



Criminal Justice and Public Order Act 1994

1994 CHAPTER 33

PART XII

MISCELLANEOUS AND GENERAL

Prisons: powers in relation to prisoners, visitors and others

151 Power to test prisoners for drugs

(1) After section 16 of the Prison Act 1952 there shall be inserted the following section—

“16A Testing prisoners for drugs

- (1) If an authorisation is in force for the prison, any prison officer may, at the prison, in accordance with prison rules, require any prisoner who is confined in the prison to provide a sample of urine for the purpose of ascertaining whether he has any drug in his body.
- (2) If the authorisation so provides, the power conferred by subsection (1) above shall include power to require a prisoner to provide a sample of any other description specified in the authorisation, not being an intimate sample, whether instead of or in addition to a sample of urine.

(3) In this section—

“authorisation” means an authorisation by the governor;

“drug” means any drug which is a controlled drug for the purposes of the Misuse of Drugs Act 1971;

“intimate sample” has the same meaning as in Part V of the Police and Criminal Evidence Act 1984;

“prison officer” includes a prisoner custody officer within the meaning of Part IV of the Criminal Justice Act 1991; and

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“prison rules” means rules under section 47 of this Act.”.

- (2) After section 41A of the Prisons (Scotland) Act 1989 there shall be inserted the following section—

“41B Testing prisoners for drugs

- (1) If an authorisation is in force for the prison, any officer of the prison may, at the prison, in accordance with rules under section 39 of this Act, require any prisoner who is confined in the prison to provide a sample of urine for the purpose of ascertaining whether he has any drug in his body.
- (2) If the authorisation so provides, the power conferred by subsection (1) above shall include power to require a prisoner to provide a sample of any other description specified in the authorisation, not being an intimate sample, whether instead of or in addition to a sample of urine.
- (3) In this section—
 - “authorisation” means an authorisation by the governor;
 - “drug” means any drug which is a controlled drug for the purposes of the Misuse of Drugs Act 1971; and
 - “intimate sample” means a sample of blood, semen or any other tissue fluid, saliva or pubic hair, or a swab taken from a person’s body orifice.”.

152 Powers of search by authorised employees in prisons

- (1) In the Prison Act 1952, after section 8, there shall be inserted the following section—

“8A Powers of search by authorised employees

- (1) An authorised employee at a prison shall have the power to search any prisoner for the purpose of ascertaining whether he has any unauthorised property on his person.
- (2) An authorised employee searching a prisoner by virtue of this section—
 - (a) shall not be entitled to require a prisoner to remove any of his clothing other than an outer coat, jacket, headgear, gloves and footwear;
 - (b) may use reasonable force where necessary; and
 - (c) may seize and detain any unauthorised property found on the prisoner in the course of the search.
- (3) In this section “authorised employee” means an employee of a description for the time being authorised by the governor to exercise the powers conferred by this section.
- (4) The governor of a prison shall take such steps as he considers appropriate to notify to prisoners the descriptions of persons who are for the time being authorised to exercise the powers conferred by this section.
- (5) In this section “unauthorised property”, in relation to a prisoner, means property which the prisoner is not authorised by prison rules or by the

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governor to have in his possession or, as the case may be, in his possession in a particular part of the prison.”.

- (2) In the Prisons (Scotland) Act 1989, after section 41, there shall be inserted the following section—

“41A Powers of search by authorised employees

- (1) An authorised employee at a prison shall have the power to search any prisoner for the purpose of ascertaining whether he has any unauthorised property on his person.
- (2) An authorised employee searching a prisoner by virtue of this section—
 - (a) shall not be entitled to require a prisoner to remove any of his clothing other than an outer coat, jacket, headgear, gloves and footwear;
 - (b) may use reasonable force where necessary; and
 - (c) may seize and detain any unauthorised property found on the prisoner in the course of the search.
- (3) In this section “authorised employee” means an employee of a description for the time being authorised by the governor to exercise the powers conferred by this section.
- (4) The governor of a prison shall take such steps as he considers appropriate to notify to prisoners the descriptions of employees who are for the time being authorised employees.
- (5) In this section—

“employee” means an employee (not being an officer of a prison) appointed under section 2(1) of this Act; and

“unauthorised property”, in relation to a prisoner, means property which the prisoner is not authorised by rules under section 39 of this Act or by the governor to have in his possession or, as the case may be, in his possession in a particular part of the prison.”.

153 Prohibited articles in Scottish prisons

- (1) Section 41 of the Prisons (Scotland) Act 1989 (unlawful introduction of tobacco, etc. into prison) shall be amended as follows.
- (2) In subsection (1), for the words from the beginning to “shall be guilty” there shall be substituted—
 - “(1) Any person who without reasonable excuse brings or introduces, or attempts by any means to bring or introduce, into a prison—
 - (a) any drug;
 - (b) any firearm or ammunition;
 - (c) any offensive weapon;
 - (d) any article to which section 1 of the Carrying of Knives etc. (Scotland) Act 1993 applies; or
 - (e) without prejudice to paragraphs (a) to (d) above, any article which is a prohibited article within the meaning of rules under section 39 of this Act,

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shall be guilty”.

(3) After subsection (2) there shall be inserted the following subsections—

“(2A) Where an officer of a prison has reasonable grounds for suspecting that a person who is in or is seeking to enter a prison has in his possession any article mentioned in paragraphs (a) to (e) of subsection (1) above he shall, without prejudice to any other power of search under this Act, have power to search that person and any article in his possession and to seize and detain any article mentioned in those paragraphs found in the course of the search.

(2B) The power conferred by subsection (2A) above—

- (a) shall be exercised in accordance with rules under section 39 of this Act;
- (b) shall not be construed as authorising the physical examination of a person’s body orifices;
- (c) so far as relating to any article mentioned in paragraph (c), (d) or (e) of subsection (1) above (and not falling within paragraph (a) or (b) of that subsection), shall not be construed as authorising an officer of a prison to require a person to remove any of his clothing other than an outer coat, jacket, headgear, gloves and footwear; and
- (d) shall include power to use reasonable force where necessary.”.

(4) For subsection (3) there shall be substituted the following subsections—

“(3) Where an officer of a prison has reasonable grounds for suspecting that any person has committed or is committing an offence under subsection (1) above he may, for the purpose of facilitating investigation by a constable into the offence, detain that person in any place in the prison in question and may, where necessary, use reasonable force in doing so.

(4) Detention under subsection (3) above shall be terminated not more than six hours after it begins or (if earlier)—

- (a) when the person is detained in pursuance of any other enactment or subordinate instrument;
- (b) when the person is arrested by a constable; or
- (c) where the governor of the prison or a constable investigating the offence concludes that there are no such grounds as are mentioned in subsection (3) above or the officer of the prison concludes that there are no longer such grounds,

and the person detained shall be informed immediately upon the termination of his detention that his detention has been terminated.

(5) Where a person has been released at the termination of a period of detention under subsection (3) above he shall not thereafter be detained under that subsection on the same grounds or on any grounds arising out of the same circumstances.

(6) At the time when an officer of a prison detains a person under subsection (3) above he shall inform the person of his suspicion, of the suspected offence and of the reason for the detention; and there shall be recorded—

- (a) the place where and the time when the detention begins;
- (b) the suspected offence;

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- (c) the time when a constable or an officer of the police authority is informed of the suspected offence and the detention;
 - (d) the time when the person is informed of his rights in terms of subsection (7) below and the identity of the officer of the prison so informing him;
 - (e) where the person requests such intimation as is specified in subsection (7) below to be sent, the time when such request is—
 - (i) made; and
 - (ii) complied with; and
 - (f) the time when, in accordance with subsection (4) above, the person's detention terminates.
- (7) A person who is being detained under subsection (3) above, other than a person in respect of whose detention subsection (8) below applies, shall be entitled to have intimation of his detention and of the place where he is being detained sent without delay to a solicitor and to one other person reasonably named by him and shall be informed of that entitlement when his detention begins.
- (8) Where a person who is being detained under subsection (3) above appears to the officer of the prison to be under 16 years of age, the officer of the prison shall send without delay to the person's parent, if known, intimation of the person's detention and of the place where he is being detained; and the parent—
- (a) in a case where there is reasonable cause to suspect that he has been involved in the alleged offence in respect of which the person has been detained, may; and
 - (b) in any other case, shall,
- be permitted access to the person.
- (9) The nature and extent of any access permitted under subsection (8) above shall be subject to any restriction essential for the furtherance of the investigation or the well-being of the person.
- (10) In this section—
- “drug” means any drug which is a controlled drug for the purposes of the Misuse of Drugs Act 1971;
 - “firearm” and “ammunition” have the same meanings as in the Firearms Act 1968;
 - “offensive weapon” has the same meaning as in the Prevention of Crime Act 1953; and
 - “parent” includes a guardian and any person who has actual custody of a person under 16 years of age.”.