



Prisons (Scotland) Act 1989

1989 CHAPTER 45

Miscellaneous

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

[^{F1}(1) A person commits an offence if without reasonable excuse the person—

- (a) brings or otherwise introduces into a prison a proscribed article (or attempts to do so),
- (b) takes out of or otherwise removes from a prison a proscribed article (or attempts to do so).

(1A) A person who commits an offence under this section—

- (a) where the proscribed article falls within paragraphs (b) to (f) of subsection (9A), is liable on summary conviction to imprisonment for a period not exceeding 30 days or to a fine not exceeding level 3 on the standard scale (or to both),
- (b) where the proscribed article falls within paragraph (a) of subsection (9A) (whether or not also within paragraph (f) of that subsection), is liable to the penalties set out in section 41ZA(5).]

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 [^{F2}subsection (1)(a),] 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.

[^{F3}(2A) Where an officer of a prison has reasonable grounds for suspecting that a person who is in or is seeking to enter a prison has in his possession any [^{F4}proscribed article] he shall, without prejudice to any other power of search under this Act, have power to search that person and any article in his possession and to seize and detain any [^{F5}proscribed article] found in the course of the search.

(2B) The power conferred by subsection (2A) above—

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- (a) shall be exercised in accordance with rules under section 39 of this Act;
 - (b) shall not be construed as authorising the physical examination of a person's body orifices;
 - (c) so far as relating to any article [^{F6}that is a proscribed article falling within paragraph (d) to (f) of subsection (9A) (but not also within paragraph (b) or (c) of that subsection), or falling within paragraph (a) of that subsection], shall not be construed as authorising 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; and
 - (d) shall include power to use reasonable force where necessary.]
- [^{F7}(3) Where an officer of a prison has reasonable grounds for suspecting that any person has committed or is committing an offence under [^{F8}this section or section 41ZA] he may, for the purpose of facilitating investigation by a constable into the offence, detain that person in any place in the prison in question and may, where necessary, use reasonable force in doing so.
- (4) Detention under subsection (3) above shall be terminated not more than six hours after it begins or (if earlier)—
- (a) when the person is detained in pursuance of any other enactment or subordinate instrument;
 - (b) when the person is arrested by a constable; or
 - (c) where the governor of the prison or a constable investigating the offence concludes that there are no such grounds as are mentioned in subsection (3) above or the officer of the prison concludes that there are no longer such grounds,
- and the person detained shall be informed immediately upon the termination of his detention that his detention has been terminated.
- (5) Where a person has been released at the termination of a period of detention under subsection (3) above he shall not thereafter be detained under that subsection on the same grounds or on any grounds arising out of the same circumstances.
- (6) At the time when an officer of a prison detains a person under subsection (3) above he shall inform the person of his suspicion, of the suspected offence and of the reason for the detention; and there shall be recorded—
- (a) the place where and the time when the detention begins;
 - (b) the suspected offence;
 - (c) the time when a constable or an officer of the police authority is informed of the suspected offence and the detention;
 - (d) the time when the person is informed of his rights in terms of subsection (7) below and the identity of the officer of the prison so informing him;
 - (e) where the person requests such intimation as is specified in subsection (7) below to be sent, the time when such request is—
 - (i) made; and
 - (ii) complied with; and
 - (f) the time when, in accordance with subsection (4) above, the person's detention terminates.
- (7) A person who is being detained under subsection (3) above, other than a person in respect of whose detention subsection (8) below applies, shall be entitled to have intimation of his detention and of the place where he is being detained sent without

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delay to a solicitor and to one other person reasonably named by him and shall be informed of that entitlement when his detention begins.

(8) Where a person who is being detained under subsection (3) above appears to the officer of the prison to be under 16 years of age, the officer of the prison shall send without delay to the person's parent, if known, intimation of the person's detention and of the place where he is being detained; and the parent—

(a) in a case where there is reasonable cause to suspect that he has been involved in the alleged offence in respect of which the person has been detained, may; and

(b) in any other case, shall,
be permitted access to the person.

(9) The nature and extent of any access permitted under subsection (8) above shall be subject to any restriction essential for the furtherance of the investigation or the well-being of the person.

[In this section, a “proscribed article” is—

- ^{F9}(9A) (a) any personal communication device,
(b) any drug,
(c) any firearm or ammunition,
(d) any offensive weapon,
(e) any article which has a blade or is sharply pointed,
(f) any article (or other article) which is a prohibited article within the meaning of rules made under section 39.

(9B) In this section, a “personal communication device” includes—

- (a) a mobile telephone,
(b) any other portable electronic device that is capable of transmitting or receiving a communication of any kind,
(c) any—
(i) component part of a device mentioned in paragraph (a) or (b),
(ii) article that is designed or adapted for use with such a device.]

(10) In this section—

“ drug ” means any drug which is a controlled drug for the purposes of the ^{M1} Misuse of Drugs Act 1971;

“ firearm ” and “ ammunition ” have the same meanings as in the ^{M2} Firearms Act 1968;

“ offensive weapon ” has the same meaning as in [^{F10}section 47 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)]; and

“ parent ” includes a guardian and any person who has actual custody of a person under 16 years of age.]

Textual Amendments

F1 S. 41(1)(1A) substituted for s. 41(1) (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 34\(1\)\(a\)](#), 206(1); S.S.I. 2010/413, art. 2, Sch.

F2 Words in s. 41(2) substituted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 34\(1\)\(b\)](#), 206(1); S.S.I. 2010/413, art. 2, Sch.

F3 S. 41(2A)(2B) inserted (3.2.1995) by [1994 c. 33](#) , [s. 153\(1\)\(3\)](#) ; S.I. 1995/127 , art. 2(1) , [Sch. 1](#)

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- F4** Words in s. 41(2A) substituted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 34(1)(c)(i)**, 206(1); S.S.I. 2010/413, art. 2, Sch.
- F5** Words in s. 41(2A) substituted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 34(1)(c)(ii)**, 206(1); S.S.I. 2010/413, art. 2, Sch.
- F6** Words in s. 41(2B)(c) substituted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 34(1)(d)**, 206(1); S.S.I. 2010/413, art. 2, Sch.
- F7** S. 41(3)-(10) substituted for s. 41(3) (3.2.1995) by 1994 c. 33 , **s. 153(1)(4)** ; S.I. 1995/127 , art. 2(1) , **Sch. 1**
- F8** Words in s. 41(3) substituted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 34(1)(e)**, 206(1); S.S.I. 2010/413, art. 2, Sch.
- F9** S. 41(9A)(9B) inserted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 34(1)(f)**, 206(1); S.S.I. 2010/413, art. 2, Sch.
- F10** Words in s. 41(10) substituted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 34(1)(g)**, 206(1); S.S.I. 2010/413, art. 2, Sch.

Modifications etc. (not altering text)

- C1** S. 41 excluded (18.9.1998) by S.I. 1998/2251 , **art. 16(1)**
- C2** S. 41(2A) modified (3.2.1995) by 1994 c. 33 , **ss. 110(6)** , 112(5) ; S.I. 1995/127 , art. 2(1) , **Sch. 1**
- C3** S. 41(2B) modified (3.2.1995) by 1994 c. 33 , **ss. 110(6)** , 112(5) ; S.I. 1995/127 , art. 2(1) , **Sch. 1**
- C4** S. 41(3) modified (3.2.1995) by 1994 c. 33 , **ss. 110(4)** , 112(3)(4)(f)(6) ; S.I. 1995/127 , art. 2(1) , **Sch. 1**
- C5** S. 41(4) modified (3.2.1995) by 1994 c. 33 , **ss. 110(3)(4)** , 112(3)(4)(f)(6) ; S.I. 1995/127 , art. 2(1) , **Sch. 1**
- C6** S. 41(6) modified (3.2.1995) by 1994 c. 33 , **ss. 110(4)** , 112(3)(4)(f)(6) ; S.I. 1995/127 , art. 2(1) , **Sch. 1**
- C7** S. 41(8) modified (3.2.1995) by 1994 c. 33 , **ss. 110(4)** , 112(3)(4)(f)(6) ; S.I. 1995/127 , art. 2(1) , **Sch. 1**

Marginal Citations

- M1** 1971 c. 38 .
- M2** 1968 c. 27 .

Changes to legislation:

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