



Legal Aid, Sentencing and Punishment of Offenders Act 2012

2012 CHAPTER 10

PART 3

SENTENCING AND PUNISHMENT OF OFFENDERS

CHAPTER 6

PRISONERS ETC

129 Employment in prisons: deductions etc from payments to prisoners

- (1) In section 47 of the Prison Act 1952 (power of Secretary of State to make rules for the regulation and management of prisons etc), in subsection (1) omit “employment”.
- (2) After that subsection insert—
 - “(1A) The Secretary of State may make rules about—
 - (a) the employment of persons who are required to be detained in secure training centres or young offender institutions;
 - (b) the making of payments to such persons in respect of work or other activities undertaken by them, or in respect of their unemployment.”
- (3) In that section, after subsection (5) insert—
 - “(6) Rules made under this section may—
 - (a) make different provision for different cases;
 - (b) contain supplementary, incidental, transitional, transitory or saving provision.”
- (4) After that section insert—

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“47A Rules about employment in prisons etc

- (1) The Secretary of State may make rules about—
 - (a) the employment of prisoners;
 - (b) the making of payments to prisoners in respect of work or other activities undertaken by them, or in respect of their unemployment.
- (2) The Secretary of State may make rules about the making, by the governor of the prison in which a prisoner is detained or the Secretary of State, of reductions in payments to the prisoner in respect of—
 - (a) work undertaken by the prisoner,
 - (b) other activities undertaken by the prisoner, or
 - (c) the prisoner’s unemployment,where those payments are made by or on behalf of the Secretary of State.
- (3) Rules under subsection (2) may make provision, in a case where reductions are made by the governor, for amounts generated by the reductions to be used by the governor—
 - (a) for making payments for the benefit of victims or communities;
 - (b) for making payments for the purposes of the rehabilitation of offenders;
 - (c) for other prescribed purposes.
- (4) Rules under subsection (2) may make provision, in a case where reductions are made by the governor—
 - (a) for amounts generated by the reductions to be used by the governor for making payments into an account of a prescribed kind;
 - (b) for the administration of the account;
 - (c) for the making of payments out of the account to a prisoner before or after the prisoner’s release on fulfilment by the prisoner of prescribed conditions.
- (5) Rules under subsection (2) that make provision for amounts generated by reductions to be used to make payments may provide for such payments to be made after the deduction of amounts of a prescribed description.
- (6) The Secretary of State may make rules about the making of deductions from, or the imposition of levies on, payments to a prisoner in respect of—
 - (a) work undertaken by the prisoner,
 - (b) other activities undertaken by the prisoner, or
 - (c) the prisoner’s unemployment,where those payments are made otherwise than by or on behalf of the Secretary of State.
- (7) Rules under subsection (6)—
 - (a) may provide for deductions to be made, or levies to be imposed, by the governor of the prison or by the Secretary of State;
 - (b) must provide that, if the governor makes the deductions or imposes the levies, the governor must pay amounts generated to the Secretary of State.

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- (8) The Secretary of State may make rules providing—
- (a) for the making of payments by the Secretary of State into an account of a prescribed kind;
 - (b) for the administration of the account;
 - (c) for the making of payments out of the account to a prisoner before or after the prisoner’s release on fulfilment by the prisoner of prescribed conditions.
- (9) Rules under this section may—
- (a) make different provision for different cases;
 - (b) contain supplementary, incidental, transitional, transitory or saving provision.
- (10) In this section references to the governor of a prison include—
- (a) the director of a contracted out prison within the meaning of Part 4 of the Criminal Justice Act 1991, and
 - (b) an officer of a prison who may exercise the functions of a governor in accordance with rules under section 47 or this section.
- (11) In this section—
- “prescribed” means prescribed by rules under this section;
- “prisoner” includes a prisoner on temporary release.”
- (5) In section 66(4) of the Criminal Justice Act 1967 (procedure applying to rules under section 47 of the Prison Act 1952), for “of the said Act of 1952” substitute “or section 47A of the Prison Act 1952”.
- (6) In section 127(6) of the Criminal Justice and Public Order Act 1994 (inducements to prison officers to contravene prison rules: meaning of “prison rules”), after “section 47” insert “or 47A”.
- (7) In section 4 of the Prisoners’ Earnings Act 1996 (interpretation)—
- (a) omit subsection (2) (application of the Act to England and Wales), and
 - (b) in subsection (3) (application of the Act to Scotland), for “In the application of this Act to Scotland” substitute “In this Act”.
- (8) In section 5 of that Act (short title, commencement and extent), for subsection (3) substitute—
- “(3) This Act extends to Scotland only.”
- (9) In section 45(2) of the National Minimum Wage Act 1998 (exclusion for prisoners doing work in pursuance of prison rules: interpretation), in paragraph (a) of the definition of “prison rules”, after “section 47” insert “or 47A”.
- (10) Before the coming into force of section 59 of the Criminal Justice and Court Services Act 2000 (abolition of power to provide remand centres), section 47(1A) of the Prison Act 1952 has effect as if it referred also to persons required to be detained in remand centres.
- (11) Before the coming into force of section 61 of the Criminal Justice and Court Services Act 2000 (abolition of sentences of detention in a young offender institution, custody for life etc)—

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- (a) section 47(1A) of the Prison Act 1952 has effect as if the references to persons required to be detained in young offender institutions were to persons aged under 18 required to be so detained, and
 - (b) section 47A of that Act has effect as if—
 - (i) “prison” included a young offender institution, and
 - (ii) “prisoner” included a person aged 18 or over who is required to be detained in a young offender institution.
- (12) The Secretary of State may make such payments to such persons as the Secretary of State considers appropriate in connection with measures that appear to the Secretary of State to be intended to—
- (a) rehabilitate offenders,
 - (b) prevent re-offending, or
 - (c) limit the impact of crime.
- (13) In making payments under subsection (12), the Secretary of State must have regard to the sums that have been made available to, or received by, the Secretary of State by virtue of rules under section 47A of the Prison Act 1952 (reductions, deductions and levies in respect of payments to prisoners etc.).

130 Transfer of prisoners: prosecution of other offences

In the Repatriation of Prisoners Act 1984, after section 3 insert—

“3A Prosecution of other offences

- (1) This section applies where—
- (a) a person has been transferred into Great Britain under a warrant under section 1, and
 - (b) the international arrangements in accordance with which the person has been transferred contain a speciality provision.
- (2) The person must not, unless a condition in subsection (3) is met—
- (a) be prosecuted for any offence committed before the departure of that person from the country or territory from which that person has been transferred, or
 - (b) be detained or otherwise subjected to any restriction of liberty for any offence committed before the departure of that person from the country or territory from which that person has been transferred, other than the offence in respect of which the person has been transferred.
- (3) For the purposes of subsection (2), the conditions are as follows—
- (a) the person has consented to the transfer;
 - (b) the offence is an offence which is not punishable with imprisonment or another form of detention;
 - (c) the offence is an offence in respect of which the person will not be detained in connection with the person’s trial, sentence or appeal;
 - (d) the person is given an opportunity to leave Great Britain and—
 - (i) the person does not do so before the end of the permitted period, or

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- (ii) if the person does so before the end of the permitted period, the person subsequently returns to Great Britain;
 - (e) after the transfer has taken place, the person has made a renunciation of the application of subsection (2) to the offence;
 - (f) the appropriate authority of the country or territory from which the person has been transferred consents to the prosecution of the offence.
- (4) For the purpose of subsection (3)(d) the “permitted period” is 45 days starting with the day on which the person’s sentence ends.
- (5) For the purpose of subsection (3)(e) a renunciation must be made before a court before which the person may be prosecuted for that offence.
- (6) In this section a “speciality provision” means a provision preventing or limiting the prosecution, detention or other restriction of liberty of the person (“P”) for any offence committed before the departure of P from the country or territory from which P has been transferred, other than for the offence in respect of which P has been transferred.”

131 Transit of prisoners

(1) In the Repatriation of Prisoners Act 1984, after section 6 insert—

“6A Transit

- (1) The relevant Minister may issue a transit order where—
- (a) the United Kingdom is a party to international arrangements providing for the transfer between the United Kingdom and a country or territory outside the British Islands of persons to whom subsection (2) applies; and
 - (b) the relevant Minister has received a request from the appropriate authority of that country or territory in accordance with those arrangements for the transit of a person to whom subsection (2) applies through a part of Great Britain.
- (2) A person falls within this subsection if—
- (a) that person is for the time being required to be detained in a prison, a hospital or any other institution either—
 - (i) by virtue of an order made in the course of the exercise by a court or tribunal in a country or territory outside the British Islands of its criminal jurisdiction; or
 - (ii) by virtue of any provisions of the law of such a country or territory which are similar to any of the provisions of this Act; and
 - (b) except in a case where a transit request is made in the circumstances described in section 6D(1), that person is present in a country or territory outside the British Islands.
- (3) The relevant Minister may issue a transit order where—
- (a) international arrangements apply to any of the Channel Islands or the Isle of Man which provide for the transfer between that island and

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- a country or territory outside the British Islands of persons to whom subsection (4) applies; and
- (b) the relevant Minister has received a request from the appropriate authority of that island for the transit of a person to whom subsection (4) applies through a part of Great Britain.
- (4) A person falls within this subsection if—
- (a) that person is for the time being required to be detained in a prison, a hospital or any other institution either—
- (i) by virtue of an order made in the course of the exercise of its criminal jurisdiction by a court or tribunal in the island from which the transit request is made; or
- (ii) by virtue of any provisions of the law of that island which are similar to any of the provisions of this Act; and
- (b) except in a case where a transit request is made in the circumstances described in section 6D(1), that person is present in that island.
- (5) Terms used in subsection (2)(a) or (4)(a) have the same meaning as in section 1(7).
- (6) In this section and sections 6B, 6C and 6D “transit order” means an order issued by the relevant Minister, in respect of a person who has been the subject of a request within subsection (1)(b) or (3)(b), which authorises the detention of that person in any part of Great Britain at any time when that person is in transit.
- (7) In subsection (6) “detention” includes detention while the person is being taken from one place to another place within Great Britain.
- (8) A person may be detained pursuant to a transit order only for as long as is reasonable and necessary to allow the transit to take place.
- (9) In this section and section 6B “relevant Minister” means—
- (a) the Scottish Ministers, in a case where it is proposed that the person who is the subject of a request under subsection (1)(b) or (3)(b) will, whilst in transit—
- (i) be present only in Scotland, or
- (ii) arrive in Scotland before being taken to another part of Great Britain;
- (b) the Secretary of State, in any other case.
- (10) For the purposes of this section and sections 6B and 6C a person who is the subject of a transit order is “in transit” at any time during the period beginning with the arrival of that person in Great Britain and ending with the removal of that person from Great Britain.

6B Transit: supplementary

- (1) A person who is the subject of a transit order is deemed to be in the legal custody of the relevant Minister at any time when that person is in transit.
- (2) A constable may for the purposes of a transit order detain a person who is the subject of that order.

- (3) The relevant Minister may, from time to time, designate any person as a person who is for the time being authorised for the purposes of a transit order to detain a person under the order.
- (4) A person authorised under subsection (3) has all the powers, authority, protection and privileges of a constable in any part of Great Britain in which the person who is the subject of the transit order is for the time being.
- (5) If a person who is the subject of a transit order escapes or is unlawfully at large, that person may be arrested without warrant by a constable.
- (6) A constable may search a person who is the subject of a transit order, and any item in the possession of that person, for any item which that person might use—
 - (a) to cause physical injury to that person or to any other person; or
 - (b) to assist that person to escape from detention.
- (7) The power conferred by subsection (6) does not authorise a constable to require a person to remove any clothing other than an outer coat, jacket, headgear or gloves.
- (8) The power conferred by subsection (6) includes power to use reasonable force where necessary.
- (9) A constable searching a person in the exercise of the power conferred by subsection (6) may seize any item found if the constable has reasonable grounds for believing that the person searched might use the item —
 - (a) to cause physical injury to that person or to any other person; or
 - (b) to assist that person to escape from detention.
- (10) Any item seized from a person under subsection (9) may be retained while that person is in transit.
- (11) In this section “constable” means—
 - (a) any person who is a constable in any part of Great Britain or who has, under any enactment (including subsection (4) above), the powers of a constable in any part of Great Britain, or
 - (b) any person who is a prison officer within the meaning of section 117(1) of the Criminal Justice and Public Order Act 1994.
- (12) A person who is a constable by virtue of subsection (11)(a) has, for the purposes of section 6A, this section and section 6C, all the powers, authority, protection and privileges of a constable in any part of Great Britain in which a person who is the subject of a transit order is for the time being.

6C Transit through different parts of Great Britain

- (1) Where the Scottish Ministers issue a transit order and it is proposed that the person who is the subject of the order will be taken to a part of Great Britain other than Scotland whilst in transit, they must notify the Secretary of State.
- (2) The Scottish Ministers need not notify the Secretary of State where the Secretary of State has agreed in writing to the transit order.

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- (3) Unless the Secretary of State agrees in writing to the transit order, that order authorises the detention of the person subject to it in Scotland only.
- (4) But where the person escapes or is unlawfully at large, the order also authorises—
 - (a) the arrest of the person under section 6B(5) in a part of Great Britain other than Scotland, and
 - (b) the detention of the person in that part by a constable (within the meaning of that section) for the purpose of taking the person to Scotland.
- (5) Where the Secretary of State issues a transit order and it is proposed that the person who is the subject of the order will be taken to Scotland whilst in transit, the Secretary of State must notify the Scottish Ministers.
- (6) The Secretary of State need not notify the Scottish Ministers where the Scottish Ministers have agreed in writing to the transit order.
- (7) Unless the Scottish Ministers agree in writing to the transit order, that order authorises the detention of the person subject to it only in a part of Great Britain other than Scotland.
- (8) But where the person escapes or is unlawfully at large, the order also authorises—
 - (a) the arrest of the person under section 6B(5) in Scotland, and
 - (b) the detention of the person in Scotland by a constable (within the meaning of that section) for the purpose of taking the person to a part of Great Britain other than Scotland.

6D Transit: unscheduled arrivals

- (1) This section applies where—
 - (a) a person is being transferred between two countries or territories outside the United Kingdom in accordance with international arrangements between those two countries or territories providing for the transfer of persons within section 6A(2)(a) or (4)(a),
 - (b) the United Kingdom is a party to international arrangements of the kind mentioned in section 6A(1)(a) with at least one of those countries or territories such that the country or territory can make a request under section 6A(1)(b), and
 - (c) the person makes an unscheduled arrival in Great Britain.
- (2) A constable may detain a person to whom subsection (1) applies until the expiry of the period of 72 hours beginning with the person's arrival in Great Britain or until a transit order is issued under section 6A in respect of that person, whichever is the sooner.
- (3) In this section “constable” means any person who is a constable in any part of Great Britain or who has, under any enactment (including section 6B(4) above), the powers of a constable in any part of Great Britain.
- (4) A person who is a constable by virtue of subsection (3) has for the purposes of this section all the powers, authority, protection and privileges of a constable

in the part of Great Britain in which the person mentioned in subsection (2) is for the time being.”

(2) In section 9 of the Repatriation of Prisoners Act 1984 (short title, commencement and extent)—

- (a) at the beginning of subsection (3) insert “Subject to subsection (3A),” and
- (b) after that subsection insert—

“(3A) Sections 3A and 6A to 6D extend to England and Wales and Scotland only.”