



# Criminal Justice and Public Order Act 1994

## 1994 CHAPTER 33

### PART VIII

#### PRISON SERVICES AND THE PRISON SERVICE

### CHAPTER II

#### SCOTLAND

#### *Contracted out prisons*

#### **106 Contracting out of prisons.**

- (1) The [<sup>F1</sup>Scottish Ministers] 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 in Scotland.
- (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—
    - (i) sections 107 and 108 below; and
    - (ii) the 1989 Act and prison rules and directions made under or by virtue of that Act (all as modified by section 110 below); and
  - (b) in the case of a part, that part and the remaining part shall each be treated for the purposes of sections 107 to 112 below as if they were separate prisons.
- (3) Where the [<sup>F1</sup>Scottish Ministers] grants a lease for the purpose of any contract under this section, none of the following enactments shall apply to it—

*Changes to legislation: Criminal Justice and Public Order Act 1994, Cross Heading: Contracted out prisons is up to date with all changes known to be in force on or before 06 August 2023. 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) sections 4 to 7 of the <sup>M1</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (irritancy clauses); and
- (b) the <sup>M2</sup>Agricultural Holdings (Scotland) Act 1991 [<sup>F2</sup>and the Agricultural Holdings (Scotland) Act 2003 (asp 11)] .

In this subsection “lease” includes a sub-lease.

(4) In this Chapter—

“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 [<sup>F1</sup>Scottish Ministers] 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.

**Textual Amendments**

- F1** Words in s. 106 substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I**, para. 115(3); S.I. 1998/3178, **art. 2**
- F2** Words in s. 106(3)(b) inserted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), ss. 94, 95(3)(4), **Sch. para. 50** (with s. 95(1)); S.S.I. 2003/548, **art. 2(i)**

**Marginal Citations**

- M1** 1985 c.73.
- M2** 1991 c.55.

**107 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 [<sup>F3</sup>Scottish Ministers] and
- (b) a controller, who shall be a [<sup>F4</sup>member of the staff of the Scottish Administration] appointed by the [<sup>F3</sup>Scottish Ministers],

and every officer of such a prison who performs custodial duties shall be a prisoner custody officer who is authorised to perform such duties or a prison officer who is temporarily attached to the prison.

(2) Subject to subsection (3) below, the director shall have the same functions as are conferred on a governor by the 1989 Act and by prison rules.

(3) The director shall not—

- (a) have any function which is conferred on a controller by virtue of subsection (4) below;
- (b) inquire into a disciplinary charge brought against a prisoner, conduct the hearing of such a charge or make, remit or mitigate an award in respect of such a charge; or
- (c) except in cases of urgency, order the removal of a prisoner from association with other prisoners, the temporary confinement of a prisoner in a special cell or the application to a prisoner of any other special control or restraint.

---

**Changes to legislation:** Criminal Justice and Public Order Act 1994, Cross Heading: Contracted out prisons is up to date with all changes known to be in force on or before 06 August 2023. 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

---

- (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 [<sup>F5</sup>Scottish Ministers] on, the running of the prison by or on behalf of the director; and
  - (b) to investigate, and report to the [Scottish Ministers] on, any allegations made against prisoner custody officers performing custodial duties at the prison or prison officers who are temporarily attached to the prison.
- (5) 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.
- [<sup>F6</sup>(6) The director must designate one or more medical officers for the prison.
- (7) A person may be designated as a medical officer for the prison only if the person is a registered medical practitioner performing primary medical services for prisoners at the prison under the National Health Service (Scotland) Act 1978 (c.29).]

#### Textual Amendments

- F3** Words in s. 107(1) substituted (1.7.1999) by [S.I. 1999/1820, arts. 1\(2\), 4, Sch. 2, Pt. I, para. 115\(4\)\(a\)\(i\); S.I. 1998/3178, art. 2](#)
- F4** Words in s. 107(1) substituted (1.7.1999) by [S.I. 1999/1820, arts. 1\(2\), 4, Sch. 2 Pt. I para. 115\(4\)\(a\)\(ii\); S.I. 1998/3178, art. 2](#)
- F5** Words in s. 107(4) substituted (1.7.1999) by [S.I. 1999/1820, arts. 1\(2\), 4, Sch. 2 Pt. I para. 115\(4\)\(b\); S.I. 1998/3178, art. 2](#)
- F6** [S. 107\(6\)\(7\)](#) substituted for [s. 107\(6\)-\(8\)](#) (1.11.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\), ss. 110\(3\), 206\(1\); S.S.I. 2011/354, art. 2, sch.](#)

### 108 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 power to search—
- (a) any prisoner who is confined in the prison or for whose custody he is responsible; and
  - (b) 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 power 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, headgear and gloves.
- (3) A prisoner custody officer performing custodial duties at a contracted out prison shall, as respects the prisoners for whose custody he is responsible, have the duty—
- (a) to prevent their escape from legal 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.

---

*Changes to legislation:* Criminal Justice and Public Order Act 1994, Cross Heading: Contracted out prisons is up to date with all changes known to be in force on or before 06 August 2023. 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

---

- (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.

#### **109 Breaches of discipline by prisoners temporarily out of contracted out prison.**

- (1) This section applies where a prisoner custody officer who performs custodial duties at a contracted out prison is responsible for the custody of a prisoner who is outside the prison for temporary purposes.
- (2) For the purposes of such prison rules as relate to breaches of discipline the prisoner shall be deemed to have been in the custody of the director of the prison at all times during the period for which the prisoner custody officer was so responsible, and that officer may bring a charge of breach of such rules as so relate against the prisoner in respect of any such time.
- (3) Nothing in subsection (1) above shall render a prisoner liable to be punished under prison rules for any act or omission of his for which he has already been punished by a court.

#### **110 Consequential modifications of 1989 Act, prison rules and directions.**

- (1) In relation to a contracted out prison, the provisions specified in subsections (2) to (7) below shall have effect subject to the modifications so specified.
- (2) In section 3 of the 1989 Act (general superintendence of prisons)—
- [<sup>F7</sup>(a) subsection (1A) shall not apply;]
  - (b) subsection (3) shall not apply.
- (3) In sections [<sup>F8</sup>[<sup>F9</sup>3A(5) and (6) ] (power to authorise searches of persons providing medical services),][<sup>F10</sup>7B (functions of prison monitoring co-ordinators), 7D (functions of independent prison monitors), 7E (duty of the governor to assist with inspection and monitoring), 7G (SPT visits),] 9(5), 11(4), 15(1) and (3) (various functions of the governor of a prison), 33A (power of governor to delegate functions), 34 (duty of governor where prisoner dies), 39(8) and (12) (prison rules), 41(4) (detention of person suspected of bringing prohibited article into prison) [<sup>F11</sup>, 41B(3) (testing prisoners for drugs) and 41C(3) (testing prisoners for alcohol)] of that Act, in prison rules and in directions made by virtue of section 39(8) of that Act the reference to the governor shall be construed as a reference to the director.
- (4) In sections [<sup>F12</sup>[<sup>F13</sup>3A(5) and (6)] (power to carry out searches of persons providing medical services),][<sup>F14</sup>7 (Her Majesty's Chief Inspector of Prisons), 7B (functions of prison monitoring co-ordinators), 7D (functions of independent prison monitors), 7G (SPT visits),] 11(4) (execution of certain warrants by prison officers etc.), 13(b) (legal custody of prisoners), 33A (power of governor to delegate functions), 40(1) (persons unlawfully at large), 41(3), (4), (6) and (8) (detention of person suspected of bringing prohibited article into prison) [<sup>F15</sup>, 41B(1) (testing prisoners for drugs) and 41C(1) (testing prisoners for alcohol)] of that Act, the reference to an officer of a prison (or, as the case may be, a prison officer) shall be construed as a reference to a prisoner custody officer performing custodial duties at the prison or a prison officer temporarily attached to the prison.

<sup>F16</sup>(4A) .....

*Changes to legislation: Criminal Justice and Public Order Act 1994, Cross Heading: Contracted out prisons is up to date with all changes known to be in force on or before 06 August 2023. 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*

- (5) Section 36 of that Act (vesting of prison property in Secretary of State) shall have effect subject to the provisions of the contract entered into under section 106 above.
- (6) Sections <sup>[F17]</sup><sup>[F18]</sup>3A(1) and (2) (medical officers)](medical services),] 37 (discontinuance of prison), 41(2A) and (2B) (power to search for prohibited articles) and 41A (powers of search by authorised employees) of that Act shall not apply.
- (7) In prison rules, in subsection (8) of section 39 of that Act (directions supplementing prison rules) and in any direction made by virtue of that subsection, the reference to an officer of a prison (or, as the case may be, a prison officer) shall be construed as including a reference to a prisoner custody officer performing custodial duties at the prison.

#### Textual Amendments

- F7** S. 110(2)(a) substituted (1.7.1999) by [S.I. 1999/1820](#) arts. 1(2), 4, Sch. 2, Pt. I, para. 115(5); [S.I. 1998/3178](#), [art. 2](#)
- F8** Words in s. 110(3) inserted (1.1.1998) by [1997 c. 48](#), [s. 43\(5\)\(a\)](#); [S.I. 1997/2323](#), art. 4, [Sch. 2](#)
- F9** Words in s. 110(3) substituted (1.11.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), [ss. 110\(4\)\(a\)](#), 206(1); [S.S.I. 2011/354](#), art. 2, sch.
- F10** Words in s. 110(3) inserted (31.8.2015) by [The Public Services Reform \(Inspection and Monitoring of Prisons\) \(Scotland\) Order 2015](#) (S.S.I. 2015/39), art. 1, [sch. para. 3\(3\)\(a\)](#)
- F11** Words in s. 110(3) substituted (1.1.1998) by [1997 c. 48](#), s. 62(1), [Sch. 1 para. 15\(a\)](#); [S.I. 1997/2323](#), art. 4, [Sch. 2](#)
- F12** Words in s. 110(4) inserted (1.1.1998) by [1997 c. 48](#), [s. 43\(5\)\(b\)](#); [S.I. 1997/2323](#), art. 4, [Sch. 2](#)
- F13** Words in s. 110(4) substituted (1.11.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), [ss. 110\(4\)\(a\)](#), 206(1); [S.S.I. 2011/354](#), art. 2, sch.
- F14** Words in s. 110(4) inserted (31.8.2015) by [The Public Services Reform \(Inspection and Monitoring of Prisons\) \(Scotland\) Order 2015](#) (S.S.I. 2015/39), art. 1, [sch. para. 3\(3\)\(b\)](#)
- F15** Words in s. 110(4) substituted (1.1.1998) by [1997 c. 48](#), s. 62(1), [Sch. 1 para. 15\(b\)](#); [S.I. 1997/2323](#), art. 4, [Sch. 2](#)
- F16** S. 110(4A) repealed (1.11.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), [ss. 110\(4\)\(b\)](#), 206(1); [S.S.I. 2011/354](#), art. 2, sch.
- F17** Words in s. 110(6) inserted (1.1.1998) by [1997 c. 48](#), [s. 43\(5\)\(d\)](#); [S.I. 1997/2323](#), art. 4, [Sch. 2](#)
- F18** Words in s. 110(6) substituted (1.11.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (asp 13), [ss. 110\(4\)\(c\)](#), 206(1); [S.S.I. 2011/354](#), art. 2, sch.

## 111 Intervention by the Secretary of State.

- (1) This section applies where, in the case of a contracted out prison, it appears to the <sup>[F19]</sup>Scottish Ministers]—
- (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 preventing serious damage to any property.
- (2) The <sup>[F20]</sup>Scottish Ministers may appoint a member of the staff of the Scottish Administration] to act as governor of the prison for the period—
- (a) beginning with the time specified in the appointment; and

---

**Changes to legislation:** Criminal Justice and Public Order Act 1994, Cross Heading: Contracted out prisons is up to date with all changes known to be in force on or before 06 August 2023. 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

---

- (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) 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 [<sup>F21</sup>and the medical officer or officers for the prison] shall comply with any directions given by the governor in the exercise of those functions.
- (4) Where the [<sup>F22</sup>Scottish Ministers] 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 [<sup>F23</sup>Scottish Ministers] shall give a notice of the appointment, or a copy of the notice of termination, to the contractor, any sub-contractor of his, the director and the controller.

#### Textual Amendments

- F19** Words in s. 111(1) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 115(6)(a)**; S.I. 1998/3178, **art. 2**
- F20** Words in s. 111(2) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 115(6)(b)**; S.I. 1998/3178, **art. 2**
- F21** Words in s. 111(3)(c) inserted (1.11.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 110(5)**, 206(1); S.S.I. 2011/354, art. 2, sch.
- F22** Words in s. 111(4) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 115(6)(c)**; S.I. 1998/3178, **art. 2**
- F23** Words in s. 111(5) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 115(6)(d)**; S.I. 1998/3178, **art. 2**

**Changes to legislation:**

Criminal Justice and Public Order Act 1994, Cross Heading: Contracted out prisons is up to date with all changes known to be in force on or before 06 August 2023. 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.

[View outstanding changes](#)

**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. 51(10)(a)(ia) inserted by [2003 c. 44 Sch. 36 para. 11\(3\)](#)