



# Criminal Justice and Public Order Act 1994

## 1994 CHAPTER 33

### PART VIII

#### PRISON SERVICES AND THE PRISON SERVICE

### CHAPTER II

#### SCOTLAND

#### Extent Information

- E1** [Pt. VIII Chapter II](#) extends to Scotland only except that ss. 102(1) to (3), 104, 105 and 117 extend also to the British Islands so far as relating to the transfer of prisoners to or from premises situated in a part of the British Islands outside Scotland see [s. 172\(12\)](#)

#### *Prisoner escorts*

#### **102 Arrangements for the provision of prisoner escorts.**

- (1) The Secretary of State may make arrangements for any of the functions specified in subsection (2) below (“escort functions”) 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.
- (2) Those functions are—
  - (a) the transfer of prisoners from one set of relevant premises to another;
  - (b) the custody of prisoners held on court premises (whether or not they would otherwise be in the custody of the court) and their production before the court;

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- [<sup>F1</sup>(ba) the custody of prisoners held in a police station and their production, by electronic means from the station, before a court;]
- (c) the custody of prisoners temporarily held in a prison in the course of transfer from one prison to another; and
- (d) the custody of prisoners while they are outside a prison for temporary purposes.
- (3) In paragraph (a) of subsection (2) above, “relevant premises” means—
- (a) the premises of any court, prison, police station or hospital; or
- (b) the premises of any other place from or to which a prisoner may be required to be taken under the [<sup>F2</sup>Criminal Procedure (Scotland) Act 1995] or the [<sup>F3</sup>Mental Health (Care and Treatment) (Scotland) Act 2003];
- 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 Scotland.
- (4) 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.
- (5) Any person who, under a warrant or hospital order, is responsible for the performance of any such function as is mentioned in subsection (2) above shall be deemed to have complied with that warrant or order 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>F4</sup>or by a police custody and security officer in the performance of functions [<sup>F5</sup>under section 28 of the Police and Fire Reform (Scotland) Act 2012 (asp 8)]].
- (6) In this section—
- “hospital” has the same meaning as in the [<sup>F6</sup>Mental Health (Care and Treatment) (Scotland) Act 2003];
- “hospital order” means an order for a person’s detention in, or admission to and detention in, a hospital under [<sup>F7</sup>section [<sup>F8</sup>52D, 52M,] 53, 54 or [<sup>F9</sup>57A] of the Act of 1995]<sup>F10</sup>...; and
- “warrant” means a warrant for committal, a warrant for arrest, a [<sup>F11</sup>transfer for treatment direction under section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003] or any other warrant, order or direction under the [<sup>F12</sup>Act of 1995] or [<sup>F13</sup>the Mental Health (Care and Treatment) (Scotland) Act 2003] requiring a person to be taken to a particular place.

#### Extent Information

**E2** S. 102 extends to Scotland only; s. 102(1) to (3) extends also to the British Islands see s. 172(12)

#### Textual Amendments

- F1** S. 102(2)(ba) inserted (1.10.2022) by [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022 \(asp 8\)](#), **ss. 40(2)(a)**, 59(1)
- F2** Words in s. 102(3)(b) substituted (1.4.1996) by [1995 c. 40, ss. 5, 7\(2\)](#), **Sch. 4 para. 93(3)(a)** (with Sch. 3)
- F3** Words in s. 102(3)(b) substituted (27.9.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), arts. 1, 2, **Sch. 1 para. 24(2)(a)**
- F4** Words in s. 102(5) added (27.6.2003) by [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), **ss. 76(10)**, 89; [S.S.I. 2003/288](#), **art. 2**, Sch.

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- F5** Words in s. 102(5) substituted (S.) (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\), s. 129\(2\), sch. 7 para. 9\(2\); S.S.I. 2013/51, art. 2](#) (with transitional provisions and savings in S.S.I. 2013/121); and (E.W.N.I.) (1.4.2013) by [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Provisions and Modifications\) Order 2013 \(S.I. 2013/602\), art. 1\(2\), Sch. 1 para. 4\(2\)](#)
- F6** Words in s. 102(6) substituted (27.9.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\), arts. 1, 2, Sch. 1 para. 24\(2\)\(b\)](#)
- F7** Words in definition of "hospital order" in s. 102(6) substituted (1.4.1996) by [1995 c. 40, ss. 5, 7\(2\), Sch. 4 para. 93\(3\)\(b\)\(i\)](#) (with [Sch. 3](#))
- F8** Words in definition of "hospital order" in s. 102(6) inserted (27.9.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\), arts. 1, 2, Sch. 1 para. 24\(2\)\(b\)\(ii\)\(aa\)](#)
- F9** Word in definition of "hospital order" in s. 102(6) substituted (27.9.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\), arts. 1, 2, Sch. 1 para. 24\(2\)\(b\)\(ii\)\(bb\)](#)
- F10** Words in definition of "hospital order" in s. 102(6) omitted (27.9.2005) by virtue of [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\), arts. 1, 2, Sch. 1 para. 24\(2\)\(b\)\(ii\)\(cc\)](#)
- F11** Words in definition of "warrant" in s. 102(6) substituted (27.9.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\), arts. 1, 2, Sch. 1 para. 24\(2\)\(b\)\(iii\)\(aa\)](#)
- F12** Words in definition of "warrant" in s. 102(6) substituted (1.4.1996) by [1995 c. 40, ss. 5, 7\(2\), Sch. 4 para. 93\(3\)\(b\)\(ii\)](#) (with [Sch. 3](#))
- F13** Words in definition of "warrant" in s. 102(6) substituted (27.9.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\), arts. 1, 2, Sch. 1 para. 24\(2\)\(b\)\(iii\)\(bb\)](#)

### 103 Monitoring of prisoner escort arrangements.

- (1) Prisoner escort arrangements shall include the appointment of a prisoner escort monitor, that is to say, a <sup>F14</sup>[member of the staff of the Scottish Administration] whose duty it shall be—
  - (a) to keep the arrangements under review and to report on them to the <sup>F15</sup>[Scottish Ministers]
  - (b) to investigate and report to the <sup>F15</sup>[Scottish Ministers] on any allegations made against prisoner custody officers acting in pursuance of the arrangements; and
  - (c) to report to the <sup>F15</sup>[Scottish Ministers] on any alleged breaches of discipline on the part of prisoners for whose transfer or custody such officers so acting are responsible.

<sup>F16</sup>(2) .....]

#### Textual Amendments

- F14** Words in s. 103(1) substituted (1.7.1999) by [S.I. 1999/1820, arts. 1\(2\), 4, Sch. 2 Pt. I para. 115\(2\)\(a\); S.I. 1998/3178, art. 2](#)
- F15** Words in s. 103(1) substituted (1.7.1999) by [S.I. 1999/1820, arts. 1\(2\), 4, Sch. 2, Pt. I, para. 115\(2\)\(b\); S.I. 1998/3178, art. 2](#)
- F16** S. 103(2) repealed (S.) (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\(2\)](#)

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#### 104 Powers and duties of prisoner custody officers performing escort functions.

- (1) A prisoner custody officer acting in pursuance of prisoner escort arrangements shall have power to search—
  - (a) any prisoner for whose transfer or custody he is responsible in accordance with the arrangements; and
  - (b) 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 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 shall, as respects prisoners for whose transfer or custody he is responsible in pursuance of prisoner escort arrangements, 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;
  - (d) to attend to their wellbeing; and
  - (e) to give effect to any directions as to their treatment which are given by a court.
- (4) Where a prisoner custody officer acting in pursuance of prisoner escort arrangements is <sup>F17</sup>—
  - (a) on any premises in which a court of summary jurisdiction is sitting; or
  - (b) in a police station and has the custody of a prisoner who is, from the station, before a court of summary jurisdiction by electronic means,
 the officer] shall have the duty to give effect to any order of the court under <sup>F18</sup>section 212 of the Criminal Procedure (Scotland) Act 1995]requiring an offender to be searched.
- (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) Prison rules may make provision in relation to—
  - (a) the power conferred by subsection (1) above; and
  - (b) the duty imposed by subsection (3)(d) above.

##### Extent Information

**E3** [S. 104](#) extends to Scotland and the British Islands see [s. 172\(12\)](#)

##### Textual Amendments

**F17** Words in [s. 104\(4\)](#) substituted (1.10.2022) by [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022](#) (asp 8), [ss. 40\(2\)\(b\)](#), 59(1)

**F18** Words in [s. 104\(4\)](#) substituted (1.4.1996) by [1995 c. 40](#), [ss. 5](#), 7(2), [Sch. 4 para. 93\(4\)](#) (with [Sch. 3](#))

#### 105 Breaches of discipline by prisoners under escort.

- (1) Where a prisoner for whose transfer or custody a prisoner custody officer has been responsible in pursuance of prisoner escort arrangements is delivered to a prison,

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he shall be deemed, for the purposes of such prison rules as relate to breaches of discipline, 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 that 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.

- (2) 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.
- (3) In this section “prison rules”, in relation to a prison situated in a part of the British Islands outside Scotland, means rules made under any provision of the law of that part which corresponds to section 39 of the 1989 Act.

#### Extent Information

**E4** [S. 105](#) extends to Scotland and the British Islands see [s. 172\(12\)](#)

### *Contracted out prisons*

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

- (1) The [<sup>F19</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>F19</sup>Scottish Ministers] grants a lease for the purpose of any contract under this section, none of the following enactments shall apply to it—
  - (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>F20</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;

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“the contractor”, in relation to a contracted out prison, means the person who has contracted with the [<sup>F19</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

- F19** 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**
- F20** 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>F21</sup>Scottish Ministers] and
  - (b) a controller, who shall be a [<sup>F22</sup>member of the staff of the Scottish Administration] appointed by the [<sup>F21</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.
- (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>F23</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)



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to facilitate the exercise by the controller of all such functions as are mentioned in or conferred by subsection (4) above.

[<sup>F24</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

- F21** 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](#)
- F22** 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](#)
- F23** 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](#)
- F24** [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.
- (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

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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>F25</sup>(a) subsection (1A) shall not apply;]

(b) subsection (3) shall not apply.

- (3) In sections [<sup>F26</sup>[<sup>F27</sup>3A(5) and (6) ] (power to authorise searches of persons providing medical services),][<sup>F28</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>F29</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>F30</sup>[<sup>F31</sup>3A(5) and (6)] (power to carry out searches of persons providing medical services),][<sup>F32</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>F33</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>F34</sup>(4A) .....

- (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>F35</sup>[<sup>F36</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.



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### Textual Amendments

- F25** 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](#)
- F26** 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](#)
- F27** 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.
- F28** 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\(3\)\(a\)](#)
- F29** 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](#)
- F30** 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](#)
- F31** 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.
- F32** 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\(3\)\(b\)](#)
- F33** 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](#)
- F34** 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.
- F35** 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](#)
- F36** 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>F37</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>F38</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
  - (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>F39</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>F40</sup>Scottish Ministers] is satisfied—

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- (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>F41</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

- F37** 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](#)
- F38** 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](#)
- F39** 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.
- F40** 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](#)
- F41** 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](#)

#### *Contracted out functions*

### **112 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) Sections 108 and 109 above shall apply in relation to a prisoner custody officer performing contracted out functions at a directly managed prison as they apply in relation to such an officer performing custodial duties at a contracted out prison, but as if the reference in section 109(2) to the director of the contracted out prison were a reference to the governor of the directly managed prison.
- (3) In relation to a directly managed prison, the references to an officer of a prison (or, as the case may be, a prison officer) in the provisions specified in subsection (4) below 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) Those provisions are—
  - [<sup>F42</sup>(aa) section 3A(6) and (7) of the 1989 Act (searches of persons providing medical services);]
  - (a) section 11(4) of [<sup>F43</sup>that] Act (execution of certain warrants by prison officers etc.);
  - (b) section 13(b) of that Act (legal custody of prisoners);
  - (c) section 33A of that Act (power of governor to delegate functions);

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- (d) subsection (8) of section 39 of that Act (directions supplementing prison rules) and directions made by virtue of that subsection;
  - (e) section 40(1) of that Act (persons unlawfully at large);
  - (f) section 41(3), (4), (6) and (8) of that Act (prohibited articles); and
  - (g) prison rules.
- (5) Section 41(2A) and (2B) of the 1989 Act (search of person suspected of bringing prohibited article into prison) shall not apply in relation to a prisoner custody officer performing contracted out functions at a directly managed prison.
- (6) Any reference in the foregoing provisions of this section 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.
- (7) In this Chapter—
- “contracted out functions” means any functions which, by virtue of a contract under this section, fall to be performed by prisoner custody officers; and
- “directly managed prison” means a prison which is not a contracted out prison.

#### Textual Amendments

**F42** S. 112(4)(aa) inserted (1.1.1998) by 1997 c. 48, s. 43(6)(a); S.I. 1997/2323, art. 4, Sch. 2

**F43** Word in s. 112(4)(a) substituted (1.1.1998) by 1997 c. 48, s. 43(6)(b); S.I. 1997/2323, art. 4, Sch. 2

### *Provision of new prisons*

## **113 Provision of new prisons.**

- (1) The [<sup>F44</sup>Scottish Ministers] may declare to be a prison—
- (a) any building or part of a building built or adapted for the purpose; and
  - (b) any floating structure or part of such a structure constructed or adapted for the purpose,
- whether vested in, or under the control of, the [<sup>F44</sup>Scottish Ministers] or any other person.
- (2) Section 106(1) and subsection (1) above are without prejudice to the [<sup>F44</sup>Scottish Ministers] powers under the 1989 Act with respect to the provision of prisons.
- (3) A declaration under subsection (1) above—
- (a) shall have effect for the purposes of the 1989 Act and any other enactment (including an enactment contained in subordinate legislation);
  - (b) shall not be sufficient to vest the legal estate in any building or structure in the [<sup>F44</sup>Scottish Ministers]; and
  - (c) may be revoked by the [<sup>F44</sup>Scottish Ministers] at any time other than a time when the prison to which it relates is a contracted out prison.
- (4) Nothing in section 36 of the 1989 Act (prison property to be vested in the [<sup>F44</sup>Scottish Ministers]) shall require the legal estate in—

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- (a) any prison provided under a contract entered into under section 106(1) above;
  - (b) any prison declared to be such under subsection (1) above and not vested in the [<sup>F44</sup>Scottish Ministers]; or
  - (c) any heritable or moveable property belonging to any prison mentioned in paragraph (a) or (b) above,
- to be vested in the [<sup>F44</sup>Scottish Ministers].

#### Textual Amendments

**F44** Words in s. 113 substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2, Pt. I para. 115(7); S.I. 1998/3178, art. 2

### Supplemental

#### 114 Prisoner custody officers: general provisions.

- (1) In this Chapter “prisoner custody officer” means a person in respect of whom a certificate is for the time being in force certifying—
  - (a) that he has been approved by the [<sup>F45</sup>Scottish Ministers] for the purpose of performing escort functions or custodial duties or both; and
  - (b) that he is accordingly authorised to perform them.
- (2) Schedule 6 to this Act shall have effect with respect to the certification of prisoner custody officers.
- (3) Prison rules may make provision regarding the powers and duties of prisoner custody officers performing custodial duties.

#### Textual Amendments

**F45** Words in s. 114(1)(a) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 115(8); S.I. 1998/3178, art. 2

#### 115 Wrongful disclosure of information.

- (1) A person who—
  - (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 [<sup>F46</sup>Scottish Ministers], 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.

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#### Textual Amendments

- F46** Words in s. 115(1) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 115(9); S.I. 1998/3178, art. 2

### 116 Minor and consequential amendments.

<sup>F47</sup>(1) . . . . .

(2) Section 33 of that Act (miscellaneous duties of prison governor) shall cease to have effect.

(3) After section 33 of that Act there shall be inserted the following section—

#### “33A Power of governor to delegate functions.

Rules made under section 39 of this Act may permit the governor of a prison to authorise an officer of the prison, or a class of such officers, to exercise on his behalf such of the governor’s functions as the rules may specify.”.

(4) In section 39 of that Act (prison rules)—

- (a) in subsection (1), after “Act” there shall be inserted “or any other enactment”;
- (b) in subsection (8), for “the purpose so specified” there shall be substituted “any purpose specified in the rules”; and
- (c) after subsection (11), there shall be inserted the following subsection—

“(12) Rules made under this section may (without prejudice to the generality of subsection (1) above) confer functions on a governor.”.

#### Textual Amendments

- F47** S. 116(1) repealed (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(4)

### 117 Interpretation of Chapter II.

(1) In this Chapter, except where otherwise expressly provided—

“the 1989 Act” means the <sup>M3</sup>Prisons (Scotland) Act 1989;

“contracted out prison” and “the contractor” have the meanings given by section 106(4) above;

“contracted out functions” and “directly managed prison” have the meanings given by section 112(7) above;

“custodial duties” means custodial duties at a contracted out or a directly managed prison;

“escort functions” has the meaning given by section 102(1) above;

“prison” includes—

- (a) any prison other than a naval, military or air force prison; and
- (b) a remand centre or young offenders institution within the meaning of section 19 of the 1989 Act;

“prison officer” means an officer of a directly managed prison;

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“prison rules” means rules made under section 39 of the 1989 Act;

“prisoner” means any person who is in legal custody or is deemed to be in legal custody under [<sup>F48</sup>section 295 of the Criminal Procedure (Scotland) Act 1995];

“prisoner custody officer” has the meaning given by section 114(1) above;

“prisoner escort arrangements” has the meaning given by section 102(4) above; and

“sub-contractor” has the meaning given by section 106(4) above.

- (2) Any reference in this Chapter to custodial duties at a contracted out or directly managed prison includes a reference to custodial duties in relation to a prisoner who is outside such a prison for temporary purposes.
- (3) In sections 102(1) to (3), 104 and 105 above, “prison”—
- (a) so far as relating to the transfer of prisoners to or from a prison situated in England and Wales, includes a young offender institution and a remand centre; and
  - (b) so far as relating to the transfer of prisoners to or from a prison situated in Northern Ireland, includes a young offenders centre and a remand centre.

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#### Extent Information

**E5** [S. 117](#) extends to Scotland and the British Islands see [s. 172\(12\)](#)

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#### Textual Amendments

**F48** Words in definition of “prisoner” in [s. 117\(1\)](#) substituted (1.4.1996) by [1995 c. 40, ss. 5, 7\(2\)](#), [Sch. 4 para. 93\(5\)](#) (with [Sch. 3](#))

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#### Marginal Citations

**M3** [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. 51(10)(a)(ia) inserted by [2003 c. 44 Sch. 36 para. 11\(3\)](#)