



# Criminal Justice (Scotland) Act 1949

## 1949 CHAPTER 94

### PART II

#### ADMINISTRATIVE PROVISIONS AND PROVISIONS AS TO TREATMENT OF PRISONERS, ETC.

##### *Institutions for offenders*

#### **50 Remand centres, detention centres and Borstal institutions**

- (1) The Secretary of State may provide—
  - (a) remand centres, that is to say places for the detention of persons not less than fourteen but under twenty-one years of age who are remanded or committed in custody for trial or sentence;
  - (b) detention centres, that is to say places in which persons not less than fourteen but under twenty-one years of age who are ordered to be detained in such centres under this Act may be kept for short periods under discipline suitable to persons of their age and description; and
  - (c) Borstal institutions, that is to say places in which offenders who on the date of their conviction were not less than sixteen but under twenty-one years of age may be detained and given such training and instruction as will conduce to their reformation and the prevention of crime.
- (2) The Secretary of State shall provide in remand centres facilities for the observation and examination of any person detained therein on whose physical or mental condition a medical report may be desirable for the assistance of the court in determining the most suitable method of dealing with his case.
- (3) Where any person under seventeen years of age is committed to, or ordered to be detained in, a remand centre under this Act for the purpose of obtaining a medical report on his physical or mental condition, the council of the county or large burgh who would be responsible for his maintenance if he were detained in a remand home shall pay to the Secretary of State, in such manner as the Secretary of State may with the approval of the Treasury determine, such sums in respect of the maintenance of that person as the Secretary of State may with the like approval direct.

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- (4) The Prisons (Scotland) Acts, 1860 to 1926 shall, subject to such adaptations and modifications as may be made by rules of the Secretary of State, apply to remand centres, detention centres and Borstal institutions, and to persons detained therein, as they apply to prisons and prisoners.
- (5) The appropriation of a prison vested in the Secretary of State under the Prisons (Scotland) Act, 1877 for use as a remand centre, detention centre or Borstal institution shall not be deemed, for the purposes of section thirty-nine of that Act, to be a discontinuance of the prison.
- (6) Section six of the Prevention of Crimes Act, 1871, and section eight of the Penal Servitude Act, 1891 (which relate to the registration, measurement and photographing of prisoners) shall have effect as if references therein to prisons and prisoners included references to remand centres, detention centres and Borstal institutions, and to persons detained therein.

## **51 Remand homes**

- (1) As from such date as may be specified in an order made by statutory instrument by the Secretary of State, no premises shall be used as a remand home unless a certificate of approval has been issued by the Secretary of State.
- (2) The Secretary of State may by rules made under this Act apply to remand homes, with such adaptations and modifications as he thinks fit, the provisions of section eighty-three and subsection (3) of section one hundred and nine of the Children and Young Persons (Scotland) Act, 1937 (which relate to the approval of schools for the purposes of that Act and the evidence of such approval).
- (3) No person shall be appointed after the commencement of this Act to be in charge of a remand home unless his appointment has been approved by the Secretary of State.
- (4) Councils of counties and) large burghs may provide in remand homes .provided for their areas facilities for the observation and examination of any person detained therein On whose physical or mental condition a medical report may be desirable for the assistance of the court in determining the most suitable method of dealing with his case, or may, if facilities for observation and examination are available at any other institution or place, arrange for the use of those facilities for the observation and examination of any such person as aforesaid.
- (5) Subsections (5) and (6) of section seventy-one of this Act shall apply in relation to the removal of any person from a remand home to an institution or place where facilities are available in pursuance of arrangements made under the last foregoing subsection for the purpose of obtaining such a report as aforesaid as they apply in relation to any such removal as is mentioned in the said subsection (5).
- (6) Any expenses incurred by the council of a county or large burgh in giving effect to arrangements made under subsection (4) of this section, and any sums paid by such a council under subsection (3) of the last foregoing section, shall be treated for the purposes of any grant under section one hundred and seven of the Children and Young Persons (Scotland) Act, 1937, as expenses of the council in respect of remand homes.

## **52 Acquisition of land for prisons and other institutions**

- (1) The Secretary of State may purchase by agreement, or compulsorily, any land required for the alteration, enlargement or rebuilding of a State Mental Hospital or of a prison or other institution to which the Prisons (Scotland) Acts, 1860 to 1926, apply or for building or establishing a new State Mental Hospital, a new prison or a new institution as aforesaid or for any other purpose connected with the management of any such State Mental Hospital, prison or institution (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 last foregoing subsection, the Acquisition of Land (Authorisation Procedure) (Scotland) Act, 1947 shall apply as if paragraph (d) of subsection (1) of section- one thereof (which refers to the compulsory purchase of land by the Secretary of State under the National Health Service (Scotland) Act, 1947) included a reference to the last 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 one hundred and twenty to one hundred and twenty-five of the 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.

### *Rules for management of prisons, etc.*

## **53 Rules for the management of prisons, remand centres, detention centres and Borstal institutions**

- (1) The Secretary of State may make rules for the regulation and management of prisons, remand centres, detention centres and Borstal institutions respectively, and for the classification, treatment, employment, discipline and control of persons required to be detained therein.
- (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.
- (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—

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- (a) any person serving a sentence of corrective training or preventive detention;
  - (b) any person serving a sentence on conviction of sedition;
  - (c) any appellant within the meaning of the Criminal Appeal (Scotland) Act, 1926, pending the determination of his appeal;
  - (d) 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, corrective training, preventive detention, or Borstal training.
- (7) Section twenty-three of the Peterhead Harbour of Refuge Act, 1886, in so far as it confers power to order the infliction of corporal punishment, shall cease to have effect, and no prisoner detained in Peterhead Prison shall be liable to corporal punishment.

#### **54 Constitution and functions of visiting committees**

- (1) Rules made under the last foregoing section shall provide for the constitution, for prisons, of visiting committees appointed, at such times, in such manner, for such periods and by such county and town councils as may be prescribed by the rules.
- (2) Rules made as aforesaid shall secure that any such visiting committee shall include such number of women as may be prescribed by the rules, and where a number less than the prescribed number is appointed by the said councils the Secretary of State may appoint such number of women as may be necessary to bring the number appointed by the councils up to the number prescribed.
- (3) The Secretary of State shall appoint for every remand centre, detention centre and Borstal institution a visiting committee of which not less than two members shall be burgh magistrates or justices of the peace and not less than such number of members as may be prescribed by the rules shall be women.
- (4) Rules made as aforesaid shall prescribe, the functions of visiting committees, and shall among other things require the members to pay frequent visits to the prison, remand centre, detention centre or Borstal institution, as the case may be, and hear any complaints which may be made by the persons detained therein and report to the Secretary of State any matter which they consider it expedient to report; and any member of a visiting committee may at any time enter the prison, remand centre, detention centre or Borstal institution, as the case may be, and shall have free access to every part thereof and to every person detained therein.
- (5) Rules made as aforesaid may require the visiting committee appointed for any prison or Borstal institution to consider periodically the character, conduct and prospects of each of the persons sentenced to corrective training, preventive detention or Borstal training who is detained therein, and to report to the Secretary of State on the advisability of his release on licence or under supervision.
- (6) The Secretary of State may pay—
- (a) to the members of any visiting committee appointed under or in pursuance of this section such allowances in respect of loss of earnings or travelling or subsistence or other expenses necessarily suffered or incurred in the performance of their duties; and

- (b) to the officers of any such committee such remuneration (whether by way of salary or fees) and such allowances in respect of travelling or subsistence expenses,  
as the Secretary of State may with the consent of the Treasury determine.

#### **55 Amendment of Prisons (Scotland) Act, 1860 as to introduction of prohibited articles**

For the purposes of section seventy-five of the Prisons (Scotland) Act, 1860 (which relates to the introduction of prohibited articles into prisons) a person shall be deemed to introduce an article into a prison if he conveys it to a prisoner outside the prison, or deposits it at any place outside the prison with intent that it shall come into the possession of a prisoner.

*Remission for good conduct and release on licence, etc.*

#### **56 Remission for good conduct and release on licence of young prisoners**

- (1) Rules made under section fifty-three of this Act may make provision whereby, in such circumstances as may be prescribed by the rules, a person serving a sentence of imprisonment or ordered to be detained in a detention centre for such a term as may be so prescribed, may be granted remission of such part of that sentence or term as may be so prescribed on the ground of his industry and good conduct; and on the discharge of a person from a prison or detention centre in pursuance of any such remission as aforesaid his sentence, or as the case may be his term of detention, shall expire.
- (2) If it appears to the Secretary of State that a person serving a sentence of imprisonment was under the age of twenty-one years at the commencement of his sentence, he may direct that instead of being granted remission of his sentence under the rules such person shall, at any time on or after the day on which he could have been discharged if the remission had been granted, be released on licence under the provisions of the Eighth Schedule to this Act.
- (3) For the purposes of this section, consecutive terms of imprisonment shall be treated as one term.

#### **57 Release on licence of persons serving imprisonment for life**

- (1) The Secretary of State may at any time if he thinks fit release on licence a person serving a term of imprisonment for life subject to compliance with such conditions, if any, as the Secretary of State may from time to time determine.
- (2) The Secretary of State may at any time by order recall to prison a person released on licence under this section, but without prejudice to the power of the Secretary of State to release him on licence again; and where any person is so recalled his licence shall cease to have effect and he shall, if at large, be deemed to be unlawfully at large.

#### **58 After Care Council**

- (1) It shall be lawful for the Secretary of State to appoint a Council to be known as the After Care Council and consisting of such number of members as the Secretary of State may determine, being persons interested in the moral and social welfare of offenders,

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and the Secretary of State may appoint a Chairman and a Secretary of the Council and such other officers as he may deem necessary.

- (2) The After Care Council—
- (a) may be appointed or specified as the society for the purposes of any of the following provisions of this Act, namely:—section twenty-two, paragraph 2 of the Fourth Schedule, paragraph 2 of the Fifth Schedule and paragraph 1 of the Eighth Schedule ; and
  - (b) may undertake such other duties in connection with the after care of offenders as the Secretary of State may require.
- (3) The Secretary of State may pay—
- (a) to the members of the After Care Council such allowances in respect of loss of earnings or travelling or subsistence or other expenses necessarily suffered or incurred in the performance of their duties; and
  - (b) to the officers of the said Council such remuneration (whether by way of salary or fees) and such allowances in respect of travelling or subsistence,
- as the Secretary of State may with the approval of the Treasury determine.

*Removal and transfer to and from prisons and other institutions*

**59 Temporary detention of persons liable to detention in a Borstal institution**

A person who is required to be taken to a Borstal institution may, until arrangements can be made for taking him there, be temporarily detained elsewhere, and the period for which he is so detained shall count as part of the period for which he is liable to be detained in a Borstal institution under this Act.

**60 Transfers from prison to Borstal institution and vice versa**

- (1) If the Secretary of State is satisfied that a person serving a sentence of imprisonment 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 such person to a Borstal institution; and the provisions of the Fourth Schedule to this Act 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 three years those provisions shall apply to him as if he had been sentenced to Borstal training three 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 situate for commutation to imprisonment 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 such a term of imprisonment, not exceeding the said unexpired part, as he may think fit; and for the purpose of this Act the said person shall be treated as if he had been sentenced to imprisonment for that term.

**61 Removal of prisoners, etc., for judicial and other purposes**

- (1) Rules under section fifty-three of this Act may provide in what manner an appellant within the meaning of the Criminal Appeal (Scotland) Act, 1926, when in custody, is to be taken to, kept in custody at, and brought back from, any place at which he is entitled to be present for the purposes of that Act, or any place to which the High Court of Justiciary or any judge thereof may order him to be taken for the purpose of any proceedings of that court.
- (2) The Secretary of State may—
  - (a) if he is satisfied that the attendance at any place in Great Britain of a person detained in Scotland in a prison, remand centre, detention centre, Borstal institution or remand home is desirable in the interests of justice or for the purposes of any public inquiry, direct him to be taken to that place;
  - (b) if he is satisfied that a person so detained requires medical or surgical treatment of any description, direct him to be taken to a hospital or other suitable place for the purpose of the treatment;

and where any person is directed under this subsection to be taken to any place he shall, unless the Secretary of State otherwise directs, be kept in custody while being so taken, while at that place, and while being taken back to the prison or other institution in which he is required in accordance with law to be detained.

**62 Removal of prisoners, etc., to and from England and from the Isle of Man or Channel Islands**

- (1) The Secretary of State may, on the application of a person serving a sentence of imprisonment, corrective training, preventive detention or Borstal training, order his removal to a prison or Borstal institution in England; and any person so removed may be detained, released, recalled and otherwise dealt with as if he had been sentenced by a court in England and as if his sentence were one which could be imposed by such a court.
- (2) Any person sentenced, under the law for the time being in force, by any court in the Isle of Man or the Channel Islands to penal servitude, imprisonment, corrective training, preventive detention, detention in a Borstal institution, Borstal training or detention in a detention centre may, if the Secretary of State so orders, be removed to a prison, Borstal institution or detention centre, as the case may be, in Scotland.
- (3) Any person ordered to be removed under the last foregoing subsection, and any person sentenced by a court in England who, under any enactment extending to England, is ordered to be removed to a prison or Borstal institution in Scotland, may be detained, released, recalled and otherwise dealt with as if his sentence had been passed by a court in Scotland and as if his sentence were one which could be imposed by such a court:

Provided that—

- (a) where a person so removed was undergoing or liable to undergo a term of penal servitude, he shall be treated as if that term were a term of imprisonment;
  - (b) where a person so removed was sentenced to detention in a Borstal institution he shall be treated as if he had been sentenced to Borstal training under this Act.
- (4) Any person removed under this section from the Isle of Man or the Channel Islands to a prison or Borstal institution in Scotland may, on his release under the provisions of the Fourth or Fifth Schedule to this Act or under section fifty-six of this Act, as the case

may be, be placed under supervision in the Isle of Man or the Channel Islands, as the case may be, and those provisions (including the provisions of the Eighth Schedule to this Act), shall apply to him therein; and if any person so released is recalled under the provisions aforesaid, he may, if in the Isle of Man or the Channel Islands, be arrested without warrant and removed to Scotland for the purpose of being taken to a prison or Borstal institution as the case may be.

- (5) The provisions of the Ninth Schedule to this Act shall have effect in relation to persons for the time being in England who have been discharged from prisons and other institutions in Scotland (including persons who, before being so discharged, had been removed to such institutions under any enactment extending to England).
- (6) For the purposes of this section, a person sentenced to death by a court in England or in the Isle of Man or the Channel Islands who has been pardoned by His Majesty on condition that he serves a term of penal servitude or imprisonment shall be deemed to have been sentenced to penal servitude or imprisonment by that court.

*Treatment of persons of unsound mind and mental defectives*

**63 Establishment of State Mental Hospitals**

- (1) The Secretary of State may provide accommodation in a State Mental Hospital for persons of unsound mind who are ordered to be kept in strict custody till His Majesty's pleasure be known and for other persons of unsound mind who cannot be suitably cared for in a mental hospital within the meaning of the Lunacy (Scotland) Acts, 1857 to 1913, and in connection therewith may provide such medical, nursing and other services as may be required.
- (2) The expressions " criminal lunatic " and " criminal lunatic asylum " shall cease to be used and there shall be respectively substituted in any enactment for those expressions the expressions " state mental patient " and " State Mental Hospital."
- (3) A State Mental Hospital shall be under the management of the General Board of Control for Scotland.
- (4) Subsection (1) of section one and sections two, three and seven of the Criminal Lunatics (Scotland) Act, 1935, shall cease to have effect.
- (5) For the purposes of paragraph (a) of subsection (1) of section sixty-six of the "National Health Service (Scotland) Act, 1947 (which provides for the grant of superannuation benefits to certain officers engaged in health services), officers employed in a State Mental Hospital shall be, deemed to be engaged in health services.
- (6) The aforesaid General Board of Control may, with the approval of the Secretary of State, by statutory instrument make rules for the care and treatment of patients detained in a State Mental Hospital; and any statutory instrument containing such rules shall be laid before Parliament after being made.

**64 Removal of state mental patients, etc.**

- (1) The Secretary of State may—
  - (a) if he is satisfied that the attendance at any place in Great Britain of a state mental patient is desirable in the interests of justice or for the purposes of any public inquiry, direct him to be taken to that place;



- (b) if he is satisfied that a state mental patient requires medical or surgical treatment which cannot be provided in the mental hospital in which he is required by law to be detained, direct him to be taken to a hospital or other suitable place for the purpose of the treatment,
- and where any person is directed under this subsection to be taken to any place he shall, unless the Secretary of State otherwise directs, be kept in custody while being so taken, while at that place and while being taken back to the mental hospital in which he is required by law to be detained.
- (2) The Secretary of State may, on the application of a state mental patient or a relation of the patient, order the patient's removal from a mental hospital in Scotland to a mental hospital in England; and any patient so removed shall be liable to be dealt with as if he had been sentenced or ordered to be detained or otherwise committed to custody, as the case may be, by a court in England.
- (3) If, under any enactment extending to England, a Broadmoor patient is ordered to be removed from a mental hospital in England to a mental hospital in Scotland, he shall be liable to be dealt with as if he had been sentenced or ordered to be detained or otherwise committed to custody, as the case may be, by a court in Scotland.
- (4) In this section any reference to a mental hospital shall include a reference to a State Mental Hospital and references to a State Mental Hospital and to a state mental patient shall, until the day appointed for the coming into operation of section sixty-three of this Act, respectively include references to the lunatic department of Perth Prison and to persons detained therein.

**65 Treatment of persons transferred from prisons, etc., under the Mental Deficiency and Lunacy (Scotland) Act, 1913, s. 10**

- (1) Where an order under section ten of the Mental Deficiency and Lunacy (Scotland) Act, 1913, that a person be transferred to an institution for defectives or be placed under guardianship expires, or the person to whom the order relates is ordered to be discharged from such institution or guardianship then, if, at the time of such expiry or order for discharge, either—
- (a) the period during which such person could, if the order under the said section ten had not been made, have been detained in the prison or other place in which he was detained when that order was made, has not expired ; or
- (b) the person is subject to an order for his custody until His Majesty's pleasure be known,
- the Secretary of State may remit him to any prison or other place in which he could have been detained if the order under the said section ten had not been made; and such person shall be liable accordingly to be dealt with as if he had never been transferred to the institution for defectives or placed under guardianship.
- (2) Subsection (1) of section sixteen of the Mental Deficiency and Lunacy (Scotland) Act, 1913 (which relates to transfer from institutions for defectives to mental hospitals and vice versa) shall not apply to a person detained in an institution for defectives during the period aforesaid; but if at any time during that period it appears to two registered medical practitioners that any person so transferred to the institution is of unsound mind, they shall certify in writing to that effect and the Secretary of State may thereupon by warrant direct that he be removed to such mental hospital as may be named in the warrant; and the Criminal and Dangerous Lunatics (Scotland)

Amendment Act, 1871, shall apply to him as if he had been removed to the mental hospital from a prison.

*Miscellaneous*

**66 Persons unlawfully at large**

- (1) Any person who, having been sentenced to imprisonment, corrective training, preventive detention or Borstal training, or ordered to be detained in a detention centre, 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 in any part of Great Britain and taken to the place in which he is required in accordance with law to be detained.
- (2) Where any person sentenced to imprisonment, corrective training, preventive detention or Borstal training, or ordered to be detained in a remand home or detention centre, is, at any time during the period for which he is liable to be detained in pursuance of the sentence or order, absent, otherwise than with lawful authority, from the prison, Borstal institution, remand home or detention centre, 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 a prison or other institution to which the Prisons (Scotland) Acts, 1860 to 1926 apply.

- (3) For the purposes of this section, a person who, after being temporarily released in pursuance of rules made under subsection (6) of section fifty-three' 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.

**67 Legal custody**

Any person required or authorised by or under this Act to be taken to any place or to be kept in custody shall, while being so taken or kept, be deemed to be in legal custody.

**68 Commutation of death sentence to sentence of imprisonment**

Where His Majesty pardons any person who has been sentenced to death on condition that he serves a term of imprisonment, that person shall be deemed to have been sentenced by the court before which he was convicted to imprisonment for the said term.

**69 Amendment of s. 75 of the Children and Young Persons (Scotland) Act, 1937**

- (1) For subsection (1) of section seventy-five of the Children and Young Persons (Scotland) Act, 1937, there shall be substituted the following subsection:—

“(1) Where a court orders a child to be sent to an approved school, the order shall be an authority for his detention in an approved school until the expiry of a

period of three years from the date of the order or the expiry of four months after he ceases to be of school age whichever is the later.”

- (2) In the said section seventy-five as amended by this section the expression " school age " has the meaning assigned to it by section thirty-two of the Education (Scotland) Act, 1946:

Provided that—

- (a) subsection (4) of that section (which extends the school age in the case of certain children requiring special educational treatment); and
- (b) subsection (2) of section thirty-three of that Act (which provides that a child shall be deemed to attain any given age on the fixed date for commencing or for terminating attendance next following the day on which he actually attains that age)

shall not apply.

- (3) The provisions of the said section seventy-five shall apply as amended by this section to any approved school order made before the commencement of this Act if the period during which the person to whom it relates could be detained thereunder apart from the provisions of this section has not expired at the commencement of this Act.

## **70 Powers of court in relation to absconders from approved schools, etc.**

- (1) Where a person in whose case an approved school order has been made is brought before a court of summary jurisdiction under section eighty-six of the Children and Young Persons (Scotland) Act, 1937, or paragraph 8 of the Second Schedule to that Act (which relate respectively to absconders and persons guilty of serious misconduct), the court may, subject to the following provisions of this section—
- (a) in any case, either make a new approved school order in his case, or order him to be taken back to the school and extend the period of his detention under the original order by such period not exceeding six months as the court may determine;
  - (b) if he has attained the age of sixteen years, and the order for his detention was made in respect of an offence, sentence him to Borstal training:

Provided that if the court before which any person is brought as aforesaid is a court of summary jurisdiction other than a sheriff court or a stipendiary magistrate's court it shall have, in lieu of the power to pass a sentence of Borstal training, power to remit the person to the sheriff court in the manner provided by section nine of the Summary Jurisdiction (Scotland) Act, 1908, and the sheriff court shall on any such remit being made have the like power with regard to the person as if he had been brought before that court as aforesaid.

- (2) An order under paragraph (a) of the last foregoing subsection extending the period of detention under an approved school order shall have effect notwithstanding any limitation imposed by the Children and Young Persons (Scotland) Act, 1937, upon the period for which a person may be detained in an approved school; and in relation to a new approved school order made under that paragraph, sections seventy-five, seventy-seven and seventy-eight of that Act (which relate to the period of detention under approved school orders and to supervision and recall) shall have effect as if for any reference therein to the age of nineteen years there were substituted a reference to the age of nineteen years and a half.

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- (3) Subject as hereinafter provided, His Majesty may by Order in Council prohibit courts of summary jurisdiction from making orders under paragraph (b) of subsection (1) of this section; and any such Order in Council may be limited to persons of one of the sexes:

Provided that no order in Council shall be made under this subsection until the Secretary of State is satisfied that adequate methods, other than Borstal training, are available for dealing with the persons to whom the Order relates.

- (4) A draft of any Order in Council under the last foregoing subsection shall be laid before Parliament, and the draft shall not be submitted to His Majesty in Council unless each House of Parliament presents an Address to His Majesty praying that the Order be made.