Criminal Justice (Scotland) Act 1949

1949 CHAPTER 94

PART III

SUPPLEMENTAL

71 Enlargement of powers of courts under the Children and Young Persons (Scotland) Act, 1937

(1) The Children and Young Persons (Scotland) Act, 1937 (hereafter in this section referred to as the Act of 1937) shall have effect as if the powers conferred on a juvenile court by section sixty-eight of that Act (which enables a juvenile court to make certain orders in relation to refractory children and young persons) included a power to make (without making any other order or in addition to making an order placing the child or young person under the supervision of a probation officer or of some other person appointed for the purpose by the court) an order committing the child or young person to the care of any fit person whether a relative or not who is willing to undertake the care of him.

(2) The power of a juvenile court under section eighty-eight of the Act of 1937 to revoke an order committing a child or young person to the care of a fit person shall include a power to substitute for that order an order placing the child or young person for a specified period not exceeding three years under the supervision of a probation officer or of some other person appointed for the purpose by the court and section seventy of the Act of 1937 shall apply in relation to the substituted order as if it were an order made under Part IV of that Act.

(3) Where any court before which a child or young person is brought upon an application for an order under any of the provisions of sections sixty-six to seventy of the Act of 1937 is not in a position to decide what order ought to be made, the court may (whether or not it also makes an interim order under subsection (2) of section seventy-one of that Act) record a finding of the fact that the child or young person is in need of care or protection or is beyond the control of his parent or guardian or is refractory as the case may be; and the said record shall be admissible as evidence of that fact for the purpose of any further hearing of that application.

(4) Where with respect to a child or young person who is being detained in a place of safety under an interim order having effect by virtue of subsection (2) of section seventy-one of the Act of 1937 the court by which the order was made is satisfied on any occasion that by reason of illness or accident he is unable to appear personally before the court any further interim order which the court has power to make on that occasion may be made in the absence of the child or young person.

(5) If at any time while there is in force an order made by a court under section forty-one, section fifty-eight, section seventy-one or section seventy-three of the Act of 1937 or section twenty-eight of this Act for the detention of a child or young person in a remand home or in some other place of safety the child or young person is found by reason of illness or accident or for any other reason to be in need of any medical treatment or examination which cannot properly be given or made in the remand home or other place of safety, the person in charge of the remand home or other place of safety may remove the child or young person therefrom to any place of safety being a place in which the necessary treatment or examination can be given or made; and the order shall so long as it remains in force—

(a) apply to the child or young person as if whilst being so removed to the last mentioned place of safety, whilst detained therein for the giving of treatment or the making of the examination and whilst being taken back to the place from which he was so removed he continued to be detained in the remand home or other place of safety specified in the order ; and

(b) be deemed to authorise the child or young person to be taken to the court from any place to which he has lawfully been removed by virtue of this subsection.

(6) Whenever in pursuance of the last preceding subsection a child or young person is removed from any remand home or other place of safety for his detention in which such an order as is mentioned in that subsection has been made, being an order in force at the time of the removal, the person by whom he is so removed shall forthwith give written notice of the fact to the clerk of the court by which the order was made:

Provided that this subsection shall not apply in relation to the removal under the last foregoing subsection of a child or young person who returns to the remand home or place of safety on the day on which he is so removed.

72 Application to supervision orders of certain provisions relating to probation

(1) Subject to the provisions of this section, a supervision order (that is to say an order made under section sixty-six, section sixty-seven, section sixty-eight or section eighty-eight of the Children and Young Persons (Scotland) ' Act, 1937, or under section thirty-eight of the Education (Scotland) Act, 1946, placing a child or young person under the supervision of a probation officer or of some other person appointed for the purpose by the court) may include any such requirement as to the residence of the person to whom the order relates, or as to treatment for his mental condition as may, by virtue of subsection (6) of section two or by virtue of section three of this Act, be included in a probation order and any other requirement which the court, in the particular circumstances of the case, considers necessary for effecting the purposes of the order:

Provided that a supervision order containing any such requirement shall not be made unless the child or young person consents thereto.

(2) A supervision order shall cease to have effect when the person to whom it applies attains the age of eighteen.

(3) The clerk of the court by which a supervision order is made or of the appropriate court shall forthwith cause a copy of the Order to be given to the parent or guardian of the child or to the young person to whom the order relates, to the person under whose supervision the child or young person is placed by the order and to the person in charge of any institution or place in which the child or young person is required by the order to reside; and subject to the provisions of this section, subsection (9) of section two of this Act shall apply to a supervision order which requires a person to reside in any institution as it applies to a probation order containing such a requirement.

(4) If at any time during the period of supervision specified in a supervision order, the court by which the order was made or the appropriate court is satisfied on information on oath from the person under whose supervision the person to whom the order relates is placed that that person has failed to comply with any of the requirements of the order, the court may issue a citation requiring the person to whom the order relates to appear before the court at such time as may be specified in the citation, and in the event of his failing so to appear, the court may issue a warrant for his arrest.

(5) Subsections (1) to (3) of section four of this Act, and the Second Schedule to this Act, shall apply in relation to the discharge, amendment and review of supervision orders as they apply in relation to the discharge, amendment and review of probation orders:

Provided that a supervision order may be amended under the said Second Schedule on application made by any person.

(6) For the purposes of their application to supervision orders under this section, the provisions of this Act specified in subsections (1) (3) and (5) of this section shall have effect subject to the following modifications, that is to say—

(a) for references to a probation order there shall be substituted references to a supervision order;

(b) for references to the probation period there shall be substituted references to the period of supervision specified in the supervision order;

(c) for references to the probationer or the offender there shall be substituted references to the person in whose case the supervision order is or is to be made;

(d) references to the probation officer shall include references to a person not being a probation officer under whose supervision the child or young person to whom the supervision order relates is placed by virtue of the order;

(e) paragraph 5 of the said Second Schedule shall not apply except where the amending order requires the person to whom the supervision order relates to reside in an institution or to submit to treatment for his mental condition.

73 Power to order detention in a remand centre under s. 71 of the Children and Young Persons (Scotland) Act, 1937

(1) Where the court before which a young person is brought is of opinion that an inquiry ought to be made into his physical or mental condition before it decides whether any and if so what order ought to be made under sections sixty-six to seventy-one of the Children and Young Persons (Scotland) Act, 1937, then, if the court has been notified by the Secretary of State that a remand centre is available for the reception from that court of persons of his class or description, and is satisfied that facilities for such an inquiry cannot conveniently be provided in a place of safety in which he could

otherwise be ordered to be detained under subsection (2) of section seventy-one of that Act, the court may order him to be detained in a remand centre; and the reference in the said subsection (2) to a place of safety shall be construed accordingly.

(2) If a court which proposes to make an interim order under subsection (2) of the said section seventy-one in the case of a young person is of opinion that he is of so unruly a character that he cannot safely be detained in a remand home or of so depraved a character that he is not fit to be so detained, and the court has been notified by the Secretary of State that a remand centre is available for the reception from that court of persons of his class or description, a remand centre shall be included among the places of safety in which his detention or continued detention may be ordered under that subsection.

(3) Where a young person detained in a remand home in pursuance of an interim order made under subsection (2) of the said section seventy-one proves to be of so unruly a character that he cannot safely be detained in a remand home, or of so depraved a character that he is not fit to be so detained, the court which made the order, or if application cannot conveniently be made to that court, the sheriff haying jurisdiction in the place where that court sat, may, if it has been notified by the Secretary of State that a remand centre is available for the reception from that court of persons of his class or description, revoke the order and order him to be detained in a remand centre.

74 Rules and orders

(1) Any power of the Secretary of State to make rules under this Act shall be exercised by statutory instrument.

(2) A draft of any statutory instrument containing rules made under section fifty-three of this Act shall be laid before Parliament.

(3) Any power to make Orders in Council under this Act, and any power of the Secretary of State to make orders under this Act, shall include power to revoke or vary any such Order in Council or order by a subsequent Order in Council or order.

75 Expenses and grants payable out of moneys provided by Parliament

(1) Any expenses of the Secretary of State under this Act and any expenses incurred by the Secretary of State—

(a) in the training of probation officers or of officers or servants serving in approved probation hostels or homes or in remand homes or approved schools, or of persons for appointment as probation officers, or as such officers or servants as aforesaid; or

(b) in the conduct of research into the causes of delinquency and the treatment of offenders, and matters connected therewith,

shall, to such amount as may be sanctioned by the Treasury, be defrayed out of moneys provided by Parliament.

(2) Any expenses incurred by the General Board of Control for Scotland in connection with State Mental Hospitals or the management thereof, to such amount as may be sanctioned by the Treasury, and any sums by which grants payable in pursuance of regulations made under subsection (1) of section sixty-six of the National Health Service (Scotland) Act, 1947, are increased by reason of any provision of this Act, shall be defrayed out of moneys provided by Parliament.

(3) There shall be paid out of moneys provided by Parliament—

(a) towards the expenditure of local authorities under the Third Schedule to this Act;

(b) towards the expenditure of any society or person in enlarging, improving or carrying on approved probation hostels or homes or establishing, enlarging or improving premises which, when established, enlarged or improved, will be approved probation hostels or homes;

(c) towards the expenditure of any body approved by the Secretary of State in the training of probation officers or of persons for appointment as probation officers;

(d) towards the expenditure of any body approved by the Secretary of State in the training of officers or servants serving in any place in which offenders or persons awaiting trial may be detained or serving in approved probation hostels or homes or the training of persons for appointment as such officers, or servants;

(e) towards the expenditure of any society engaged in supervising or assisting persons released from a prison, Borstal institution or detention centre;

(f) towards the expenditure of any body or person approved by the Secretary of State in the conduct of research into the causes of delinquency and the treatment of offenders, and matters connected therewith,

such sums as the Secretary of State may with the approval of the Treasury direct, and subject to such conditions as he may with the like approval determine:

Provided that the sums paid as aforesaid towards any such expenditure as is mentioned in paragraph (a) of this subsection shall not exceed fifty per cent. of that expenditure.

(4) The Secretary of State may, with the consent of the Treasury, make regulations providing for the deduction from any sums which would otherwise be paid out of moneys provided by Parliament to local authorities, whether under the last foregoing subsection or under the Children and Young Persons (Scotland) Act, 1937, of such amounts as may be prescribed by the regulations in respect of expenditure incurred by the Secretary of State—

(a) in the training of any such officers, servants or other persons as are mentioned in subsection (1) of this section;

(b) in making any payments under paragraph (b) or paragraph (c) of the last foregoing subsection;

(c) in making payments under paragraph (d) of that subsection in respect of expenditure incurred in the training of officers or servants serving in remand homes or in approved probation hostels or homes, or the training of persons for appointment as such officers or servants:

Provided that the sums to be deducted in respect of any expenditure of the Secretary of State in pursuance of any such regulations as aforesaid shall not exceed fifty per cent. of that expenditure.

(5) The conditions subject to which any sums are paid to any society or person under paragraph (b) of subsection (3) of this section may include conditions for securing the repayment in whole or in part of the sums received by the society or person if the probation hostel or home in respect of which those sums are paid ceases to be approved; and, notwithstanding anything in the constitution of the hostel or home or of the managers thereof, or in the trusts, if any, to which the property of the hostel or home or of the managers is subject, the managers and any persons who are trustees

of any of the said property may accept those sums on those conditions, and execute any instrument required for carrying into effect those conditions, and shall be bound by those conditions and by any instrument so executed and have power to fulfil the conditions and the obligations created by the instrument.

(6) There shall be paid out of moneys provided by Parliament any sums by which any grants under section one hundred and seven of the Children and Young Persons (Scotland) Act, 1937, towards the expenses of councils of counties and large burghs, are increased by reason of any provisions of this Act.

(7) Any increase attributable to this Act in the sums payable out of moneys provided by Parliament under Part II of the Local Government Act, 1948, shall be defrayed out of moneys so provided.

(8) All sums received by the Secretary of State under this Act (including any sums so received under arrangements made with respect to the cost of removing and maintaining persons removed from the Isle of Man or Channel Islands to institutions in Scotland under section sixty-two of this Act) shall be paid into the Exchequer.

76 Transitory provisions

Without prejudice to the provisions of the Interpretation Act, 1889, with respect to repeals, the transitory provisions set out in the Tenth Schedule to this Act shall have effect for the purposes of the transition to the provisions of this Act from the law in force before the commencement of this Act.

77 Consequential and minor amendments

The enactments mentioned in the first column of the Eleventh Schedule to this Act shall have effect subject to the amendments specified in the second column of that Schedule (being amendments consequential upon the foregoing provisions of this Act or relating to matters of minor detail).

78 Interpretation

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

" Appropriate court " means a court named as such in pursuance of subsection (2) of section two of this Act or of the Second Schedule to this Act in a probation or supervision order or in an amendment of any such order made on a change of residence of a probationer or person under supervision;

" Approved probation hostel " and " Approved probation home " have the meaning assigned to them by section twelve of this Act;

" Approved school " means a school approved under section eighty-three of the Children and Young Persons (Scotland) Act, 1937;

" Child " means a person under the age of fourteen years;

" Court " does not include a court-martial;

" Enactment " includes an enactment contained in a local Act and any order, regulation or other instrument having effect by virtue of an Act;

" England " includes Wales;

" Large burgh " and " Small burgh " have the like meanings as in the Local Government (Scotland) Act, 1947;

" Probationer " means a person for the time being under supervision by virtue of a probation order;

" Probation order " has the meaning assigned to it by section two of this Act;

" Probation period " means the period for which a probationer is placed under supervision by a probation order;

" Remand " means an order adjourning the proceedings or continuing the case and giving direction as to detention in custody or liberation during the period of adjournment or continuation and references to remanding a person or remanding in custody or on bail shall be construed accordingly;

" Remand home " means premises established or used by the council of a county or large burgh under the provisions of section eighty-one of the Children and Young Persons (Scotland) Act, 1937;

" Salaried probation officer " means a probation officer appointed under paragraph 3 of the Third Schedule to this Act;

" Sentence " includes an order for imprisonment pronounced by any court whether civil or criminal, an order for detention in a detention centre, an order for custody in a remand home under section fifty-eight of the Children and Young Persons (Scotland) Act, 1937, and an order sending an offender to an approved school;

" Supervision order " has the meaning assigned to it by section seventy-two of this Act;

" Voluntary probation officer " means a person (other than a salaried probation officer) named in a probation order as a person (whether alone or jointly with a salaried probation officer) under whose supervision the probationer is to be;

" Whole time probation officer " means a probation officer who devotes substantially his whole time to the duties of his office;

" Young, person " means a person who is not less than fourteen but under seventeen years of age.

(2) Any reference in this Act to a previous sentence of imprisonment shall be construed as including a reference to a previous sentence of penal servitude; any such reference to a previous sentence of Borstal training shall be construed as including a reference to a previous sentence" of detention in a Borstal institution; and any such reference to a previous conviction or sentence shall be construed as a reference to a previous conviction by a court in any part of Great Britain and to a previous sentence passed by any such court.

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

(4) References in this Act to an offence punishable with imprisonment shall be construed, in relation to any offender, without regard to any prohibition or restriction imposed by or under this Act upon the imprisonment of offenders of his age.

(5) For the purposes of this Act, except subsection (8) of section two thereof, where a probation order has been made on appeal, the order shall be deemed to have been made by the court from which the appeal was brought.

(6) References in this Act to any enactment shall, unless the context otherwise requires, be construed as references to, that enactment as amended by any subsequent enactment including this Act.

(7) References in the Prisons (Scotland) Act, 1877, to a general or special rule shall be construed as references to a rule made under section fifty-three of this Act.

79 Short title, commencement, extent and repeals

(1) This Act may be cited as the Criminal Justice (Scotland) Act, 1949, and, save as otherwise expressly provided, shall extend to Scotland only.

(2) This Act shall come into operation on such day as His Majesty may by Order in Council appoint:

Provided that different days may be appointed for the purposes of different provisions of this Act, and any reference in any provision of this Act to the commencement of this Act shall, unless otherwise provided by any such Order, be construed as a reference to the commencement of that provision.

(3) The enactments specified in the Twelfth Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule but without prejudice to the provisions of section seventy-six of this Act; and Regulation 93A of the Defence (General) Regulations, 1939, and Regulation 14 of the Defence (Price Control) Regulations, 1945, shall cease to have effect.