



Prisons (Scotland) Act 1989

1989 CHAPTER 45

Miscellaneous

33 Duties of governor of prison.

The governor of a prison shall—

- (a) as far as practicable, visit the whole of the prison and see every prisoner at least once in every 24 hours, and, in default of such daily visits, state in his journal the extent of and the reason for such default;
- (b) as soon as practicable draw the attention of the medical officer to any prisoner whose state of mind or body appears to require attention and carry into effect the written directions of the medical officer as to alterations in the discipline or treatment of such prisoner;
- (c) notify the medical officer without delay of the illness of any prisoner, and deliver to him daily a list of prisoners complaining of illness;
- (d) deliver to the chaplain and to the medical officer lists of prisoners confined to their cells; and
- (e) keep records regarding the commitment to and liberation from the prison of prisoners committed thereto in pursuance of criminal warrants and when so required exhibit such records to the sheriff within whose jurisdiction the prison is situated.

VALID FROM 03/02/1995

[^{F1}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.]

Status: Point in time view as at 18/08/1993. This version of this cross heading contains provisions that are not valid for this point in time.
Changes to legislation: There are currently no known outstanding effects for the Prisons (Scotland) Act 1989, Cross Heading: Miscellaneous. (See end of Document for details)

Textual Amendments

F1 S. 33A inserted (3.2.1995) by 1994 c. 33, s. 116(3); S.I. 1995/127, art. 2(1), Sch. 1

Modifications etc. (not altering text)

C1 S. 33A modified (3.2.1995) by 1994 c. 33, ss. 110(3)(4), 112(3)(4)(c)(6); S.I. 1995/127, art. 2(1), Sch. 1

34 Notification of and inquiry into death of prisoner.

The governor of a prison shall, in the event of the death of a prisoner, give immediate notice thereof to the procurator fiscal within whose area the prison is situated, and to the visiting committee, and, where practicable, to the nearest relative of the prisoner.

Modifications etc. (not altering text)

C2 S. 34 modified (3.2.1995) by 1994 c. 33, s. 110(3); S.I. 1995/127, art. 2(1), Sch. 1
S. 34 modified (18.9.1998) by S.I. 1998/2251, art. 16(3)

35 Return of warrants for or sentences of imprisonment.

Where a warrant for imprisonment is granted or a sentence of imprisonment is pronounced by any court, a return thereof shall be made by the clerk of the court to the Secretary of State at such time and in such form as he may determine.

36 Legal estate in prison.

The legal estate in every prison and in all heritable or moveable property belonging to a prison shall be vested in the Secretary of State and may be disposed of in such manner as the Secretary of State, with the consent of the Treasury, may determine.

Modifications etc. (not altering text)

C3 S. 36 modified (3.2.1995) by 1994 c. 33, s. 110(5); S.I. 1995/127, art. 2(1), Sch. 1
S. 36 excluded (3.2.1995) by 1994 c. 33, s. 113(4); S.I. 1995/127, art. 2(1), Sch. 1
S. 36 excluded (18.9.1998) by S.I. 1998/2251, art. 16(1)

37 Discontinuance of prison.

- (1) The Secretary of State may by order discontinue any prison, and any prison so discontinued shall be sold or otherwise disposed of as the Secretary of State, with the consent of the Treasury, may direct.
- (2) For the purposes of this section a prison shall not be deemed to be discontinued by reason only of its appropriation for use as a remand centre or young offenders institution.

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Changes to legislation: There are currently no known outstanding effects for the Prisons (Scotland) Act 1989, Cross Heading: Miscellaneous. (See end of Document for details)

Modifications etc. (not altering text)

- C4** S. 37 modified (3.2.1995) by 1994 c. 33, s. 110(6); S.I. 1995/127, art. 2(1), Sch. 1
S. 37 excluded (18.9.1998) by S.I. 1998/2251, art. 16(1)

38 Acquisition of land for prisons.

- (1) The Secretary of State may purchase by agreement, or compulsorily, any land required for the alteration, enlargement or rebuilding of a prison or for building or establishing a new prison or for any other purpose connected with the management of a prison (including the provision of accommodation for officers or servants employed therein).
- (2) For the purpose of the compulsory purchase of land by the Secretary of State under the foregoing subsection, the ^{M1}Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply as if section 1(1)(d) (which refers to the compulsory purchase of land by the Secretary of State under the ^{M2}National Health Service (Scotland) Act 1972) included a reference to the foregoing subsection.
- (3) In relation to the purchase of land by agreement under this section, the Lands Clauses Acts (except the provisions relating to the purchase of land otherwise than by agreement and the provisions relating to access to the special Act, and except sections 120 to 125 (sale of superfluous lands) of the ^{M3}Lands Clauses Consolidation (Scotland) Act 1845) shall be incorporated with this section, and in construing those Acts as so incorporated this section shall be deemed to be the special Act and references to the promoters of the undertaking shall be construed as references to the Secretary of State.

Modifications etc. (not altering text)

- C5** S. 38 excluded (18.9.1998) by S.I. 1998/2251, art. 16(1)

Marginal Citations

- M1** 1947 c. 42.
M2 1972 c. 58.
M3 1845 c. 19.

39 Rules for the management of prisons and other institutions.

- (1) The Secretary of State may make rules for the regulation and management of prisons, remand centres and young offenders institutions respectively, ^{F2}. . . for the classification, treatment, employment, discipline and control of persons required to be detained therein [^{F3}and for any other matter as respects which it is provided in this Act that rules may be made under this section].
- (2) Rules made under this section shall make provision for ensuring that a person who is charged with any offence under the rules shall be given a proper opportunity of presenting his case.
- (3) Rules made under this section may provide for the training of particular classes of persons and their allocation for that purpose to any prison or other institution in which they may lawfully be detained.

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- (4) Rules made under this section may provide for the appointment of a convenient prison or prisons—
- (a) in which prisoners are to be confined before and during trial, or at either of such times;
 - (b) in which particular classes of prisoners may be confined;
 - (c) in which civil prisoners may be confined during the period of their imprisonment.
- (5) Rules made under this section shall provide for the special treatment of the following persons whilst required to be detained in a prison, that is to say—
- (a) any appellant within the meaning of section 279 of the 1975 Act pending the determination of his appeal;
 - (b) any other person detained in a prison, not being a person serving a sentence imposed on conviction of an offence.
- (6) Rules made under this section may provide for the temporary release of persons serving a sentence of imprisonment or detention.
- [^{F4}(7) Rules made under this section may provide for the award of additional days, not exceeding in aggregate one-sixth of the prisoner's sentence—
- (a) to a short-term or long-term prisoner within the meaning of Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993; or
 - (b) conditionally on his eventually becoming such a prisoner, to a person remanded in custody,
- where he is guilty, under such rules, of a breach of discipline.]
- [^{F5}(8) Without prejudice to any power to make standing orders or to issue directions or any other kind of instruction, rules made under this section may authorise the Secretary of State to supplement the rules by making provision by directions for any purpose specified in the rules; and rules so made or directions made by virtue of this subsection may authorise the governor, or any other officer, of a prison, or some other person or class of persons specified in the rules or directions, to exercise a discretion in relation to the purpose so specified.
- (9) Rules made under this section may permit directions made by virtue of subsection (8) above to derogate (but only to such extent, or in such manner, as may be specified in the rules) from provisions of rules so made and so specified.
- (10) Any reference, however expressed, in any enactment other than this section to rules made under this section shall be construed as including a reference to directions made by virtue of subsection (8) above.
- (11) Directions made by virtue of subsection (8) above shall be published by the Secretary of State in such manner as he considers appropriate.]

Textual Amendments

- F2** Word in s. 39(1) repealed (18.8.1993) by 1993 c. 9, s. 47(1)(3), Sch. 5 para. 6(6)(a), **Sch. 7 Pt.I** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(2), **Sch.1**.
- F3** Words in s. 39(1) added (18.8.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 6(6)(b)** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(2), **Sch.1**.
- F4** S. 39(7) added (18.8.1993) by 1993 c. 9, s.24 (with ss. 5(1), 6(1), 10, 27 and 47(2), Sch. 6 paras. 1, 2, 6 and 7); S.I. 1993/2050, art. 3(2), **Sch.1**.

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Changes to legislation: There are currently no known outstanding effects for the Prisons (Scotland) Act 1989, Cross Heading: Miscellaneous. (See end of Document for details)

F5 S. 39(8)-(11) added (18.8.1993) by 1993 c. 9, s.25 (with ss. 5(1), 6(1), 10, 27 and 47(2), Sch. 6 paras. 1, 2, 6 and 7); S.I. 1993/2050, art. 3(2), Sch.1.

40 Persons unlawfully at large.

- (1) Any person who, having been sentenced to imprisonment or to detention in a young offenders institution, or having been committed to a prison or remand centre, is unlawfully at large may be arrested by a constable or prison officer without warrant and taken to the place in which he is required in accordance with law to be detained.
- (2) Where any person sentenced to imprisonment or to detention in a young offenders institution is, at any time during the period for which he is liable to be detained in pursuance of the sentence, absent, otherwise than with lawful authority, from the prison or young offenders institution, as the case may be, then, unless the Secretary of State otherwise directs, no account shall be taken, in calculating the period for which he is liable to be so detained, of any time during which he is so absent:
Provided that this subsection shall not apply to any period during which any such person as aforesaid is detained in pursuance of an order of any court in the United Kingdom in a prison, young offenders institution or remand centre.
- (3) Without prejudice to section 69(2) of the ^{M4}Criminal Justice Act 1967, in subsection (2) above references to a prison shall be construed as including references to a place which is the subject of a direction of the Secretary of State under section 206 of the 1975 Act (detention of children convicted on indictment).
- (4) For the purposes of this section, a person who, after being temporarily released in pursuance of rules made under section 39(6) of this Act, is at large at any time during the period for which he is liable to be detained in pursuance of his sentence shall be deemed to be unlawfully at large if the period for which he was temporarily released has expired or if an order recalling him has been made by the Secretary of State in pursuance of the rules.

Marginal Citations

M4 1967 c. 80.

VALID FROM 01/04/1996

[^{F6}40A Warrants for arrest of escaped prisoners.

- (1) On an application being made to a justice alleging that any person is an offender unlawfully at large from a prison or other institution to which this Act or, as the case may be, the Prison Act 1952 or the Prison Act (Northern Ireland) 1953 applies in which he is required to be detained after being convicted of an offence, the justice may issue a warrant to arrest him and bring him before any sheriff.
- (2) Where a person is brought before a sheriff in pursuance of a warrant for his arrest under this section, the sheriff shall, if satisfied that he is the person named in the warrant and if satisfied that he is an offender unlawfully at large as mentioned in subsection (1) above, order him to be returned to the prison or other institution where he is required or liable to be detained.]

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Textual Amendments

F6 S. 40A inserted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 75(6)**

Modifications etc. (not altering text)

C6 S. 40A excluded (18.9.1998) by S.I. 1998/2251, **art. 16(1)**

41 Unlawful introduction of tobacco, etc., into prison.

- (1) Any person who brings, or introduces or attempts by any means to bring or introduce, into a prison any letter, tobacco, spirits or other article not allowed by rules made under section 39 of this Act shall be guilty of an offence and shall be liable on conviction by a court of summary jurisdiction to a fine not exceeding level 3 on the standard scale or to imprisonment for any period not exceeding 30 days.
- (2) For the purposes of the foregoing subsection a person shall be deemed to introduce an article into a prison if he conveys it to a prisoner outside the prison or places it anywhere outside the prison with intent that it shall come into the possession of a prisoner.
- (3) It shall be lawful for any officer of the prison to apprehend an offender against this section.

VALID FROM 03/02/1995

[^{F7}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

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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.]

Textual Amendments

F7 S. 41A inserted (3.2.1995) by 1994 c. 33, s. 152(2); S.I. 1995/127, art. 2(1), **Sch. 1**

Modifications etc. (not altering text)

C7 S. 41A modified (3.2.1995) by 1994 c. 33, s. 110(6); S.I. 1995/127, art. 2(1), **Sch. 1**
S. 41A excluded (18.9.1998) by S.I. 1998/2251, art. 16(1)

VALID FROM 09/01/1995

[^{F8}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 ^{M5}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.]

Textual Amendments

F8 S. 41B inserted (9.1.1995) by 1994 c. 33, s. 151(2); S.I. 1994/3192, art. 2, **Sch.**

Modifications etc. (not altering text)

C8 S. 41B(1) modified (3.2.1995) by 1994 c. 33, s. 110(4); S.I. 1995/127, art. 2(1), **Sch. 1**
C9 S. 41B(3) modified (3.2.1995) by 1994 c. 33, s. 110(3); S.I. 1995/127, art. 2(1), **Sch. 1**

Marginal Citations

M5 1971 c. 38.

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VALID FROM 01/01/1998

[^{F9}41C Testing of prisoners for alcohol.

- (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, and whom he reasonably believes to have taken alcohol, to provide a sample of breath for the purpose of ascertaining whether he has any alcohol in his body.
- (2) If the authorisation so provides, the power conferred by subsection (1) above shall include the 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 breath.
- (3) In this section—
 - “authorisation” means an authorisation by the governor; and
 - “intimate sample” means a sample of blood, semen or other tissue fluid, saliva or pubic hair, or a swab taken from a person’s body orifice.]

Textual Amendments

- F9** S. 41C inserted after s. 41B (1.1.1998 with application as mentioned in [s. 33\(1\)-\(8\)](#) of the amending Act) by [1997 c. 48, s. 42](#); [S.I. 1997/2323, art. 4, Sch. 2](#)

VALID FROM 01/01/1998

[^{F10}41D Unlawful disclosure of information by medical officer.

- (1) This section applies to—
 - (a) a registered medical practitioner appointed under paragraph (a) of section 107(6) of the ^{M6}Criminal Justice and Public Order Act 1994 (medical services in contracted out prisons);
 - (b) a registered medical practitioner providing appropriate medical services under an arrangement entered into under section 3A(2)(b) of this Act or paragraph (b) of the said section 107(6); and
 - (c) any person acting under the supervision of such a practitioner.
- (2) Any person to whom this section applies who discloses, otherwise than in the course of his duty or as authorised by the Secretary of State, any information relating to a particular prisoner which he has acquired in the course of carrying out his duties shall be guilty of an offence.
- (3) A person guilty of an offence under subsection (2) 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

F10 S. 41D inserted after s. 41B (1.1.1998 with application as mentioned in s. 33(1)-(8) of the amending Act) by 1997 c. 48, s. 44(1); S.I. 1997/2323, art. 4, Sch. 2

Marginal Citations

M6 1994 c.33.

42 Exercise of power to make rules, etc.

- (1) Any power of the Secretary of State to make rules or regulations under this Act, and the power of the Secretary of State to make an order under section 22(2), 30(6) or (7), 32(5) or 37(1) of this Act, shall be exercisable by statutory instrument.
- (2) Any statutory instrument containing [^{F11}an order made under section 37(1) or rules made under section 39 of this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament].
- (3) Any rule made under section 18(3) or (5) of this Act or any statutory instrument containing an order under section 30(6) or (7) or 32(5) of this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) An order shall not be made under section 22(2) of this Act unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

Textual Amendments

F11 Words in s. 42(2) substituted (18.8.1993) by 1993 c. 9, s. 47(1), Sch. 5 para. 6(8) (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, art. 3(2), Sch.1.

43 Interpretation.

- (1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them—
 - “the 1975 Act” means the ^{M7}Criminal Procedure (Scotland) Act 1975;
 - “court” does not include a court-martial;
 - “criminal prisoner” means a person committed to prison in respect of a charge or conviction of a criminal offence and “civil prisoner” includes any other prisoner;
 - “local review committee” has the same meaning as in section 18(5) of this Act;
 - “Parole Board” means the Parole Board for Scotland;
 - “prison” includes any prison other than a naval, military or air force prison;
 - “prisoner” means a person committed for trial, safe custody, punishment or otherwise; and
 - “sentence of imprisonment” does not include a committal in default of payment of any sum of money or for failure to do or abstain from doing anything required to be done or left undone.

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- (2) For the purposes of any reference, however expressed, in this Act (other than in section 25) to the term of imprisonment or other detention to which a person has been sentenced or which, or part of which, he has served, consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term.
- (3) Any reference in this Act, however expressed, to a previous conviction or sentence shall be construed as a reference to a previous conviction by a court in any part of Great Britain and to a previous sentence passed by any such court.
- (4) Any reference in this Act to an offence punishable with imprisonment shall be construed, in relation to any offender, without regard to any prohibition or restriction imposed by or under any enactment on the imprisonment of offenders of his age.
- (5) References, however expressed, in this Act (other than in section 30) to imprisonment shall, so far as those provisions apply to institutions provided under section 19 of this Act, be construed as including detention in those institutions.
- (6) For the purpose of this Act the maintenance of a prisoner shall include all necessary expenses incurred in respect of the prisoner for food, clothing, custody and removal from one place to another from the period from the date of the order for his committal to prison until his death or discharge from prison.
- (7) Where the age of any person at any time is material for the purposes of any provision of this Act regulating the powers of a court, his age at the material time shall be deemed to be or to have been that which appears to the court, after considering any available evidence, to be or to have been his age at that time.

Marginal Citations

M7 1975 c. 21.

44 Expenses.

All expenses incurred in the maintenance of prisons and prisoners and all other expenses of the Secretary of State under this Act shall be defrayed out of moneys provided by Parliament.

45 Amendments and repeals.

- (1) The enactments mentioned in Schedule 2 to this Act shall have effect subject to the amendments specified therein, being amendments consequential on the provisions of this Act.
- (2) The enactments mentioned in Schedule 3 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

46 Short title, commencement and extent.

- (1) This Act may be cited as the Prisons (Scotland) Act 1989.
- (2) This Act shall come into force at the end of the period of three months beginning with the date on which it is passed.

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(3) This Act shall extend to Scotland only.

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