



# Criminal Justice (Scotland) Act 1963

## 1963 CHAPTER 39

### PART I

#### PROVISIONS WITH RESPECT TO SENTENCES AND ORDERS INFERRING DETENTION

##### *Restrictions on Imprisonment and Detention of Young Offenders*

#### **1 Restrictions on detention**

- (1) No court shall impose detention on a person under twenty-one years of age, unless the court is of opinion that no other method of dealing with him is appropriate.
- (2) For the purpose of determining in pursuance of the provisions of subsection (1) of (this section whether any other method of dealing with a person mentioned therein is appropriate, the court shall obtain information about that person's circumstances from a probation officer or otherwise and shall consider that information ; and the court shall take into account any information before it which is relevant to his character and to his physical and mental condition.
- (3) Where a court of summary jurisdiction imposes detention on an offender under twenty-one years of age, the court shall state the reason for its opinion that no other method of dealing with him is appropriate, and the reason shall be entered in the record of the proceedings along with the finding and sentence.
- (4) Where, after the commencement of this section, in the case of a person who is of or over seventeen years of age but less than twenty-one years of age the court is of opinion as aforesaid, and either—
  - (a) if the person has been convicted of an offence punishable with imprisonment, is satisfied, having considered all the circumstances of the case, that neither a sentence of borstal training nor a sentence of detention in a detention centre should be imposed ; or
  - (b) would have power but for the said commencement to impose imprisonment otherwise than by sentence;

it shall, subject to the following provisions of this Act, instead of imposing a term of imprisonment upon him impose detention in a young offenders institution for a term not exceeding the term for which he could have been imprisoned.

### *Young Offenders Institutions*

## **2 Young offenders institutions**

- (1) The Secretary of State shall provide such young offenders institutions as appear to him to be necessary, and accordingly, after section 31(1)(c) of the Prisons (Scotland) Act 1952 (which relates to remand centres, detention centres and borstal institutions), there shall be inserted the following paragraph—

“and

- (d) young offenders institutions, that is to say, places in which offenders upon whom detention therein has been imposed under the Criminal Justice (Scotland) Act 1963, may be kept for suitable training and instruction.”

- (2) In any enactment—

- (a) any reference to a sentence of imprisonment as including a reference to a sentence of any other form of detention shall be construed as including a reference to a sentence of detention in a young offenders institution; and
- (b) any reference to imprisonment as including any other form of detention shall be construed as including a reference to detention in a young offenders institution.”

### *Borstal Training*

## **3 Conditions for a sentence of borstal training**

The power of a court to pass a sentence of borstal training under section 20 of the Criminal Justice (Scotland) Act 1949 shall not be exercised in the case of any person on whom such a sentence has previously been imposed and who has served any part thereof.

## **4 Term of detention and supervision under a sentence of borstal training**

- (1) The maximum period for which a person sentenced to borstal training after the commencement of this section may be detained in pursuance of section 33(2) of the Prisons (Scotland) Act 1952 shall be two years instead of three years.
- (2) The period for which a person sentenced to borstal training after the commencement of this section is to be under supervision under section 33(3) of the said Act after his release from a borstal institution shall, subject to any order of the Secretary of State under that subsection, be a period of one year beginning with the date of his release (instead of a period of three years from the date of sentence or of one year from the date of release, whichever period expires earlier).
- (3) Where in pursuance of section 33(4) of the said Act an order is made for the recall of a person sentenced to borstal training after the commencement of this section and

subsequently released, the maximum period for which he shall be liable to be detained following recall shall be three months instead of one year.

## **5 Detention on recall from supervision under a sentence of borstal training**

- (1) Where in pursuance of section 33(4) of the said Act of 1952 an order is made for the recall of a person who is under supervision after his release from a borstal institution, that person shall, after the commencement of this section, instead of being detained in a borstal institution, be detained in a young offenders institution.
- (2) The Secretary of State shall have power, in the case of a person who is detained in a borstal institution at the commencement of this section after his recall as aforesaid, to transfer that person to a young offenders institution.

## **6 Recall on re-conviction**

- (1) Where a person sentenced to borstal training, being under supervision after his release from a borstal institution, is convicted of an offence punishable with imprisonment, the court may, instead of dealing with him in any other manner, make an order for his recall.
- (2) An order for the recall of a person made as aforesaid shall have the like effect as an order for recall made by the Secretary of State under section 33(4) of the Prisons (Scotland) Act 1952.

### *Detention Centre*

## **7 Detention in a detention centre**

- (1) Subject to the provisions of this section, in any case where a person who is not less than fourteen but under twenty-one years of age is convicted of an offence punishable with imprisonment, and the court has been notified by the Secretary of State that a detention centre is available for the reception from that court of persons of his class or description, it may pass on him a sentence of detention in that centre for a fixed term of three months.
- (2) A court shall not pass a sentence under this section in the case of a person who has served or is serving a sentence involving his detention for two months or more in a prison or in a young offenders institution or a sentence of borstal training, or in the case of a person who has served a sentence of detention in a detention centre, unless the court is of the opinion that, having regard to special considerations arising out of the circumstances of the case and the character of the offender, this method of dealing with him is the most appropriate.
- (3) Where it appears to the Secretary of State that a person detained in a detention centre is unfit for such detention by reason of his health, without prejudice to any other powers he may have in the matter, he may, after consultation where practicable with the judge by whom or the presiding chairman of the court by which the sentence was passed, release that person; and he shall then be required to be under supervision in accordance with section 11(1) of this Act.
- (4) Section 19 of the Criminal Justice (Scotland) Act 1949 shall cease to have effect.

## 8 Term of detention in a detention centre

- (1) The term for which a person may be detained in a detention centre shall not exceed three months at a time; and accordingly no court may pronounce an order the effect of which would be that a person would be liable to be detained for more than that period.
- (2) Where a court has before it a person convicted of an offence punishable with imprisonment who is serving a sentence of detention in a detention centre or who has been sentenced to and has not yet started to serve such a sentence as aforesaid, it may pass either of the following sentences (subject to the requirements of any enactment relating to those sentences)—
  - (a) a sentence of detention in a young offenders institution, or, if the person is of or over twenty-one years of age, a sentence of imprisonment, for a period not exceeding the aggregate of the unexpired portion of the sentence of detention in a detention centre and the maximum period of detention in a young offenders institution or of imprisonment, as the case may be, which the court may impose for the offence of which it has convicted the person; or
  - (b) a sentence of borstal training ;
 and in that event the sentence of detention in a detention centre shall cease to have effect.

### *Transfer of Young Offenders*

## 9 Transfer between institutions

- (1) For section 32 of the Prisons (Scotland) Act 1952 (which relates to transfers from prison to borstal institution and vice versa) there shall be substituted the following section:—

### **“32 Transfer of young offenders between institutions.**

- (1) If the Secretary of State is satisfied that a person detained in a young offenders institution in pursuance of a sentence is under twenty-one years of age and might with advantage be detained in a borstal institution, he may, after consultation where practicable with the judge by whom or the presiding chairman of the court by which the sentence was passed, transfer that person to a borstal institution; and the provisions of the next following section shall thereupon apply to him as if he had on the date of the transfer been sentenced to borstal training:

Provided that if on that date the unexpired term of his sentence is less than two years those provisions shall apply to him as if he had been sentenced to borstal training two years before the expiration of that term.

- (2) If a person detained in a borstal institution is reported to the Secretary of State by the visiting committee to be incorrigible, or to be exercising a bad influence on the other inmates of the institution, the Secretary of State may present an application to the sheriff within whose jurisdiction the institution is situated for commutation to detention in a young offenders institution of the unexpired part of the term for which the said person is then liable to be detained in a borstal institution, and on any such application the sheriff may commute the said unexpired part to detention as aforesaid for such a term, not exceeding that unexpired part, as he may think fit; and for the purposes of this Act (other

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than those of subsections (3) and (4) of section 33) and of the Criminal Justice (Scotland) Act 1963 the said person shall be treated as if he had been sentenced to detention in a young offenders institution for that term.

- (3) If in the case of a person who is not less than seventeen years of age, who is detained in a detention centre, it is reported to the Secretary of State by the visiting committee that he is not amenable to the discipline of the centre by reason of his health, the Secretary of State may transfer that person to a young offenders institution and there detain him for a period not exceeding the unexpired part of the term for which the said person was sentenced to be detained in the detention centre.
  - (4) The powers conferred upon the Secretary of State by the last foregoing subsection may be exercised in the case of a person who has not attained the age of seventeen years if the Secretary of State is satisfied, having regard to the character and development of the person, that it is appropriate that he should be detained in a young offenders institution.”
- (2) On the coming into operation of the provisions of section 1 of this Act, the Secretary of State shall have power, in the case of any person who is under twenty-one years of age and who is serving a sentence of imprisonment under which he would not normally be released within the next three months, to transfer that person to a young offenders institution; and for the purposes of this Act and of the Prisons (Scotland) Act 1952, any person so transferred shall be treated as if he had been sentenced to detention in a young offenders institution.
  - (3) Where an order has been made under any of the enactments specified in the next following subsection for the committal or transfer to a civil prison in Scotland of a person who is under twenty-one years of age, that person shall be taken to a young offenders institution.
  - (4) (a) (a) The enactments referred to in the last foregoing subsection are—
    - the Army Act 1955
    - the Air Force Act 1955
    - the Naval Discipline Act 1957,and any rules made thereunder.
    - (b) For the purposes of the aforesaid enactments, any reference therein to a like sentence of a civil court shall include, in relation to a person taken to a young offenders institution under the last foregoing subsection, a reference to a sentence of detention in a young offenders institution, and references to a civil prison and to imprisonment and any cognate references shall be construed accordingly.

## **10 Transfer to prison of persons over twenty-one, and maximum age for detention in young offenders institution**

- (1) Subject to the provisions of this section, where a person serving a sentence of detention in a young offenders institution has attained the age of twenty-one years, the Secretary of State shall have power to transfer him to prison.
- (2) No person shall be detained in a young offenders institution after he has attained the age of twenty-three years, and accordingly any person so detained shall, not later than the day immediately preceding his twenty-third birthday, be transferred to prison.

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- (3) Where a person has been transferred to prison under this section, he shall be treated for the purpose of his serving the unexpired part of his sentence and of his supervision on release as if the sentence of detention passed upon him were a sentence of imprisonment for a like term, and the provisions of this Act and of the Prisons (Scotland) Act 1952 relating to the treatment and supervision of prisoners shall apply to him accordingly.

### *Supervision of Offenders on Release*

## **11 Supervision of persons released from detention centres**

- (1) A person detained in a detention centre in pursuance of a sentence under section 7 of this Act, or transferred therefrom to a young offenders institution under section 32 (3) of the Prisons (Scotland) Act 1952, shall, after his release and until the expiration of a period of twelve months from the date of his release, be required to be under the supervision of such person as may be specified in the notice to be given to him by the Secretary of State on his release, and shall, while under that supervision, comply with such other requirements as may be so specified:

Provided that the Secretary of State may, at any time, modify or cancel any of the said requirements or order that a person who is under supervision as aforesaid shall cease to be under supervision.

- (2) Subject to the provisions of the next following subsection, if before the expiration of the said period of twelve months the Secretary of State is satisfied that a person under supervision under the last foregoing subsection has failed to comply with any requirement for the time being specified in the notice given to him under that subsection, he may, after the commencement of section 1 of this Act, by order recall him to a young offenders institution if the offender has attained the age of seventeen years or, where the offender is less than seventeen years of age, to a detention centre; and thereupon he shall be liable to be detained in that institution or centre until the expiration of the period of fourteen days from the date of his being taken into custody under the order, and if at large he shall be deemed to be unlawfully at large:

Provided that—

- (a) any such order shall, at the expiration of the said period of twelve months, cease to have effect unless the person to whom it relates is then in custody thereunder; and
  - (b) a person shall not be recalled more than once under this subsection by virtue of the same sentence under section 7 of this Act.
- (3) The power conferred upon the Secretary of State by the last foregoing subsection to recall an offender to a young offenders institution may be exercised in the case of a person who has not attained the age of seventeen years if the Secretary of State is satisfied, having regard to the character and development of the person, that it is appropriate that he should be detained in a young offenders institution.
- (4) The Secretary of State may, at any time, release a person who is detained after recall as aforesaid; and the provisions of this section shall apply to a person released by virtue of this subsection, subject to the modification that the period referred to in subsection (1) shall be calculated from the date of his original release.

- (5) Where a person who has attained the age of seventeen years is recalled under this section before the commencement of section 1 of this Act, he shall be recalled to a detention centre instead of to a young offenders institution.

## **12 Supervision of persons released from young offenders institutions**

- (1) A person detained in a young offenders institution in pursuance of a sentence shall, where the term of his detention is six months or more, after his release and until the expiration of a period of twelve months from the date of his release, be required to be under the supervision of such person as may be specified in the notice to be given to him by the Secretary of State on his release, and shall, while under that supervision, comply with such other requirements as may be so specified :

Provided that the Secretary of State may, at any time, modify or cancel any of the said requirements or order that a person who is under supervision as aforesaid shall cease to be under supervision.

- (2) The Secretary of State may by order extend the provisions of the last foregoing subsection to persons detained as aforesaid whose term of detention is less than six months but not less than three.
- (3) If before the expiration of the said period of twelve months the Secretary of State is satisfied that a person under supervision under subsection (1) of this section has failed to comply with any requirement for the time being specified in the notice given to him under that subsection, he may by order recall him to a young offenders institution; and thereupon he shall be liable to be detained in that institution, and if at large he shall be deemed to be unlawfully at large :

Provided that any such order shall, at the expiration of the said period of twelve months, cease to have effect unless the person to whom it relates is then in custody thereunder.

- (4) The period for which a person may be detained under the last foregoing subsection shall not exceed three months.
- (5) The Secretary of State may, at any time, release a person who is detained under this section; and the provisions of this section shall apply in the case of a person so released subject to the following modifications:—
- (a) the period referred to in subsection (1) shall be calculated from the date of his original release; and
  - (b) the period during which he shall be liable to be detained on further recall shall be the period referred to in subsection (4) reduced by any time during which he has previously been detained under this section.

## **13 Recall to young offenders institution on re-conviction**

- (1) Where a person sentenced to detention in a young offenders institution, being under supervision after his release from such an institution, is convicted of an offence punishable with imprisonment, the court may, instead of dealing with him in any other manner, make an order for his recall.
- (2) An order for the recall of a person made as aforesaid shall have the like effect as an order for recall made by the Secretary of State under section 12 of this Act.

#### **14 Supervision of certain prisoners after release**

- (1) If it appears to the Secretary of State that a person serving a sentence of imprisonment is a person to whom this section applies, he shall, by notice given to such person in accordance with paragraph 2 of Schedule 1 to this Act, place him under supervision under that Schedule on his release from prison.
- (2) Subject to the provisions of subsection (4) thereof, this section applies—
  - (a) to any person serving a sentence of imprisonment for a term of three years or more ;
  - (b) to any person serving a sentence of imprisonment for a term of not less than six months,
 

but less than three years, who is under the age of twenty-six years at the commencement of the sentence ; but does not apply to a person serving a sentence of imprisonment for life.
- (3) The Secretary of State may by order substitute a lower limit of three months instead of six months in paragraph (b) of subsection (2) above.
- (4) This section shall not apply to persons serving a sentence of imprisonment commencing before such date as may be prescribed by order of the Secretary of State under this subsection ; and any such order may prescribe different dates in respect of sentences described in paragraphs (a) and (b) respectively of subsection (2) of this section, and, in respect of sentences comprised in the said paragraph (b), either according to the length of the term of imprisonment under a sentence or to the age of the person on whom it is passed.

#### **15 Termination of supervisory functions of After Care Council**

- (1) Subject to the provisions of this section, the powers of the Secretary of State under the Prisons (Scotland) Act 1952 shall include power to make such arrangements as appear to him to be necessary for the supervision of offenders released from institutions provided under that Act.
- (2) The Secretary of State may no longer place offenders under the supervision of the After Care Council in pursuance of section 18(2) of the Prisons (Scotland) Act 1952, and accordingly for that subsection there shall be substituted the following subsection:—
 

“(2) It shall be the duty of the After Care Council to advise the Secretary of State on any question relating to the after-care of offenders which he may refer to them, and to bring to his attention any matter relating to after-care of which in their opinion he ought to be apprised”.

#### *Miscellaneous*

#### **16 Amendment of s. 8 of the Summary Jurisdiction (Scotland) Act 1954**

In section 8 of the Summary Jurisdiction (Scotland) Act 1954 (which provides in certain cases where the person convicted has two previous convictions for a maximum sentence of six months imprisonment), for paragraphs (a) and (b) there shall be substituted the following paragraphs:—

- “(a) a second or subsequent offence inferring dishonest appropriation of property, or attempt thereat, or



(b) a second or subsequent offence inferring personal violence”.

**17 Amendment of First Offenders (Scotland) Act 1960**

- (1) For the purposes of the First Offenders (Scotland) Act 1960, any order made by a court of summary jurisdiction under section 1 or section 2 of the Criminal Justice (Scotland) Act 1949 (which provide for absolute discharge and probation) shall be treated as a conviction.
- (2) For the purpose of determining whether a person is a first offender within the meaning of that Act, a previous conviction shall be disregarded after the expiration of a period of ten years from the date of that conviction, being a period exclusive of any period spent by him in custody under sentence in respect of the conviction.