



Criminal Justice Act 1991

1991 CHAPTER 53

PART IV

PROVISION OF SERVICES

Contracted out prisons

[84 ^{F1}**Contracting out prisons etc.**

- (1) The Secretary of State may enter into a contract with another person for the provision or running (or the provision and running) by him, or (if the contract so provides) for the running by sub-contractors of his, of any prison or part of a prison.
- (2) While a contract under this section for the running of a prison or part of a prison is in force—
 - (a) the prison or part shall be run subject to and in accordance with sections 85 and 86 below, the 1952 Act (as modified by section 87 below) and prison rules; and
 - (b) in the case of a part, that part and the remaining part shall each be treated for the purposes of sections 85 to 88A below as if they were separate prisons.
- (3) Where the Secretary of State grants a lease or tenancy of land for the purposes of any contract under this section, none of the following enactments shall apply to it, namely—
 - (a) Part II of the ^{M1}Landlord and Tenant Act 1954 (security of tenure);
 - (b) section 146 of the ^{M2}Law of Property Act 1925 (restrictions on and relief against forfeiture);
 - (c) section 19(1), (2) and (3) of the ^{M3}Landlord and Tenant Act 1927 and the ^{M4}Landlord and Tenant Act 1988 (covenants not to assign etc.); and
 - (d) the ^{M5}Agricultural Holdings Act 1986.

In this subsection “lease or tenancy” includes an underlease or sub-tenancy.

- (4) In this Part—

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“contracted out prison” means a prison or part of a prison for the running of which a contract under this section is for the time being in force;

“the contractor”, in relation to a contracted out prison, means the person who has contracted with the Secretary of State for the running of it; and

“sub-contractor”, in relation to a contracted out prison, means a person who has contracted with the contractor for the running of it or any part of it.]

Textual Amendments

F1 S. 84 substituted (3.11.1994) by 1994 c. 33, s.96.

Marginal Citations

- M1 1954 c. 56.
- M2 1925 c. 20.
- M3 1927 c. 36
- M4 1988 c. 26.
- M5 1986 c. 5.

85 Officers of contracted out prisons.

- (1) Instead of a governor, every contracted out prison shall have—
 - (a) a director, who shall be a prisoner custody officer appointed by the contractor and specially approved for the purposes of this section by the Secretary of State; and
 - (b) a controller, who shall be a Crown servant appointed by the Secretary of State; and every officer of such a prison who performs custodial duties shall [F2(subject to section 86B)] be a prisoner custody officer who is authorised to perform such duties [F3or a prison officer who is temporarily attached to the prison].
- (2) F4. . . , the director shall have such functions as are conferred on him by the 1952 Act (as modified by section 87 below) or as may be conferred on him by prison rules.
- (3) F5.
- (4) The controller shall have such functions as may be conferred on him by prison rules and shall be under a duty—
 - (a) to keep under review, and report to the Secretary of State on, the running of the prison by or on behalf of the director; and
 - (b) to investigate, and report to the Secretary of State on, any allegations made against prisoner custody officers performing custodial duties at the prison [F6or prison officers who are temporarily attached to the prison].
- (5) [F7The contractor and any sub-contractor of his shall each]be under a duty to do all that he reasonably can (whether by giving directions to the officers of the prison or otherwise) to facilitate the exercise by the controller of all such functions as are mentioned in or conferred by subsection (4) above.

Textual Amendments

F2 Words in s. 85(1) inserted (1.11.2007) by Offender Management Act 2007 (c. 21), ss. 18(3), 41(1); S.I. 2007/3001, art. 2(1)(c)

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- F3** Words in s. 85(1) inserted (3.11.1994) by 1994 c. 33, s. 97(1).
F4 Words in s. 85(2) repealed (1.11.2007) by Offender Management Act 2007 (c. 21), ss. 39, 41(1), Sch. 5 Pt. 2; S.I. 2007/3001, art. 2(1)(t)(iii)
F5 S. 85(3) repealed (1.11.2007) by Offender Management Act 2007 (c. 21), ss. 19, 39, 41(1), Sch. 5 Pt. 2; S.I. 2007/3001, art. 2(1)(t)(iii)
F6 Words in s. 85(4)(b) inserted (3.11.1994) by 1994 c. 33, s. 97(2).
F7 Words in s. 85(5) substituted (3.11.1994) by 1994 c. 33, s. 101(1).

Commencement Information

- I1** S. 85 wholly in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(4) and Sch. 3

86 Powers and duties of prisoner custody officers employed at contracted out prisons.

- (1) A prisoner custody officer performing custodial duties at a contracted out prison shall have the following powers, namely—
- to search in accordance with prison rules any prisoner who is confined in the prison; and
 - to search [^{F8}in accordance with prison rules] any other person who is in or is seeking to enter the prison, and any article in the possession of such a person.
- (2) The powers conferred by subsection (1)(b) above to search a person shall not be construed as authorising a prisoner custody officer to require a person to [^{F9}submit to an intimate search (within the meaning of section 164(5) of the Customs and Excise Management Act 1979)].
- (3) A prisoner custody officer performing custodial duties at a contracted out prison shall have the following duties as respects prisoners confined in the prison, namely—
- to prevent their escape from lawful custody;
 - to prevent, or detect and report on, the commission or attempted commission by them of other unlawful acts;
 - to ensure good order and discipline on their part; and
 - to attend to their wellbeing.
- (4) The powers conferred by subsection (1) above, and the powers arising by virtue of subsection (3) above, shall include power to use reasonable force where necessary.

Textual Amendments

- F8** Words in s. 86(1)(b) inserted (1.11.2007) by Offender Management Act 2007 (c. 21), ss. 16(1)(a), 41(1); S.I. 2007/3001, art. 2(1)(a)
F9 Words in s. 86(2) substituted (1.11.2007) by Offender Management Act 2007 (c. 21), ss. 16(1)(b), 41(1); S.I. 2007/3001, art. 2(1)(a)

Commencement Information

- I2** S. 86 wholly in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(4) and Sch. 3

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[^{F10}86A Power of prisoner custody officers to detain suspected offenders

- (1) A prisoner custody officer performing custodial duties at a contracted out prison shall have the following powers in relation to any person who is in or is seeking to enter the prison (other than a prisoner confined in the prison).
- (2) Where the officer has reason to believe that the person is committing or has committed an offence under any of sections 39 to 40D of the Prison Act 1952, the officer may—
 - (a) require the person to wait with him for the arrival of a constable for such period as may be necessary (not exceeding two hours); and
 - (b) use reasonable force to prevent the person from making off while subject to a requirement under paragraph (a).
- (3) A person who makes off while subject to such a requirement is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (4) In subsection (2), a reference to an offence under a particular provision includes a reference to any offence consisting of an attempt to commit, incitement or conspiracy to commit, or aiding, abetting, counselling or procuring the commission of, an offence under that provision.]

Textual Amendments

F10 S. 86(A) inserted (1.11.2007) by [Offender Management Act 2007 \(c. 21\)](#), [ss. 17\(1\)](#), [41\(1\)](#); S.I. [2007/3001](#), [art. 2\(1\)\(b\)](#)

Modifications etc. (not altering text)

- C1** S. 86A(2) modified (temp.) (1.11.2007) by [The Offender Management Act 2007 \(Commencement No.1 and Transitional Provisions\) Order 2007 \(S.I. 2007/3001\)](#), [art. 2\(2\)](#)
- C2** S. 86A(4) modified (1.10.2008) by [Serious Crime Act 2007 \(c. 27\)](#), [ss. 63\(1\)\(2\)](#), [94](#), [Sch. 6 para. 19\(b\)](#); S.I. [2008/2504](#), [art. 2\(a\)](#)

[^{F11}86B Powers of authorised persons to perform custodial duties

- (1) In this section—

“restricted activity” means an activity which is (apart from this section) required by section 85(1) to be carried out by an officer of a contracted-out prison who is—

 - (a) a prisoner custody officer authorised to perform custodial duties; or
 - (b) a prison officer temporarily attached to the prison; and

“worker”, in relation to a contracted out prison, means a person who works at the prison, other than an officer mentioned above.
- (2) The Secretary of State may by order specify descriptions of restricted activity that may be the subject of authorisations under subsection (3) given to workers at a contracted-out prison.
- (3) A worker at a contracted-out prison may carry out any activity of a description specified under subsection (2), but only if and to the extent that he is for the time being authorised to do so by the director of the prison.
- (4) The director may give such authorisation—

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- (a) in general or specific terms, subject to any limitations or conditions he considers appropriate; and
 - (b) to one or more particular workers or to any worker who is (or comes to be) within a specified description of workers at the prison.
- (5) Nothing in an order or authorisation under this section is to be taken as authorising the use of force.
- (6) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

- F11** S. 86(B) inserted (1.11.2007) by [Offender Management Act 2007 \(c. 21\)](#), **ss. 18(2)**, 41(1); S.I. 2007/3001, **art. 2(1)(c)**

87 Consequential modifications of 1952 Act.

- (1) In relation to a contracted out prison, the provisions of the 1952 Act specified in subsections (2) to (8) below shall have effect subject to the modifications so specified.
- (2) In section 7(1) (prison officers), the reference to a governor shall be construed as a reference to a director and a controller.
- [^{F12}(3) Section 8 (powers of prison officers) shall not apply (but this does not affect the powers of a prison officer who is temporarily attached to the prison).]
- (4) In sections [^{F13}8A(3), (4) and (5)] 10(5), 12(3), 13(1) [^{F14}16A][^{F15}16B]and 19(1) and (3) (various functions of the governor of a prison), references to the governor shall be construed as references to the director.
- [^{F16}(4A) Section 11 (ejection of prison officers and their families refusing to quit) shall not apply.]
- [^{F16}(5) In section 12(1) and (2) (place of confinement of prisoners), any reference to a prisoner or prisoners shall be construed as a reference to a remand prisoner or prisoners.]
- (6) In section 13(2) (legal custody of prisoner), the reference to an officer of the prison shall be construed as a reference to a prisoner custody officer performing custodial duties at the prison [^{F17}or a prison officer who is temporarily attached to the prison].
- (7) In section 14(2) (cells), the reference to a prison officer shall be construed as a reference to a prisoner custody officer performing custodial duties at the prison [^{F17}or a prison officer who is temporarily attached to the prison].
- (8) Section 35 (vesting of prison property in the Secretary of State) shall have effect subject to the provisions of the contract entered into under section 84(1) above.

Textual Amendments

- F12** S. 87(3) substituted (1.11.2007) by [Offender Management Act 2007 \(c. 21\)](#), **ss. 20(2)**, 41(1); S.I. 2007/3001, **art. 2(1)(e)**
- F13** Words in s. 87(4) inserted (1.11.2007) by [Offender Management Act 2007 \(c. 21\)](#), **ss. 20(3)**, 41(1); S.I. 2007/3001, **art. 2(1)(e)**

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- F14** Words in s. 87(4) inserted (9.1.1995) by 1994 c. 33, s. 168(2), **Sch. 10 para. 69**; S.I. 1994/3192, art. 2, **Sch.**
- F15** Words in s. 87(4) inserted (21.5.1997) by 1997 c. 38, **ss.2**, 3(2).
- F16** S. 87(4A) inserted (3.11.1994) by 1994 c. 33, **s. 97(4)**.
- F17** Words in s. 87(6)(7) inserted (3.11.1994) by 1994 c. 33, **s. 97(5)**.

Modifications etc. (not altering text)

- C3** S. 87 has effect (9.7.1992) by S.I. 1992/1656, **art. 3** as if s. 87(5) were omitted (which S.I. is revoked (24.2.1993) by S.I. 1993/368, **art. 2**.)
- S. 87 has effect (24.02.1993) by S.I. 1993/368, **art. 4** as if subsection (5) were omitted.

Commencement Information

- I3** S. 87 wholly in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, **art. 2(4)** and Sch. 3

88 Intervention by the Secretary of State.

- (1) This section applies where, in the case of a contracted out prison, it appears to the Secretary of State—
- (a) that the director has lost, or is likely to lose, effective control of the prison or any part of it; and
 - (b) that the making of an appointment under subsection (2) below is necessary in the interests of preserving the safety of any person, or of preventing serious damage to any property.
- (2) The Secretary of State may appoint a Crown servant to act as governor of the prison for the period—
- (a) beginning with the time specified in the appointment; and
 - (b) ending with the time specified in the notice of termination under subsection (4) below.
- (3) During that period—
- (a) all the functions which would otherwise be exercisable by the director or the controller shall be exercisable by the governor;
 - (b) [^{F18}the contractor and any sub-contractor of his shall each] do all that he reasonably can to facilitate the exercise by the governor of those functions; and
 - (c) the officers of the prison shall comply with any directions given by the governor in the exercise of those functions.
- (4) Where the Secretary of State is satisfied—
- (a) that the governor has secured effective control of the prison or, as the case may be, the relevant part of it; and
 - (b) that the governor's appointment is no longer necessary as mentioned in subsection (1)(b) above,
- he shall, by a notice to the governor, terminate the appointment at a time specified in the notice.
- (5) As soon as practicable after making or terminating an appointment under this section, the Secretary of State shall give a notice of the appointment, or a copy of the notice of termination, to the contractor, [^{F19}any sub-contractor of his,]the director and the controller.

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Textual Amendments

F18 Words in s. 88(3)(b) substituted (3.11.1994) by 1994 c. 33, s. 101(2).

F19 Words in s. 88(5) inserted (3.11.1994) by 1994 c. 33, s. 101(3).

Commencement Information

I4 S. 88 wholly in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(4) and Sch. 3

Changes to legislation:

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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. 24(2)(ba) inserted by [2013 c. 22 s. 26\(7\)](#)
- s. 46(3)(aa) substituted for word by [2008 c. 4 s. 33\(7\)\(b\)](#) (This amendment not applied to [legislation.gov.uk](#). S. 33(2)(4)(7)(8) omitted (3.12.2012) by virtue of 2012 c. 10, s. 118(4)(a); S.I. 2012/2906, art. 2(d))
- s. 46ZA inserted by [2008 c. 4 s. 33\(2\)](#) (This amendment not applied to [legislation.gov.uk](#). S. 33(2)(4)(7)(8) omitted (3.12.2012) by virtue of 2012 c. 10, s. 118(4)(a); S.I. 2012/2906, art. 2(d))