



# Criminal Justice Act 1961

1961 CHAPTER 39 9 and 10 Eliz 2

## PART IV

### SUPPLEMENTAL

34 .....<sup>F1</sup>

#### Textual Amendments

**F1** S. 34 repealed by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [Sch. 16](#)

#### 35 **Legal custody.**

- (1) Any person required or authorised by or under this Act to be taken to any place or to be kept in custody shall, while being so taken or kept, be deemed to be in legal custody.
- (2) A constable, or any other person required or authorised by or under this Act to take any person to or keep him at any place shall, while taking or keeping him there have all the powers, authorities, protection and privileges which a constable has within the area for which he acts as constable.

#### 36 **General provisions as to orders.**

- (1) Any power of the Secretary of State to make orders under this Act (other than orders under subsection (1) of section nineteen<sup>F2</sup> . . .) shall be exercisable by statutory instrument.
- (2) Any Order in Council or order under this Act may be varied or revoked by a subsequent Order in Council or order.

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*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice Act 1961, Part IV. (See end of Document for details)*

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**Textual Amendments**

- F2** Words in s. 36(1) repealed (1.10.1997) by 1997 c. 43, s. 56(2), **Sch. 6**; S.I. 1997/2200, **art. 2(1)(o)** (with **art. 5(6)**)

**37 Prison Commissioners' reports.**

In any case where a court is required by this Act to consider a report made by or on behalf of the [<sup>F3</sup>Secretary of State] in respect of an offender, the court shall cause a copy of the report to be given to the offender or his counsel or solicitor.

**Textual Amendments**

- F3** Words substituted by S.I. 1963/597, **Sch. 2**

**38 Construction of references to sentence of imprisonment, etc.**

- (1) Except as provided by subsection (3) of this section, the expression “sentence” in this Act does not include a committal for default or the fixing of a term to be served in the event of default, or a committal or attachment for contempt of court.
- (2) For the purposes of any provisions of this Act referring to a person who is serving or has served a sentence of any description, the expression “sentence” includes—
  - (a) in any case, a sentence of that description passed by a court in Scotland, Northern Ireland, any of the Channel Islands or the Isle of Man; and
  - (b) in the case of imprisonment, <sup>F4</sup>... a sentence which is treated by virtue of the <sup>M1</sup>Colonial Prisoners Removal Act 1884 as a sentence passed by a court in England and Wales.
- (3) <sup>F5</sup>For the purposes . . . of sections twenty-two and thirty-four of this Act—
  - [<sup>F6</sup>(a) the expression “imprisonment or detention” means imprisonment, custody for life, detention in a [<sup>F7</sup>young offender ] institution or in a secure training centre [<sup>F8</sup>or secure college] or detention under an equivalent sentence passed by a court in the Channel Islands or the Isle of Man;]
  - (b) the expression “sentence” includes <sup>F9</sup>... any order made by any court imposing imprisonment or detention, and “sentenced” shall be construed accordingly.
  - [<sup>F10</sup>(c) any reference to a person serving a sentence of, or sentenced to, imprisonment or detention shall be construed as including a reference to a person who, under any enactment relating to children and young persons in force in any part of the United Kingdom or any of the Channel Islands or the Isle of Man, has been sentenced by a court to be detained for an offence and is liable to be detained in accordance with [<sup>F11</sup>a determination of the Secretary of State or of a person authorised by him, in accordance with arrangements made by the Secretary of State or in accordance with] directions given by the Secretary of State, . . . <sup>F12</sup> or by the Governor of the Isle of Man with the concurrence of the Secretary of State, and any other reference to a sentence of imprisonment or detention shall be construed accordingly.]
- (4) For the purposes of any reference in this Act to a term of imprisonment or of detention in a detention centre or to a term of imprisonment or detention, consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term.

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- [<sup>F13</sup>(5) For the purposes of this Act (and of any enactment referred to in Part III of this Act)—
- (a) a sentence [<sup>F14</sup>of detention in a young offenders institution passed in Scotland, and a sentence] of penal servitude passed in any of the Channel Islands or the Isle of Man shall be treated as a sentence of imprisonment for the like term;
  - [<sup>F15</sup>(aa) An order for detention in a young offenders centre passed in Northern Ireland shall be treated as a sentence of imprisonment for the like term.]
  - (b) a sentence of detention in a borstal institution passed as aforesaid shall be treated as a sentence of borstal training;
  - (c) a sentence of death passed by any court (including a court-martial) on a person subsequently pardoned by Her Majesty on condition of his serving a term of imprisonment or penal servitude shall be treated as a sentence of imprisonment or penal servitude passed by that court for that term; and
  - (d) without prejudice to paragraph (c) of this subsection, any reference to a person on whom a sentence of any description has been passed includes a reference to a person who under the law of any part of the United Kingdom, any of the Channel Islands or the Isle of Man is treated as a person on whom a sentence of that description has been passed;
- and “sentenced” shall be construed accordingly.]
- [<sup>F16</sup>(6) The Secretary of State may by order designate as equivalent sentences for the purposes of this Act <sup>F5</sup>. . . a description of sentence which a court with jurisdiction in one part of the United Kingdom or in the Channel Islands or the Isle of Man may pass and a description of sentence which a court elsewhere in the United Kingdom or in those Islands may pass;]

#### Textual Amendments

- F4** Words in s. 38(2)(b) repealed (28.3.2009 for specified purposes) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 17](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059)
- F5** Words in s. 38(3)(6) repealed (1.10.1997) by [1997 c. 43](#), s. 56(2), [Sch. 6](#); S.I. 1997/2200, [art. 2\(1\)\(o\)](#)
- F6** S. 38(3)(a) substituted (1.3.1998) by 1994 by virtue of c. 33, s. 168(2), [Sch. 10 para. 12\(5\)](#); S.I. 1998/277, [art. 3\(2\)](#)
- F7** Words in s. 38(3)(a) substituted (20.3.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), [Sch. 9 para. 7\(a\)](#); S.I. 2015/778, art. 2(1)(c)
- F8** Words in s. 38(3)(a) inserted (20.3.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), [Sch. 9 para. 7\(b\)](#); S.I. 2015/778, art. 2(1)(c)
- F9** Words in s. 38(3)(b) repealed (28.3.2009 for specified purposes) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 17](#); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059)
- F10** S. 38(3)(c) added by [Criminal Justice Act 1967 \(c. 80\)](#), [s. 69\(1\)](#)
- F11** Words in s. 38(3)(c) inserted (14.7.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), s. 153(7), [Sch. 26 para. 4](#); S.I. 2008/1586, art. 2(1), [Sch. 1 para. 48\(c\)](#)
- F12** Words repealed by S.I. 1973/2163, [Sch. 6](#)
- F13** S. 38(5) repealed (*prosp.*) except that the repeal is in force (E.W.N.I.) so far as regards subsection (a) and (b) and is in force (S.) except as regards subparas. (c) and (d) by [Criminal Justice Act 1982 \(c. 48\)](#), [SIF 39:1](#), s. 80(2), [Sch. 16](#)
- F14** Words inserted by [Criminal Justice \(Scotland\) Act 1963 \(c. 39\)](#), [Sch. 5](#)
- F15** S. 38(5)(aa) inserted by [Treatment of Offenders Act \(Northern Ireland\) 1968 \(c. 29\)](#), [Sch. 3 Pt. III](#)
- F16** S. 38(6) inserted by [Criminal Justice Act 1982 \(c. 48\)](#), [SIF 39:1](#), [Sch. 14 para. 15\(b\)](#)

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

- C1** S. 38(2)–(5) extended by [Criminal Justice Act 1967 \(c. 80\)](#), [s. 14\(4\)](#)

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### Marginal Citations

M1 1884 c. 31.

## 39 Interpretation.

(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them, that is to say:—

[<sup>F17</sup>[<sup>F18</sup>“appropriate institution”, in relation to any person, means, subject to subsection (1A) of this section, any institution which would be appropriate for the detention of an offender of the same age serving an equivalent sentence passed by a court in the place to which he has been transferred;]]

[<sup>F19</sup> ...

“default” means failure to pay, or want of sufficient distress to satisfy, any fine or other sum of money, or failure to do or abstain from doing any thing required to be done or left undone;

“enactment” includes an enactment of the Parliament of Northern Ireland;

“prison” does not include a naval, military or air force prison;

[<sup>F18</sup> “responsible Minister” means—

- (a) in relation to persons detained in England and Wales or in Scotland, a Secretary of State;
- (b) in relation to persons detained in Northern Ireland, [<sup>F20</sup>the Secretary of State]];

[<sup>F21</sup> ...

[<sup>F22</sup>(1ZA) In the definition of “default” in subsection (1) the reference to want of sufficient distress to satisfy a fine or other sum includes a reference to circumstances where—

- (a) there is power to use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 to recover the fine or other sum from a person, but
- (b) it appears, after an attempt has been made to exercise the power, that the person's goods are insufficient to pay the amount outstanding (as defined by paragraph 50(3) of that Schedule).]

[<sup>F23</sup> Subsection (1) of this section shall have effect in relation to a person serving a sentence [<sup>F24</sup>(1A) of a length which could not have been passed on an offender of his age by a court in the place to which he has been transferred as if it defined “appropriate institution” as meaning such place as the Secretary of State may direct.]

(1B) Any reference in this Act to a sentence being equivalent to another sentence is to be construed as a reference to its having been so designated under section 38(6) of this Act.]

(2) [<sup>F25</sup>Except as otherwise expressly provided, references in this Act to a court do not include the Court Martial, the Summary Appeal Court, the Service Civilian Court, the Court Martial Appeal Court or the Supreme Court on an appeal brought from the Court Martial Appeal Court.]

(3) Where the age of any person at any time is material for the purposes of any provision of this Act regulating the powers of a court or justice of the peace, his age at the material time shall be deemed to be or to have been that which appears to the court or justice, after considering any available evidence, to be or to have been his age at that time.

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- (4) Any reference in this Act to any other enactment is a reference thereto as amended, and includes a reference thereto as extended or applied, by or under any other enactment, including this Act.

#### Textual Amendments

- F17** Definition substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **Sch. 14 para. 16(a)**
- F18** Definitions in s. 39(1) repealed (E.W.) (1.10.1997) by [1997 c. 43, s. 56\(2\)](#), **Sch. 6**; S.I. 1997/2200, **art. 2(1)(o)**
- F19** Words in s. 39(1) repealed (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\), s. 383\(2\)](#), **Sch. 17**; S.I. 2009/812, **art. 3(a)(b)** (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, **art. 4**
- F20** Words substituted by [Criminal Law Act 1977 \(c. 45\)](#), **Sch. 12**
- F21** Definition repealed by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **Sch. 16**
- F22** [S. 39\(1ZA\)](#) inserted (6.4.2014) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\), s. 148](#), **Sch. 13 para. 26** (with s. 89); S.I. 2014/768, **art. 2(1)(b)**
- F23** [S. 39\(1A\)\(1B\)](#) inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **Sch. 14 para. 16(b)**
- F24** [S. 39\(1A\)](#) repealed (E.W.)(1.10.1997) by [1997 c. 43, s. 56\(2\)](#), **Sch. 6**; S.I. 1997/2200, **art. 2(1)(o)**
- F25** [S. 39\(2\)](#) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\), s. 383\(2\)](#), **Sch. 16 para. 47**; S.I. 2009/812, **art. 3(a)(b)** (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, **art. 4**

#### 40 Legislative powers of Parliament of Northern Ireland.

(1) . . . <sup>F26</sup>

[<sup>F27</sup>(2) Any reference in this Act to an enactment of the Parliament of Northern Ireland, or to an enactment which that Parliament has power to amend, shall be construed, in relation to Northern Ireland, as a reference to that enactment as amended by any Act of that Parliament, whether passed before or after this Act, and to any enactment of that Parliament passed after this Act and re-enacting the said enactment with or without modifications.]

#### Textual Amendments

- F26** [S. 40\(1\)](#) repealed by [Northern Ireland Constitution Act 1973 \(c. 36\)](#), **Sch. 6 Pt. I**
- F27** [S. 40\(2\)](#) added by [Criminal Justice Act 1967 \(c. 80\)](#), **Sch. 6 para. 25**

#### 41 Minor and consequential amendments and repeals.

(1) The enactments described in the Fourth Schedule to this Act shall have effect subject to the amendments specified in the second column of that Schedule, being minor amendments and amendments consequential on the foregoing provisions of this Act.

(2) . . . <sup>F28</sup>

<sup>F29</sup>(3) . . . . .

<sup>F29</sup>(4) . . . . .

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*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice Act 1961, Part IV. (See end of Document for details)*

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#### Textual Amendments

- F28** S. 41(2) repealed by Statute Law (Repeals) Act 1974 (c. 22), **Sch. Pt. XI**  
**F29** S. 41(3)(4) repealed (5.11.1993) by 1993 c. 50, s. 1(1) **Sch. 1 Pt. I** Group 1.

### 42 Application to Scotland and Northern Ireland.

- (1) The following provisions of this Act shall extend to Scotland, that is to say—  
<sup>F30</sup>  
 . . .  
 section thirty-five;  
 [<sup>F31</sup>section thirty-six;]  
 sections thirty-eight and thirty-nine;  
 section forty-one and the Fourth <sup>F32</sup> . . . Schedules so far as they relate to enactments which extend to Scotland;  
 but except as aforesaid, and except so far as it relates to the commencement of the said provisions, this Act shall not extend to Scotland.
- (2) The following provisions of this Act shall extend to Northern Ireland, that is to say—  
<sup>F30</sup>  
 . . .  
 section thirty-five;  
 [<sup>F31</sup>section thirty-six;]  
 sections thirty-eight to forty;  
 section forty-one and the Fourth <sup>F32</sup> . . . Schedules, so far as they relate to enactments which extend to Northern Ireland;  
 but except as aforesaid, and except so far as it relates to the commencement of the said provisions, this Act shall not extend to Northern Ireland.

#### Textual Amendments

- F30** Words in s. 42(1)(2) repealed (1.10.1997) by 1997 c. 43, s. 56(2), **Sch. 6**; S.I. 1997/2200, **art. 2(1)(o)** (with **art. 5(6)**)  
**F31** Words inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), **Sch. 14 para. 17**  
**F32** Words in s. 42(1)(2) repealed (5.11.1993) by 1993 c. 50, s. 1(1) **Sch. 1 Pt. I** Group 1.

### 43 Expenses.

There shall be paid out of moneys provided by Parliament any increase attributable to the provisions of this Act in the sums which, under any other enactment, are payable out of moneys so provided.

### 44 Commencement.

- (1) The foregoing provisions of this Act (including the Schedules therein referred to) shall come into operation on such date as the Secretary of State may by order appoint.
- (2) Different dates may be appointed by order under this section for different purposes of this Act; and any reference in this Act to the commencement of any provision of this Act shall be construed as a reference to the date appointed for the purposes of that provision.

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*Changes to legislation: There are currently no known outstanding effects  
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**45 Short title.**

This Act may be cited as the Criminal Justice Act 1961.

**Changes to legislation:**

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