



# Criminal Justice Act 1991

## 1991 CHAPTER 53

### PART IV

#### PROVISION OF SERVICES

**Annotations:**

**Modifications etc. (not altering text)**

- C1 [Pt. IV](#) (ss. 73-92) applied (30.6.1999) by [1999 c. 9, s. 1\(2\)](#), [Sch. 1](#) as added by [1991 c. 56, Sch. 4A para. 13\(2\)\(a\)](#)

*Probation services*

<sup>F1</sup>73 .....

**Annotations:**

**Amendments (Textual)**

- F1 [S. 73](#) repealed (5.2.1994) by [1993 c. 47, ss. 32, 33\(2\)](#), [Sch.4](#)

<sup>F2</sup>74 .....

**Annotations:**

**Amendments (Textual)**

- F2 [S. 74](#) repealed (5.2.1994) by [1993 c. 47, ss. 32, 33\(2\)](#), [Sch.4](#)

<sup>F3</sup>75 .....

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**Annotations:**

**Amendments (Textual)**

**F3** S. 75 repealed (5.2.1994) by 1993 c. 47, ss. 32, 33(2), **Sch.4**

*Court security*

**76 Provision of court security officers.**

**F4** .....

**Annotations:**

**Amendments (Textual)**

**F4** S. 76 repealed (1.4.2005) by Courts Act 2003 (c. 39), ss. 109(1)(3), 110, Sch. 8 para. 351, **Sch 10**; S.I. 2005/910, **art. 3(y)(aa)**

**77 Powers and duties of court security officers.**

**F5** .....

**Annotations:**

**Amendments (Textual)**

**F5** S. 77 repealed (1.4.2005) by Courts Act 2003 (c. 39), ss. 109(1)(3), 110, Sch. 8 para. 351, **Sch 10**; S.I. 2005/910, **art. 3(y)(aa)**

**78 Protection of court security officers.**

**F6** .....

**Annotations:**

**Amendments (Textual)**

**F6** S. 78 repealed (1.4.2005) by Courts Act 2003 (c. 39), ss. 109(1)(3), 110, Sch. 8 para. 351, **Sch 10**; S.I. 2005/910, **art. 3(y)(aa)**

**[<sup>F7</sup>79 Duties of responsible authorities.**

(1) In section 55(2) (duties of local authorities outside Greater London) of the Justices of the <sup>M1</sup>Peace Act 1979 (“the 1979 Act”), for paragraph (b) there shall be substituted the following paragraphs—

“(b) the sums payable under Part II of this Act on account of a person’s salary or expenses as justices’ clerk for the non-metropolitan county or metropolitan district or any part thereof, the remuneration of any staff employed by the magistrates’ courts committee to assist him and the remuneration of any court security officers employed (whether by

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- that committee or the council) under section 76(2)(a) of the Criminal Justice Act 1991, together with—
- (i) secondary Class I contributions payable in respect of any such person, staff or officers under Part I of the Social Security Act 1975, and
  - (ii) state scheme premiums so payable under Part III of the Social Security Pensions Act 1975;
- (bb) the sums payable under any contract entered into (whether by the magistrates' courts committee or the council) under section 76(2)(b) of the Criminal Justice Act 1991;”.
- (2) In section 58(2) of that Act (corresponding arrangements in the inner London area), for paragraph (b) there shall be substituted the following paragraphs—
- “(b) the sums payable by way of salary or expenses to justices' clerks and other officers employed by the committee of magistrates and the remuneration of any court security officers employed (whether by that committee or the Receiver) under section 76(2)(a) of the Criminal Justice Act 1991, together with—
- (i) secondary Class I contributions payable in respect of any such officers under Part I of the Social Security Act 1975, and
  - (ii) state scheme premiums so payable under Part III of the Social Security Pensions Act 1975;
- (bb) the sums payable under any contract entered into (whether by the committee of magistrates or the Receiver) under section 76(2)(b) of the Criminal Justice Act 1991;”.]

**Annotations:**

**Amendments (Textual)**

**F7** S. 79 repealed (1.4.1995 so far as it applies to s. 55(2) of the 1979 Act and otherwise *prosp.*) by 1994 c. 29, s. 93, **Sch. 9 Pt.II**; S.I. 1995/685, **arts. 4(n), 8(v)**

**Commencement Information**

**II** S. 79 wholly in force at 1.4.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(1), **Sch. 1**.

**Marginal Citations**

**M1** 1979 c. 55.

*Prisoner escorts*

**80 Arrangements for the provision of prisoner escorts.**

- (1) The Secretary of State may make arrangements for any of the following functions, namely—
- [<sup>F8</sup>(a) the delivery of prisoners from one set of relevant premises to another;]
  - (b) the custody of prisoners held on [<sup>F9</sup>the premises of any court] (whether or not they would otherwise be in the custody of the court) and their production before the court;
  - [<sup>F10</sup>(c) the custody of prisoners temporarily held in a prison in the course of delivery from one prison to another; and]

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(e) the custody of prisoners while they are outside a prison for temporary purposes,

to be performed in such cases as may be determined by or under the arrangements by prisoner custody officers who are authorised to perform such functions.

[<sup>F11</sup>(1A) In paragraph (a) of subsection (1) above “relevant premises” means a court, prison, police station or hospital; and either (but not both) of the sets of premises mentioned in that paragraph may be situated in a part of the British Islands outside England and Wales.]

(2) Arrangements made by the Secretary of State under this section (“prisoner escort arrangements”) may include entering into contracts with other persons for the provision by them of prisoner custody officers.

(3) Any person who, under [<sup>F12</sup>a warrant or a hospital order or remand], is responsible for the performance of any such function as is mentioned in subsection (1) above shall be deemed to have complied with [<sup>F12</sup>the warrant, order or remand] if he does all that he reasonably can to secure that the function is performed by a prisoner custody officer acting in pursuance of prisoner escort arrangements.

[<sup>F13</sup>(4) In this section—

“hospital” has the same meaning as in the <sup>M2</sup>Mental Health Act 1983;

“hospital order” means an order for a person’s admission to hospital made under section 37, 38 or 44 of that Act, section 5 of the <sup>M3</sup>Criminal Procedure (Insanity) Act 1964 or section 6, 14 or 14A of the <sup>M4</sup>Criminal Appeal Act 1968;

“hospital remand” means a remand of a person to hospital under section 35 or 36 of the Mental Health Act 1983;

“warrant” means a warrant of commitment, a warrant of arrest or a warrant under section 46, 47, 48, 50 or 74 of that Act.]

#### Annotations:

##### Amendments (Textual)

- F8** S. 80(1)(a) substituted (3.11.1994) by 1994 c. 33, s. 93(1)(a).  
**F9** Words in s. 80(1)(b) substituted (3.11.1994) by 1994 c. 33, s. 93(1)(b).  
**F10** S. 80(1)(c) substituted (3.11.1994) for s. 80(1)(c)(d) by 1994 c. 33, s. 93(1)(c).  
**F11** S. 80(1A) inserted (3.11.1994) by 1994 c. 33, s. 93(2).  
**F12** Words in s. 80(3) substituted (3.11.1994) by 1994 c. 33, s. 93(3).  
**F13** S. 80(4) inserted (3.11.1994) by 1994 c. 33, s. 93(4).

##### Modifications etc. (not altering text)

- C2** S. 80: transfer of functions (20.4.2000) by S.I. 2000/1160, art. 4(1)(2)(g)

##### Commencement Information

- I2** S. 80 wholly in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(4) and Sch. 3

##### Marginal Citations

- M2** 1983 c. 20.  
**M3** 1964 c. 84.  
**M4** 1968 c. 19.

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## **81 Monitoring etc. of prisoner escort arrangements.**

- (1) Prisoner escort arrangements shall include the appointment of—
  - (a) a prisoner escort monitor, that is to say, a Crown servant whose duty it shall be to keep the arrangements under review and to report on them to the Secretary of State; and
  - (b) a panel of lay observers whose duty it shall be to inspect the conditions in which prisoners are transported or held in pursuance of the arrangements and to make recommendations to the Secretary of State.
- (2) It shall also be the duty of a prisoner escort monitor to investigate and report to the Secretary of State on—
  - (a) any allegations made against prisoner custody officers acting in pursuance of prisoner escort arrangements; and
  - (b) any alleged breaches of discipline on the part of prisoners for whose delivery or custody such officers so acting are responsible.
- (3) Any expenses incurred by members of lay panels may be defrayed by the Secretary of State to such extent as he may with the approval of the Treasury determine.

### **Annotations:**

#### **Modifications etc. (not altering text)**

**C3** S. 81(1)(a)(2): transfer of functions (20.4.2000) by S.I. 2000/1160, art. 4(1)(2)(b)

#### **Commencement Information**

**I3** S. 81 wholly in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(4) and Sch. 3

## **82 Powers and duties of prisoner custody officers acting in pursuance of such arrangements.**

- (1) A prisoner custody officer acting in pursuance of prisoner escort arrangements shall have the following powers, namely—
  - (a) to search in accordance with rules made by the Secretary of State any prisoner for whose delivery or custody he is responsible in pursuance of the arrangements; and
  - (b) to search any other person who is in or is seeking to enter any place where any such prisoner is or is to be held, and any article in the possession of such a person.
- (2) The powers conferred by subsection (1)(b) above to search a person shall not be construed as authorising a prisoner custody officer to require a person to remove any of his clothing other than an outer coat, jacket or gloves.
- (3) A prisoner custody officer shall have the following duties as respects prisoners for whose delivery or custody he is responsible in pursuance of prisoner escort arrangements, namely—
  - (a) to prevent their escape from lawful custody;
  - (b) to prevent, or detect and report on, the commission or attempted commission by them of other unlawful acts;
  - (c) to ensure good order and discipline on their part;
  - (d) to attend to their wellbeing; and

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- (e) to give effect to any directions as to their treatment which are given by a court, and the Secretary of State may make rules with respect to the performance by prisoner custody officers of their duty under paragraph (d) above.
- [<sup>F14</sup>(4) Where a prisoner custody officer acting in pursuance of prisoner escort arrangements is on any premises in which the Crown Court or a magistrates' court is sitting, it shall be his duty to give effect to any order of that court made—
- (a) in the case of the Crown Court, under [<sup>F15</sup>section 142 of the Powers of Criminal Courts (Sentencing) Act 2000]](power of Court to order search of persons before it); or
  - (b) in the case of a magistrates' court, under section 80 of the 1980 Act (application of money found on defaulter).
- (5) The powers conferred by subsection (1) above, and the powers arising by virtue of subsections (3) and (4) above, shall include power to use reasonable force where necessary.
- (6) The power to make rules under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Annotations:**

**Amendments (Textual)**

**F14** S. 82(4) substituted (3.11.1994) by 1994 c. 33, s. 94(1).

**F15** Words in s. 82(4) substituted (25.8.2000) by 2000 c. 6, ss. 165, 168(1), Sch. 9 para. 146

**Commencement Information**

**I4** S. 82 wholly in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(4) and Sch. 3

**[83** <sup>F16</sup>**Breaches of discipline by prisoners under escort.**

- (1) This section applies where a prisoner for whose delivery or custody a prisoner custody officer has been responsible in pursuance of prisoner escort arrangements is delivered to a prison.
- (2) For the purposes of such prison rules as relate to disciplinary offences, the prisoner shall be deemed to have been—
  - (a) in the custody of the governor of the prison; or
  - (b) in the case of a contracted out prison, in the custody of its director,
 at all times during the period for which the prisoner custody officer was so responsible.
- (3) In the case of any breach by the prisoner at any time during that period of such prison rules as so relate, a disciplinary charge may be laid against him by the prisoner custody officer.
- (4) Nothing in this section shall enable a prisoner to be punished under prison rules for any act or omission of his for which he has already been punished by a court.
- (5) In this section “prison rules”, in relation to a prison situated in a part of the British Islands outside England and Wales, means rules made under any provision of the law of that part which corresponds to section 47 of the 1952 Act.]

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**Annotations:**

**Amendments (Textual)**

**F16** S. 83 substituted (3.11.1994) by 1994 c. 33, s.95.

*Contracted out prisons*

**[84** <sup>F17</sup> **Contracting out prisons etc.**

- (1) The Secretary of State may enter into a contract with another person for the provision or running (or the provision and running) by him, or (if the contract so provides) for the running by sub-contractors of his, of any prison or part of a prison.
- (2) While a contract under this section for the running of a prison or part of a prison is in force—
  - (a) the prison or part shall be run subject to and in accordance with sections 85 and 86 below, the 1952 Act (as modified by section 87 below) and prison rules; and
  - (b) in the case of a part, that part and the remaining part shall each be treated for the purposes of sections 85 to 88A below as if they were separate prisons.
- (3) Where the Secretary of State grants a lease or tenancy of land for the purposes of any contract under this section, none of the following enactments shall apply to it, namely—
  - (a) Part II of the <sup>M5</sup>Landlord and Tenant Act 1954 (security of tenure);
  - (b) section 146 of the <sup>M6</sup>Law of Property Act 1925 (restrictions on and relief against forfeiture);
  - (c) section 19(1), (2) and (3) of the <sup>M7</sup>Landlord and Tenant Act 1927 and the <sup>M8</sup>Landlord and Tenant Act 1988 (covenants not to assign etc.); and
  - (d) the <sup>M9</sup>Agricultural Holdings Act 1986.

In this subsection “lease or tenancy” includes an underlease or sub-tenancy.

- (4) In this Part—

“contracted out prison” means a prison or part of a prison for the running of which a contract under this section is for the time being in force;

“the contractor”, in relation to a contracted out prison, means the person who has contracted with the Secretary of State for the running of it; and

“sub-contractor”, in relation to a contracted out prison, means a person who has contracted with the contractor for the running of it or any part of it.]

**Annotations:**

**Amendments (Textual)**

**F17** S. 84 substituted (3.11.1994) by 1994 c. 33, s.96.

**Marginal Citations**

**M5** 1954 c. 56.  
**M6** 1925 c. 20.  
**M7** 1927 c. 36

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**M8** 1988 c. 26.  
**M9** 1986 c. 5.

## 85 Officers of contracted out prisons.

- (1) Instead of a governor, every contracted out prison shall have—
- (a) a director, who shall be a prisoner custody officer appointed by the contractor and specially approved for the purposes of this section by the Secretary of State; and
  - (b) a controller, who shall be a Crown servant appointed by the Secretary of State; and every officer of such a prison who performs custodial duties shall [<sup>F18</sup>(subject to section 86B)] be a prisoner custody officer who is authorised to perform such duties [<sup>F19</sup>or a prison officer who is temporarily attached to the prison].
- (2) <sup>F20</sup> . . . , the director shall have such functions as are conferred on him by the 1952 Act (as modified by section 87 below) or as may be conferred on him by prison rules.
- (3) <sup>F21</sup> . . . . .
- (4) The controller shall have such functions as may be conferred on him by prison rules and shall be under a duty—
- (a) to keep under review, and report to the Secretary of State on, the running of the prison by or on behalf of the director; and
  - (b) to investigate, and report to the Secretary of State on, any allegations made against prisoner custody officers performing custodial duties at the prison [<sup>F22</sup>or prison officers who are temporarily attached to the prison].
- (5) [<sup>F23</sup>The contractor and any sub-contractor of his shall each]be under a duty to do all that he reasonably can (whether by giving directions to the officers of the prison or otherwise) to facilitate the exercise by the controller of all such functions as are mentioned in or conferred by subsection (4) above.

### Annotations:

#### Amendments (Textual)

- F18** Words in s. 85(1) inserted (1.11.2007) by Offender Management Act 2007 (c. 21), ss. 18(3), 41(1); S.I. 2007/3001, art. 2(1)(c)
- F19** Words in s. 85(1) inserted (3.11.1994) by 1994 c. 33, s. 97(1).
- F20** Words in s. 85(2) repealed (1.11.2007) by Offender Management Act 2007 (c. 21), ss. 39, 41(1), Sch. 5 Pt. 2; S.I. 2007/3001, art. 2(1)(t)(iii)
- F21** S. 85(3) repealed (1.11.2007) by Offender Management Act 2007 (c. 21), ss. 19, 39, 41(1), Sch. 5 Pt. 2; S.I. 2007/3001, art. 2(1)(t)(iii)
- F22** Words in s. 85(4)(b) inserted (3.11.1994) by 1994 c. 33, s. 97(2).
- F23** Words in s. 85(5) substituted (3.11.1994) by 1994 c. 33, s. 101(1).

#### Commencement Information

- I5** S. 85 wholly in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(4) and Sch. 3



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## **86 Powers and duties of prisoner custody officers employed at contracted out prisons.**

- (1) A prisoner custody officer performing custodial duties at a contracted out prison shall have the following powers, namely—
  - (a) to search in accordance with prison rules any prisoner who is confined in the prison; and
  - (b) to search [<sup>F24</sup>in accordance with prison rules] any other person who is in or is seeking to enter the prison, and any article in the possession of such a person.
- (2) The powers conferred by subsection (1)(b) above to search a person shall not be construed as authorising a prisoner custody officer to require a person to [<sup>F25</sup>submit to an intimate search (within the meaning of section 164(5) of the Customs and Excise Management Act 1979)].
- (3) A prisoner custody officer performing custodial duties at a contracted out prison shall have the following duties as respects prisoners confined in the prison, namely—
  - (a) to prevent their escape from lawful custody;
  - (b) to prevent, or detect and report on, the commission or attempted commission by them of other unlawful acts;
  - (c) to ensure good order and discipline on their part; and
  - (d) to attend to their wellbeing.
- (4) The powers conferred by subsection (1) above, and the powers arising by virtue of subsection (3) above, shall include power to use reasonable force where necessary.

### **Annotations:**

#### **Amendments (Textual)**

**F24** Words in s. 86(1)(b) inserted (1.11.2007) by [Offender Management Act 2007 \(c. 21\)](#), **ss. 16(1)(a)**, 41(1); S.I. 2007/3001, **art. 2(1)(a)**

**F25** Words in s. 86(2) substituted (1.11.2007) by [Offender Management Act 2007 \(c. 21\)](#), **ss. 16(1)(b)**, 41(1); S.I. 2007/3001, **art. 2(1)(a)**

#### **Commencement Information**

**I6** S. 86 wholly in force at 31.10.1991 see [s. 102\(2\)\(3\)](#) and [S.I. 1991/2208](#), **art. 2(4)** and Sch. 3

## **[<sup>F26</sup>86A Power of prisoner custody officers to detain suspected offenders**

- (1) A prisoner custody officer performing custodial duties at a contracted out prison shall have the following powers in relation to any person who is in or is seeking to enter the prison (other than a prisoner confined in the prison).
- (2) Where the officer has reason to believe that the person is committing or has committed an offence under any of sections 39 to 40D of the Prison Act 1952, the officer may—
  - (a) require the person to wait with him for the arrival of a constable for such period as may be necessary (not exceeding two hours); and
  - (b) use reasonable force to prevent the person from making off while subject to a requirement under paragraph (a).
- (3) A person who makes off while subject to such a requirement is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

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- (4) In subsection (2), a reference to an offence under a particular provision includes a reference to any offence consisting of an attempt to commit, incitement or conspiracy to commit, or aiding, abetting, counselling or procuring the commission of, an offence under that provision.]

**Annotations:**

**Amendments (Textual)**

**F26** S. 86(A) inserted (1.11.2007) by *Offender Management Act 2007* (c. 21), **ss. 17(1)**, 41(1); S.I. 2007/3001, **art. 2(1)(b)**

**Modifications etc. (not altering text)**

**C4** S. 86A(2) modified (temp.) (1.11.2007) by *The Offender Management Act 2007 (Commencement No.1 and Transitional Provisions) Order 2007* (S.I. 2007/3001), **art. 2(2)**

**C5** S. 86A(4) modified (1.10.2008) by *Serious Crime Act 2007* (c. 27), **ss. 63(1)(2)**, 94, **Sch. 6 para. 19(b)**; S.I. 2008/2504, **art. 2(a)**

[<sup>F27</sup>**86B Powers of authorised persons to perform custodial duties**

- (1) In this section—
- “restricted activity” means an activity which is (apart from this section) required by section 85(1) to be carried out by an officer of a contracted-out prison who is—
- (a) a prisoner custody officer authorised to perform custodial duties; or
  - (b) a prison officer temporarily attached to the prison; and
- “worker”, in relation to a contracted out prison, means a person who works at the prison, other than an officer mentioned above.
- (2) The Secretary of State may by order specify descriptions of restricted activity that may be the subject of authorisations under subsection (3) given to workers at a contracted-out prison.
- (3) A worker at a contracted-out prison may carry out any activity of a description specified under subsection (2), but only if and to the extent that he is for the time being authorised to do so by the director of the prison.
- (4) The director may give such authorisation—
- (a) in general or specific terms, subject to any limitations or conditions he considers appropriate; and
  - (b) to one or more particular workers or to any worker who is (or comes to be) within a specified description of workers at the prison.
- (5) Nothing in an order or authorisation under this section is to be taken as authorising the use of force.
- (6) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

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**Annotations:**

**Amendments (Textual)**

**F27** S. 86(B) inserted (1.11.2007) by Offender Management Act 2007 (c. 21), ss. 18(2), 41(1); S.I. 2007/3001, art. 2(1)(c)

**87 Consequential modifications of 1952 Act.**

- (1) In relation to a contracted out prison, the provisions of the 1952 Act specified in subsections (2) to (8) below shall have effect subject to the modifications so specified.
- (2) In section 7(1) (prison officers), the reference to a governor shall be construed as a reference to a director and a controller.
- [<sup>F28</sup>(3) Section 8 (powers of prison officers) shall not apply (but this does not affect the powers of a prison officer who is temporarily attached to the prison).]
- (4) In sections [<sup>F29</sup>8A(3), (4) and (5)] 10(5), 12(3), 13(1) [<sup>F30</sup>16A][<sup>F31</sup>16B]and 19(1) and (3) (various functions of the governor of a prison), references to the governor shall be construed as references to the director.
- [<sup>F32</sup>(4A) Section 11 (ejection of prison officers and their families refusing to quit) shall not apply.]
- [<sup>F32</sup>(5) In section 12(1) and (2) (place of confinement of prisoners), any reference to a prisoner or prisoners shall be construed as a reference to a remand prisoner or prisoners.]
- (6) In section 13(2) (legal custody of prisoner), the reference to an officer of the prison shall be construed as a reference to a prisoner custody officer performing custodial duties at the prison [<sup>F33</sup>or a prison officer who is temporarily attached to the prison].
- (7) In section 14(2) (cells), the reference to a prison officer shall be construed as a reference to a prisoner custody officer performing custodial duties at the prison [<sup>F33</sup>or a prison officer who is temporarily attached to the prison].
- (8) Section 35 (vesting of prison property in the Secretary of State) shall have effect subject to the provisions of the contract entered into under section 84(1) above.

**Annotations:**

**Amendments (Textual)**

- F28** S. 87(3) substituted (1.11.2007) by Offender Management Act 2007 (c. 21), ss. 20(2), 41(1); S.I. 2007/3001, art. 2(1)(e)
- F29** Words in s. 87(4) inserted (1.11.2007) by Offender Management Act 2007 (c. 21), ss. 20(3), 41(1); S.I. 2007/3001, art. 2(1)(e)
- F30** Words in s. 87(4) inserted (9.1.1995) by 1994 c. 33, s. 168(2), Sch. 10 para. 69; S.I. 1994/3192, art. 2, Sch.
- F31** Words in s. 87(4) inserted (21.5.1997) by 1997 c. 38, ss.2, 3(2).
- F32** S. 87(4A) inserted (3.11.1994) by 1994 c. 33, s. 97(4).
- F33** Words in s. 87(6)(7) inserted (3.11.1994) by 1994 c. 33, s. 97(5).

**Modifications etc. (not altering text)**

**C6** S. 87 has effect (9.7.1992) by S.I. 1992/1656, art. 3 as if s. 87(5) were omitted (which S.I. is revoked (24.2.1993) by S.I. 1993/368, art. 2.)

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S. 87 has effect (24.02.1993) by S.I. 1993/368, art. 4 as if subsection (5) were omitted.

#### Commencement Information

**I7** S. 87 wholly in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(4) and Sch. 3

### 88 Intervention by the Secretary of State.

- (1) This section applies where, in the case of a contracted out prison, it appears to the Secretary of State—
- (a) that the director has lost, or is likely to lose, effective control of the prison or any part of it; and
  - (b) that the making of an appointment under subsection (2) below is necessary in the interests of preserving the safety of any person, or of preventing serious damage to any property.
- (2) The Secretary of State may appoint a Crown servant to act as governor of the prison for the period—
- (a) beginning with the time specified in the appointment; and
  - (b) ending with the time specified in the notice of termination under subsection (4) below.
- (3) During that period—
- (a) all the functions which would otherwise be exercisable by the director or the controller shall be exercisable by the governor;
  - (b) [<sup>F34</sup>the contractor and any sub-contractor of his shall each] do all that he reasonably can to facilitate the exercise by the governor of those functions; and
  - (c) the officers of the prison shall comply with any directions given by the governor in the exercise of those functions.
- (4) Where the Secretary of State is satisfied—
- (a) that the governor has secured effective control of the prison or, as the case may be, the relevant part of it; and
  - (b) that the governor's appointment is no longer necessary as mentioned in subsection (1)(b) above,
- he shall, by a notice to the governor, terminate the appointment at a time specified in the notice.
- (5) As soon as practicable after making or terminating an appointment under this section, the Secretary of State shall give a notice of the appointment, or a copy of the notice of termination, to the contractor, [<sup>F35</sup>any sub-contractor of his,]the director and the controller.

#### Annotations:

##### Amendments (Textual)

**F34** Words in s. 88(3)(b) substituted (3.11.1994) by 1994 c. 33, s. 101(2).

**F35** Words in s. 88(5) inserted (3.11.1994) by 1994 c. 33, s. 101(3).

##### Commencement Information

**I8** S. 88 wholly in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(4) and Sch. 3

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*[<sup>F36</sup>Contracted out functions*

**Annotations:**

**Amendments (Textual)**

**F36** S. 88A and cross heading inserted (3.11.1994) by 1994 c. 33, s.99.

<sup>F37</sup>**88A Contracted out functions at directly managed prisons.**

- (1) The Secretary of State may enter into a contract with another person for any functions at a directly managed prison to be performed by prisoner custody officers who are provided by that person and are authorised to perform custodial duties.
- (2) [<sup>F38</sup>Sections 86 and 86A] above shall apply in relation to a prisoner custody officer performing contracted out functions at a directly managed prison as [<sup>F39</sup>they apply] in relation to such an officer performing custodial duties at a contracted out prison.
- (3) In relation to a directly managed prison—
  - (a) the reference in section 13(2) of the 1952 Act (legal custody of prisoners) to an officer of the prison; and
  - (b) the reference in section 14(2) of that Act (cells) to a prison officer,shall each be construed as including a reference to a prisoner custody officer performing custodial duties at the prison in pursuance of a contract under this section.
- (4) Any reference in subsections (1) to (3) above to the performance of functions or custodial duties at a directly managed prison includes a reference to the performance of functions or such duties for the purposes of, or for purposes connected with, such a prison.
- (5) In this Part—

“contracted out functions” means any functions which, by virtue of a contract under this section, fall to be performed by prisoner custody officers;

“directly managed prison” means a prison which is not a contracted out prison.]

**Annotations:**

**Amendments (Textual)**

**F37** S. 88A and cross heading inserted (3.11.1994) by 1994 c. 33, s.99.

**F38** Words in s. 88A(2) substituted (1.11.2007) by Offender Management Act 2007 (c. 21), ss. 17(2)(a), 41(1); S.I. 2007/3001, art. 2(1)(b)

**F39** Words in s. 88A(2) substituted (1.11.2007) by Offender Management Act 2007 (c. 21), ss. 17(2)(b), 41(1); S.I. 2007/3001, art. 2(1)(b)

*Supplemental*

**89 Certification of prisoner custody officers**

- (1) In this Part “prisoner custody officer” means a person in respect of whom a certificate is for the time being in force certifying—

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- (a) that he has been approved by the Secretary of State for the purpose of performing escort functions or custodial duties or both; and
  - (b) that he is accordingly authorised to perform them.
- (2) The provisions of Schedule 10 to this Act shall have effect with respect to the certification of prisoner custody officers.
- (3) In this section and Schedule 10 to this Act—
- “custodial duties” means custodial duties at a [<sup>F40</sup>contracted out or directly managed prison];
  - “escort functions” means the functions specified in section 80(1) above.

**Annotations:**

**Amendments (Textual)**

**F40** Words in s. 89(3) substituted (3.11.1994) by 1994 c. 33, s. 101(4).

**Modifications etc. (not altering text)**

**C7** S. 89: transfer of functions (20.4.2000) by S.I. 2000/1160, art. 4(1)(2)(h)

**Commencement Information**

**I9** S. 89 wholly in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(4) and Sch. 3

**90 Protection of prisoner custody officers.**

- (1) Any person who assaults a prisoner custody officer
- [<sup>F41</sup>(a) acting in pursuance of prisoner escort arrangements;
  - (b) performing custodial duties at a contracted out prison; or
  - (c) performing contracted out functions at a directly managed prison,]
- shall be liable on summary conviction to fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding six months or to both.
- (2) Section 17(2) of the <sup>M10</sup>Firearms Act 1968 (additional penalty for possession of firearms when committing certain offences) shall apply to offences under subsection (1) above.
- (3) Any person who resists or wilfully obstructs a prisoner custody officer
- [(a) acting in pursuance of prisoner escort arrangements;
  - (b) performing custodial duties at a contracted out prison; or
  - (c) performing contracted out functions at a directly managed prison,]
- shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) For the purposes of this section, a prisoner custody officer shall not be regarded as acting in pursuance of prisoner escort arrangements at any time when he is not readily identifiable as such an officer (whether by means of a uniform or badge which he is wearing or otherwise).

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**Annotations:**

**Amendments (Textual)**

**F41** Words in s. 90(1)(3) substituted (3.11.1994) by 1994 c. 33, s. 101(5).

**Commencement Information**

**I10** S. 90 wholly in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(4) and Sch. 3

**Marginal Citations**

**M10** 1968 c. 27.

**91 Wrongful disclosure of information.**

(1) A person who

- [<sup>F42</sup>(a) is or has been employed (whether as a prisoner custody officer or otherwise) in pursuance of prisoner escort arrangements, or at a contracted out prison; or
- (b) is or has been employed to perform contracted out functions at a directly managed prison,]

shall be guilty of an offence if he discloses, otherwise than in the course of his duty or as authorised by the Secretary of State, any information which he acquired in the course of his employment and which relates to a particular prisoner.

(2) A person guilty of an offence under subsection (1) above shall be liable—

- (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.

**Annotations:**

**Amendments (Textual)**

**F42** Words in s. 91(1) substituted (3.11.1994) by 1994 c. 33, s. 101(6).

**Commencement Information**

**I11** S. 91 wholly in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(4) and Sch. 3

**92 Interpretation of Part IV.**

(1) In this Part [<sup>F43</sup>unless the context otherwise requires]—

“contracted out prison” and “the contractor” have the meanings given by [<sup>F44</sup>section 84(4)] above;

[<sup>F45</sup>“contracted out functions” and “directly managed prison” have the meanings given by section 88A(5) above;]

<sup>F46</sup> .....  
<sup>F47</sup> .....

“prison” includes a young offender institution or remand centre;

[<sup>F45</sup>“prison officer” means an officer of a directly managed prison;

“prison rules” means rules made under section 47 of the 1952 Act;]



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[<sup>F48</sup>“prisoner” means any person for the time being detained in legal custody as a result of a requirement imposed by a court or otherwise that he be so detained;]

“prisoner custody officer” has the meaning given by section 89(1) above;

“prisoner escort arrangements” has the meaning given by section 80(2) above.

[<sup>F45</sup>“sub-contractor” has the meaning given by section 84(4) above.]

[<sup>F49</sup>(1A) Any reference in this Part to custodial duties at a contracted out prison includes a reference to custodial duties in relation to a prisoner who is outside such a prison for temporary purposes.]

<sup>F50</sup>(2) . . . . .

(3) Sections 80, 81(1) and (2)(a), 82 and 89 to 91 above, subsection (1) above and Schedule 10 to this Act shall have effect as if—

(a) any reference in section 80(1), 81(1), 82 or 91 above to prisoners included a reference to persons [<sup>F51</sup>remanded [<sup>F52</sup>to local authority accommodation or youth detention accommodation under section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012]] by virtue of a security requirement imposed under section 23(4) of the 1969 Act (remands and committals to local authority accommodation); and

(b) any reference in [<sup>F51</sup>section 80(1)(c) or (e) or (1A)] above to a prison included a reference to [<sup>F53</sup>accommodation in which a person is or is to be accommodated pursuant to such a remand].

[<sup>F54</sup>(4) In sections 80, 82 and 83 above, “prison”—

(a) so far as relating to the delivery of prisoners to or from a prison situated in Scotland, includes a remand centre or young offenders institution within the meaning of section 19 of the <sup>M11</sup>Prisons (Scotland) Act 1989; and

(b) so far as relating to the delivery of prisoners to or from a prison situated in Northern Ireland, includes a remand centre or young offenders centre.]

#### Annotations:

#### Amendments (Textual)

**F43** Words in s. 92(1) inserted (3.11.1994) by 1994 c. 33, s. 101(7)(a).

**F44** Words in s. 92(1) substituted (3.11.1994) by 1994 c. 33, s. 101(7)(b).

**F45** Definitions in s. 92(1) inserted (3.11.1994) by 1994 c. 33, s. 101(7)(c)–(e).

**F46** S. 92(1): definition of “court-house” repealed (1.4.2005) by Courts Act 2003 (c. 39), ss. 109(1)(3), 110, Sch. 8 para. 352(2); Sch. 10, S.I. 2005/910, {art. 3(y)}

**F47** S. 92(1): definition of “court security officer” repealed (1.4.2005) by Courts Act 2003 (c. 39), ss. 109(1)(3), 110, Sch. 8 para. 352(2); Sch. 10, S.I. 2005/910, {art. 3(y)}

**F48** Definition in s. 92(1) substituted (3.11.1994) by 1994 c. 33, s. 93(5).

**F49** S. 92(1A) inserted (3.11.1994) by 1994 c. 33, s. 98.

**F50** S. 92(2) repealed (1.4.2005) by Courts Act 2003 (c. 39), ss. 109(1)(3), 110, Sch. 8 para. 352(3); Sch. 10, S.I. 2005/910, {art. 3(y)}

**F51** Words in s. 92(3) substituted (3.11.1994) by 1994 c. 33, s. 93(6).

**F52** Words in s. 92(3)(a) substituted (3.12.2012) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), Sch. 12 para. 31(a); S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

**F53** Words in s. 92(3)(b) substituted (3.12.2012) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), Sch. 12 para. 31(b); S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

**F54** S. 92(4) inserted (3.11.1994) by 1994 c. 33, s. 93(7).



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**Commencement Information**

- I12** S. 92 partly in force; s. 92(3) not in force; s. 92(1) in force at 31.10.1991 see s. 102(2)(3) and [S.I. 1991/2208, art. 2\(4\)](#) and Sch. 3; s. 92(2) in force at 1.4.1992 see [S.I. 1992/333, art. 2\(1\), Sch. 1](#)  
S. 92(3) shall come into force on the day appointed by the Secretary of State by order under s. 62(1) see [S.I. 1992/333, art. 2\(5\), Sch. 3](#)

**Marginal Citations**

- M11** [1989 c. 45.](#)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 24(2)(ba) inserted by 2013 c. 22 s. 26(7)
- s. 46(3)(aa) substituted for word by 2008 c. 4 s. 33(7)(b) (This amendment not applied to legislation.gov.uk. S. 33(2)(4)(7)(8) omitted (3.12.2012) by virtue of 2012 c. 10, s. 118(4)(a); S.I. 2012/2906, art. 2(d))
- s. 46ZA inserted by 2008 c. 4 s. 33(2) (This amendment not applied to legislation.gov.uk. S. 33(2)(4)(7)(8) omitted (3.12.2012) by virtue of 2012 c. 10, s. 118(4)(a); S.I. 2012/2906, art. 2(d))