



Criminal Justice (Scotland) Act 1949

1949 CHAPTER 94

PART II

ADMINISTRATIVE PROVISIONS AND PROVISIONS AS TO TREATMENT OF PRISONERS, ETC.

Miscellaneous

66 Persons unlawfully at large

- (1) Any person who, having been sentenced to imprisonment, corrective training, preventive detention or Borstal training, or ordered to be detained in a detention centre, or having been committed to a prison or remand centre, is unlawfully at large, may be arrested by a constable or prison officer without warrant in any part of Great Britain and taken to the place in which he is required in accordance with law to be detained.
- (2) Where any person sentenced to imprisonment, corrective training, preventive detention or Borstal training, or ordered to be detained in a remand home or detention centre, is, at any time during the period for which he is liable to be detained in pursuance of the sentence or order, absent, otherwise than with lawful authority, from the prison, Borstal institution, remand home or detention centre, as the case may be, then, unless the Secretary of State otherwise directs, no account shall be taken, in calculating the period for which he is liable to be so detained, of any time during which he is so absent:

Provided that this subsection shall not apply to any period during which any such person as aforesaid is detained in pursuance of an order of any court in a prison or other institution to which the Prisons (Scotland) Acts, 1860 to 1926 apply.

- (3) For the purposes of this section, a person who, after being temporarily released in pursuance of rules made under subsection (6) of section fifty-three' of this Act, is at large at any time during the period for which he is liable to be detained in pursuance of his sentence shall be deemed to be unlawfully at large if the period for which he was temporarily released has expired or if an order recalling him has been made by the Secretary of State in pursuance of the rules.

67 Legal custody

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.

68 Commutation of death sentence to sentence of imprisonment

Where His Majesty pardons any person who has been sentenced to death on condition that he serves a term of imprisonment, that person shall be deemed to have been sentenced by the court before which he was convicted to imprisonment for the said term.

69 Amendment of s. 75 of the Children and Young Persons (Scotland) Act, 1937

(1) For subsection (1) of section seventy-five of the Children and Young Persons (Scotland) Act, 1937, there shall be substituted the following subsection:—

“(1) Where a court orders a child to be sent to an approved school, the order shall be an authority for his detention in an approved school until the expiry of a period of three years from the date of the order or the expiry of four months after he ceases to be of school age whichever is the later.”

(2) In the said section seventy-five as amended by this section the expression " school age " has the meaning assigned to it by section thirty-two of the Education (Scotland) Act, 1946:

Provided that—

- (a) subsection (4) of that section (which extends the school age in the case of certain children requiring special educational treatment); and
- (b) subsection (2) of section thirty-three of that Act (which provides that a child shall be deemed to attain any given age on the fixed date for commencing or for terminating attendance next following the day on which he actually attains that age)

shall not apply.

(3) The provisions of the said section seventy-five shall apply as amended by this section to any approved school order made before the commencement of this Act if the period during which the person to whom it relates could be detained thereunder apart from the provisions of this section has not expired at the commencement of this Act.

70 Powers of court in relation to absconders from approved schools, etc.

(1) Where a person in whose case an approved school order has been made is brought before a court of summary jurisdiction under section eighty-six of the Children and Young Persons (Scotland) Act, 1937, or paragraph 8 of the Second Schedule to that Act (which relate respectively to absconders and persons guilty of serious misconduct), the court may, subject to the following provisions of this section—

- (a) in any case, either make a new approved school order in his case, or order him to be taken back to the school and extend the period of his detention under the original order by such period not exceeding six months as the court may determine;
- (b) if he has attained the age of sixteen years, and the order for his detention was made in respect of an offence, sentence him to Borstal training:

Provided that if the court before which any person is brought as aforesaid is a court of summary jurisdiction other than a sheriff court or a stipendiary magistrate's court it shall have, in lieu of the power to pass a sentence of Borstal training, power to remit the person to the sheriff court in the manner provided by section nine of the Summary Jurisdiction (Scotland) Act, 1908, and the sheriff court shall on any such remit being made have the like power with regard to the person as if he had been brought before that court as aforesaid.

- (2) An order under paragraph (a) of the last foregoing subsection extending the period of detention under an approved school order shall have effect notwithstanding any limitation imposed by the Children and Young Persons (Scotland) Act, 1937, upon the period for which a person may be detained in an approved school; and in relation to a new approved school order made under that paragraph, sections seventy-five, seventy-seven and seventy-eight of that Act (which relate to the period of detention under approved school orders and to supervision and recall) shall have effect as if for any reference therein to the age of nineteen years there were substituted a reference to the age of nineteen years and a half.
- (3) Subject as hereinafter provided, His Majesty may by Order in Council prohibit courts of summary jurisdiction from making orders under paragraph (b) of subsection (1) of this section; and any such Order in Council may be limited to persons of one of the sexes:

Provided that no order in Council shall be made under this subsection until the Secretary of State is satisfied that adequate methods, other than Borstal training, are available for dealing with the persons to whom the Order relates.

- (4) A draft of any Order in Council under the last foregoing subsection shall be laid before Parliament, and the draft shall not be submitted to His Majesty in Council unless each House of Parliament presents an Address to His Majesty praying that the Order be made.