Criminal Justice (Scotland) Act 2016

2016 asp 1

PART 6

MISCELLANEOUS

PROSPECTIVE

CHAPTER 3

NOTIFICATION IF PARENT OF UNDER 18 IMPRISONED

107 Child's named person to be notified

(1) This section applies where a person is admitted to any penal institution for imprisonment or detention arising from—

(a) anything done by a court of criminal jurisdiction (including the imposition of a sentence, the making of an order or the issuing of a warrant),

(b) anything done under section 17 or 17A of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (as to the recall of a prisoner),

(c) anything done by virtue of the Extradition Act 2003 (particularly section 9(2) or 77(2) of that Act), or

(d) the operation of any other enactment concerning criminal matters (including penal matters).

(2) The Scottish Ministers must ensure that the person is asked—

(a) whether the person is a parent of a child, and

(b) if the person claims to be a parent of a child, to—

(i) state the identity of the child, and

(ii) give information enabling the identity of the service provider in relation to the child to be ascertained.

(3) If the identity of the service provider can be ascertained by or on behalf of the Scottish Ministers without undue difficulty in light of anything disclosed by the person, they must ensure that the service provider is notified of—

Status: *This version of this chapter contains provisions that are prospective.*
Changes to legislation: *Criminal Justice (Scotland) Act 2016, CHAPTER 3 is up to date with all changes known to be in force on or before 23 September 2024. 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) View outstanding changes*

(a) the fact of the person's admission to the penal institution,
(b) what has been stated by the person about the identity of the child, and
(c) such other matters disclosed by the person as appear to them to be relevant for the purpose of the exercise of the named person functions with respect to the child.

(4) In addition, the Scottish Ministers must ensure that the service provider is notified of anything disclosed by the person about the identity of any other child—
(a) of whom the person claims to be a parent, and
(b) the service provider in relation to whom is unknown to them.

(5) No requirement is imposed by subsection (2) if the person's admission to the penal institution is on—
(a) returning after—
(i) any unauthorised absence, or
(ii) any temporary release in accordance with prison rules, or
(b) being transferred from—
(i) any other penal institution,
(ii) any secure accommodation in which the person has been kept, or
(iii) any hospital in which the person has been detained, so as to be given medical treatment for a mental disorder, by virtue of Part VI of the 1995 Act or the Mental Health (Care and Treatment) (Scotland) Act 2003.

(6) Each of the requirements imposed by subsections (2) to (4) is to be fulfilled without unnecessary delay.

(7) The references in subsections (2) to (4) to the Scottish Ministers are to them in their exercise of functions in connection with the person's imprisonment or detention in the penal institution.

(8) The references in subsections (3) and (4) to disclosure by the person are to such disclosure in response to something asked under subsection (2).

108 Definition of certain expressions

In this Chapter—
"child" means a person who is under 18 years of age,
"named person functions" has the meaning given by section 32 of the Children and Young People (Scotland) Act 2014,
"parent" includes any person who—
(a) is a guardian of a child,
(b) is liable to maintain, or has care of, a child, or
(c) has parental responsibilities in relation to a child (as construed by reference to section 1(1) to (3) of the Children (Scotland) Act 1995),
"penal institution" means—
(a) any prison, other than—
(i) a naval, military or air force prison, or
(ii) any legalised police cells (within the meaning of section 14(1) of the Prisons (Scotland) Act 1989),

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(b) any remand centre (within the meaning of section 19(1)(a) of the Prisons (Scotland) Act 1989), or

(c) any young offenders institution (within the meaning of section 19(1)(b) of the Prisons (Scotland) Act 1989),

"prison rules" means rules made under section 39 of the Prisons (Scotland) Act 1989,

"secure accommodation" means accommodation provided in a residential establishment, approved in accordance with regulations made under section 78(2) of the Public Services Reform (Scotland) Act 2010, for the purpose of restricting the liberty of children,

"service provider" in relation to a child has the meaning given by section 32 of the Children and Young People (Scotland) Act 2014.

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

- Act expiry of affecting provision 2022 asp 8, sch. para. 15 by S.S.I. 2023/360 reg. 2(a)

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

- s. 38(7)(a) words renumbered as s. 38(7)(a) by 2024 asp 5 s. 15(6)(a)
- s. 38(7)(b) and word inserted by 2024 asp 5 s. 15(6)(b)
- s. 41(1A) inserted by 2024 asp 5 s. 15(7)(b)