful custody;
  - (b) to prevent, or detect and report on, the commission or attempted commission by them of other unlawful acts;
  - (c) to ensure good order and discipline on their part;
  - (d) to attend to their wellbeing; and
  - (e) to give effect to any directions as to their treatment which are given by a court,and the Secretary of State may make rules with respect to the performance by prisoner custody officers of their duty under paragraph (d) above.
- (4) Where a prisoner custody officer acting in pursuance of prisoner escort arrangements is on any premises in which a magistrates' court is sitting, it shall be his duty to give effect to any order of that court made under Article 110 of the <sup>M25</sup>Magistrates' Courts (Northern Ireland) Order 1981 (application of funds found upon defaulter).
- (5) The powers conferred by subsection (1) above and the powers arising by virtue of subsections (3) and (4) above shall include power to use reasonable force where necessary.

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- (6) 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.

#### Extent Information

**E12** S. 120 extends to Northern Ireland and British Islands see s. 172(14)

#### Marginal Citations

**M25** S.I. 1981/1675 (N.I.26).

### 121 Breaches of discipline by prisoners under escort.

- (1) This section applies where a prisoner for whose delivery or custody a prisoner custody officer has been responsible in pursuance of prisoner escort arrangements is delivered to a prison.
- (2) For the purpose of such prison rules as relate to disciplinary offences, the prisoner shall be deemed to have been in the custody of the governor of the prison at all times during the period for which the prisoner custody officer was so responsible.
- (3) In the case of any breach by the prisoner at any time during the period of such prison rules as so relate, a disciplinary charge may be laid against him by the prisoner custody officer.
- (4) Nothing in this section shall enable a prisoner to be punished under prison rules for any act or omission of his for which he has already been punished by a court.
- (5) In this section “prison rules”, in relation to a prison situated in a part of the British Islands outside Northern Ireland, means rules made under any provision of the law of that part which corresponds to section 13 of the <sup>M26</sup>Prison Act (Northern Ireland) 1953.

#### Extent Information

**E13** S. 121 extends to Northern Ireland and British Islands see s. 172(14)

#### Marginal Citations

**M26** 1953 c. 18 (N.I.).

### *Supplemental*

### 122 Certification of custody officers.

- (1) In this Chapter “prisoner custody officer” means a person in respect of whom a certificate is for the time being in force certifying—
- (a) that he has been approved by the Secretary of State for the purpose of performing escort functions; and
  - (b) that he is accordingly authorised to perform them.

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- (2) Schedule 7 to this Act shall have effect with respect to the certification of prisoner custody officers.
- (3) In this section and Schedule 7 to this Act “escort functions” means the functions specified in section 118(1) above.

### **123 Protection of prisoner custody officers.**

- (1) Any person who assaults a prisoner custody officer acting in pursuance of prisoner escort arrangements shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding six months or to both.
- (2) Article 18(2) of the <sup>M27</sup>Firearms (Northern Ireland) Order 1981 (additional penalty for possession of firearms when committing certain offences) shall apply to offences under subsection (1) above.
- (3) Any person who resists or wilfully obstructs a prisoner custody officer acting in pursuance of prisoner escort arrangements shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) For the purposes of this section, a prisoner custody officer shall not be regarded as acting in pursuance of prisoner escort arrangements at any time when he is not readily identifiable as such an officer (whether by means of a uniform or badge which he is wearing or otherwise).

#### **Marginal Citations**

M27 [S.I.1981/155 \(N.I. 2\)](#).

### **124 Wrongful disclosure of information.**

- (1) A person who is or has been employed (whether as a prisoner custody officer or otherwise) in pursuance of prisoner escort arrangements shall be guilty of an offence if he discloses, otherwise than in the course of his duty or as authorised by the Secretary of State, any information which he acquired in the course of his employment and which relates to a particular prisoner.
- (2) A person guilty of an offence under subsection (1) above shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

### **125 Interpretation of Chapter III.**

- (1) In this Chapter—
  - “prison” includes a young offenders centre or remand centre;
  - “prisoner custody officer” has the meaning given by section 122(1) above;
  - “prison rules” means rules made under section 13 of the <sup>M28</sup>Prison Act (Northern Ireland) 1953;

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“prisoner” means any person for the time being detained in lawful custody as the result of a requirement imposed by a court or otherwise that he be so detained;

“prisoner escort arrangements” has the meaning given by section 118(3) above.

(2) Sections 118, 119(1) and (2)(a), 120 and 122 to 124 above, subsection (1) above and Schedule 7 to this Act shall have effect as if—

- (a) any reference in section 118(1), 119(1), 120 or 124 above to prisoners included a reference to persons remanded or committed to custody in certain premises under section 51, 74 or 75 of the <sup>M29</sup>Children and Young Persons Act (Northern Ireland) 1968 or ordered to be sent to a training school under section 74 or 78 of that Act; and
- (b) any reference in section 118(1)(c) or (d) or (2) above to a prison included a reference to such premises or training school.

(3) In sections 118, 120 and 121 above, “prison”—

- (a) so far as relating to the delivery of prisoners to or from a prison situated in England and Wales, includes a remand centre or young offender institution; and
- (b) so far as relating to the delivery of prisoners to or from a prison situated in Scotland, includes a remand centre or young offenders institution within the meaning of section 19 of the <sup>M30</sup>Prisons (Scotland) Act 1989.

#### Extent Information

**E14** S. 125 extends to Northern Ireland and British Islands see s. 172(14)

#### Marginal Citations

**M28** 1953 c. 18 (N.I.).

**M29** 1968 c. 34 (N.I.).

**M30** 1989 c. 45.

## CHAPTER IV

### THE PRISON SERVICE

#### 126 Service in England and Wales and Northern Ireland.

- (1) The relevant employment legislation shall have effect as if an individual who as a member of the prison service acts in a capacity in which he has the powers or privileges of a constable were not, by virtue of his so having those powers or privileges, to be regarded as in police service for the purposes of any provision of that legislation.
- (2) In this section “the relevant employment legislation” means—
  - (a) the <sup>M31</sup>Employment Protection (Consolidation) Act 1978 and the <sup>M32</sup>Trade Union and Labour Relations (Consolidation) Act 1992; and
  - (b) the <sup>M33</sup>Industrial Relations (Northern Ireland) Order 1976, the <sup>M34</sup>Industrial Relations (No. 2) (Northern Ireland) Order 1976 and the <sup>M35</sup>Industrial Relations (Northern Ireland) Order 1992.



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- (3) For the purposes of this section a person is a member of the prison service if he is an individual holding a post to which he has been appointed for the purposes of section 7 of the <sup>M36</sup>Prison Act 1952 or under section 2(2) of the <sup>M37</sup>Prison Act (Northern Ireland) 1953 (appointment of prison staff).
- (4) Except for the purpose of validating anything that would have been a contravention of section 127(1) below if it had been in force, subsection (1) above, so far as it relates to the question whether an organisation consisting wholly or mainly of members of the prison service is a trade union, shall be deemed always to have had effect and to have applied, in relation to times when provisions of the relevant employment legislation were not in force, to the corresponding legislation then in force.
- (5) Subsection (6) below shall apply where—
- (a) the certificate of independence of any organisation has been cancelled, at any time before the passing of this Act, in consequence of the removal of the name of that organisation from a list of trade unions kept under provisions of the relevant employment legislation; but
  - (b) it appears to the Certification Officer that the organisation would have remained on the list, and that the certificate would have remained in force, had that legislation had effect at and after that time in accordance with subsection (1) above.
- (6) Where this subsection applies—
- (a) the Certification Officer shall restore the name to the list and delete from his records any entry relating to the cancellation of the certificate;
  - (b) the removal of the name from the list, the making of the deleted entry and the cancellation of the certificate shall be deemed never to have occurred; and
  - (c) the organisation shall accordingly be deemed, for the purposes for which it is treated by virtue of subsection (4) above as having been a trade union, to have been independent throughout the period between the cancellation of the certificate and the deletion of the entry relating to that cancellation.

#### Marginal Citations

- M31** 1978 c. 44.
- M32** 1992 c. 52.
- M33** S.I. 1976/1043 (N.I. 16).
- M34** S.I. 1976/2147 (N.I. 28).
- M35** S.I. 1992/807 (N.I. 5).
- M36** 1952 c. 52.
- M37** 1953 c. 18 (N.I.).

### 127 Inducements to withhold services or to indiscipline.

- (1) A person contravenes this subsection if he induces a prison officer—
- (a) to withhold his services as such an officer; or
  - (b) to commit a breach of discipline.
- (2) The obligation not to contravene subsection (1) above shall be a duty owed to the Secretary of State.

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- (3) Without prejudice to the right of the Secretary of State, by virtue of the preceding provisions of this section, to bring civil proceedings in respect of any apprehended contravention of subsection (1) above, any breach of the duty mentioned in subsection (2) above which causes the Secretary of State to sustain loss or damage shall be actionable, at his suit or instance, against the person in breach.
- (4) In this section “prison officer” means any individual who—
- (a) holds any post, otherwise than as a chaplain or assistant chaplain or as a medical officer, to which he has been appointed for the purposes of section 7 of the <sup>M38</sup>Prison Act 1952 or under section 2(2) of the <sup>M39</sup>Prison Act (Northern Ireland) 1953 (appointment of prison staff),
  - (b) holds any post, otherwise than as a medical officer, to which he has been appointed under section 3(1) of the <sup>M40</sup>Prisons (Scotland) Act 1989, or
  - (c) is a custody officer within the meaning of Part I of this Act or a prisoner custody officer, within the meaning of Part IV of the <sup>M41</sup>Criminal Justice Act 1991 or Chapter II or III of this Part.
- (5) The reference in subsection (1) above to a breach of discipline by a prison officer is a reference to a failure by a prison officer to perform any duty imposed on him by the prison rules or any code of discipline having effect under those rules or any other contravention by a prison officer of those rules or any such code.
- (6) In subsection (5) above “the prison rules” means any rules for the time being in force under section 47 of the Prison Act 1952, section 39 of the Prisons (Scotland) Act 1989 or section 13 of the Prison Act (Northern Ireland) 1953 (prison rules).
- (7) This section shall be disregarded in determining for the purposes of any of the relevant employment legislation whether any trade union is an independent trade union.
- (8) Nothing in the relevant employment legislation shall affect the rights of the Secretary of State by virtue of this section.
- (9) In this section “the relevant employment legislation” has the same meaning as in section 126 above.

#### Marginal Citations

**M38** 1952 c. 52.

**M39** 1953 c. 18 (N.I.).

**M40** 1989 c. 45.

**M41** 1991 c. 53.

## 128 Pay and related conditions.

- (1) The Secretary of State may by regulations provide for the establishment, maintenance and operation of procedures for the determination from time to time of—
- (a) the rates of pay and allowances to be applied to the prison service; and
  - (b) such other terms and conditions of employment in that service as may appear to him to fall to be determined in association with the determination of rates of pay and allowances.

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- (2) Before making any regulations under this section the Secretary of State shall consult with such organisations appearing to him to be representative of persons working in the prison service and with such other persons as he thinks fit.
- (3) The power to make regulations under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Regulations under this section may—
  - (a) provide for determinations with respect to matters to which the regulations relate to be made wholly or partly by reference to such factors, and the opinion or recommendations of such persons, as may be specified or described in the regulations;
  - (b) authorise the matters considered and determined in pursuance of the regulations to include matters applicable to times and periods before they are considered or determined;
  - (c) make such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit; and
  - (d) make different provision for different cases.
- (5) For the purposes of this section the prison service comprises all the individuals who are prison officers within the meaning of section 127 above, apart from those who are custody officers within the meaning of Part I of this Act or prisoner custody officers within the meaning of Part IV of the <sup>M42</sup>Criminal Justice Act 1991 or Chapter II or III of this Part.

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

**C1** [S. 128](#): transfer of certain functions (1.7.1999) by [S.I. 1999/1750](#) arts. 1, 2 Sch. 1 (with art. 7); [S.I. 1998/3178](#), [art. 2](#)

**C2** [S. 128](#) amended (1.7.1999) by [S.I. 1999/1756](#) arts. 1, 2, Sch. para. 16 (with art. 8); [1998/3178](#), [art. 2](#)

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**Marginal Citations**

**M42** [1991 c. 53](#).

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