

# **CRIMINAL JUSTICE (SCOTLAND) ACT 2003**

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## **EXPLANATORY NOTES**

### **THE ACT THE ACT IS IN 12 PARTS.**

#### **Part 4 – Prisoners**

#### **Custody and temporary detention**

#### ***Section 23 – Remand and committal of children and young persons***

107. **Section 23** amends the Prisons (Scotland) Act 1989 (“the 1989 Act”) and the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) to enable young persons to be remanded in young offenders institutions in certain circumstances. In this context, “young persons” means persons aged 14 or over but under 21 years of age.
108. A young offenders institution is defined in section 19(1)(b) of the 1989 Act as a place in which offenders sentenced to detention in a young offenders institution may be kept. Subsection (1) amends this definition to allow young offenders institutions also to hold persons not less than 14 but under 21 years of age who are remanded or committed for trial or sentence.
109. Subsection (2) amends section 40 of the 1989 Act so that persons committed to a young offenders institution are included in the provisions about persons who are unlawfully at large.
110. Section 51 of the 1995 Act deals with the remanding and committal of young persons. There are various provisions which set out how a court may deal with persons in different age groups and in different circumstances. Subsection (3) amends the section with the effect that:
  - persons aged 14 and 15 (unless they are certified as unruly or depraved) shall be committed to the local authority, which shall then place the young persons in secure accommodation or a suitable place of safety;
  - persons aged 16 and over who are subject to a supervision requirement may be committed to prison, to a local authority or to a young offenders institution; and
  - persons aged 16 and over who are not subject to a supervision requirement, and persons aged 14 and 15 who have been certified by the court as unruly or depraved, shall be committed to a remand centre, if the court has been notified that one is available, or to a young offenders institution or to a prison, if the court has not been so notified.
111. Subsection (4) removes the references to remand centres in section 51(2) of the 1995 Act. The effect of this is that, while the local authority to which a person is committed must be specified in a warrant, there is no similar requirement to specify a particular remand centre.
112. Subsection (5) inserts a new subsection (2A) into section 51 of the 1995 Act to provide that, subject to section 51(4), a person committed to a remand centre under any

provision of the 1995 Act shall continue to be held in a remand centre for the period of committal or until liberated in due course of law.

113. Subsection (6) amends section 51(3)(b) of the 1995 Act so that, where a committal to a local authority of a person aged 14 or 15 is revoked by a court on the basis that the person is unruly or depraved, the court may commit the person to either a young offenders institution or a prison.
114. Subsection (7) amends section 51(4) of the 1995 Act. That section currently gives sheriffs the power to revoke an order committing a person aged 14 or 15 to a remand centre or a prison if they no longer consider that the order is necessary. Instead, the young person can be committed to an appropriate local authority which may then place the person in secure accommodation or a suitable place of safety. The section is amended to give sheriffs the power also to revoke orders committing young persons aged 14 or 15 to a young offenders institution.
115. Subsection (8) adds a new subsection (5) to section 51 of the 1995 Act. The effect of the new subsection is that, where a court commits a person to prison or to a young offenders institution under section 51, the warrant issued by the court allows the Scottish Ministers to detain the person in either a prison or a young offenders institution, without the need for any further court order.

### ***Section 24 - Legal custody***

116. **Section 24** amends the Prisons (Scotland) Act 1989 (“the 1989 Act”) to remove the need for prison officers to remain with a prisoner at all times when he or she is in the custody of the police or of a police custody and security officer, and clarifies the relationship between section 13 of the 1989 Act and section 295 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”).
117. **Section 24(1)** amends section 13 of the 1989 Act, which defines “legal custody” for the purposes of that Act, to provide that:
  - the definition relates to prisoners and is without prejudice to section 295 of the 1995 Act; and
  - in addition to the existing circumstances in which a prisoner is in legal custody, a prisoner will also be in legal custody in terms of the 1989 Act if under the control of a constable or a police custody and security officer while outside a prison;
  - “constable” includes a constable under any part of the law of the United Kingdom and Channel Islands.
118. **Section 24(2)** amends section 295 of the 1995 Act to provide that it is without prejudice to section 13 of the 1989 Act.

### ***Section 25 – Temporary detention of person being returned to prison in England and Wales etc.***

119. **Section 25** inserts a new section 40B into the Prisons (Scotland) Act 1989 (“the 1989 Act”) to provide that a person who is unlawfully at large from another jurisdiction in the UK or the Channel Islands can be detained in a Scottish prison or young offenders institution until arrangements can be made for his/her return to the jurisdiction from which he/she is unlawfully at large.
120. Section 40(1) of the 1989 Act provides that any person in Scotland who is unlawfully at large from a Scottish prison or young offenders institution may be arrested by a constable or prison officer without a warrant and taken to the place in which he or she is required in accordance with the law to be detained.
121. By virtue of paragraph 17 of Schedule 1 to the Crime (Sentences) Act 1997, the provisions of section 40(1) of the 1989 Act and the corresponding provisions

*These notes relate to the Criminal Justice (Scotland) Act  
2003 (asp 7) which received Royal Assent on 26 March 2003*

for England, Wales and Northern Ireland extend throughout the UK and Channel Islands. However, under section 40(1), the power of a constable or prison officer in Scotland in relation to a person liable to be detained in another part of the UK or in the Channel Islands extends only to taking the person to the place in which he or she is required to be detained and not to detaining that person in a place in Scotland pending their being transported to the other jurisdiction. This has caused practical difficulties for the Scottish Prison Service, which section 25 will remove.