



Criminal Justice and Public Order Act 1994

1994 CHAPTER 33

PART VIII

PRISON SERVICES AND THE PRISON SERVICE

CHAPTER IV

THE PRISON SERVICE

126 Service in England and Wales and Northern Ireland.

- (1) The relevant employment legislation shall have effect as if an individual who as a member of the prison service acts in a capacity in which he has the powers or privileges of a constable were not, by virtue of his so having those powers or privileges, to be regarded as in police service for the purposes of any provision of that legislation.
- (2) In this section “the relevant employment legislation” means—
 - [^{F1}(a) the Trade Union and Labour Relations (Consolidation) Act 1992 and the Employment Rights Act 1996;]
 - [^{F2}(b) the Trade Union and Labour Relations (Northern Ireland) Order 1995 and the Employment Rights (Northern Ireland) Order 1996.]
- (3) For the purposes of this section a person is a member of the prison service if he is an individual holding a post to which he has been appointed for the purposes of section 7 of the ^{M1}Prison Act 1952 or under section 2(2) of the ^{M2}Prison Act (Northern Ireland) 1953 (appointment of prison staff).
- (4) Except for the purpose of validating anything that would have been a contravention of section 127(1) below if it had been in force, subsection (1) above, so far as it relates to the question whether an organisation consisting wholly or mainly of members of the prison service is a trade union, shall be deemed always to have had effect and to have

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applied, in relation to times when provisions of the relevant employment legislation were not in force, to the corresponding legislation then in force.

- (5) Subsection (6) below shall apply where—
- (a) the certificate of independence of any organisation has been cancelled, at any time before the passing of this Act, in consequence of the removal of the name of that organisation from a list of trade unions kept under provisions of the relevant employment legislation; but
 - (b) it appears to the Certification Officer that the organisation would have remained on the list, and that the certificate would have remained in force, had that legislation had effect at and after that time in accordance with subsection (1) above.
- (6) Where this subsection applies—
- (a) the Certification Officer shall restore the name to the list and delete from his records any entry relating to the cancellation of the certificate;
 - (b) the removal of the name from the list, the making of the deleted entry and the cancellation of the certificate shall be deemed never to have occurred; and
 - (c) the organisation shall accordingly be deemed, for the purposes for which it is treated by virtue of subsection (4) above as having been a trade union, to have been independent throughout the period between the cancellation of the certificate and the deletion of the entry relating to that cancellation.

Textual Amendments

- F1** S. 126(2)(a) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 65** (with ss. 191-195, 202)
- F2** S. 126(2)(b) substituted (N.I.) (24.9.1996) by S.I. 1996/1919 (N.I. 16), arts. 255, 256, **Sch. 1** (with savings and transitional provisions in **Sch. 2**)

Marginal Citations

- M1** 1952 c. 52.
- M2** 1953 c. 18 (N.I.).

127 Inducements to withhold services or to indiscipline.

- (1) A person contravenes this subsection if he induces a prison officer—
- ^[F3](a) to take (or continue to take) any industrial action;]
 - (b) to commit a breach of discipline.
- ^[F4](1A) In subsection (1) “ industrial action ” means—
- (a) the withholding of services as a prison officer; or
 - (b) any action that would be likely to put at risk the safety of any person (whether a prisoner, a person working at or visiting a prison, a person working with prisoners or a member of the public).]
- (2) The obligation not to contravene subsection (1) above shall be a duty owed to the Secretary of State. ^[F5]or, in Scotland, to the Scottish Ministers^[F6]or, in Northern Ireland, to the Department of Justice]
- (3) Without prejudice to the right of the Secretary of State [or, in Scotland, to the Scottish Ministers^[F7]or, in Northern Ireland, of the Department of Justice], by virtue of the

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preceding provisions of this section, to bring civil proceedings in respect of any apprehended contravention of subsection (1) above, any breach of the duty mentioned in subsection (2) above which causes the Secretary of State [^{F5}or, in Scotland, to the Scottish Ministers][^{F8}or, in Northern Ireland, the Department of Justice] to sustain loss or damage shall be actionable, at his suit or instance, against the person in breach.

- (4) In this section “prison officer” means any individual who—
- (a) holds any post, otherwise than as a chaplain or assistant chaplain or as a medical officer, to which he has been appointed ^{F9}. . . under section 2(2) of the ^{M3}Prison Act (Northern Ireland) 1953 (appointment of prison staff),
 - ^{F10}(aa) holds any post, other than as a chaplain or assistant chaplain, to which he has been appointed for the purposes of section 7 of the Prison Act 1952 (appointment of prison staff),]
 - (b) ^{F11}
 - (c) is a custody officer within the meaning of Part I of this Act or a prisoner custody officer, within the meaning of Part IV of the ^{M4}Criminal Justice Act 1991 or Chapter II or III of this Part.
- (5) The reference in subsection (1) above to a breach of discipline by a prison officer is a reference to a failure by a prison officer to perform any duty imposed on him by the prison rules or any code of discipline having effect under those rules or any other contravention by a prison officer of those rules or any such code.
- (6) In subsection (5) above “the prison rules” means any rules for the time being in force under section 47 of the Prison Act 1952, section 39 of the Prisons (Scotland) Act 1989 or section 13 of the Prison Act (Northern Ireland) 1953 (prison rules).
- (7) This section shall be disregarded in determining for the purposes of any of the relevant employment legislation whether any trade union is an independent trade union.
- (8) Nothing in the relevant employment legislation shall affect the rights of the Secretary of State [^{F12}or in Scotland, the Scottish Ministers][^{F13}or, in Northern Ireland, the Department of Justice] by virtue of this section.
- (9) In this section “the relevant employment legislation” has the same meaning as in section 126 above.

Textual Amendments

- F3** S. 127(1)(a) substituted (8.5.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\), ss. 138\(2\), 153\(1\)\(d\)](#)
- F4** S. 127(1A) inserted (8.5.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\), ss. 138\(3\), 153\(1\)\(d\)](#)
- F5** Words in s. 127(2)(3) inserted (1.7.1999) by [S.I. 1999/1820](#) arts. 1(2), 4, Sch. 2 Pt. I para. 115(10)(a); [S.I. 1998/3178, art. 2](#)
- F6** Words in s. 127(2) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), [Sch. 7 para. 3\(a\)](#) (with arts. 28-31)
- F7** Words in s. 127(3) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), [Sch. 7 para. 3\(b\)](#) (with arts. 28-31)
- F8** Words in s. 127(3) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), [Sch. 7 para. 3\(c\)](#) (with arts. 28-31)
- F9** Words in s. 127(4)(a) omitted (22.3.2005) by virtue of [The Regulatory Reform \(Prison Officers\) \(Industrial Action\) Order 2005 \(S.I. 2005/908\)](#), arts. 1, 2(a)

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- F10** S. 127(4)(aa) inserted (8.5.2008) by Criminal Justice and Immigration Act 2008 (c. 4), **ss. 138(4), 153(1)(d)**
- F11** S. 127(4)(b) omitted (22.3.2005) by virtue of The Regulatory Reform (Prison Officers) (Industrial Action) Order 2005 (S.I. 2005/908), arts. 1, **2(b)**
- F12** Words in s. 127(8) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 115(10)(c); S.I. 1998/3178, art. 2**
- F13** Words in s. 127(8) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 7 para. 3(d)** (with arts. 28-31)

Marginal Citations

- M3** 1953 c. 18 (N.I.).
- M4** 1991 c. 53.

[^{F14}127A Power to suspend the operation of section 127

- (1) The Secretary of State may make orders suspending, or later reviving, the operation of section 127.
 [In the application of this section to Northern Ireland, in subsection (1) the reference ^{F15}(1A) to the Secretary of State is to be read as a reference to the Department of Justice in Northern Ireland.]
- (2) An order under this section may make different provision in relation to different descriptions of prison officer.
- (3) The power to make orders under this section is exercisable by statutory instrument [^{F16}(subject to subsection (5))].
- (4) A statutory instrument containing an order under this section may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.]
- [^{F17}(5) The power of the Department of Justice in Northern Ireland to make orders under this section is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (and not by statutory instrument).
- (6) No order may be made by the Department of Justice under this section unless a draft of the order has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (7) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of subsection (6) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.]

Textual Amendments

- F14** S. 127A inserted (8.5.2008) by Criminal Justice and Immigration Act 2008 (c. 4), **ss. 139, 153(1)(d)**
- F15** S. 127A(1A) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 7 para. 4(2)** (with arts. 28-31)
- F16** Words in s. 127A(3) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 7 para. 4(3)** (with arts. 28-31)
- F17** S. 127A(5)-(7) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), art. 1(2), **Sch. 7 para. 4(4)** (with arts. 28-31)

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128 Pay and related conditions.

- (1) The Secretary of State may by regulations provide for the establishment, maintenance and operation of procedures for the determination from time to time of—
 - (a) the rates of pay and allowances to be applied to the prison service; and
 - (b) such other terms and conditions of employment in that service as may appear to him to fall to be determined in association with the determination of rates of pay and allowances.
- (2) Before making any regulations under this section the Secretary of State shall consult with such organisations appearing to him to be representative of persons working in the prison service and with such other persons as he thinks fit.
- (3) The power to make regulations under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Regulations under this section may—
 - (a) provide for determinations with respect to matters to which the regulations relate to be made wholly or partly by reference to such factors, and the opinion or recommendations of such persons, as may be specified or described in the regulations;
 - (b) authorise the matters considered and determined in pursuance of the regulations to include matters applicable to times and periods before they are considered or determined;
 - (c) make such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit; and
 - (d) make different provision for different cases.
- ^{F18}(5) For the purposes of this section, the prison service comprises all the individuals who:
 - ^{F19}(a) hold any post, other than as chaplain or assistant chaplain, to which they have been appointed for the purposes of section 7 of the Prison Act 1952;
 - ^{F20}(aa)
 - (b) hold any post, otherwise than as a medical officer, to which those individuals have been appointed for the purposes of section 3(1A) of the Prisons (Scotland) Act 1989.]

Textual Amendments

- F18** S. 128(5) substituted (22.3.2005) by [The Regulatory Reform \(Prison Officers\) \(Industrial Action\) Order 2005 \(S.I. 2005/908\)](#), arts. 1, 3
- F19** S. 128(5)(a)(aa) substituted (1.11.2007) for s. 128(5)(a) by [Offender Management Act 2007 \(c. 21\)](#), ss. 25(2), 41(1); S.I. 2007/3001, art. 2(1)(f)
- F20** S. 128(5)(aa) omitted (12.4.2010) by virtue of [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), [Sch. 7 para. 5](#) (with arts. 28-31)

Modifications etc. (not altering text)

- C1** S. 128: transfer of certain functions (1.7.1999) by [S.I. 1999/1750](#) arts. 1, 2 Sch. 1 (with art. 7); [S.I. 1998/3178](#), art. 2
- C2** S. 128 amended (1.7.1999) by [S.I. 1999/1756](#) arts. 1, 2, Sch. para. 16 (with art. 8); [1998/3178](#), art. 2

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[^{F21}128A Pay and related conditions: Northern Ireland

- (1) The Department of Justice in Northern Ireland may by regulations provide for the establishment, maintenance and operation of procedures for the determination from time to time of—
 - (a) the rates of pay and allowances to be applied to the prison service; and
 - (b) such other terms and conditions of employment in that service as may appear to the Department of Justice to fall to be determined in association with the determination of rates of pay and allowances.
- (2) Before making any regulations under this section the Department of Justice shall consult with such organisations appearing to it to be representative of persons working in the prison service and with such other persons as it thinks fit.
- (3) The power to make regulations under this section shall be exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.
- (4) Regulations made under this section shall be subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954).
- (5) Regulations under this section may—
 - (a) provide for determinations with respect to matters to which the regulations relate to be made wholly or partly by reference to such factors, and the opinion or recommendations of such persons, as may be specified or described in the regulations;
 - (b) authorise the matters considered and determined in pursuance of the regulations to include matters applicable to times and periods before they are considered or determined;
 - (c) make such incidental, supplemental, consequential and transitional provision as the Department of Justice thinks fit; and
 - (d) make different provision for different cases.
- (6) For the purposes of this section, the prison service comprises all the individuals who hold any post, other than as chaplain or assistant chaplain, to which they have been appointed for the purposes of section 2(2) of the Prison Act (Northern Ireland) 1953.]

Textual Amendments

F21 S. 128A inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), [Sch. 7 para. 6](#) (with arts. 28-31)

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