

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 3: Sentencing and punishment of offenders

Chapter 6: Prisoners etc

Section 129: Employment in prisons: deductions etc from payments to prisoners

697. **Section 129** makes amendments to the Prison Act 1952 (“the 1952 Act”) in respect of the employment and payment of prisoners and persons required to be detained in remand centres, secure training centres and young offender institutions. It makes particular provision in respect of reductions in, deductions from and levies on the earnings of prisoners and persons in young offender institutions who are aged 18 or over.
698. **Subsection (1)** removes ‘employment’ from the existing rule-making power in section 47(1) of the 1952 Act. Rules about employment of prisoners and persons in young offender institutions who are aged 18 or over are to be made under the power in new section 47A inserted by **subsection (4)**
699. **Subsection (2)** amends section 47 of the 1952 Act by inserting new subsection (1A) so that the Secretary of State may continue to make rules about the employment of persons required to be detained in remand centres or secure training centres and persons aged 17 years or younger required to be detained in young offender institutions (see subsection (11)(a)).
700. **Subsection (4)** inserts a new section 47A into the 1952 Act. This confers a number of new powers on the Secretary to State to make prison rules (to which the negative Parliamentary procedure will apply):
- about the employment of prisoners and the making of payments to prisoners in respect of work or other activities undertaken by them (or in respect of their unemployment);
 - about the making, by the governor, of reductions in such payments to a prisoner.
 - about the ways in which a governor may use the amounts generated by way of reductions – which can be for the benefit of victims or communities, for the purposes of the rehabilitation of offenders, or for other purposes prescribed in rules.
 - enabling amounts generated by way of reductions for making payments into an account of a kind to be prescribed. (It is envisaged that such accounts will be for the benefit of the prisoner. The accounts are to be of a kind prescribed in rules, and the rules may also make provision for making payments out of the account to

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the prisoner before or after the prisoner's release on fulfilment by the prisoner of conditions which are prescribed in rules.);

- to allow for payments of amounts generated by way of reductions to be made after the deduction of amounts of a prescribed description. This is to enable running and administration costs to be taken into account;
- to allow for the making deductions from, or imposing levies on, payments to a prisoner for work, other activities, or in respect of unemployment, where those payments are not made by or on behalf of the governor. It is envisaged that this power will apply in respect of a prisoner's earnings etc. from a range of sources other than the governor;
- to provide for either the governor or the Secretary of State to make deductions or impose levies but that, where the governor does so, the governor must pay amounts generated to the Secretary of State.

701. *Subsections (7) and (8)* of section 129 amend the Prisoners' Earnings Act 1996 to remove its application in England and Wales. It remains applicable in Scotland.
702. *Subsection (12)* gives the Secretary of State a power to make payments in connection with measures that appear to him to be intended to rehabilitate offenders, prevent re-offending or limit the impact of crime.
703. *Subsection (13)* provides that in making such payments, the Secretary of State must have regard to the amounts generated from reductions, deductions and levies made or imposed by virtue of rules under new section 47A.

Section 130: Transfer of prisoners: prosecution of other offences

704. **Section 130** inserts new section 3A into the Repatriation of Prisoners Act 1984. New section 3A will provide prisoners transferred to England, Wales or Scotland, in accordance with international prisoner transfer arrangements, with statutory protection from prosecution in Great Britain in relation to offences committed prior to transfer taking place, except in specified circumstances.
705. *Subsection (3)* of new section 3A sets out the circumstances in which prisoners transferred to England, Wales or Scotland pursuant to international prisoner transfer arrangements may be prosecuted in Great Britain for offences committed prior to transfer taking place.

Section 131: Transit of prisoners

706. **Section 131** inserts new sections 6A, 6B, 6C and 6D into the Repatriation of Prisoners Act 1984. These new sections will enable the Isle of Man, the Channel Islands or countries with which the UK has prisoner transfer arrangements to transfer, via an airport or port in England, Wales or Scotland, a prisoner serving a sentence of imprisonment to or from a third country, for the purpose of the serving that sentence.
707. New sections 6A and 6B provide the relevant Minister responsible for executing the transit with the power to hold a prisoner who is in transit through England, Wales or Scotland pursuant to prisoner transfer arrangements for as long is reasonable and necessary to enable the transit to take place. They also provides a power to search a prisoner taken into detention for the purpose of transit. They also confer ancillary powers on the Minister to designate any person as having the powers of a constable for the purpose of executing a transit order and confer a power on a constable or any person so designated with a power to arrest the prisoner without warrant should that prisoner escape or be unlawfully at large.
708. New section 6C sets out the procedure to be followed where a prisoner enters the United Kingdom through one jurisdiction and exits through another. Transit may only take

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place in these circumstances where the relevant Minister in each jurisdiction concerned consents to transit.

709. New section 6D provides a power to detain a prisoner who makes an unscheduled stop in England, Wales or Scotland in the course of being transferred between two other countries or territories, for a period of no more than 72 hours, or until a transit order is issued, as long as the UK has prisoner transfer arrangements with one of those two countries or territories.