



Prisons (Scotland) Act 1989

1989 CHAPTER 45

Miscellaneous

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, ^{F1} . . . for the classification, treatment, employment, discipline and control of persons required to be detained therein [^{F2} and for any other matter as respects which it is provided in this Act [^{F3} or any other enactment] 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.
- ^{F4}(4)
- (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 [^{F5} section 132 of the 1995 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 [^{F6} on licence] of persons serving a sentence of imprisonment or detention.
- [^{F7}(7) [^{F8}Subject to 7A below] 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 [^{F9}any person who is, or is treated as, a long-term or short-term prisoner for the purposes of any provision of] Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993; or

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- (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 [^{F10}; ^{F11} ...].]
- [^{F12}(7A) Additional days shall not be awarded under rules made under subsection (7) above in respect of a sentence where the prisoner has at any time been released on licence, in relation to that sentence, under Part I of the ^{M1} Prisoners and Criminal Proceedings (Scotland) Act 1993; and any reference to a sentence in such rules shall be construed in accordance with section 27(5) of that Act.
- (7B) In the application of subsection (7) above to
- [^{F13}(a) a prisoner subject to a sentence under section 205ZA or 205ZC of the 1995 Act (sentences for terrorism offences), the reference to the prisoner's sentence is to be construed as a reference to the appropriate custodial term of the sentence concerned, and
- (b) a prisoner subject to an extended sentence within the meaning of section 210A of [^{F14}that] Act, the reference to his sentence shall be construed as a reference to the custodial term of that extended sentence.]
- [^{F15}(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 [^{F16}any purpose specified in the rules].
- (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.]
- [^{F17}(12) Rules made under this section may (without prejudice to the generality of subsection (1) above) confer functions on a governor.]

Textual Amendments

- F1** 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**.
- F2** 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**.
- F3** Words in s. 39(1) inserted (3.2.1995) by 1994 c. 33, s. 116(4)(a); S.I. 1995/127, art. 2(1), **Sch. 1**.
- F4** S. 39(4) repealed (1.10.1993) by 1993 c. 9, s. 47(3), **Sch. 7 Pt. I** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **art. 3(4)**.
- F5** Words in s. 39(5) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 75(4)(a)**.
- F6** Words in s. 39(6) inserted (11.10.2019) by Management of Offenders (Scotland) Act 2019 (asp 14), **ss. 55(2), 63(2)**; S.S.I. 2019/309, reg. 2, sch.

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- F7** 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](#).
- F8** Words in s. 39(7) inserted (30.9.1998) by [1998 c. 37, s. 119, Sch. 8 para. 71\(a\)\(i\)](#); [S.I. 1998/2327, art. 2\(1\)\(y\)\(2\)\(u\)](#)
- F9** Words in s. 39(7)(a) substituted (30.9.1998) by [1998 c. 37, s. 119, Sch. 8 para. 71\(a\)\(ii\)](#); [S.I. 1998/2327, art. 2\(1\)\(y\)\(2\)\(u\)](#)
- F10** Words in s. 39(7) inserted (3.2.1995) by [1994 c. 33, s. 130\(4\)](#); [S.I. 1995/127, art. 2\(1\), Sch. 1](#)
- F11** Words in s. 39(7) repealed (30.9.1998) by [1998 c. 37, ss. 119, 120\(2\), Sch. 8 para. 71\(a\)\(iii\), Sch. 10](#); [S.I. 1998/2327, art. 2\(1\)\(y\)\(aa\)\(2\)\(u\)\(3\)\(s\)](#)
- F12** S. 39(7A)(7B) inserted (30.9.1998) by [1998 c. 37, s. 119, Sch. 8 para. 71\(b\)](#); [S.I. 1998/2327, art. 2\(1\)\(y\)\(2\)\(u\)](#)
- F13** Words in s. 39(7B) inserted (30.4.2021) by [Counter-Terrorism and Sentencing Act 2021 \(c. 11\), s. 50\(1\)\(i\), Sch. 13 para. 51\(2\)\(a\)](#)
- F14** Word in s. 39(7B) substituted (30.4.2021) by [Counter-Terrorism and Sentencing Act 2021 \(c. 11\), s. 50\(1\)\(i\), Sch. 13 para. 51\(2\)\(b\)](#)
- F15** 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](#).
- F16** Words in s. 39(8) substituted (3.2.1995) by [1994 c. 33, s. 116\(4\)\(b\)](#); [S.I. 1995/127, art. 2\(1\), Sch. 1](#)
- F17** S. 39(12) inserted (3.2.1995) by [1994 c. 33, s. 116\(4\)\(c\)](#); [S.I. 1995/127, art. 2\(1\), Sch. 1](#)

Modifications etc. (not altering text)

- C1** S. 39(8) modified (3.2.1995) by [1994 c. 33, ss. 110\(3\)\(7\), 112\(3\)\(4\)\(d\)\(6\)](#); [S.I. 1995/127, art. 2\(1\), Sch. 1](#)

Marginal Citations

- M1** [1993 c.9](#).

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Changes and effects yet to be applied to :

- s. 39(7)s. 39(7A)(7B) repealed by [2007 asp 17 sch. 5](#)