



Prisons (Scotland) Act 1989

1989 CHAPTER 45

An Act to consolidate certain enactments relating to prisons and other institutions for offenders in Scotland and connected matters. [16th November 1989]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Modifications etc. (not altering text)

- C1** Act applied (3.2.1995) by 1994 c. 33, s. 106(2)(a)(ii); S.I. 1995/127, art. 2(1), **Sch. 1**
Act applied (3.2.1995) by 1994 c. 33, s. 107(2); S.I. 1995/127, art. 2(1), **Sch. 1**
Act extended (3.2.1995) by 1994 c. 33, s. 113(3)(a); S.I. 1995/127, art. 2(1), **Sch. 1**
Act applied (1.4.1996) by 1995 c. 46, ss. 206(3), 309(2) (with s. 24(2))
Act amended (1.10.1997 with application as mentioned in Sch. 1 para. 17(3) of the amending Act) by 1997 c. 43, s. 41, **Sch. 1 para. 17(2)**; S.I. 1997/2200, art. 2(1)(g)

Central administration

1 General control over prisons in Scotland.

All powers and jurisdiction in relation to prisons and prisoners which before the commencement of the ^{M1}Prisons (Scotland) Act 1877 were exercisable by any other authority shall, subject to the provisions of this Act, continue to be exercisable by the Secretary of State.

Marginal Citations

- M1** 1877 c. 53.

Status: Point in time view as at 18/08/1993. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation: Prisons (Scotland) Act 1989 is up to date with all changes known to be in force on or before 19 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

2 Appointment of officers and servants for the purposes of this Act.

- (1) There shall be employed for the purposes of this Act such inspectors and other officers and servants as the Secretary of State, with the sanction of the Treasury as to number, may appoint.
- (2) There shall be paid out of moneys provided by Parliament to the inspectors and officers and servants appointed in pursuance of the foregoing subsection such salaries as the Secretary of State may, with the consent of the Treasury determine.

3 General superintendence of prisons.

- (1) The general superintendence of prisons shall be vested in the Secretary of State, who shall appoint the governors and other officers of prisons including medical officers, being medical practitioners duly registered under the Medical Acts.
- (2) The Secretary of State shall appoint to each prison a chaplain being a minister or a licentiate of the Church of Scotland.
- (3) The Secretary of State shall make contracts and do all other acts necessary for the maintenance of the prisons and prisoners therein.
- (4) There shall be provided such office accommodation in connection with the general superintendence of prisons as the Secretary of State, with the consent of the Treasury, may determine.

Modifications etc. (not altering text)

C2 S. 3 modified (3.2.1995) by 1994 c. 33, s. 110(2); S.I. 1995/127, art. 2(1), Sch. 1

VALID FROM 01/01/1998

[^{F13A} Medical services in prisons.

- (1) Without prejudice to section 11(2) of this Act, the Secretary of State shall secure the provision of appropriate medical services within prisons.
- (2) The Secretary of State may perform the duty imposed by subsection (1) above by—
 - (a) appointing for a prison one or more medical officers, each of whom shall be a registered medical practitioner;
 - (b) entering into an arrangement with any person for the provision of appropriate medical services in relation to any prison or prisons; or
 - (c) both making any such appointment as is mentioned in paragraph (a) above and by entering such an arrangement as is mentioned in paragraph (b) above.
- (3) In this section “appropriate medical services” means such services in relation to—
 - (a) routine and emergency health care for prisoners; and
 - (b) the provision of advice to the governor on matters related to the medical treatment and health of prisoners generally,
 as the Secretary of State considers appropriate for the prison in which they are to be provided; and such services shall be provided by or under the supervision of a registered medical practitioner.

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- (4) Any medical officer appointed under subsection (2)(a) above shall, for the purposes of this Act, be an officer of the prison.
- (5) A registered medical practitioner providing, or supervising the provision of, appropriate medical services in accordance with an arrangement made under subsection (2)(b) above shall be deemed to be a medical officer for the prison for the purposes of—
 - (a) section 27(5) of this Act (so far as that section continues to have effect by virtue of Schedule 6 to the ^{M2}Prisoners and Criminal Proceedings (Scotland) Act 1993 (existing provisions which continue to have effect in relation to prisoners sentenced before 1st October 1993)); and
 - (b) any rules or directions made or issued under section 39 of this Act; unless such rules or directions otherwise provide or the context otherwise requires.
- (6) Subject to subsection (7) below, rules under section 39 of this Act may make provision for the governor to authorise the carrying out by officers of the prison of a search of any person who is in or is seeking to enter the prison for the purpose of providing appropriate medical services in accordance with an arrangement made under subsection (2)(b) above.
- (7) Nothing contained in rules made by virtue of subsection (6) above shall permit the governor to authorise an officer of a prison to require a person to remove any of his clothing other than an outer coat, jacket, headgear, gloves and footwear.]

Textual Amendments

- F1** S. 3A inserted (1.1.1998 with application as mentioned in s. 33(1)-(8) of the amending Act) by 1997 c. 48, s. 43(2); S.I. 1997/2323, art. 4, Sch. 2

Modifications etc. (not altering text)

- C3** S. 3A modified (18.9.1998) by S.I. 1998/2251, art. 16(2)

Marginal Citations

- M2** 1993 c.9.

4 General duties in relation to prisons.

- (1) Subject to any directions of the Secretary of State officers duly authorised by him shall visit and inspect all prisons and examine the state of the buildings, the conduct of officers, the treatment and conduct of the prisoners and all other matters concerning the management of prisons.
- (2) The Secretary of State may, by himself or by any authorised officer, exercise in relation to any prison and the prisoners therein all powers and jurisdiction exercisable by the prison authority of a prison by virtue of any Act of Parliament or by any rules duly made thereunder.

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5 Report to Parliament.

- (1) The Secretary of State shall, at such time or times as he may think fit, cause a report to be prepared of the condition of the prisons and prisoners, and shall lay such report before Parliament.
- (2) A report prepared under subsection (1) above shall state the various manufacturing processes carried on in each prison with such particulars as to the kinds and quantities of, and the commercial value of the labour on, the manufactures, and as to the number of prisoners employed and otherwise as may in the opinion of the Secretary of State be best calculated to afford information to Parliament.

6 Annual return of punishments.

The Secretary of State shall make a yearly return to Parliament of all punishments inflicted within each prison and the offences for which they were inflicted.

7 Appointment and functions of Her Majesty's Chief Inspector of Prisons for Scotland.

- (1) Her Majesty may appoint a person to be Chief Inspector of Prisons for Scotland.
- (2) It shall be the duty of the Chief Inspector to inspect or arrange for the inspection of prisons in Scotland and to report to the Secretary of State on them.
- (3) The Chief Inspector shall in particular report to the Secretary of State on the treatment of prisoners and conditions in prisons.
- (4) The Secretary of State may refer specific matters connected with prisons in Scotland and prisoners in them to the Chief Inspector and direct him to report on them.
- (5) The Chief Inspector shall in each year submit to the Secretary of State a report in such form as the Secretary of State may direct, and the Secretary of State shall lay a copy of that report before Parliament.
- (6) The Chief Inspector shall be paid such salary and allowances as the Secretary of State may with the consent of the Treasury determine.
- (7) In this section, references to prisons include legalised police cells within the meaning of section 14(1) of this Act.

8 Visiting committees.

- (1) Rules made under section 39 of this Act shall provide for the constitution, for prisons, of visiting committees appointed, at such times, in such manner, for such periods and by such regional, island and district councils as may be prescribed by the rules.
- (2) Rules made under section 39 of this Act shall prescribe the functions of visiting committees, and shall among other things require the members to pay frequent visits to the prison and hear any complaints which may be made by the prisoners and report to the Secretary of State any matter which they consider it expedient to report; and any member of a visiting committee may at any time enter the prison and shall have free access to every part thereof and to every prisoner.
- (3) The Secretary of State may pay—

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- (a) to the members of any visiting committee appointed under or in pursuance of this section such allowances in respect of loss of earnings or travelling or subsistence or other expenses necessarily suffered or incurred in the performance of their duties, and
- (b) to the officers of any such committee such remuneration (whether by way of salary or fees) and such allowances in respect of travelling or subsistence expenses,

as the Secretary of State may with the consent of the Treasury determine.

9 Appointment of prison ministers.

- (1) Where in any prison the number of prisoners who belong to a religious denomination other than the Church of Scotland is such as in the opinion of the Secretary of State to require the appointment of a minister of that denomination, the Secretary of State may appoint such a minister to that prison.
- (2) The Secretary of State may pay a minister appointed under the foregoing subsection such remuneration as he thinks reasonable.
- (3) The Secretary of State may allow a minister of any denomination other than the Church of Scotland to visit prisoners of his denomination in a prison to which no minister of that denomination has been appointed under this section.
- (4) No prisoner shall be visited against his will by such a minister as is mentioned in the last foregoing subsection; but every prisoner not belonging to the Church of Scotland shall be allowed, in accordance with the arrangements in force in the prison in which he is confined, to attend chapel or to be visited by the chaplain.
- (5) The governor of a prison shall on the reception of each prisoner record the religious denomination to which the prisoner declares himself to belong, and shall give to any minister who under this section is appointed to the prison or permitted to visit prisoners therein a list of the prisoners who have declared themselves to belong to his denomination; and the minister shall not be permitted to visit any other prisoners.

Modifications etc. (not altering text)

C4 S. 9 excluded (18.9.1998) by S.I. 1998/2251, art. 16(1)

C5 S. 9(5) modified (3.2.1995) by 1994 c. 33, s. 110(3); S.I. 1995/127, art. 2(1), Sch. 1

Confinement and treatment of prisoners

10 Place of confinement of prisoners.

Prisoners shall be committed to such prison as may be appointed by rules under this Act, and a convicted criminal prisoner may be removed by the Secretary of State from any one prison to any other prison for the purpose of undergoing any part of his sentence.

11 Removal of prisoners for judicial and other purposes.

- (1) Rules under section 39 of this Act may provide in what manner an appellant within the meaning of section 279 of the 1975 Act, when in custody, is to be taken to, kept

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in custody at, and brought back from, any place at which he is entitled to be present for the purposes of that Act, or any place to which the High Court of Justiciary or any judge thereof, may order him to be taken for the purposes of any proceedings of that court.

- (2) The Secretary of State may, if he is satisfied that a person detained in Scotland in a prison requires medical or surgical treatment of any description, direct him to be taken to a hospital or other suitable place for the purpose of the treatment.
- (3) Where any person is directed under the last foregoing subsection to be taken to any place he shall, unless the Secretary of State otherwise directs, be kept in custody while being so taken, while at that place, and while being taken back to the prison in which he is required in accordance with law to be detained.
- (4) The governor or any officer of a prison may execute any warrant issued by the High Court of Justiciary for the removal of a prisoner in that prison to any other prison for the purpose of trial before that court.
- (5) The Secretary of State may make regulations as to the mode in which and the officers by whom warrants issued under the last foregoing subsection shall be executed.

Modifications etc. (not altering text)

- C6** S. 11(4) modified (3.2.1995) by 1994 c. 33, s. 110(3)(4); S.I. 1995/127, art. 2(1), Sch. 1
S. 11(4) modified (3.2.1995) by 1994 c. 33, s. 112(3)(4)(a)(6); S.I. 1995/127, art. 2(1), Sch. 1

12 Photographing and measuring of prisoners.

[^{F2}Rules under section 39 of this Act may provide for] the measuring and photographing of prisoners and ^{F3}. . . may prescribe the time or times at which, and the manner and dress in which prisoners shall be measured and photographed, and the number of copies of the measurements and photographs of each prisoner which shall be made and the persons to whom they shall be sent.

Textual Amendments

- F2** Words in s. 12 substituted (18.8.1993) by 1993 c. 9, s. 47(1), Sch. 5 para. 6(2)(a) (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(2), Sch.1.
F3 Words in s. 12 repealed (18.8.1993) by 1993 c. 9, s. 47(1)(3), Sch. 5 para. 6(2)(b), Sch. 7 Pt.I (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(2), Sch.1.

13 Legal custody of prisoner.

A person shall be deemed to be in legal custody—

- (a) while he is confined in or being taken to or from any prison in which he may be lawfully confined; or
- (b) while he is working or is, for any other reason, outside the prison in the custody or under the control of an officer of the prison; or
- (c) while he is being taken to any place to which he is required or authorised by or under this Act to be taken; or
- (d) while he is kept in custody in pursuance of such requirement or authorisation.

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Modifications etc. (not altering text)

- C7** S. 13(b) modified (3.2.1995) by 1994 c. 33, s. 110(4); S.I. 1995/127, art. 2(1), **Sch. 1**
S. 13(b) modified (3.2.1995) by 1994 c. 33, s. 112(3)(4)(b)(6); S.I. 1995/127, art. 2(1), **Sch. 1**

14 Legalised police cells.

- (1) The Secretary of State, on the application of a police authority, may from time to time by rules under [^{F4}section 39 of] this Act declare that any police cells or other premises in the possession of the police authority shall be a legal prison for the detention of prisoners before, during or after trial for any period not exceeding 30 days. Any such police cells or other premises are hereinafter referred to as legalised police cells.
- (2) Any person charged with or convicted of any crime or offence committed within any region or islands area who might have been lawfully confined in a prison situated therein may be lawfully confined in any legalised police cells situated in that region or islands area for such period as aforesaid.
- (3) The maintenance of prisoners confined in any legalised police cells shall be deemed to be the maintenance of prisoners under this Act:
Provided that the police authority shall not be entitled to any payment for the use of the legalised police cells or for services rendered by any of their officers in connection with the detention or removal of the prisoners so confined.
- (4) The police authority, notwithstanding anything in this section, shall at all times have a prior claim to the uninterrupted use of any legalised police cells in their area.
- (5) For the purposes of this section the police authority of any region or islands area in which there are any legalised police cells and all persons in their employment shall be subject to the provisions of this Act and any rules made thereunder.
- (6) It shall be the duty of the Secretary of State to make any arrangements required for the removal of any prisoners confined in legalised police cells in the islands area of Orkney or of Shetland.
- (7) In this section the expression “police authority” means the council of a region or islands area, except that where there is an amalgamation scheme in force under the ^{M3}Police (Scotland) Act 1967 it means a joint police committee.
- (8) For the purposes of sections 8 and 39 of this Act, legalised police cells shall be deemed to be prisons.

Textual Amendments

- F4** Words in s. 14(1) inserted (18.8.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 6(3)** (with s. 47(2), **Sch. 6 paras. 1, 2**); S.I. 1993/2050, art. 3(2), **Sch.1**.

Marginal Citations

- M3** 1967 c. 77.

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15 Right of sheriff or justice to visit prison.

- (1) A sheriff or justice of the peace may visit any prison within his jurisdiction or in which a prisoner is confined for any offence committed within his jurisdiction, and may examine the condition of the prison and of the prisoners therein and enter in the visitors book to be kept by the governor of the prison any observations on the condition of the prison or on any abuses therein.
- (2) Nothing in the foregoing subsection shall authorise a sheriff or justice of the peace to communicate with any prisoner except on the subject of his treatment in the prison nor to visit any prisoner under sentence of death.
- (3) It shall be the duty of the governor of a prison to draw the attention of the visiting committee at their next visit to any entry in the visitors book made in pursuance of this section.

Modifications etc. (not altering text)

- C8 S. 15(1) modified (3.2.1995) by 1994 c. 33, s. 110(3); S.I. 1995/127, art. 2(1), Sch. 1
C9 S. 15(3) modified (3.2.1995) by 1994 c. 33, s. 110(3); S.I. 1995/127, art. 2(1), Sch. 1

Discharge of prisoners

16 Discharge of prisoners.

- (1) Where a prisoner would, but for this subsection, be discharged on a Saturday or Sunday, he shall be discharged on the preceding Friday.
- (2) A prisoner discharged from a prison situated outside the district or islands area in which he was convicted shall be entitled to be taken back to that district or islands area at the expense of the Secretary of State.

17 Allowances to prisoner on discharge.

- (1) When a prisoner is discharged from prison the Secretary of State may provide him with the means of returning to his home by causing his fare to be paid or in any other convenient manner.
- (2) The Secretary of State may make such payments to or in respect of persons released or about to be released from prisons as he may, with the consent of the Treasury, determine.

18 Constitution and functions of Parole Board and local review committees.

- (1) For the purpose of exercising the functions conferred on it by this Act as respects Scotland there shall be a body to be known as the Parole Board for Scotland, consisting of a chairman and not less than four other members appointed by the Secretary of State.
- (2) It shall be the duty of the Board to advise the Secretary of State with respect to—
 - (a) the release on licence under section 22, 25 or 26 of this Act and the recall under section 25, 28, 31 or 32 of this Act of persons whose cases have been referred to the Board by the Secretary of State;

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- (b) the conditions of such licences and the variation or cancellation of such conditions; and
 - (c) any other matter so referred which is connected with the recall of persons to whom the said section 31 or 32 applies or the release on licence or recall of persons to whom the said section 22, 25 or 26 applies.
- (3) The following provisions shall have effect with respect to the proceedings of the Board on any case referred to it, that is to say—
 - (a) the Board shall deal with the case on consideration of any documents given to it by the Secretary of State and of any reports it has called for and any information whether oral or in writing that it has obtained; and
 - (b) if in any particular case the Board thinks it necessary to interview the person to whom the case relates before reaching a decision, the Board may request one of its members to interview him and shall take into account the report of that interview by that member;and, without prejudice to the foregoing, the Secretary of State may by rules make provision with respect to the proceedings of the Board on cases referred to it, including provision authorising such cases to be dealt with by a prescribed number of members of the Board.
- (4) The documents to be given by the Secretary of State to the Board under the last foregoing subsection shall include—
 - (a) where the case referred to the Board is one of release under section 22, 25 or 26 of this Act, any written representations made by the person to whom the case relates in connection with or since his last interview in accordance with rules under the next following subsection;
 - (b) where the case so referred relates to a person recalled under section 25, 28, 31 or 32 of this Act, any written representations made under that section.
- (5) The Secretary of State may by rules make provision—
 - (a) for the establishment and constitution of local review committees having the duty of reviewing at such times or in such circumstances as may be prescribed by or determined under the rules the cases of persons who are or will become eligible for release under section 22, 25 or 26 of this Act, and reporting to the Secretary of State on their suitability for release on licence; and
 - (b) for the interview of such persons by a member of any such committee (not being a prison officer);and rules under this subsection may make different provision for different cases.
- (6) The supplementary provisions contained in Schedule 1 to this Act shall have effect with respect to the Parole Board and local review committees.

Detention and transfer of young offenders

19 Remand centres and young offenders institutions.

- (1) The Secretary of State may provide—
 - (a) remand centres, that is to say places for the detention of persons not less than 14 but under 21 years of age who are remanded or committed in custody for trial or sentence; and

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- (b) young offenders institutions, that is to say, places in which offenders sentenced to detention in a young offenders institution may be kept.
- (2) The Secretary of State shall provide in remand centres facilities for the observation and examination of any person detained therein on whose physical or mental condition a medical report may be desirable for the assistance of the court in determining the most suitable method of dealing with his case.
- (3) The Secretary of State shall appoint for every remand centre and young offenders institution a visiting committee of which not less than two members shall be justices of the peace and not less than such number of members as may be prescribed by [^{F5}rules under section 39 of this Act] shall be women.
- (4) The following provisions, that is to say—
- (a) sections 8(2) and (3), 11(2) and (3), 12 and 38 of this Act, and
 - (b) subject as hereinafter provided, sections 1 to 7, 9, 10, 11(1), (4) and (5), 13 to 17, 24, 33 to 37 and 41 of this Act,

shall apply to remand centres and young offenders institutions, to persons detained therein and to visiting committees appointed therefor under subsection (3) above in like manner as the said provisions apply to prisons, prisoners and visiting committees appointed for prisons under section 8(1) of this Act:

Provided that—

- (i) section 11(4) and (5) of this Act shall not apply to young offenders institutions;
- (ii) section 24 of this Act shall not apply to remand centres;
- (iii) the provisions specified in paragraph (b) of this subsection, other than those mentioned in [^{F6}paragraph (i)] of this proviso, shall apply as aforesaid subject to such adaptations and modifications as may be made by rules [^{F6}under section 39 of this Act].

Textual Amendments

- F5** Words in s. 19(3) substituted (18.8.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 6(4)(a)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(2), **Sch.1**.
- F6** Words in s. 19(4) sub-para. (iii) of the proviso substituted (18.8.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 6(4)(b)(i)(ii)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(2), **Sch.1**.

20 Temporary detention of persons liable to detention in young offenders institution or remand centre.

A person who is required to be taken to a young offenders institution or remand centre may, until arrangements can be made for taking him there, be temporarily detained elsewhere.

[^{F7}20A Transfer of young offenders to prison or remand centre.

- (1) Subject to section 21 of this Act, an offender sentenced to detention in a young offenders institution shall be detained in such an institution unless a direction under subsection (2) below is in force in relation to him.
- (2) The Secretary of State may from time to time direct that an offender sentenced to detention in a young offenders institution shall be detained in a prison or remand centre

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instead of in a young offenders institution, but if the offender is under 18 years of age at the time of the direction, only for a temporary purpose.

- (3) Where an offender is detained in a prison or remand centre by virtue of subsection (2) above, any rules under section 39 of this Act which apply in relation to persons detained in that place shall apply to that offender; but subject to the foregoing and to subsection (4) below, the provisions of [^{F8}this Act, the Prisoners and Criminal Proceedings (Scotland) Act 1993, the 1995 Act and the Crime and Punishment (Scotland) Act 1997] relating to the treatment and supervision of persons sentenced to detention in a young offenders institution shall continue to apply to the offender.
- (4) Where an offender referred to in subsection (3) above attains the age of 21 years, subsection (3) of section 21 of this Act shall apply to him as if he had been transferred to prison under that section.]

Textual Amendments

- F7** S. 20A inserted (1.10.1993) by 1993 c. 9, s. 23 (with ss. 5(1), 6(1), 10, 27 and 47(2), Sch. 6 paras. 1, 2, 6 and 7); S.I. 1993/2050, art. 3(4).
- F8** Words in s. 20A(3) substituted (*prosp.* with application as mentioned in s. 33(1)–(8) of the amending Act) by 1997 c. 48, ss. 62(1), 65(2), Sch. 1 para. 13(3) (which amending section was repealed (30.9.1998) by 1998 c. 37, ss. 119, 120(2), Sch. 8 para. 141(1)(a), Sch. 10; S.I. 1998/2327, arts. 2(1)(y)(aa)(2)(pp)(3)(y))

21 Transfer to prison of persons over 21, and maximum age for detention in young offenders institution.

- (1) Subject to the provisions of this section, where a person serving a sentence of detention in a young offenders institution has attained the age of 21 years, the Secretary of State shall have power to transfer him to prison.
- (2) No person shall be detained in a young offenders institution after he has attained the age of 23 years, and accordingly any person so detained shall, not later than the day immediately preceding his twenty-third birthday, be transferred to prison.
- (3) Where a person has been transferred to prison under this section, he shall be treated for the purpose of his serving the unexpired part of his sentence and of his supervision on release as if the sentence of detention passed upon him were a sentence of imprisonment for a like term, and the provisions of the 1975 Act and this Act relating to the treatment and supervision of prisoners shall apply to him accordingly:
Provided that section 212, or as the case may be section 421, of the 1975 Act (recall on reconviction) shall continue to apply to a person so transferred to prison.

Release on licence, etc.

22 Release on licence of persons serving determinate sentences.

- (1) The Secretary of State may, if recommended to do so by the Parole Board, release on licence a person, who is serving a sentence of imprisonment, other than imprisonment for life, or a sentence of detention in a young offender institution imposed in England and Wales, after he has served not less than one-third of his sentence or the specified period, whichever expires the later.

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- (2) In subsection (1) above, “the specified period” means 12 months or such period, not more than 12 months, as the Secretary of State may by order provide.
- (3) An order under subsection (2) above may make such incidental or supplementary provision (including provision amending enactments) as the Secretary of State considers appropriate.
- (4) Where a sentence of imprisonment for an offence has been passed on a person with an order under subsection (1) of section 47 of the ^{M4}Criminal Law Act 1977 (sentences partly suspended in England and Wales)—
 - (a) if the offender has not been released from prison since the sentence for the offence was passed, the only portion of that sentence that is to be taken into account for the purposes of subsection (1) of this section is any portion of it that he is required to serve in prison under subsection (1) or (3) of the said section 47; and
 - (b) if he is released from prison but part of his sentence for the offence is subsequently restored under subsection (3) of that section, he shall be treated for the purpose of subsection (1) of this section as if his only sentence for the offence were the part of his sentence so restored.
- (5) A person whose sentence falls to be reduced under section 67 of the ^{M5}Criminal Justice Act 1967 (sentences in England and Wales) shall, for the purpose of determining under subsection (1) above whether he has served one-third of his sentence, be treated as if any period spent in custody and taken into account under that section were included in his sentence and as if he had served that period as part of that sentence.
- (6) A person subject to a licence under this section shall comply with such conditions, if any, as may for the time being be specified in the licence.
- (7) The Secretary of State shall consult the Parole Board before including on release, or subsequently inserting, a condition in a licence under this section or varying or cancelling any such condition; and for the purposes of this subsection the Secretary of State shall be treated as having consulted the Board about a proposal to include, insert, vary or cancel a condition in any case if he has consulted the Board about the implementation of proposals of that description generally or in that class of case.
- (8) A licence granted to any person under this section shall, unless previously revoked under section 62 of the Criminal Justice Act 1967 or section 28 of this Act, remain in force until a date specified in the licence, being the date on which he could have been discharged from prison on remission of part of his sentence under rules made under section 39 of this Act if, after the date of his release on licence, he had not forfeited remission of any part of the sentence under the rules.

Marginal Citations

M4 1977 c. 45.

M5 1967 c. 80.

23 Release on licence without recommendation of Parole Board.

If, in any case falling within such class of cases as the Secretary of State may determine after consultation with the Parole Board, a local review committee recommends the release on licence of a person to whom subsection (1) of section 22 of this Act applies,

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the Secretary of State shall not be obliged to refer the case to the Board before releasing him under that subsection and, unless he nevertheless refers it to the Board, may so release him without any recommendation by the Board.

24 Remission for good conduct.

Rules made under section 39 of this Act may make provision whereby, in such circumstances as may be prescribed by the rules, a person serving a sentence of imprisonment for such a term as may be so prescribed, may be granted remission of such part of that sentence as may be so prescribed on the ground of his industry and good conduct; and on the discharge of a person from a prison in pursuance of any such remission as aforesaid his sentence shall expire.

25 Release on licence of children convicted on indictment.

- (1) Subject to subsection (2) below, the Secretary of State may release on licence, on such conditions as may for the time being be specified in the licence, a person detained under section 206 of the 1975 Act (detention of children convicted on indictment).
- (2) Where a person has been sentenced under the said section 206 to be detained for a period exceeding 18 months, the Secretary of State—
 - (a) shall not release him on licence under subsection (1) above except on the recommendation of the Parole Board; and
 - (b) shall consult the Board with regard to the inclusion or subsequent insertion of any condition in the licence or the variation or cancellation of any such condition; but for the purposes of this paragraph the Secretary of State shall be treated as having consulted the Board about a proposal to include, insert, vary or cancel a condition in any case if he has consulted the Board about the implementation of proposals of that description generally or in that class of case.
- (3) A licence granted under subsection (1) above shall, unless previously revoked under subsection (4) below, remain in force until the expiry of the period of—
 - (a) detention specified by the court under the said section 206, or
 - (b) 12 months from the date of release under the licence,whichever is the later.
- (4) The Secretary of State may—
 - (a) on the recommendation of the Parole Board, or
 - (b) at his own instance, where it appears to him to be in the public interest to do so before consultation with the Board is practicable,revoke a licence granted under subsection (1) above and recall the person released under the licence to a place in which the Secretary of State directs that he should be detained; and on such revocation, the person shall be liable to be detained in pursuance of his sentence, and, if at large, shall be deemed to be unlawfully at large.
- (5) The Secretary of State shall inform a person recalled under subsection (4) above of the reasons for his recall, so that the person may make representations in writing to the Parole Board with respect to his recall; and the Board may, on receipt of such representations, require the Secretary of State to release him on licence forthwith.
- (6) Subject to subsection (5) above, a person detained in pursuance of subsection (4) above shall remain in detention until the expiry of the period of—

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- (a) detention specified by the court under the said section 206; or
- (b) three months from the date of the commencement of his detention in pursuance of the said subsection (4),

whichever is the later:

Provided that the Secretary of State may, at any time before the expiry of the period referred to in paragraph (a) above, again release him on licence.

26 Release on licence of persons sentenced to imprisonment for life, etc.

- (1) The Secretary of State may, if recommended to do so by the Parole Board, release on licence a person serving a sentence of imprisonment for life, or a sentence of custody for life imposed in England and Wales, or a person detained under section 205(2) or (3) of the 1975 Act (persons under 21 convicted of murder); but shall not release on licence such a person except after consultation with the Lord Justice-General together with the trial judge, if available.
- (2) Subsections (6) and (7) of section 22 of this Act shall apply in relation to a licence under this section as they apply in relation to a licence under that section.

27 Power of Secretary of State to discharge prisoners temporarily on account of their health.

- (1) If the Secretary of State is satisfied that by reason of the condition of a prisoner's health it is undesirable to detain him in prison, but that, such condition of health being due in whole or in part to the prisoner's own conduct in prison, it is desirable that his release should be temporary and conditional only, the Secretary of State may, if he thinks fit, having regard to all the circumstances of the case, by order authorise the temporary discharge of the prisoner for such period and subject to such conditions as may be stated in the order.
- (2) Where an order of temporary discharge is made in the case of a prisoner not under sentence, the order shall contain conditions requiring the attendance of the prisoner at any further proceedings on his case at which his presence may be required.
- (3) Any prisoner discharged under this section shall comply with any conditions stated in the order of temporary discharge, and shall return to prison at the expiration of the period stated in the order, or of such extended period as may be fixed by any subsequent order of the Secretary of State, and, if the prisoner fails so to comply or return, he may be arrested without warrant and taken back to prison.
- (4) Where a prisoner under sentence is discharged in pursuance of an order of temporary discharge, the currency of the sentence shall be suspended from the day on which he is discharged from prison under the order to the day on which he is received back into prison, so that the former day shall be reckoned and the latter shall not be reckoned as part of the sentence.
- (5) Nothing in this section shall affect the duties of the medical officer of a prison in respect of a prisoner whom the Secretary of State does not think fit to discharge under this section.

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28 Revocation of licences and conviction of prisoners on licence.

- (1) Where the Parole Board recommends the recall of any person who is subject to a licence under section 22 or 26 of this Act, the Secretary of State may revoke that person's licence and recall him to prison.
- (2) The Secretary of State may revoke the licence of any such person and recall him as aforesaid without consulting the Board, where it appears to him that it is expedient in the public interest to recall that person before such consultation is practicable.
- (3) A person recalled to prison under the foregoing provisions of this section may make representations in writing with respect to his recall and shall on his return to prison be informed of the reasons for his recall and of his right to make such representations.
- (4) The Secretary of State shall refer to the Parole Board the case of a person recalled under subsection (1) above who makes representations under the last foregoing subsection and shall in any event so refer the case of a person returned to prison after being recalled under subsection (2) above.
- (5) Where the Board recommends the immediate release on licence of a person whose case is referred to it under this section, the Secretary of State shall give effect to the recommendation, and where it is necessary for that purpose to release that person under subsection (1) of section 26 of this Act, the Secretary of State shall do so without the consultation required by that subsection.
- (6) If a person subject to a licence under section 60 or 61 of the ^{M6}Criminal Justice Act 1967 or section 22 or 26 of this Act is convicted by the High Court of Justiciary, or by a sheriff, whether summarily or on indictment, of an offence punishable on indictment with imprisonment, the court by which he is convicted may, whether or not it passes any other sentence on him, revoke the licence.
- (7) On the revocation of the licence of any person under this section, he shall be liable to be detained in pursuance of his sentence, and, if at large, shall be deemed to be unlawfully at large.
- (8) If, in the case of a person subject to a licence under section 60 of the Criminal Justice Act 1967 (release on licence) or section 22 of this Act, a Crown Court or the High Court of Justiciary or a sheriff revokes that licence under section 62 of the Criminal Justice Act 1967 or, as the case may be, under this section, the Secretary of State shall not thereafter release him under subsection (1) of the said section 22 before the expiration of the specified period from the date of revocation or before the expiration of one-third of the period during which the licence would have remained in force, whichever is the later; but the foregoing provision shall not affect any power to release him otherwise than under that subsection.
- (9) In subsection (8) above, "the specified period" has the same meaning as in section 22(2) above.
- (10) This section shall have effect, in its application to a person sentenced in England and Wales to detention in a young offender institution or sentenced to be detained under section 205(2) of the 1975 Act (punishment of person under 18 for murder), as if for any reference to a prison there were substituted a reference to any place in which that person was detained immediately before he was released on licence.
- (11) This section shall have effect, in its application to a person sentenced to be detained under section 205(3), 207 or 415 of the 1975 Act (detention of young offenders) as if

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for any reference to a prison there were substituted a reference to a young offenders institution.

Marginal Citations

M6 1967 c. 80.

29 Determination of age.

Without prejudice to section 43(7) of this Act, for the purposes of the provisions of this Act relating to licences or persons on licence, the age of any person at the time when sentence was passed on him shall be deemed to have been that which appears to the Secretary of State to have been his age at that time.

Supervision after release

30 Supervision of certain prisoners after release.

- (1) If it appears to the Secretary of State that a person serving a sentence of imprisonment is a person to whom this section applies, he shall, by notice given to such person in accordance with subsection (3) below, place him under supervision on his release from prison.
- (2) Subject to the provisions of subsection (7) below, this section applies—
 - (a) to any person serving a sentence of imprisonment for a term of three years or more;
 - (b) to any person serving a sentence of imprisonment for a term of not less than six months, but less than three years, who is under the age of 26 years at the commencement of the sentence;
 but does not apply to a person serving a sentence of imprisonment for life.
- (3) Before the release from prison of any person to whom this section applies, the Secretary of State shall cause to be given to him a notice (“a notice of supervision”) giving the name and address of the person who is to be his supervising officer in the first instance, and specifying the requirements with which he has to comply while under supervision; and a notice given to any person under this subsection shall contain a statement that it is given to him as falling within a specified class of the persons to whom this section for the time being applies.
- (4) Subject to this section and sections 214 and 423 of the 1975 Act, every person to whom this section applies shall, after his release from prison and until the expiry of the period of 12 months from the date of his release, be under supervision, and shall, while under that supervision, be required—
 - (a) to keep in touch with his supervising officer in accordance with such instructions as may from time to time be given by that officer; and
 - (b) to comply with the directions of his supervising officer as to conduct; and
 - (c) to comply with such other requirements as may be specified in his notice of supervision.
- (5) At any time during the period referred to in subsection (4) above the Secretary of State may, by notice in writing given to a person under supervision as aforesaid,—

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- (a) discharge him from supervision, or
 - (b) replace as from a specified date his supervising officer by another supervising officer whose name and address shall be specified in that notice, or
 - (c) cancel or modify any other of the requirements specified in his notice of supervision.
- (6) The Secretary of State may by order substitute a lower limit of three months instead of six months in paragraph (b) of subsection (2) above.
- (7) This section shall not apply to persons serving a sentence of imprisonment commencing before such date as may be prescribed by order of the Secretary of State under this subsection; and any such order may prescribe different dates in respect of sentences described in paragraphs (a) and (b) respectively of subsection (2) above, and, in respect of sentences comprised in the said paragraph (b), either according to the length of the term of imprisonment under a sentence or to the age of the person on whom it is passed.

31 Supervision of children after release.

- (1) A child released after detention under section 206 of the 1975 Act who has not been released on licence during the period of detention may be required, by notice given by the Secretary of State on his release, to be under the supervision of such officer as may be specified in the notice, and to comply, while the notice is in force, with such conditions as may be specified.
- (2) Subject to subsection (5) below, the supervision requirement shall not continue after the expiry of the period of 12 months from the date of release.
- (3) The Secretary of State may, on giving notice to the person concerned, at any time vary or cancel a requirement or condition specified under subsection (1) above.
- (4) A period of supervision required under subsection (1) above shall not extend beyond the date on which the person under supervision attains the age of 23 years.
- (5) Where, before a supervision requirement expires, the Secretary of State is satisfied that the person to whom it relates has failed to comply with its terms and either—
- (a) the Parole Board so recommends, or
 - (b) it appears to him to be in the public interest to do so before consultation with the Board is practicable,
- he may recall the person to detention for a period not exceeding three months; and a person at large after such recall shall be deemed to be unlawfully at large.
- (6) The Secretary of State shall inform a person recalled under subsection (5) above of the reasons for his recall, so that the person may make representations in writing to the Parole Board with respect to his recall; and the Board may, on receipt of such representations, require the Secretary of State to release him forthwith.
- (7) The Secretary of State may at any time release a person detained by virtue of subsection (5) above.
- (8) The powers conferred by subsection (5) above may be exercised as often as it appears to the Secretary of State that the person concerned has failed to comply with the supervision requirement; but no person may be recalled to detention for periods totalling more than three months by virtue of that subsection.

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- (9) A recall under subsection (5) above may continue beyond the date of expiry of the supervision requirement unless the person to whom it relates is not in custody at that date.
- (10) In this section, “child” has the same meaning as in section 462(1) (interpretation) of the 1975 Act.

32 Supervision of persons released from young offenders institution.

- (1) This section applies in relation to persons sentenced under section 207 or 415 of the 1975 Act (detention of young offenders).
- (2) Subject to sections 212 and 421 of the 1975 Act (which relate to recall of young offenders on re-conviction) and to subsections (4) to (6) and (10) below, a person in relation to whom this section applies may, where he has been sentenced to a period of (or, as the case may be, periods totalling) six months or more, be required, by notice of the Secretary of State given to the person on his release from that detention, both to be under the supervision of such officer as may be specified in the notice and to comply, while under the supervision, with such conditions as may be so specified; and the supervision shall continue—
- (a) in a case where such release is on licence under section 60(1) or section 61 of the ^{M7}Criminal Justice Act 1967 or section 22(1) or 26 of this Act, until the expiry of the period of 12 months from the date of such release or until the expiry of the licence, whichever is the later;
 - (b) in any other case—
 - (i) where the term was less than 18 months, until the expiry of the period of six months from the date of such release; or
 - (ii) where the term was 18 months or more, until the expiry of the period of 12 months from the date of such release.
- (3) In a case such as is mentioned in paragraph (a) of subsection (2) above, the requirement and conditions specified by the Secretary of State under that subsection shall be in addition to any conditions specified in the licence mentioned in that paragraph.
- (4) Without prejudice to subsection (7) below, a period of supervision required under subsection (2) above shall not extend beyond the date on which the person under supervision attains the age of 23 years.
- (5) The Secretary of State may by order extend the provisions of subsection (2) above to persons in relation to whom this section applies whose detention is for less than six months but not less than three months.
- (6) The Secretary of State may, on giving notice to the person concerned, at any time modify or cancel a requirement, or condition, which is specified under subsection (2) above.
- (7) Subject to subsections (9) and (10) below, where, before the expiry of the period for which a person is required under this section to be under supervision, the Secretary of State is satisfied that the person has failed to conform to the requirement or has failed to comply with a condition for the time being specified in the notice given to him under subsection (2) above and either—
- (a) the Parole Board so recommends, or

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- (b) it appears to him to be in the public interest to do so before consultation with the Board is practicable,
- he may (except in a case such as is mentioned in paragraph (a) of subsection (2) above) recall the person to a young offenders institution; and thereupon the person shall be liable to be detained in that institution for a period not exceeding three months, and if at large shall be deemed to be unlawfully at large.
- (8) The Secretary of State shall inform a person recalled under subsection (7) above of the reasons for his recall, so that the person may make representations in writing to the Parole Board with respect to his recall; and the Board may, on receipt of such representations, require the Secretary of State to release him forthwith.
- (9) A recall under subsection (7) above shall cease to have effect at the expiry of the first period mentioned in that subsection unless the person to whom it relates is then in custody thereunder.
- (10) The Secretary of State may at any time release a person who is, by virtue of subsection (7) above, detained; and the provisions of this section shall apply to a person released under subsection (8) above or this subsection as if, following the release mentioned in subsection (2) above, neither the recall under the said subsection (7) nor the subsequent release under subsection (8) above or this subsection had taken place, except that the period of detention between the recall and the subsequent release shall be deducted from the period for which the person would otherwise be liable to be detained were he again to be recalled.

Marginal Citations

M7 1967 c. 80.

Miscellaneous

33 Duties of governor of prison.

The governor of a prison shall—

- (a) as far as practicable, visit the whole of the prison and see every prisoner at least once in every 24 hours, and, in default of such daily visits, state in his journal the extent of and the reason for such default;
- (b) as soon as practicable draw the attention of the medical officer to any prisoner whose state of mind or body appears to require attention and carry into effect the written directions of the medical officer as to alterations in the discipline or treatment of such prisoner;
- (c) notify the medical officer without delay of the illness of any prisoner, and deliver to him daily a list of prisoners complaining of illness;
- (d) deliver to the chaplain and to the medical officer lists of prisoners confined to their cells; and
- (e) keep records regarding the commitment to and liberation from the prison of prisoners committed thereto in pursuance of criminal warrants and when so required exhibit such records to the sheriff within whose jurisdiction the prison is situated.

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VALID FROM 03/02/1995

[^{F9}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.]

Textual Amendments

F9 S. 33A inserted (3.2.1995) by 1994 c. 33, s. 116(3); S.I. 1995/127, art. 2(1), Sch. 1

Modifications etc. (not altering text)

C10 S. 33A modified (3.2.1995) by 1994 c. 33, ss. 110(3)(4), 112(3)(4)(c)(6); S.I. 1995/127, art. 2(1), Sch. 1

34 Notification of and inquiry into death of prisoner.

The governor of a prison shall, in the event of the death of a prisoner, give immediate notice thereof to the procurator fiscal within whose area the prison is situated, and to the visiting committee, and, where practicable, to the nearest relative of the prisoner.

Modifications etc. (not altering text)

C11 S. 34 modified (3.2.1995) by 1994 c. 33, s. 110(3); S.I. 1995/127, art. 2(1), Sch. 1
S. 34 modified (18.9.1998) by S.I. 1998/2251, art. 16(3)

35 Return of warrants for or sentences of imprisonment.

Where a warrant for imprisonment is granted or a sentence of imprisonment is pronounced by any court, a return thereof shall be made by the clerk of the court to the Secretary of State at such time and in such form as he may determine.

36 Legal estate in prison.

The legal estate in every prison and in all heritable or moveable property belonging to a prison shall be vested in the Secretary of State and may be disposed of in such manner as the Secretary of State, with the consent of the Treasury, may determine.

Modifications etc. (not altering text)

C12 S. 36 modified (3.2.1995) by 1994 c. 33, s. 110(5); S.I. 1995/127, art. 2(1), Sch. 1
S. 36 excluded (3.2.1995) by 1994 c. 33, s. 113(4); S.I. 1995/127, art. 2(1), Sch. 1
S. 36 excluded (18.9.1998) by S.I. 1998/2251, art. 16(1)

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37 Discontinuance of prison.

- (1) The Secretary of State may by order discontinue any prison, and any prison so discontinued shall be sold or otherwise disposed of as the Secretary of State, with the consent of the Treasury, may direct.
- (2) For the purposes of this section a prison shall not be deemed to be discontinued by reason only of its appropriation for use as a remand centre or young offenders institution.

Modifications etc. (not altering text)

- C13** S. 37 modified (3.2.1995) by 1994 c. 33, s. 110(6); S.I. 1995/127, art. 2(1), Sch. 1
S. 37 excluded (18.9.1998) by S.I. 1998/2251, art. 16(1)

38 Acquisition of land for prisons.

- (1) The Secretary of State may purchase by agreement, or compulsorily, any land required for the alteration, enlargement or rebuilding of a prison or for building or establishing a new prison or for any other purpose connected with the management of a prison (including the provision of accommodation for officers or servants employed therein).
- (2) For the purpose of the compulsory purchase of land by the Secretary of State under the foregoing subsection, the ^{M8}Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply as if section 1(1)(d) (which refers to the compulsory purchase of land by the Secretary of State under the ^{M9}National Health Service (Scotland) Act 1972) included a reference to the foregoing subsection.
- (3) In relation to the purchase of land by agreement under this section, the Lands Clauses Acts (except the provisions relating to the purchase of land otherwise than by agreement and the provisions relating to access to the special Act, and except sections 120 to 125 (sale of superfluous lands) of the ^{M10}Lands Clauses Consolidation (Scotland) Act 1845) shall be incorporated with this section, and in construing those Acts as so incorporated this section shall be deemed to be the special Act and references to the promoters of the undertaking shall be construed as references to the Secretary of State.

Modifications etc. (not altering text)

- C14** S. 38 excluded (18.9.1998) by S.I. 1998/2251, art. 16(1)

Marginal Citations

- M8** 1947 c. 42.
M9 1972 c. 58.
M10 1845 c. 19.

39 Rules for the management of prisons and other institutions.

- (1) The Secretary of State may make rules for the regulation and management of prisons, remand centres and young offenders institutions respectively, ^{F10}. . . for the classification, treatment, employment, discipline and control of persons required to be

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detained therein [^{F11}and for any other matter as respects which it is provided in this Act that rules may be made under this section].

- (2) Rules made under this section shall make provision for ensuring that a person who is charged with any offence under the rules shall be given a proper opportunity of presenting his case.
- (3) Rules made under this section may provide for the training of particular classes of persons and their allocation for that purpose to any prison or other institution in which they may lawfully be detained.
- (4) Rules made under this section may provide for the appointment of a convenient prison or prisons—
 - (a) in which prisoners are to be confined before and during trial, or at either of such times;
 - (b) in which particular classes of prisoners may be confined;
 - (c) in which civil prisoners may be confined during the period of their imprisonment.
- (5) Rules made under this section shall provide for the special treatment of the following persons whilst required to be detained in a prison, that is to say—
 - (a) any appellant within the meaning of section 279 of the 1975 Act pending the determination of his appeal;
 - (b) any other person detained in a prison, not being a person serving a sentence imposed on conviction of an offence.
- (6) Rules made under this section may provide for the temporary release of persons serving a sentence of imprisonment or detention.
- [^{F12}(7) Rules made under this section may provide for the award of additional days, not exceeding in aggregate one-sixth of the prisoner's sentence—
 - (a) to a short-term or long-term prisoner within the meaning of Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993; or
 - (b) conditionally on his eventually becoming such a prisoner, to a person remanded in custody, where he is guilty, under such rules, of a breach of discipline.]
- [^{F13}(8) Without prejudice to any power to make standing orders or to issue directions or any other kind of instruction, rules made under this section may authorise the Secretary of State to supplement the rules by making provision by directions for any purpose specified in the rules; and rules so made or directions made by virtue of this subsection may authorise the governor, or any other officer, of a prison, or some other person or class of persons specified in the rules or directions, to exercise a discretion in relation to the purpose so specified.
- (9) Rules made under this section may permit directions made by virtue of subsection (8) above to derogate (but only to such extent, or in such manner, as may be specified in the rules) from provisions of rules so made and so specified.
- (10) Any reference, however expressed, in any enactment other than this section to rules made under this section shall be construed as including a reference to directions made by virtue of subsection (8) above.
- (11) Directions made by virtue of subsection (8) above shall be published by the Secretary of State in such manner as he considers appropriate.]

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Textual Amendments

- F10** Word in s. 39(1) repealed (18.8.1993) by 1993 c. 9, s. 47(1)(3), Sch. 5 para. 6(6)(a), **Sch. 7 Pt.I** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(2), **Sch.1**.
- F11** Words in s. 39(1) added (18.8.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 6(6)(b)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(2), **Sch.1**.
- F12** S. 39(7) added (18.8.1993) by 1993 c. 9, s.24 (with ss. 5(1), 6(1), 10, 27 and 47(2), Sch. 6 paras. 1, 2, 6 and 7); S.I. 1993/2050, art. 3(2), **Sch.1**.
- F13** S. 39(8)-(11) added (18.8.1993) by 1993 c. 9, s.25 (with ss. 5(1), 6(1), 10, 27 and 47(2), Sch. 6 paras. 1, 2, 6 and 7); S.I. 1993/2050, art. 3(2), **Sch.1**.

40 Persons unlawfully at large.

- (1) Any person who, having been sentenced to imprisonment or to detention in a young offenders institution, 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 and taken to the place in which he is required in accordance with law to be detained.
- (2) Where any person sentenced to imprisonment or to detention in a young offenders institution is, at any time during the period for which he is liable to be detained in pursuance of the sentence, absent, otherwise than with lawful authority, from the prison or young offenders institution, 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 the United Kingdom in a prison, young offenders institution or remand centre.
- (3) Without prejudice to section 69(2) of the ^{M11}Criminal Justice Act 1967, in subsection (2) above references to a prison shall be construed as including references to a place which is the subject of a direction of the Secretary of State under section 206 of the 1975 Act (detention of children convicted on indictment).
- (4) For the purposes of this section, a person who, after being temporarily released in pursuance of rules made under section 39(6) 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.

Marginal Citations

M11 1967 c. 80.

VALID FROM 01/04/1996

^{F14}40A Warrants for arrest of escaped prisoners.

- (1) On an application being made to a justice alleging that any person is an offender unlawfully at large from a prison or other institution to which this Act or, as the case

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may be, the Prison Act 1952 or the Prison Act (Northern Ireland) 1953 applies in which he is required to be detained after being convicted of an offence, the justice may issue a warrant to arrest him and bring him before any sheriff.

- (2) Where a person is brought before a sheriff in pursuance of a warrant for his arrest under this section, the sheriff shall, if satisfied that he is the person named in the warrant and if satisfied that he is an offender unlawfully at large as mentioned in subsection (1) above, order him to be returned to the prison or other institution where he is required or liable to be detained.]

Textual Amendments

F14 S. 40A inserted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 75(6)

Modifications etc. (not altering text)

C15 S. 40A excluded (18.9.1998) by S.I. 1998/2251, art. 16(1)

41 Unlawful introduction of tobacco, etc., into prison.

- (1) Any person who brings, or introduces or attempts by any means to bring or introduce, into a prison any letter, tobacco, spirits or other article not allowed by rules made under section 39 of this Act shall be guilty of an offence and shall be liable on conviction by a court of summary jurisdiction to a fine not exceeding level 3 on the standard scale or to imprisonment for any period not exceeding 30 days.
- (2) For the purposes of the foregoing subsection a person shall be deemed to introduce an article into a prison if he conveys it to a prisoner outside the prison or places it anywhere outside the prison with intent that it shall come into the possession of a prisoner.
- (3) It shall be lawful for any officer of the prison to apprehend an offender against this section.

VALID FROM 03/02/1995

^{F15}41A Powers of search by authorised employees.

- (1) An authorised employee at a prison shall have the power to search any prisoner for the purpose of ascertaining whether he has any unauthorised property on his person.
- (2) An authorised employee searching a prisoner by virtue of this section—
- (a) shall not be entitled to require a prisoner to remove any of his clothing other than an outer coat, jacket, headgear, gloves and footwear;
 - (b) may use reasonable force where necessary; and
 - (c) may seize and detain any unauthorised property found on the prisoner in the course of the search.
- (3) In this section “authorised employee” means an employee of a description for the time being authorised by the governor to exercise the powers conferred by this section.

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(4) The governor of a prison shall take such steps as he considers appropriate to notify to prisoners the descriptions of employees who are for the time being authorised employees.

(5) In this section—

“employee” means an employee (not being an officer of a prison) appointed under section 2(1) of this Act; and

“unauthorised property”, in relation to a prisoner, means property which the prisoner is not authorised by rules under section 39 of this Act or by the governor to have in his possession or, as the case may be, in his possession in a particular part of the prison.]

Textual Amendments

F15 S. 41A inserted (3.2.1995) by 1994 c. 33, s. 152(2); S.I. 1995/127, art. 2(1), Sch. 1

Modifications etc. (not altering text)

C16 S. 41A modified (3.2.1995) by 1994 c. 33, s. 110(6); S.I. 1995/127, art. 2(1), Sch. 1

S. 41A excluded (18.9.1998) by S.I. 1998/2251, art. 16(1)

VALID FROM 09/01/1995

[^{F16}41B Testing prisoners for drugs.

(1) If an authorisation is in force for the prison, any officer of the prison may, at the prison, in accordance with rules under section 39 of this Act, require any prisoner who is confined in the prison to provide a sample of urine for the purpose of ascertaining whether he has any drug in his body.

(2) If the authorisation so provides, the power conferred by subsection (1) above shall include power to require a prisoner to provide a sample of any other description specified in the authorisation, not being an intimate sample, whether instead of or in addition to a sample of urine.

(3) In this section—

“authorisation” means an authorisation by the governor;

“drug” means any drug which is a controlled drug for the purposes of the ^{M12}Misuse of Drugs Act 1971; and

“intimate sample” means a sample of blood, semen or any other tissue fluid, saliva or pubic hair, or a swab taken from a person’s body orifice.]

Textual Amendments

F16 S. 41B inserted (9.1.1995) by 1994 c. 33, s. 151(2); S.I. 1994/3192, art. 2, Sch.

Modifications etc. (not altering text)

C17 S. 41B(1) modified (3.2.1995) by 1994 c. 33, s. 110(4); S.I. 1995/127, art. 2(1), Sch. 1

C18 S. 41B(3) modified (3.2.1995) by 1994 c. 33, s. 110(3); S.I. 1995/127, art. 2(1), Sch. 1

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Marginal Citations

M12 1971 c. 38.

VALID FROM 01/01/1998

[^{F17}41C Testing of prisoners for alcohol.

- (1) If an authorisation is in force for the prison, any officer of the prison may, at the prison, in accordance with rules under section 39 of this Act, require any prisoner who is confined in the prison, and whom he reasonably believes to have taken alcohol, to provide a sample of breath for the purpose of ascertaining whether he has any alcohol in his body.
- (2) If the authorisation so provides, the power conferred by subsection (1) above shall include the power to require a prisoner to provide a sample of any other description specified in the authorisation, not being an intimate sample, whether instead of or in addition to a sample of breath.
- (3) In this section—
 - “authorisation” means an authorisation by the governor; and
 - “intimate sample” means a sample of blood, semen or other tissue fluid, saliva or pubic hair, or a swab taken from a person’s body orifice.]

Textual Amendments

F17 S. 41C inserted after s. 41B (1.1.1998 with application as mentioned in s. 33(1)-(8) of the amending Act) by 1997 c. 48, s. 42; S.I. 1997/2323, art. 4, Sch. 2

VALID FROM 01/01/1998

[^{F18}41D Unlawful disclosure of information by medical officer.

- (1) This section applies to—
 - (a) a registered medical practitioner appointed under paragraph (a) of section 107(6) of the^{M13}Criminal Justice and Public Order Act 1994 (medical services in contracted out prisons);
 - (b) a registered medical practitioner providing appropriate medical services under an arrangement entered into under section 3A(2)(b) of this Act or paragraph (b) of the said section 107(6); and
 - (c) any person acting under the supervision of such a practitioner.
- (2) Any person to whom this section applies who discloses, otherwise than in the course of his duty or as authorised by the Secretary of State, any information relating to a particular prisoner which he has acquired in the course of carrying out his duties shall be guilty of an offence.
- (3) A person guilty of an offence under subsection (2) above shall be liable—

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- (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.]

Textual Amendments

F18 S. 41D inserted after s. 41B (1.1.1998 with application as mentioned in s. 33(1)-(8) of the amending Act) by 1997 c. 48, s. 44(1); S.I. 1997/2323, art. 4, Sch. 2

Marginal Citations

M13 1994 c.33.

42 Exercise of power to make rules, etc.

- (1) Any power of the Secretary of State to make rules or regulations under this Act, and the power of the Secretary of State to make an order under section 22(2), 30(6) or (7), 32(5) or 37(1) of this Act, shall be exercisable by statutory instrument.
- (2) Any statutory instrument containing [^{F19}an order made under section 37(1) or rules made under section 39 of this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament].
- (3) Any rule made under section 18(3) or (5) of this Act or any statutory instrument containing an order under section 30(6) or (7) or 32(5) of this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) An order shall not be made under section 22(2) of this Act unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

Textual Amendments

F19 Words in s. 42(2) substituted (18.8.1993) by 1993 c. 9, s. 47(1), Sch. 5 para. 6(8) (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(2), Sch.1.

43 Interpretation.

- (1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them—
 - “the 1975 Act” means the ^{M14}Criminal Procedure (Scotland) Act 1975;
 - “court” does not include a court-martial;
 - “criminal prisoner” means a person committed to prison in respect of a charge or conviction of a criminal offence and “civil prisoner” includes any other prisoner;
 - “local review committee” has the same meaning as in section 18(5) of this Act;
 - “Parole Board” means the Parole Board for Scotland;
 - “prison” includes any prison other than a naval, military or air force prison;
 - “prisoner” means a person committed for trial, safe custody, punishment or otherwise; and

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“sentence of imprisonment” does not include a committal in default of payment of any sum of money or for failure to do or abstain from doing anything required to be done or left undone.

- (2) For the purposes of any reference, however expressed, in this Act (other than in section 25) to the term of imprisonment or other detention to which a person has been sentenced or which, or part of which, he has served, consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term.
- (3) Any reference in this Act, however expressed, 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.
- (4) Any reference 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 any enactment on the imprisonment of offenders of his age.
- (5) References, however expressed, in this Act (other than in section 30) to imprisonment shall, so far as those provisions apply to institutions provided under section 19 of this Act, be construed as including detention in those institutions.
- (6) For the purpose of this Act the maintenance of a prisoner shall include all necessary expenses incurred in respect of the prisoner for food, clothing, custody and removal from one place to another from the period from the date of the order for his committal to prison until his death or discharge from prison.
- (7) 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, 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.

Marginal Citations

M14 1975 c. 21.

44 Expenses.

All expenses incurred in the maintenance of prisons and prisoners and all other expenses of the Secretary of State under this Act shall be defrayed out of moneys provided by Parliament.

45 Amendments and repeals.

- (1) The enactments mentioned in Schedule 2 to this Act shall have effect subject to the amendments specified therein, being amendments consequential on the provisions of this Act.
- (2) The enactments mentioned in Schedule 3 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

46 Short title, commencement and extent.

- (1) This Act may be cited as the Prisons (Scotland) Act 1989.

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- (2) This Act shall come into force at the end of the period of three months beginning with the date on which it is passed.
- (3) This Act shall extend to Scotland only.

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SCHEDULES

SCHEDULE 1

Section 18.

PROVISIONS AS TO PAROLE BOARD AND LOCAL REVIEW COMMITTEES

The Parole Board

- 1 The Parole Board shall include among its members—
 - (a) a person who holds or has held judicial office;
 - (b) a registered medical practitioner who is a psychiatrist;
 - (c) a person appearing to the Secretary of State to have knowledge and experience of the supervision or after-care of discharged prisoners; and
 - (d) a person appearing to the Secretary of State to have made a study of the causes of delinquency or the treatment of offenders.

- 2 A person appointed to be a member of the Parole Board shall hold and vacate office under the terms of the instrument by which he is appointed, but may at any time resign his office; and a person who ceases to hold office as a member of the Parole Board shall be eligible for reappointment.

- 3 There shall be paid to the members of the Board such remuneration and allowances as the Secretary of State may with the consent of the Treasury determine.

- 4 The expenses of the Board under the last foregoing paragraph and any other expenses incurred by the Board in discharging its functions under section 18 of this Act shall be defrayed by the Secretary of State out of moneys provided by Parliament.

- 5 The Board shall as soon as practicable after the end of each year make to the Secretary of State a report on the performance of its functions during that year, and the Secretary of State shall lay a copy of each report so made before Parliament.

Local review committees

- 6 The Secretary of State may out of moneys provided by Parliament pay to members of local review committees, and to persons assisting in or concerned with the carrying out of the functions of any such committee, travelling or other allowances in accordance with such scales as may be determined by him with the consent

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of the Treasury, and may out of such moneys defray any other expenses of such committees to such amount as may be so determined.

SCHEDULE 2

Section 45(1).

AMENDMENT OF ENACTMENTS

Children and Young Persons (Scotland) Act 1937

- 1 In section 57(3) of the ^{M15}Children and Young Persons (Scotland) Act 1937, for the word “206” there shall be substituted the words “205 or 206”, and after the word “1975” there shall be inserted the words “or section 25 of the Prisons (Scotland) Act 1989”.

Marginal Citations

M15 1937 c. 37.

- 2 In section 87(1) and (3) of that Act, after the words “Act 1975” there shall be inserted the words “and of the Prisons (Scotland) Act 1989”.

Army Act 1955

- 3 In section 71AA(6B) of the ^{M16}Army Act 1955 and in paragraph 10(6B) of Schedule 5A to that Act, for the words “Section 12 of the Criminal Justice (Scotland) Act 1963” there shall be substituted the words “Section 32 of the Prisons (Scotland) Act 1989”.

Marginal Citations

M16 1955 c. 18.

Air Force Act 1955

- 4 In section 71AA(6B) of the ^{M17}Air Force Act 1955 and in paragraph 10(6B) of Schedule 5A to that Act, for the words “Section 12 of the Criminal Justice (Scotland) Act 1963” there shall be substituted the words “Section 32 of the Prisons (Scotland) Act 1989”.

Marginal Citations

M17 1955 c. 19.

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Naval Discipline Act 1957

- 5 In section 43AA(6B) of the ^{M18}Naval Discipline Act 1957 and in paragraph 10(6B) of Schedule 4A to that Act, for the words “Section 12 of the Criminal Justice (Scotland) Act 1963” there shall be substituted the words “Section 32 of the Prisons (Scotland) Act 1989”.

Marginal Citations

M18 1957 c. 53.

- 6 In section 88 of that Act, in subsection (3)(c), for the words from “thirty-five” to “1952” there shall be substituted the words “39 of the Prisons (Scotland) Act 1989”, and, in subsection (4), for the words “37 of the Prisons (Scotland) Act 1952” there shall be substituted the words “40 of the Prisons (Scotland) Act 1989”.

Criminal Justice Act 1961

- 7 In section 30(1)(b) of the ^{M19}Criminal Justice Act 1961, for the words “37 of the Prisons (Scotland) Act 1952” there shall be substituted the words “40 of the Prisons (Scotland) Act 1989”.

Marginal Citations

M19 1961 c. 39.

Criminal Justice (Scotland) Act 1963

- 8 In Schedule 1 to the ^{M20}Criminal Justice (Scotland) Act 1963, in paragraph 13, for the words “paragraph 2 of this Schedule” there shall be substituted the words “section 30(3) of the Prisons (Scotland) Act 1989”.

Marginal Citations

M20 1963 c. 39.

Criminal Justice Act 1967

- 9 In section 69(2) of the ^{M21}Criminal Justice Act 1967, for the words “37 of the Prisons (Scotland) Act 1952” there shall be substituted the words “40 of the Prisons (Scotland) Act 1989”.

Marginal Citations

M21 1967 c. 80.

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Courts-Martial (Appeals) Act 1968

- 10 In section 52 of the ^{M22}Courts-Martial (Appeals) Act 1968, for paragraph (e) there shall be substituted the following paragraph—

“(e) section 39 of the Prisons (Scotland) Act 1989; or”.

Marginal Citations

M22 1968 c. 20.

Criminal Procedure (Scotland) Act 1975

- 11 In section 205A(1) of the ^{M23}Criminal Procedure (Scotland) Act 1975, for the words “61 of the Criminal Justice Act 1967” there shall be substituted the words “26 of the Prisons (Scotland) Act 1989”.

Marginal Citations

M23 1975 c. 21.

- 12 For section 206(1) of that Act, there shall be substituted the following section—

“206 Detention of children convicted on indictment.

Subject to section 205 of this Act, where a child is convicted and the court is of the opinion that no other method of dealing with him is appropriate, it may sentence him to be detained for a period which it shall specify in the sentence; and the child shall during that period be liable to be detained in such place and on such conditions as the Secretary of State may direct.”

- 13 In sections 207(11) and 415(11) of that Act, for the words from the beginning to “shall apply” there shall be substituted the words “Section 18 (functions of Parole Board), section 24 (remission for good conduct) and sections 22, 26, 28 and 29 (release on licence) of the Prisons (Scotland) Act 1989 shall apply”.

- 14 In sections 212 and 421 of that Act, in subsection (1), after the word “1967” there shall be inserted the words “or section 22(1) or section 26 of the Prisons (Scotland) Act 1989”, and, in subsection (2), for the words “12 of the Criminal Justice (Scotland) Act 1963” there shall be substituted the words “32 of the said Act of 1989”.

- 15 In sections 214 and 423 of that Act—

- (a) in subsection (1), for the words from “Schedule” to “1963” there shall be substituted the words “section 30 of the Prisons (Scotland) Act 1989”;
- (b) in subsection (2)(b), for the words from “paragraph” to “1963” there shall be substituted the words “section 30(4) of the said Act of 1989”;
- (c) in subsection (6), for the words from “Schedule” to “1963” there shall be substituted the words “section 30 of the said Act of 1989”;

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- (d) in subsection (7), for the words “the said Schedule” (where those words first occur) there shall be substituted the words “section 30 of the said Act of 1989”, and, in paragraph (a) thereof, for the words “paragraph 1 of the said Schedule” there shall be substituted the words “subsection (4) of the said section 30”; and
 - (e) in subsection (8), for the words “paragraph 3 of the said Schedule” there shall be substituted the words “subsection (5) of section 30 of the said Act of 1989”, and for the words from “section 14” to “1963” there shall be substituted the words “the said section 30”.
- 16 In section 462(1) of that Act, for the words “Prisons (Scotland) Act 1952”, wherever these words occur, there shall be substituted the words “Prisons (Scotland) Act 1989”.

Law Reform (Miscellaneous Provisions) (Scotland) Act 1980

- 17 In Schedule 1 to the ^{M24}Law Reform (Miscellaneous Provisions) (Scotland) Act 1980, in paragraph (v) of Group B of Part I, for the words “59(6) of the Criminal Justice Act 1967” there shall be substituted the words “18(5) of the Prisons (Scotland) Act 1989”.

Marginal Citations

M24 1980 c. 55.

Contempt of Court Act 1981

- 18 In section 15(6) of the ^{M25}Contempt of Court Act 1981, for the words “60 of the Criminal Justice Act 1967” there shall be substituted the words “22 of the Prisons (Scotland) Act 1989”.

Marginal Citations

M25 1981 c. 49.

Mental Health (Scotland) Act 1984

- 19 In section 74(8) of the ^{M26}Mental Health (Scotland) Act 1984, for the words “37 of the Prisons (Scotland) Act 1952” there shall be substituted the words “40 of the Prisons (Scotland) Act 1989”.

Marginal Citations

M26 1984 c. 36.

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SCHEDULE 3

Section 45(2).

REPEALS

Chapter	Short title	Extent of repeal
Edw. 8 & 1 Geo. 6. c. 37.	Children and Young Persons (Scotland) Act 1937.	In section 62(b), the words “subsection (2) of”.
15 & 16 Geo. 6 & 1 Eliz. 2. c. 61.	Prisons (Scotland) Act 1952.	The whole Act.
9 & 10 Eliz. 2 c. 39.	Criminal Justice Act 1961.	Section 30(4).
1963 c. 39.	Criminal Justice (Scotland) Act 1963.	Section 10. Section 12. Section 14. Section 50. Section 51. Section 54. In Schedule 1, paragraphs 1 to 3 and, in paragraph 14, the words “Part I of this Schedule or”.
1967 c. 80.	Criminal Justice Act 1967.	In Schedule 5, the entry relating to the Prisons (Scotland) Act 1952. Sections 59 to 62. Section 64. Section 100(2A). Schedule 2.
1972 c. 71.	Criminal Justice Act 1972.	Section 35.
1975 c. 21.	Criminal Procedure (Scotland) Act 1975.	In section 206, subsections (2) to (7). Section 206A. Section 213. Section 422. In Schedule 9, paragraphs 16, 31 to 35 and 41.
1977 c. 45.	Criminal Law Act 1977.	In Schedule 12, paragraph 7(4) to (6) of the entry relating to the Criminal Justice Act 1967.

Status: Point in time view as at 18/08/1993. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation: Prisons (Scotland) Act 1989 is up to date with all changes known to be in force on or before 19 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

1980 c. 62.	Criminal Justice (Scotland) Act 1980.	Section 44. Section 45(2). Schedule 5. In Schedule 7, paragraphs 1 to 6, 14, 15 and 17 to 20.
1982 c. 48.	Criminal Justice Act 1982.	Section 33(a) and (b). Section 57(2). In Schedule 14, paragraphs 18 to 21.
1985 c. 73.	Law Reform (Miscellaneous Provisions) (Scotland) Act 1985.	Section 42. Section 44. Section 45.
1988 c. 33.	Criminal Justice Act 1988.	In Schedule 9, paragraph 1. In Schedule 15, paragraph 18.

Status:

Point in time view as at 18/08/1993. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation:

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