



Criminal Justice (Scotland) Act 2003

2003 asp 7

PART 4

PRISONERS ETC.

Custody and temporary detention

23 Remand and committal of children and young persons

- (1) In section 19(1)(b) of the 1989 Act (construction of expression “young offenders institution”), at the end there is added “ and in which certain such persons as are mentioned in paragraph (a) above may be kept ”.
- (2) In section 40 of that Act (persons unlawfully at large), in each of subsections (1) and (2), after the words “a prison” there is inserted “ or young offenders institution ”.
- (3) In subsection (1) of section 51 of the 1995 Act (remand and committal of children and young persons)—
 - (a) in paragraph (a)—
 - (i) the words “subject to paragraph (b) below,” are repealed; and
 - (ii) for the words “the court shall, instead of committing him to prison,” there is substituted “ but is not a child to whom paragraph (bb) below applies, the court shall ”;
 - (b) in paragraph (aa)—
 - (i) for the words “is over 16 years of age and” there is substituted “ has attained the age of 16 years and is ”;
 - (ii) the words “, instead of committing him to prison,” are repealed; and
 - (iii) at the end there is added “ or may commit him either to prison or to a young offenders institution ”;
 - (c) for paragraph (b) there is substituted—
 - “(b) if he is a person who has attained the age of 16 years and to whom paragraph (aa) above does not apply, then where—
 - (i) the court has been notified by the Scottish Ministers that a remand centre is available for the reception

Changes to legislation: Criminal Justice (Scotland) Act 2003, Cross Heading: Custody and temporary detention is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- from that court of persons of his class or description, it shall commit him to a remand centre; or
- (ii) the court has not been so notified, it may commit him either to prison or to a young offenders institution;
- (bb) if he is a child who is under 16 years of age but has attained the age of 14 years and is certified by the court to be unruly or depraved, then where—
 - (i) the court has been so notified as is mentioned in paragraph (b)(i) above, it shall commit him to a remand centre; or
 - (ii) the court has not been so notified, it may commit him either to prison or to a young offenders institution.”.

(4) In subsection (2) of that section the words “or to a remand centre”, “or centre” and “or in the centre” are repealed.

(5) After subsection (2) of that section there is inserted—

“(2A) Subject to subsection (4) below, where any person is committed to a remand centre under any provision of this Act, he shall be detained in a remand centre for the period for which he is committed or until he is liberated in due course of law.”.

(6) ^{F1}

(7) ^{F1}

(8) At the end of that section there is added—

“(5) Where by virtue of subsection (1)(aa), (b)(ii), (bb)(ii) or (3)(b) of this section a person is committed either to prison or to a young offenders institution, the warrant issued by the court is warrant also, without further application to the court in that regard, for committal to whichever of the two the court does not specify.”.

Textual Amendments

F1 S. 23(6)(7) repealed (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 64(4)**, 206; S.S.I. 2010/413, **art. 2**, Sch.

24 Legal custody

(1) In section 13 of the 1989 Act (legal custody of prisoners)—

- (a) for the words “A person shall be deemed to be” there is substituted “ Without prejudice to section 295 of the Criminal Procedure (Scotland) Act 1995 (c. 46) (legal custody of persons generally), a prisoner is ”; and
- (b) in paragraph (b), at the end there is added “ , a constable (“constable” having the same meaning as it has, by virtue of paragraph 17(1) and (2) of Schedule 1 to the Crime (Sentences) Act 1997 (c. 43), in section 40(1) of this Act) or a police custody and security officer ”.

(2) In section 295 of the 1995 Act (legal custody of persons generally)—

Changes to legislation: Criminal Justice (Scotland) Act 2003, Cross Heading: Custody and temporary detention is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

- (a) at the beginning there is inserted “ Without prejudice to section 13 of the Prisons (Scotland) Act 1989 (c. 45) (legal custody of prisoners), ”;
- (b) for the word “shall” there is substituted “ is ”; and
- (c) the words “be deemed to be” are repealed.

25 Temporary detention of person being returned to prison in England and Wales etc.

After section 40A of the 1989 Act there is inserted—

“40B Temporary detention of person being returned to prison in England and Wales etc.

Any person absent, otherwise than with lawful authority, from a place outwith Scotland, being a place to which, by virtue of paragraph 17 of Schedule 1 to the Crime (Sentences) Act 1997 (c. 43) (application throughout United Kingdom and Channel Islands of certain enactments relating to the arrest and return of prisoners etc.), he may be taken, may, until the arrangements to take him can be made, be detained in a prison or young offenders institution in Scotland.”.

Changes to legislation:

Criminal Justice (Scotland) Act 2003, Cross Heading: Custody and temporary detention is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to :

- specified provision(s) and purposes Appointed Day(s) by [S.S.I. 2003/439 art. 23Sch.](#) (Effect not applied to [legislation.gov.uk](#). This S.S.I. is revoked (1.10.2003) by S.S.I. 2003/475, art. 4)

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. 16D inserted by [2023 asp 4 s. 14\(3\)](#)
- s. 16ZA inserted by [2023 asp 4 s. 14\(2\)](#)
- s. 17E(6) inserted by [2023 asp 4 s. 14\(7\)\(d\)](#)
- s. 17DA inserted by [2023 asp 4 s. 14\(6\)](#)
- s. 17ZA inserted by [2023 asp 4 s. 14\(4\)](#)
- s. 18A(5) inserted by [2023 asp 4 s. 14\(8\)\(b\)](#)