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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 94**

**PRISONS  
YOUNG OFFENDERS INSTITUTIONS**

The Prisons and Young Offenders  
Institutions (Scotland) Rules 2006

<i>Made</i>	- - - -	<i>2nd March 2006</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>3rd March 2006</i>
<i>Coming into force</i>	- -	<i>26th March 2006</i>

The Scottish Ministers, in exercise of the powers conferred on them by section 39 of the Prisons (Scotland) Act 1989(1) and of all other powers enabling them in that behalf, hereby make the following Rules:

**PART 1  
GENERAL**

**Citation and commencement**

**1.** These Rules may be cited as the Prisons and Young Offenders Institutions (Scotland) Rules 2006 and shall come into force on 26th March 2006.

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(1) 1989 c. 45; the functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46); section 39 was amended by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9) (“the 1993 Act”), sections 24 and 25, Schedule 5, paragraph 6(6) and Schedule 7 and by the Criminal Justice and Public Order Act 1994 (c. 33) (“the 1994 Act”), sections 116(4) and 130(4) and by the Crime and Disorder Act 1998 (c. 37), Schedule 8, paragraph 71; section 39 is to be read with sections 3A(5), (6) and (7) (which was inserted by the Crime and Punishment (Scotland) Act 1997 (c. 48) (“the 1997 Act”), section 43(2), 8(1) and (2), 11(1), 12 (as amended by the 1993 Act, Schedule 5, paragraph 6(2)), 14(1) (as amended by the 1993 Act, Schedule 5, paragraph 6(3)), 19(3) and (4) (as amended by the 1993 Act, Schedule 5, paragraph 6(4)), 24 (which was repealed by the 1993 Act, Schedule 7 but was saved by Schedule 6 to that Act in relation to any “existing prisoner” within the meaning specified in paragraph 1 of Schedule 6), 33A (which was inserted by the 1994 Act, section 116(3)), 41(2B) (which was inserted by the 1994 Act, section 153(3)), 41B(1) (which was inserted by the 1994 Act, section 151(2) and amended by the [Management of Offenders etc. \(Scotland\) Act 2005, asp 14](#), section 16) and 41C(1) (which was inserted by the 1997 Act, section 42) of the 1989 Act; section 39 was extended by the Courts-Martial (Appeals) Act 1968 (c. 20), section 52 (as amended by the 1989 Act, Schedule 2, paragraph 10).

## Application of Rules

2.—(1) Subject to paragraphs (2) to (5), these Rules apply to prisons and young offenders institutions and to any person who is required to be detained in any such prison or institution.

(2) Subject to any exception or modification specified in any provision of these Rules or where the context otherwise requires, any reference in these Rules to a prison shall be construed as including a young offenders institution.

(3) Subject to any exception or modification specified in any provision of these Rules or where the context otherwise requires, these Rules apply to persons on whom detention in a young offenders institution has been imposed under section 207(2) of the 1995 Act(2) as they apply to prisoners who are serving sentences of imprisonment; and any reference in these Rules to a prisoner, imprisonment or a sentence of imprisonment shall respectively be construed as including a young offender, detention or a sentence of detention in a young offenders institution.

(4) Subject to any exception or modification specified in any provision of these Rules or where the context otherwise requires, these Rules apply to—

- (a) any person under 16 years of age who has been committed to a prison under section 51 of the 1995 Act(3);
- (b) a person sentenced under section 205 of the 1995 Act(4) to be detained without limit of time or for life and who is directed or sentenced to be detained in a prison or a young offenders institution; and
- (c) a person sentenced to be detained under section 208 of the 1995 Act(5) and who is directed to be detained in a prison or a young offenders institution,

as they apply to prisoners who are serving sentences of imprisonment; and any reference in these Rules to a prisoner, imprisonment or a sentence of imprisonment shall respectively be construed as including any such person, detention or a sentence of detention under any of those provisions.

(5) Subject to any exception or modification specified in any provision of these Rules or where the context otherwise requires, these Rules apply to any other person on whom imprisonment, or as the case may be detention in a young offenders institution, has been imposed or who is committed to prison, including persons who are imprisoned or detained—

- (a) under section 219 of the 1995 Act (imprisonment for non payment of fine)(6) or, by virtue of that section, under section 207 of that Act (detention of young offenders)(7);
- (b) for examination or trial on any criminal charge;
- (c) by virtue of remand in custody under the Extradition Act 2003(8);
- (d) by virtue of detention under Schedule 2 or 3 to the Immigration Act 1971(9);

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(2) 1995 c. 46.

(3) 1995 c. 46; section 51(1)(a)(aa), section 51(3)(b) and section 51(4) were amended, section 51(1)(b) substituted and section 51(1)(bb), section 51(2A), 51(5) inserted by the Criminal Justice (Scotland) Act 2003, section 23; section 51(1)(a), section 51(1)(b) and section 51(4) were amended and section 51(1)(a) and section 51(4A) were inserted by the Crime and Punishment (Scotland) Act 1997, section 56; section 51(1)(a)(aa), and section 51(2) were partially repealed by the Criminal Justice (Scotland) Act 2003, section 23.

(4) 1995 c. 46; section 205(1) amended by the Convention Rights (Compliance) (Scotland) Act 2001, section 2(1)(a); section 205(4) (6) were repealed by the Convention Rights (Compliance) (Scotland) Act 2001, section 2(1)(b).

(5) 1995 c. 46; section 208 was amended and section 208(2) was inserted by the [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), section 10(3) and section 10(4); section 208 was substituted and section 208(2) was inserted by the Criminal Justice Act 2003, section 290(3).

(6) 1995 c. 46; section 219(1) was amended and section 219(1A) was inserted by the [Antisocial Behaviour etc. \(Scotland\) Act 2004](#), section 144(1), Schedule 4, paragraph 5(4), section 219(8)(b) amended by the [Proceeds of Crime Act 2002](#), Schedule 11, paragraph 29(4).

(7) 1995 c. 46; section 207(2) was amended and section 207(4A) inserted by the [Crime and Punishment \(Scotland\) Act 1997](#), section 6(4), Schedule 1, paragraph 21.

(8) 2003 c. 41.

(9) 1971 c. 77; Schedule 2 was relevantly amended as follows: paragraph 16(1A) was inserted by paragraph 60 of Schedule 14 to the [Immigration and Asylum Act 1999 \(c. 33\)](#); paragraph 16(2) was substituted by section 140(1) of the [Immigration](#)

- (e) by virtue of non compliance with an order under section 45 of the Court of Session Act 1988(10);
- (f) under section 4 or 6 of the Civil Imprisonment (Scotland) Act 1882(11);
- (g) by virtue of a warrant granted under section 1(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940(12);
- (h) for contempt of court or for non payment of a fine for contempt of court;
- (i) for breach of interdict; and
- (j) by virtue of, or by virtue of any rules or regulations made under, the Army Act 1955(13), the Air Force Act 1955(14), the Naval Discipline Act 1957(15) or the Courts-Martial (Appeals) Act 1968(16),

as they apply to persons serving sentences of imprisonment; and any reference in these Rules to a prisoner, imprisonment or a sentence of imprisonment shall therefore respectively be construed as including any such person, any such imprisonment or detention or any such period of imprisonment or detention imposed on such a person.

(6) Any reference in paragraphs (1) to (5) to a person sentenced to imprisonment or other detention includes a person who is detained in a prison or young offenders institution and is—

- (a) by virtue of section 26 of the Criminal Justice Act 1961(17), Schedule 1 to the Crime (Sentences) Act 1997(18) or the Transfer of Prisoners (Restricted Transfers) (Channel Islands and Isle of Man) Order 1998(19), treated for any purpose as if his or her sentence had been an equivalent sentence passed by a court in Scotland; or
- (b) serving a sentence of imprisonment or detention by virtue of a warrant authorising his or her detention which has been issued under the Repatriation of Prisoners Act 1984(20).

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and Asylum Act 1999 (c. 33); paragraph 16(3) was substituted by paragraph 1(11) of Schedule 4 to the Channel Tunnel (International Arrangements) Order 1993 (S.I. 1993/1813); paragraph 16(2) was amended by section 73(5) of the Nationality, Immigration and Asylum Act 2002 (c. 41), and by paragraph 1(11) of Schedule 4 to the Channel Tunnel (International Arrangements) Order 1993 (S.I. 1993/1813); Schedule 3 was relevantly amended as follows: paragraph 2(1A) was inserted by paragraph 1(b) of Schedule 10 to the Criminal Justice Act 1982 (c. 48); paragraph 2(1) was amended by section 34(1) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), by section 54(2) of the Immigration and Asylum Act 1999 (c. 33) and also by paragraph 1(a) of Schedule 10 to the Criminal Justice Act 1982 (c. 48); paragraph 2(2) was amended by section 34(2) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19) and also by paragraph 7 of Schedule 7 to the Nationality, Immigration and Asylum Act 2002 (c. 41); paragraph 2(3) was amended by section 54(3) of the Immigration and Asylum Act 1999 (c. 33). In addition, Schedule 2 is subject to the modifications contained in section 6(6) (b) of the Criminal Justice (International Co-operation) Act 1990 (c. 5).

- (10) 1988 c. 36.
- (11) 1882 c. 42; sections 4 and 6 were amended by the Sheriff Courts (Scotland) Act 1971 (c. 58), section 4.
- (12) 1940 c. 42.
- (13) 1955 c. 18, continued by section 1 of the Armed Forces Act 2001 (c. 19); section 122(1) was relevantly repealed in part by paragraph 1 of Schedule 7, Part III to the Armed Forces Act 1996 (c. 46), by Schedule 3 to the Armed Forces Act 1991(c. 62) and also by paragraph 5 of Schedule 6 and Schedule 7 Part III of the Armed Forces Act 1996 (c. 46).
- (14) 1955 c. 19, continued by section 1 of the Armed Forces Act 2001 (c. 19); section 122(1) relevantly repealed in part by paragraph 1 of Schedule 7, Part III to the Armed Forces Act 1996 (c. 46), by Schedule 3 to the Armed Forces Act 1991(c. 62) and also by paragraph 5 of Schedule 6 and Schedule 7 Part III of the Armed Forces Act 1996 (c. 46).
- (15) 1957 c. 53, continued by section 1 of the Armed Forces Act 2001 (c. 19); section 81 was relevantly amended by paragraph 90 of Schedule 1 to the Armed Forces Act 1996 (c. 46).
- (16) 1968 c. 20; section 43 was relevantly amended by paragraph 17 of Schedule 9 to the Constitutional Reform Act 2005.
- (17) 1961 c. 39; section 26 was repealed by the Crime (Sentences) Act 1997 (c. 43), Schedule 6 but, by virtue of article 5(6) of the Crime (Sentences) Act 1997 (Commencement No. 2 and Transitional Provisions) Order 1997 (S.I. 1997/2200), that repeal does not apply in respect of any person who on 1st October 1997 was in Scotland by virtue of an order made under section 26 of the 1961 Act, for so long as that order has effect under Part III of that Act.
- (18) 1997 c. 43; paragraphs 1 and 2 of Schedule 1 were amended by S.I. 1997/1775, article 2 and paragraph 1 of the Schedule and also by S.I. 1999/1820, article 4 and paragraph 130 of Schedule 2.
- (19) S.I. 1998/2798.
- (20) 1984 c. 47, which has been relevantly amended as follows: section 1 was amended by S.I. 1999/1820, article 4 and paragraph 75 of Schedule 2; section 3 was amended by Schedule 5 to the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9), by section 62 and paragraph 10 of Schedule 1 of the Crime and Punishment (Scotland) Act; section 119 of the Crime and Disorder Act 1998 (c. 37), by S.I. 1999/1820, article 4 and paragraph 75 of Schedule 2, and also by the Criminal Justice (Scotland) Act 2003 (asp 7); section 3 was repealed in part by the Crime and Punishment (Scotland) Act, section 62, paragraph 10 of Schedule 1 and Schedule 3, and also by the Criminal Justice Act 2003 (c. 44), Schedule 37, Part 8; section 4 was

### **Application of Rules to contracted out prisons**

3.—(1) Subject to paragraph (2), these Rules apply to a contracted out prison.

(2) Where the Scottish Ministers have entered into a contract for the running of a contracted out prison, these Rules shall have effect in relation to the prison, with the following modifications:—

- (a) references to “an officer” in these Rules shall include references to a prisoner custody officer certified as such under section 114(1) of the 1994 Act<sup>(21)</sup> and performing custodial duties at that or any other prison;
- (b) references to “an employee” in these Rules shall include references to an employee of the contractor or any sub contractor;
- (c) subject to sub paragraphs (d) and (h), references to a “Governor” in these Rules shall include references to a director approved by the Scottish Ministers for the purpose of section 107(1)<sup>(22)</sup> of the 1994 Act except in rules 22(2), 37, 94, 97, 98, 99 and 131 and in any rule in Parts 11 and 15 where references to a “Governor” shall be construed as references to a controller appointed by the Scottish Ministers under section 107(1) of the 1994 Act;
- (d) where a director exercises the powers set out in section 107(3)(c) of the 1994 Act (removal of a prisoner from association with other prisoners, the temporary confinement of a prisoner in a special cell or the application to a prisoner of any other special control or restraint in cases of urgency) the director shall notify the controller of the fact forthwith;
- (e) “Governor-in-Charge” in these Rules means the director except where the function has been conferred on the controller in terms of sub paragraph (c) and in such cases references to the “Governor in Charge” shall be construed as references to the controller;
- (f) rules 102(8), 130 and paragraphs (b) and (c) of rule 150 shall not apply;
- (g) references to an officer in rule 114(2) shall be construed as references to the controller;
- (h) in rule 127 where a prisoner desires to make a complaint concerning a matter referred to in rule 127(1) in relation to the controller, references to “the Governor” in paragraphs (2) to (4) shall be construed as references to “the Scottish Ministers”; and
- (i) the reference to “the Governor” in paragraph (b) of rule 148 shall include reference to the director and the controller.

### **Suspension of certificate of a prisoner custody officer**

4. The prescribed circumstances for the purposes of paragraph 3(2)(b) of Schedule 6 to the 1994 Act (suspension of certificate) are—

- (a) where—
  - (i) an allegation has been made against a prisoner custody officer acting in pursuance of prisoner escort arrangements or performing custodial duties at a prison; or
  - (ii) the officer has been charged with a criminal offence or disciplinary action is being taken against him or her by the contractor; or
  - (iii) it appears to the prisoner escort monitor or, as the case may be, controller that the officer is, by reason of physical or mental illness, or for any other reason, incapable of satisfactorily carrying out his or her duties; and

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amended by S.I. 1999/1820 article 4 and paragraph 75 of Schedule 2; section 5 was amended by the Merchant Shipping Act 1995 (c. 21), Schedule 13 and also by S.I. 1999/1820, article 4 and paragraph 75 of Schedule 2; paragraph 2 of the Schedule was substituted by the Criminal Justice Scotland Act 2003 (asp 7), section 33 and amended by S.I. 1998/2327, article 5.

(21) 1994 c. 33; section 114(1) was amended by S.I. 1999/1820, article 4 and paragraph 115 of Schedule 2.

(22) 1994 c. 33; section 107(1) was amended by S.I. 1999/1820, article 4 and paragraph 115 of Schedule 2.

- (b) where the prisoner escort monitor or, as the case may be, controller considers that the suspension of the certificate would be conducive to the maintenance of order or discipline in the prison or, as the case may be, the performance of the functions set out in section 102(2) of the 1994 Act (arrangements for the provision of prisoner escorts).

## Interpretation

5.—(1) In these Rules, unless the context otherwise requires, the following expressions shall have the meanings ascribed to them:—

“the Act” means the Prisons (Scotland) Act 1989;

“the 1993 Act” means the Prisoners and Criminal Proceedings (Scotland) Act 1993(23);

“the 1994 Act” means the Criminal Justice and Public Order Act 1994(24);

“the 1994 Rules” means the Prisons and Young Offenders Institutions (Scotland) Rules 1994(25);

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995(26);

“appellant” means a prisoner—

- (a) who appeals under section 106 or 175 of the Criminal Procedure (Scotland) Act 1995(27) against his or her conviction or sentence, or against both conviction and sentence;
- (b) whose case has been referred to the High Court of Justiciary by the Scottish Criminal Cases Review Commission pursuant to section 194B(1) of the 1995 Act(28);
- (c) who appeals by way of bill of suspension against his or her conviction or sentence, or both conviction and sentence, in summary proceedings;
- (d) who appeals under section 8 of the Courts-Martial (Appeals) Act 1968(29) against his or her conviction or sentence, or both conviction and sentence, or who appeals under section 39(1)(30) of that Act from any decision of the Courts-Martial Appeal Court on an appeal under section 8 of that Act; or
- (e) who is returned to prison under section 18(2) of the 1993 Act and who appeals under section 19 of that Act,

and, for the purposes of this definition, a prisoner shall be deemed to be an appellant from the time—

- (i) in the case of an appeal as mentioned in sub paragraph (a) in solemn proceedings, he or she lodges an intimation of intention to appeal in terms of section 109(1)(31) of the

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(23) 1993 c. 9.

(24) 1994 c. 33.

(25) S.I. 1994/1931, amended by S.I. 1996/32, 1997/2007, 1998/1589, 1998/2504 and 1999/374 and S.S.I. 2000/187, 2002/107, 2003/242 and 2006/5.

(26) 1995 c. 46.

(27) 1995 c. 46; has been relevantly amended as follows: section 106 was amended by the Crime and Punishment (Scotland) Act 1997 (c. 48), sections 17, 18 and 23, by the Crime and Disorder Act 1998 (c. 37) section 119 and paragraph 119 of Schedule 8, by the Protection of Children (Scotland) Act 2003 (asp 5), section 16 and also by the Criminal Justice Scotland Act 2003 (asp 7), Schedule 1, paragraph 2; section 106A was inserted by the Crime and Punishment (Scotland) Act 1997, section 19; section 175 was amended by Crime and Punishment (Scotland) Act 1997 (c. 48), section 17, section 21, section 23, by the Crime and Disorder Act 1998 (c. 37) section 119 and paragraph 123 of Schedule 8, by the Proceeds of Crime Act 2002 (c. 29) Part 3, section 115, and also by the Protection of Children (Scotland) Act 2003 (asp 5), section 16.

(28) Section 194B was inserted by the Crime and Punishment (Scotland) Act 1997, section 25, and was amended by S.I. 1999/1181, Article 3.

(29) 1968 c. 20; section 8 was amended by the Armed Forces Act 1971 (c. 33), section 73(2) and Schedule 2, paragraph 1(2), by the Armed Forces Act 1976 (c. 52), section 22(5) and Schedule 9, paragraph 16, by the Armed Forces Act 1991 (c. 62), Schedule 3, by the Armed Forces Act 1996 (c. 46), section 17 and Schedule 7, Part III, and by the Armed Forces Act 2001 (c. 19), section 34 and Schedule 6, paragraph 55.

(30) 1968 c. 20; section 39 was amended by the Constitutional Reform Act 2005, Schedule 9, paragraph 17.

(31) 1995 c. 46; section 109(1) amended by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraph 29.

1995 Act or, in the case of an appeal against sentence only, a note of appeal in terms of section 110(1)(32) of that Act;

- (ii) in the case of an appeal as mentioned in sub paragraph (a) in summary proceedings, he or she lodges an application for a stated case under section 176(1) of the 1995 Act or, in the case of an appeal against sentence only, a note of appeal under section 186(1)(33) of that Act;
- (iii) in the case of a reference as referred to in sub paragraph (b), the Secretary of State or, as the case may be, the Scottish Criminal Cases Review Commission refers the case to the High Court of Justiciary;
- (iv) in the case of an appeal as referred to in sub paragraph (c), he or she lodges the bill of suspension;
- (v) in the case of an appeal as referred to in sub paragraph (d), he or she presents a petition in terms of section 8(2) of the Courts-Martial (Appeals) Act 1968(34); or
- (vi) in the case of an appeal as referred to in sub paragraph (e), he or she lodges a note of appeal,

until the appeal, or, as the case may be, the reference is finally disposed of or abandoned in its entirety;

“chaplain” means the person who is appointed pursuant to section 3(2) of the Act(35) as the chaplain to a prison;

“chaplaincy team” consists of the chaplain and any prison minister and any visiting minister;

“civil prisoner” means a person who is committed to prison—

- (a) by virtue of non compliance with an order under section 45 of the Court of Session Act 1988(36);
- (b) under section 4 or 6 of the Civil Imprisonment (Scotland) Act 1882(37);
- (c) by virtue of a warrant granted under section 1(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940(38);
- (d) for contempt of court or for non payment of a fine imposed for contempt of court; or
- (e) for breach of interdict;

“closed visiting facilities” means visiting facilities which adopt special security features including physical barriers between prisoner and visitor;

“clothing” includes footwear, jewellery and other objects worn for personal adornment;

“constable” has the same meaning as in section 51(1) of the Police (Scotland) Act 1967(39);

“contracted out prison” means a prison or part of a prison for the running of which a contract under section 106 of the 1994 Act(40) is for the time being in force;

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(32) 1995 c 46; section 110(1) amended by the Crime and Punishment (Scotland) Act 1997 (c. 48), section 19, by the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), section 24, and also by S.S.I. 2002/387, article 2.

(33) 1995 c. 46; section 186(1) was amended by the Protection of Children (Scotland) Act (asp 5), section 16.

(34) Section 8(2) was amended by the Armed Forces Act 1971 (c. 33), Schedule 2, paragraph 1(2), and by the Armed Forces Act 2001 (c. 19) Schedule 6, paragraph 19.

(35) 1989 c. 45; section 3(2) was modified by S.I. 1998/2251.

(36) 1988 c. 36.

(37) 1882 c. 42; sections 4 and 6 were amended by the Sheriff Courts (Scotland) Act 1971 (c. 58), section 4.

(38) 1940 c. 42.

(39) 1967 c. 77; Section 51(1) was amended by the Police and Magistrates Courts Act 1994 (c. 29), section 63 and Schedule 9, by the Anti-terrorism, Crime and Security Act 2001 (c. 24), section 101 and Schedule 7, paragraph 7, by the Railways and Transport Safety Act 2003 (c. 20), Schedule 5, paragraph 4, and by the Criminal Justice (Scotland) Act 2003 (asp 7) section 76.

(40) 1994 c. 33; section 106 was relevantly amended by S.I. 1999/1820, Schedule 2, paragraph 115.

“contracted out services” means services to a prison (other than a contracted out prison) or to staff or prisoners therein, provided other than by officers or employees;

“controlled drug” means any drug which is a controlled drug for the purposes of the Misuse of Drugs Act 1971<sup>(41)</sup>;

“Deputy Governor” means the officer who is appointed to act in place of the Governor-in-Charge during any period when the Governor in Charge is temporarily absent from the prison;

“employee” means an employee (not being an officer of a prison) appointed by the Scottish Ministers under section 2(1) of the Act;

“film” has the same meaning as in Part I of the Copyright, Designs and Patents Act 1988<sup>(42)</sup>;

“Governor” means—

- (a) in this rule, rules 82(4), 92, 107, 108 and in any rule in Part 12 (other than rule 122), the Governor in Charge;
- (b) in rules 6, 7, 13, 29 and 81 and in any rule in Parts 3, 8, 10 (other than rules 107 and 108), 11 and 14 to 17 and, unless otherwise expressly provided for, in directions made under rules 17(2)(g), 17(3), 19(1)(b)(iii), 21(5), 59(3)(b), 60(2), 62(2), 77(3) and 88, any of the following—
  - (i) the Governor in Charge;
  - (ii) the Deputy Governor;
  - (iii) any authorised Unit Manager; and
  - (iv) where there is no officer as mentioned in sub paragraphs (i) to (iii) above present for the time being in the prison, the most senior officer who is present in prison at that time; and
- (c) in any other provision in these Rules, any officer;

“Governor in Charge” means the officer who is appointed as the Governor in overall charge of the prison or, in the case of legalised police cells, the constable who is in charge of the cells;

“legal adviser” means a person who is entitled to practise—

- (a) as a solicitor, an advocate or a barrister in any part of the United Kingdom; or
- (b) as a member of the corresponding profession of solicitor, advocate or barrister in any Member State of the European Community,

and includes the authorised clerk or employee of such a person;

“letter” includes any communication in written form which—

- (a) is directed to a specific person or address; and
- (b) relates to the personal, private or business affairs of, or the business affairs of the employer of, either correspondent,

and includes an envelope containing any such communication;

“life prisoner” means a person serving a sentence of imprisonment for life;

“long term prisoner” means a person serving a sentence of imprisonment for a term of four years or more which was imposed on or after 1st October 1993 and includes any person who is treated as such a prisoner for the purposes of any provision of Part I of the 1993 Act;

“media representative” means a photographer, cameraman or a researcher or producer for or of any television, radio or other programme intended for broadcast or transmission by any form of electronic medium;

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(41) 1971 c. 38.

(42) 1988 c. 48; section 5B was inserted by S.I. 1995/3297, article 9.

“medical officer” means a registered medical practitioner who is–

- (a) appointed as a medical officer by virtue of an appointment made under section 3(1) of the Act prior to its amendment by section 43(1) of the Crime and Punishment (Scotland) Act 1997<sup>(43)</sup>;
- (b) appointed to be a medical officer for the prison under section 3A(2)(a) of the Act<sup>(44)</sup>; or
- (c) providing, or supervising the provision of, appropriate medical services within the meaning of section 3A(3) of the Act<sup>(45)</sup>, in accordance with an arrangement made under section 3A(2)(b) of the Act<sup>(46)</sup>,

and, except where the context otherwise requires, any reference to a medical officer includes such an officer who is for the time being liable to be required to attend at the prison;

“officer” means–

- (a) an officer of the prison appointed by the Scottish Ministers and includes the Governor and, for the purposes of rule 109, includes a prisoner custody officer who is authorised to perform escort functions in accordance with section 114 of the 1994 Act<sup>(47)</sup>; or
- (b) in the case of a legalised police cell, any constable.

“photograph” has the same meaning as in Part I of the Copyright, Designs and Patents Act 1988<sup>(48)</sup>;

“Principal Reporter” means the Principal Reporter appointed under section 127 of the Local Government etc. (Scotland) Act 1994<sup>(49)</sup> or any officer of the Scottish Children’s Reporter Administration to whom there is delegated, under section 131(1) of that Act, any function of the Principal Reporter under the Children (Scotland) Act 1995<sup>(50)</sup>;

“prison minister” means a person who is appointed by the Scottish Ministers pursuant to section 9(1) of the Act as a minister to a prison;

“prohibited article” means–

- (a) any drug which is a controlled drug for the purposes of the Misuse of Drugs Act 1971<sup>(51)</sup>;
- (b) any firearm or any ammunition within the meaning of the Firearms Act 1968<sup>(52)</sup>;
- (c) any offensive weapon within the meaning of section 47(4) of the Criminal Law (Consolidation) (Scotland) Act 1995<sup>(53)</sup>;
- (d) any article to which section 49 of the Criminal Law (Consolidation) (Scotland) Act 1995 applies; or
- (e) alcoholic liquor;

“reception”, in relation to a prisoner committed to prison means the process of receiving a prisoner into prison–

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(43) 1997 c. 48.

(44) 1989 c45; section 3A(2)(a) was inserted by the Crime and Punishment (Scotland) Act 1997(c. 48), s43(2); section 3A was modified by S.I. 1998/2251 and was amended by the Scotland Act 1998 (c. 46), section 125 and Schedule 8, paragraph 27.

(45) 1989 c45; section 3A(3) was inserted by the Crime and Punishment (Scotland) Act 1997(c. 48), s43(2); section 3A was modified by S.I. 1998/2251 and was amended by the Scotland Act 1998 (c. 46), section 125 and Schedule 8, paragraph 27.

(46) 1989 c45; section 3A(2)(b) was inserted by the Crime and Punishment (Scotland) Act 1997(c. 48), s43(2); section 3A was modified by S.I. 1998/2251 and was amended by the Scotland Act 1998 (c. 46), section 125 and Schedule 8, paragraph 27.

(47) 1994 c. 33, section 114(1) was amended by S.I. 1999/1820, article 4 and paragraph 115 of Schedule 2.

(48) 1988 c. 48..

(49) 1994 c. 39; section 127 was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40), Schedule 4, paragraph 95.

(50) 1995 c. 36.

(51) 1971 c. 38.

(52) 1968 c. 27.

(53) 1995 c. 39; section 47(4) was amended by the Offensive Weapons Act 1996 (c. 26) section 5.



- (a) on his or her removal to prison from court, or any other place, in implementation of the warrant, order or certificate ordering or authorising his or her detention in custody; or
- (b) on his or her transfer to any prison from any other prison, or from any remand centre, young offenders institution or other place where he or she was liable to be detained in custody,

and cognate expressions shall be construed accordingly;

“refugee” means–

- (a) a person who is recognised by Her Majesty’s Government as a refugee within the meaning of the UN Convention relating to the Status of Refugees done at Geneva on 28th July 1951<sup>(54)</sup> as extended by the Protocol thereto which entered into force on 4th October 1987<sup>(55)</sup> or, as the case may be, the Protocol relating to the status of refugees done at New York on 31st January 1967<sup>(56)</sup>; or
- (b) a person who enjoys asylum in the United Kingdom in pursuance of a decision of Her Majesty’s Government though not yet recognised;

“residential officer” means an officer who is required by the Governor to supervise a specific area of living accommodation for prisoners;

“residential unit manager” means an officer who is required by the Governor to manage a number of areas of living accommodation for prisoners;

“short-term prisoner” means a person serving a sentence of imprisonment for a term of less than four years which was imposed on or after 1st October 1993 and includes any person who is treated as such a prisoner for the purposes of any provision of Part I of the 1993 Act;

“smoke” has the meaning assigned to it in the Smoking, Health and Social Care (Scotland) Act 2005<sup>(57)</sup>;

“sound recording” has the same meaning as in Part I of the Copyright, Designs and Patents Act 1988<sup>(58)</sup>;

“special cell” means a room or cell which is adapted for the temporary accommodation of refractory or violent prisoners and whose features may include special sound-proofing, strengthened fixtures and fittings or the absence of any window;

“stateless person” has the meaning assigned to it in article 1 of the Convention relating to the Status of Stateless Persons 1954<sup>(59)</sup>;

“supervision level” means a supervision level which may be assigned in accordance with Part 3 of these Rules;

“Unit Manager” means an officer who is appointed to manage a function or group of functions within the prison;

“untried prisoner” means a person who is committed to prison–

- (a) for examination or trial on any criminal charge;
- (b) by virtue of remand in custody under the Extradition Act 2003<sup>(60)</sup>; or

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<sup>(54)</sup> Treaty Series No. 39 (1954), Cmnd 9171.

<sup>(55)</sup> Treaty Series No. 50 (1987), Cmnd 222 (out of print: photocopies are available free of charge from the Scottish Prison Service, Calton House, 5 Redheughs Rigg, Edinburgh).

<sup>(56)</sup> Treaty Series No. 15 (1969), Cmnd 3906 (out of print: photocopies are available free of charge from the Scottish Prison Service, Calton House, 5 Redheughs Rigg, Edinburgh).

<sup>(57)</sup> 2005, asp 13.

<sup>(58)</sup> 1988 c. 48; section 5A was inserted by S.I. 1995/3297, article 9.

<sup>(59)</sup> Cmnd 1098 of 1960.

<sup>(60)</sup> 2003 c. 41.

(c) by virtue of detention under Schedule 2 or 3 to the Immigration Act 1971(61), but does not include any such person who is for the time being serving a sentence of imprisonment;

“visiting minister” means a minister who is allowed to visit prisoners of his or her denomination in terms of section 9(3) of the Act(62);

“young prisoner” means a prisoner who is under 16 years of age.

(2) Unless the context otherwise requires, any reference in these Rules to a numbered rule is a reference to the rule in these Rules bearing that number; any reference to a numbered Schedule is a reference to the Schedule to these Rules bearing that number and any reference in a rule to a numbered paragraph is a reference to the paragraph bearing that number in that rule.

(3) Except where the context otherwise requires, for the purposes of any reference, however expressed, in these Rules to the term of imprisonment or other detention to which a person has been sentenced or which, having been sentenced, that person has served (in whole or in part), consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term.

### **Elimination of discrimination**

6. Subject to the provisions of these Rules or of any direction made for any purpose specified in these Rules, the Governor shall seek to eliminate within the prison discrimination on the grounds of gender, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, birth, medical condition and economic or other status against particular prisoners or categories of prisoners.

### **Availability of Rules and directions**

7. The Governor shall ensure that a copy of these Rules, and of any direction made for any purpose specified in the Rules, as in force from time to time, shall be readily available for inspection by officers and prisoners in each accommodation block and in the prison library.

## **PART 2**

### **RECEPTION, RECORDS, CLASSIFICATION AND ALLOCATION**

#### **Production of warrant, order, direction or certificate**

8. No person shall be received as a prisoner into prison unless there exists and is produced in respect of that person a valid warrant, order, direction or certificate authorising detention in custody.

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(61) 1971 c. 77; Schedule 2 was relevantly amended as follows: paragraph 16(1A) was inserted by paragraph 60 of Schedule 14 to the Immigration and Asylum Act 1999 (c. 33); paragraph 16(2) was substituted by section 140(1) of the Immigration and Asylum Act 1999 (c. 33); paragraph 16(3) was substituted by paragraph 1(11) of Schedule 4 to the Channel Tunnel (International Arrangements) Order 1993 (S.I. 1993/1813); paragraph 16(2) was amended by section 73(5) of the Nationality, Immigration and Asylum Act 2002 (c. 41), and by paragraph 1(11) of Schedule 4 to the Channel Tunnel (International Arrangements) Order 1993 (S.I. 1993/1813); Schedule 3 was relevantly amended as follows: paragraph 2(1A) was inserted by paragraph 1(b) of Schedule 10 to the Criminal Justice Act 1982 (c. 48); paragraph 2(1) was amended by section 34(1) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), by section 54(2) of the Immigration and Asylum Act 1999 (c. 33) and also by paragraph 1(a) of Schedule 10 to the Criminal Justice Act 1982 (c. 48); paragraph 2(2) was amended by section 34(2) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19) and also by paragraph 7 of Schedule 7 to the Nationality, Immigration and Asylum Act 2002 (c. 41); paragraph 2(3) was amended by section 54(3) of the Immigration and Asylum Act 1999 (c. 33). In addition, Schedule 2 is subject to the modifications contained in section 6(6) (b) of the Criminal Justice (International Co-operation) Act 1990 (c. 5).

(62) 1989 c. 45; section 9 was relevantly amended by S.I. 1998/2251, article 16.

### **Procedure on reception of prisoners**

- 9.**—(1) This rule applies in relation to every prisoner on reception.
- (2) Every prisoner shall be searched in accordance with rule 106.
- (3) The Governor may deliver—
- (a) subject to sub paragraph (b), any prohibited article in the possession of the prisoner to the police; and
  - (b) any medicines in the possession of the prisoner to a medical officer.
- (4) Subject to paragraph (5), every prisoner shall be required by an officer to take a hot bath or shower.
- (5) The Governor or a medical officer may direct that a prisoner shall not be required to take a hot bath or shower, in which event he or she shall explain the reasons why to the prisoner concerned.

### **Interview and medical examination of prisoners on reception**

- 10.**—(1) Every prisoner shall be interviewed by an officer at the time of reception in order to identify any problems which may require immediate attention.
- (2) Every prisoner shall be examined by a medical officer, or such other person as such an officer may instruct—
- (a) in the case of the prisoner’s reception on removal from court or any other place, other than on a transfer from any prison, remand centre or young offenders institution, within 24 hours of that reception; or
  - (b) in the case of the prisoner’s reception on transfer from any other prison, remand centre or young offenders institution—
    - (i) where some cause for concern is apparent to an officer on reception, as soon as reasonably practicable and no later than 24 hours after reception; or
    - (ii) in any other case, within 72 hours of that reception.

### **Information to be given to prisoners on reception**

- 11.**—(1) Paragraphs (2) to (5), (6)(e) and (7) of this rule do not apply in relation to a prisoner who is received into prison on transfer from any other prison.
- (2) Every prisoner shall be informed by the Governor at the time of reception how the prisoner may inform—
- (a) up to two persons; and
  - (b) a legal adviser,
- of the prisoner’s reception into prison, and the Governor shall make available reasonable facilities for that purpose.
- (3) A prisoner who is a foreign national shall also be informed of his or her entitlement to contact, in addition to the persons mentioned in paragraph (2), a diplomatic representative of the prisoner’s choice.
- (4) A prisoner who is a refugee or stateless person shall also be informed of his or her entitlement to contact, in addition to the persons mentioned in paragraph (2),—
- (a) a diplomatic representative of a state which the prisoner considers may look after his or her interests; and

- (b) subject to such limit as to numbers as the Governor may reasonably impose, national or international authorities and organisations whose principal purpose is to serve the interests of refugees or stateless persons or to protect the civil rights of such persons.

(5) A prisoner who is committed to prison on default of the payment of any sum of money due to be paid by the prisoner shall be informed by the Governor at the time of reception of the facilities available in terms of rule 79 to arrange the making of such payment as will entitle the prisoner to be released from prison.

(6) On reception every prisoner shall be provided with information in writing by the Governor concerning the following matters:—

- (a) the rules, directions and standing orders which apply in that prison;
- (b) the prison routine and regime;
- (c) how the prisoner may make requests and complaints;
- (d) how the prisoner may maintain contact with relatives and friends; and
- (e) the rights of appeal against conviction or sentence, or against both conviction and sentence, which may be available to him or her in terms of—
  - (i) section 106 or 175 of the Criminal Procedure (Scotland) Act 1995(63) or, as the case may be, section 19 of the 1993 Act (64); or
  - (ii) in the case of a prisoner convicted by a court-martial under the Army Act 1955(65), the Air Force Act 1955(66) or the Naval Discipline Act 1957(67), the Courts-Martial (Appeals) Act 1968(68).

(7) In the case of any prisoner whose date of release can be calculated at the time of reception, the Governor shall inform the prisoner of that date as soon as may be reasonably practicable and normally within 48 hours.

(8) The information to be provided to any prisoner in terms of this rule shall be provided in a manner which enables the prisoner to understand it.

### Registration and records of prisoners

12.—(1) As soon as may be reasonably practicable following reception the following particulars of every prisoner shall be recorded by the Governor insofar as the Governor considers they are relevant to the identification and management of that prisoner:—

- (a) the religious denomination to which the prisoner has declared him or herself to belong;
- (b) any distinctive marks on his or her body;
- (c) the prisoner's physical measurements; and

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(63) 1995 c. 46; has been relevantly amended as follows: section 106 was amended by the Crime and Punishment (Scotland) Act 1997 (c. 48), sections 17, 18 and 23, by the Crime and Disorder Act 1998 (c. 37) section 119 and paragraph 119 of Schedule 8, and also by the Protection of Children (Scotland) Act 2003 (asp 5), section 16 and also by the Criminal Justice Scotland Act 2003 (asp 7), Schedule 1, paragraph 2; section 106A was inserted by the Crime and Punishment (Scotland) Act 1997 section 19; section 175 was amended by the Crime and Punishment (Scotland) Act 1997 (c. 48), section 17, section 21, section 23, by the Crime and Disorder Act 1998 (c. 37) section 119 and paragraph 123 of Schedule 8, by the Proceeds of Crime Act 2002 (c. 29) Part 3, section 115, and also by the Protection of Children (Scotland) Act 2003 (asp 5), section 16.

(64) 1993 c. 9.

(65) 1955 c. 18, continued by section 1 of the Armed Forces Act 2001 (c. 19); section 122(1) was relevantly repealed in part by paragraph 1 of Schedule 7, Part III to the Armed Forces Act 1996 (c. 46), by Schedule 3 to the Armed Forces Act 1991(c. 62) and also by paragraph 5 of Schedule 6 and Schedule 7 Part III of the Armed Forces Act 1996 (c. 46).

(66) 1955 c. 19, continued by section 1 of the Armed Forces Act 2001 (c. 19); section 122(1) relevantly repealed in part by paragraph 1 of Schedule 7, Part III to the Armed Forces Act 1996 (c. 46), by Schedule 3 to the Armed Forces Act 1991 (c. 62) and also by paragraph 5 of Schedule 6 and Schedule 7 Part III of the Armed Forces Act 1996 (c. 46).

(67) 1957 c. 53, continued by section 1 of the Armed Forces Act 2001 (c. 19); section 81 was relevantly amended by paragraph 90 of Schedule 1 to the Armed Forces Act 1996 (c. 46).

(68) 1968 c. 20; section 43 was relevantly amended by paragraph 17 of Schedule 9 to the Constitutional Reform Act 2005.

(d) any other personal particulars.

(2) Paragraph (1) does not apply in relation to a prisoner who is received into prison on transfer from any other prison.

(3) Any information received for the purposes of paragraph (1) shall be updated as necessary during the prisoner's confinement in the prison.

(4) The Governor may at any time during the confinement of a prisoner (other than an untried or civil prisoner) in prison—

- (a) photograph; and
- (b) take fingerprints of,

the prisoner.

(5) The Governor may at any time during the period that an untried prisoner is remanded or detained in prison take photographs of, and fingerprints from, an untried prisoner.

(6) Where an untried prisoner is released before trial or disposal of proceedings or he or she is acquitted after trial or, as the case may be, successfully defends any proceedings brought against him or her under the Extradition Act 1989 or the Immigration Act 1971—

- (a) any photographs taken of him or her under paragraph (5) together with negatives and copies; and
- (b) any fingerprints taken of him or her,

shall be forthwith destroyed unless the procurator fiscal requests their retention in connection with any other proceedings.

(7) Where fingerprints are taken in accordance with paragraph (4) or (5), an officer shall require the prisoner to sign a fingerprint form relating to the prints at that time.

(8) The Governor shall ensure that information recorded in terms of this rule is kept confidential.

### **Classification of prisoners**

**13.** Every prisoner may be classified by the Governor according to—

- (a) age;
- (b) sex;
- (c) offence or matter in respect of which the prisoner is committed to prison;
- (d) period of sentence or committal; and
- (e) previous record.

### **Allocation of prisoners**

**14.—(1)** The Scottish Ministers may set aside particular prisons or parts of prisons for particular groups or categories of prisoners or particular purposes.

(2) Subject to paragraph (1), the Governor may, having regard to—

- (a) the classification of a prisoner;
- (b) the supervision level of a prisoner; and
- (c) any other matter affecting the management of a prisoner,

allocate within a prison a particular part of that prison in which a prisoner, or any particular group or category of prisoners, may be confined.

(3) At the request of the prisoner following his or her allocation within any part of the prison, the Governor shall give him or her an explanation of the reasons why he or she has been allocated to that part of the prison.

### **Separation of different categories of prisoners**

15. The Governor shall, so far as reasonably practicable, keep civil prisoners, untried prisoners and young prisoners apart from other categories of prisoners.

## **PART 3**

### **SUPERVISION LEVELS**

#### **Supervision levels**

16. The supervision levels which may be assigned to prisoners in accordance with this Part of these Rules are specified in column 1 of the Table set out below and the description of each level is set out opposite that level in column 2 of the Table:—

<i>Column 1</i> <i>Supervision Level</i>	<i>Column 2</i> <i>Description</i>
High Supervision	A prisoner for whom all activities and movements require to be authorised, supervised and monitored by an officer.
Medium Supervision	A prisoner for whom activities and movements are subject to limited supervision and restrictions.
Low Supervision	A prisoner for whom activities and movements are subject to minimum supervision and restrictions, and who may be given the opportunity to participate in supervised or unsupervised activities in the community.

#### **Assignment of supervision levels**

17.—(1) Every prisoner shall be assigned a supervision level in accordance with the provisions of this Part of these Rules.

(2) Subject to paragraphs (3) to (9), a prisoner shall be assigned the appropriate supervision level having regard, so far as applicable, to the following criteria:—

- (a) the seriousness of the offence for which the prisoner has been convicted;
- (b) the prisoner's previous convictions;
- (c) any outstanding charges;
- (d) the length of time that the prisoner has spent in custody;
- (e) the prisoner's conduct in custody;
- (f) the prisoner's trustworthiness and stability; and
- (g) any other criteria as may be specified in a direction made by the Scottish Ministers for the purposes of this rule.

(3) Any such direction made by the Scottish Ministers may make provision for the relative importance that is to be given to each of the criteria in determining the assignment of a supervision level, and may make provision as to the form and content of any document that may be required to be completed by the Governor when assigning, or when reviewing the assignment of, a supervision level.

(4) Subject to paragraph (7), all prisoners, on reception, shall be assigned high supervision level.

(5) Within 72 hours of reception, the supervision level of all prisoners shall be reviewed in accordance with the provisions of these Rules.

(6) An untried prisoner, or a prisoner who has been convicted but is awaiting sentence, shall be assigned no lower a supervision level than medium supervision level.

(7) On reception, a prisoner who is—

(a) transferred under paragraph 1 of Schedule 1 to the Crime (Sentences) Act 1997<sup>(69)</sup> where the transfer is—

(i) a restricted transfer within the meaning of paragraph 6(1) of that Schedule; and

(ii) has been made for a temporary purpose; or

(b) transferred under paragraph 2 or 3 of Schedule 1 to the said Act of 1997<sup>(70)</sup>,

shall be assigned for the period of the detention a supervision level which, in the opinion of the Governor, is the nearest equivalent to the prisoner's classification in the prison or place in the part of the United Kingdom, the Channel Islands or the Isle of Man in which the prisoner was detained immediately before the transfer took place.

(8) Following the review of a supervision level in terms of paragraph (5) above, the Governor shall keep under review and shall formally review within 6 months, and thereafter at least once in every period of 12 months, the supervision level assigned to each prisoner and may, if appropriate, assign another supervision level to the prisoner.

(9) The entitlement of any prisoner who is assigned low supervision level to participate in supervised or unsupervised activities in the community shall be subject to the requirements of rule 111 and of Part 15 of these Rules.

### **Information regarding assignment of a supervision level**

**18.**—(1) This rule does not apply to the assignment of high supervision level on reception or to the review of a supervision level to which rule 19 applies.

(2) Following the assignment of a supervision level or the review of a supervision level in accordance with this Part of these Rules, the Governor shall—

(a) inform the prisoner in writing—

(i) in the case of the assignment of a supervision level of the reasons why the supervision level assigned is appropriate; or

(ii) in the case of a review which has resulted in no change of level, of the reasons why a lower level is not appropriate; and

(b) if asked to do so by the prisoner concerned, but subject to paragraph (3), provide the prisoner with—

(i) a copy of any document to which the Governor has had regard; and

(ii) a summary of any other information of which the Governor was aware and to which he or she has had regard,

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<sup>(69)</sup> 1997, c. 43; Schedule 1, paragraph 1 was relevantly amended by S.I. 1999/1820, article 4 and Schedule 2, paragraph 130.

<sup>(70)</sup> 1997, c. 43; Schedule 1, paragraphs 2 and 3 were relevantly amended by S.I. 1999/1820, article 4 and Schedule 2, paragraph 130.

in reaching the relevant decision.

(3) If the Governor is of the opinion that any document or any other information of which the Governor was aware and to which he or she has had regard in reaching the relevant decision would, if disclosed to the prisoner, be likely to be damaging on one or more of the following grounds, namely:—

- (a) that it would be likely adversely to affect the health, welfare or safety of the prisoner or of any other person;
- (b) that it would be likely to result in the commission of an offence;
- (c) that it would be likely to facilitate an escape from legal custody or the doing of any act prejudicial to the safe keeping of persons in legal custody;
- (d) that it would be likely to impede the prevention or detection of offences or the apprehension or prosecution of suspected offenders; or
- (e) that it would be likely otherwise to damage the public interest,

the Governor shall not be obliged to provide the prisoner with a copy of that document or a summary of that other information but shall, in writing, inform the prisoner, but only insofar as is practicable without prejudicing the purposes for which that document or other information is not disclosed, of the gist of that document or information.

#### **Right to make representations prior to certain reviews of supervision level**

**19.**—(1) This rule applies when, in the course of a review of a prisoner's supervision level, a Governor is minded to assign—

- (a) a higher supervision level than the existing level that is assigned to the prisoner; or
- (b) a supervision level other than low supervision to a prisoner who is—
  - (i) a long-term prisoner who is eligible to be considered by the Parole Board for Scotland in terms of Part I of the 1993 Act;
  - (ii) a life prisoner who has served the part of his or her sentence specified in an order made under section 2(3) of the 1993 Act; or
  - (iii) a prisoner who has not yet served the part of his or her sentence specified in sub paragraph (i) or (ii) but who has served such part of his or her sentence as may be specified in a direction made by the Scottish Ministers.

(2) The Governor shall—

- (a) provide the prisoner with a written notice informing him—
  - (i) of the supervision level that it is proposed should be assigned to the prisoner;
  - (ii) of the reasons for that proposal; and
  - (iii) of the procedure by which the prisoner may make written representations in relation to the proposed assignment of the supervision level; and
- (b) if asked to do so by the prisoner concerned, but subject to paragraph (3), provide the prisoner with—
  - (i) a copy of any document to which the Governor has had regard; and
  - (ii) a summary of any other information of which the Governor was aware and to which he or she has had regard,

in considering the matter.

(3) If the Governor is of the opinion that any document or other information of which the Governor was aware and to which he or she has had regard in considering the matter would, if disclosed to the prisoner, be likely to be damaging on any ground mentioned in rule 18(3), the



Governor shall not be obliged to provide the prisoner with a copy of that document or a summary of that other information but shall inform the prisoner in the notice under paragraph (2), but only insofar as is practicable without prejudicing the purposes for which that document or other information is not disclosed, of the gist of that document or information.

- (4) In a case to which paragraph (2) applies, the Governor shall—
- (a) consider any representations made by the prisoner by virtue of that paragraph before reaching a decision in relation to the assignment of a supervision level; and
  - (b) if the supervision level is assigned in circumstances as mentioned in paragraph (1), provide the prisoner with a written statement of reasons for his or her decision.

### **Imposition of special security measures**

**20.**—(1) Subject to paragraphs (2) to (6), the Governor may impose special security measures, being measures which are separate from and additional to anything that can be done under Part 10 of these Rules, on any prisoner who is assigned high supervision level where the Governor considers that the imposition of these measures are necessary—

- (a) in the interests of the health, welfare or safety of the prisoner or any other person; or
- (b) to prevent an escape from legal custody or the doing of any act prejudicial to the safe keeping of persons in legal custody.

(2) The Governor, if minded to impose special security measures on a prisoner (other than an untried prisoner), shall—

- (a) provide the prisoner with a written notice stating—
  - (i) the measures that are to be imposed;
  - (ii) the reasons why they are to be imposed; and
  - (iii) the procedure by which the prisoner may make written representations in relation to the imposition of the special security measures; and
- (b) if asked to do so by the prisoner concerned, but subject to paragraph (3), provide the prisoner with—
  - (i) a copy of any document to which the Governor has had regard; and
  - (ii) a summary of any other information of which the Governor was aware and to which he or she has had regard,

in considering the matter.

(3) If the Governor is of the opinion that any document or other information of which the Governor was aware and to which he or she has had regard in considering the matter would, if disclosed to the prisoner, be likely to be damaging on any ground mentioned in rule 18(3), the Governor shall not be obliged to provide the prisoner with a copy of that document or a summary of that other information but shall inform the prisoner in the notice under paragraph (2), but only insofar as is practicable without prejudicing the purposes for which that document or other information is not disclosed, of the gist of that document or information.

- (4) In a case to which paragraph (2) applies, the Governor shall—
- (a) consider any representations made by the prisoner by virtue of that paragraph before reaching a decision in relation to the imposition of special security measures; and
  - (b) if special security measures are imposed, provide the prisoner with a written statement of reasons for this decision.

(5) The Governor shall not be prevented from imposing special security measures on a prisoner on a provisional basis without having recourse to the procedure at paragraphs (2), (3) and (4) where

the Governor considers that the immediate, provisional, imposition of the measures is necessary for either of the purposes in paragraph (1)(a) or (b):

Provided that—

- (a) the prisoner is informed in writing of the provisional imposition of the special security measures; and
- (b) the procedure referred to at paragraphs (2), (3) and (4) is commenced within 48 hours of the provisional imposition of the special security measures.

(6) If the Governor decides that the provisional imposition of the special security measures does not require to extend beyond a 48 hour period, then the procedure referred to at paragraphs (2), (3) and (4) shall not apply, and the prisoner shall be informed in writing, within 24 hours of the Governor's decision, that the special security measures are no longer provisionally imposed.

### **Reviews of imposition of special security measures**

**21.**—(1) The Governor shall keep the imposition of special security measures under review, and shall formally review, at least once in every period of 6 months, whether the continued imposition of the special security measures continues to be necessary for either of the purposes in rule 20(1) (a) and (b).

(2) If, in formally reviewing the continued imposition of special security measures, the Governor is minded to continue to impose these measures on a prisoner then the Governor shall—

- (a) provide the prisoner with a written notice stating—
  - (i) the measures that the Governor is minded to continue to impose;
  - (ii) the reasons why they are to be continued; and
  - (iii) the procedure by which the prisoner may make written representations in relation to the continued imposition of the special security measures; and
- (b) if asked to do so by the prisoner concerned, but subject to paragraph (3), provide the prisoner with—
  - (i) a copy of any document to which the Governor has had regard; and
  - (ii) a summary of any other information of which the Governor was aware and to which he or she has had regard,in considering the matter.

(3) If the Governor is of the opinion that any document or other information of which the Governor was aware and to which he or she has had regard in considering the matter would, if disclosed to the prisoner, be likely to be damaging on any ground mentioned in rule 18(3), the Governor shall not be obliged to provide the prisoner with a copy of that document or a summary of that other information but shall inform the prisoner in the notice under paragraph (2), but only insofar as is practicable without prejudicing the purposes for which that document or other information is not disclosed, of the gist of that document or information.

(4) In a case to which paragraph (2) applies, the Governor shall—

- (a) consider any representations made by the prisoner by virtue of that paragraph before reaching a decision in relation to the continued imposition of special security measures; and
- (b) if special security measures continue to be imposed, provide the prisoner with a written statement of reasons for this decision.

(5) The Scottish Ministers may make a direction for the purposes of prescribing—

- (a) the procedure in terms of which notices may be provided to a prisoner, and representations may be made, under rules 19, 20 and this rule;

- (b) the form in which any such notice or representations may be provided or made; and
- (c) the time limits within which the procedure mentioned in rules 19, 20 and this rule may be carried out.

## PART 4

### PHYSICAL AND PERSONAL ENVIRONMENT

#### **Accommodation of prisoners in cells and rooms**

**22.**—(1) Subject to paragraphs (2) and (3), every prisoner shall be accommodated by him or herself in a cell or room.

- (2) Two or more prisoners may be required to share accommodation in a cell or room where—
  - (a) the nature of the accommodation in the prison, or the circumstances pertaining in that or any other prison to which these Rules apply, make such sharing necessary; or
  - (b) either the Governor, or a medical officer with the consent of the Governor, instructs this.

(3) Where a cell or room is used to accommodate 2 or more prisoners, the prisoners concerned shall be persons whom the Governor, or a medical officer on medical grounds, considers suitable to associate with each other in that accommodation.

#### **Standard of accommodation**

**23.**—(1) Each cell or room used to accommodate prisoners shall be fitted with means of communication with an officer.

(2) Each cell or room used to accommodate prisoners, and any other part of a prison in which prisoners are otherwise kept, or to which they ordinarily have access, shall be of an adequate size and be lighted, heated, ventilated and furnished as is necessary for the health and safety of prisoners.

(3) Every prisoner shall be required to keep the cell or room in which that prisoner is accommodated in a clean and tidy condition except when excused from doing so—

- (a) by a medical officer on medical grounds; or
- (b) by the Governor on any other ground.

#### **Provision of bedding**

**24.**—(1) The Governor shall provide beds and bedding to enable every prisoner to have a separate bed, and bedding sufficient for warmth and health.

(2) Notwithstanding paragraph (1), the Governor may, at the request of a prisoner, provide that prisoner with a mattress only instead of a bed.

(3) Every prisoner's bedding shall be changed as frequently as is necessary to ensure its cleanliness.

(4) Except with the consent of the Governor, no prisoner shall be permitted to receive or possess bedding other than that which is provided in terms of paragraph (1).

#### **Entitlement of an untried prisoner to wear his or her own clothing**

**25.**—(1) Subject to paragraph (2), every untried prisoner may wear his or her own clothing in prison and on those occasions when required or permitted to be outside the prison.

- (2) Paragraph (1) does not apply to an untried prisoner where—

- (a) particular clothing may be required for the purposes of legal proceedings;
- (b) a medical officer considers that—
  - (i) the prisoner’s clothing is prejudicial to the prisoner’s health; or
  - (ii) special clothing is required on medical grounds;
- (c) the Governor considers that the prisoner’s clothing—
  - (i) is in poor condition;
  - (ii) may be prejudicial to security, good order or discipline within the prison, or
  - (iii) is incompatible with the facilities at, or management of, the prison;
- (d) special or protective clothing is required for particular work or activities being undertaken by the prisoner; or
- (e) the entitlement of a prisoner to wear his or her own clothing has been forfeited under rule 119(1)(e).

(3) Where the Scottish Ministers consider, in relation to any prison to which these Rules apply, that it is not appropriate to permit untried prisoners, or particular categories of untried prisoners, to wear their own clothing in that prison, they may specify in a direction that paragraph (1) shall not apply in relation to any untried prisoner, or any category of untried prisoner, in that prison.

#### **Circumstances in which a prisoner other than an untried prisoner may wear his or her own clothing**

**26.**—(1) The Governor may permit a prisoner other than an untried prisoner to wear his or her own clothing in prison and on those occasions when required or permitted to be outside the prison.

(2) In considering whether or not to exercise his or her discretion in accordance with paragraph (1), the Governor shall take into account the matters set out in sub paragraphs (a) to (d) of rule 25(2) as well as any other matters that appear to the Governor to be relevant.

(3) A permission given by the Governor may be withdrawn at any time if the Governor considers it appropriate.

#### **Provision of clothing to prisoners**

**27.**—(1) The Governor shall provide suitable clothing for every prisoner where the prisoner has insufficient clothing or does not wish, or is not permitted in terms of rule 25 or rule 26, to wear their own clothing.

(2) For the purposes of paragraph (1), suitable clothing shall mean clothing which—

- (a) is of good condition, appearance and fit; and
- (b) having regard to the circumstances, is suitable for the health and safety of the prisoner.

(3) Any clothing provided in terms of paragraph (1) shall—

- (a) so far as reasonably practicable, be issued by the Governor for use by the prisoner concerned on a personal basis;
- (b) where required to be worn by the prisoner on occasions when outwith the prison, not give any indication that the prisoner is such a person; and
- (c) be maintained in good repair in accordance with arrangements made by the Governor.

(4) If a medical officer is of the opinion that any article of clothing belonging to, or provided to, a prisoner requires disinfection—

- (a) where applicable, any officer may require the prisoner to change out of the article;
- (b) the prisoner shall be provided with such clean clothing as is necessary; and

- (c) the Governor shall arrange for the disinfection of the relevant article by such process as is necessary.

### **Changes of clothing**

**28.**—(1) Subject to paragraph (2), the Governor shall ensure that every prisoner has sufficient clothing, whether of their own or provided pursuant to rule 27(1), to enable the prisoner—

- (a) to change daily his or her socks and underwear and such other articles of clothing as may be specified in a direction by the Scottish Ministers; and
- (b) to have a clean change of other clothing as often as is necessary for the purposes of health and hygiene.

(2) Where the Scottish Ministers consider that it is not practicable, by reason of the circumstances pertaining in, or facilities available at, any prison, to enable prisoners to change daily their socks and underwear or any other article of clothing, they may specify in a direction—

- (a) that paragraph (1)(a) shall not apply in relation to prisoners in that prison; or
- (b) that in the application of paragraph (1)(a) to prisoners detained in that prison, the frequency with which prisoners shall be able to change socks and underwear shall be at such lesser frequency as is specified in the direction.

### **Prisoners' food**

**29.**—(1) The Governor shall ensure that every prisoner is provided with sufficient wholesome and nutritious food and drink, well prepared and presented, which takes into account the prisoner's age, health, and, so far as reasonably practicable, his or her religious, cultural or other requirements.

(2) Where by reason of exceptional circumstances pertaining in the prison, it is not practicable to provide food and drink to prisoners, or any particular group or category of prisoners, in terms of paragraph (1)—

- (a) subject to sub paragraph (b), the Governor shall seek to provide food and drink so far as reasonably practicable having regard to the circumstances; and
- (b) where the exceptional circumstances have existed for more than 48 hours, the Scottish Ministers may by direction provide that paragraph (1) shall not apply in relation to prisoners in that prison until such time as they consider that it is practicable for it to do so.

(3) The Governor shall, on a daily basis—

- (a) taste some food and drink prepared for prisoners for the purpose of checking its quality and condition;
- (b) check that the quantity of food and drink prepared for prisoners is adequate; and
- (c) ensure that the conditions under which such food and drink are prepared and served or reheated prior to serving are inspected by an officer.

(4) If an officer finds any deficiency as a result of any inspection or sampling in terms of paragraph (3), the Governor shall remedy the deficiency as soon as reasonably practicable.

(5) Except where the Governor or a medical officer so authorises, no prisoner shall receive or possess food or drink other than that which—

- (a) is provided in terms of this rule; or
- (b) the prisoner is permitted to purchase within the prison.

### **Personal hygiene**

**30.**—(1) The Governor shall—

- (a) afford every prisoner the opportunity to keep clean; and
- (b) provide every prisoner with such toiletries, including—
  - (i) shaving materials if required; and
  - (ii) in the case of female prisoners, sanitary protection,as are necessary for the prisoner’s health and cleanliness.

(2) The Governor shall ensure that every prisoner has access at all reasonable times to such facilities for washing and bathing or showering as are necessary for health and cleanliness and which enable the prisoner to bathe or shower at least twice a week.

(3) A prisoner shall neither be prevented from growing nor be required to remove a moustache or beard, or both, nor shall the prisoner’s hair be cut without consent of the prisoner, unless a medical officer considers it necessary to do so on medical grounds.

## PART 5

### HEALTH AND WELFARE

#### **Smoking**

- 31.** No prisoner shall smoke in a prison except—
- (a) where rule 22(1) applies, in a cell or room in which that prisoner is accommodated by him or herself;
  - (b) where rule 22(2) applies, in a cell or room in which that prisoner is accommodated and which the Governor designates as a smoking area in accordance with a direction given by the Scottish Ministers; or
  - (c) in the open air, in any place as the Scottish Ministers may specify in a direction.

#### **Provision of medical and other services and facilities**

**32.—**(1) The Scottish Ministers shall make arrangements for the provision at every prison to such extent as they consider necessary, of appropriate medical services and facilities for the maintenance of good health, the prevention of illness, the care of prisoners suffering from illness or the aftercare of such prisoners.

(2) For the purposes of this rule, “medical services and facilities” includes any form of service or facility for the care of a person’s health.

#### **General duty of medical officers to attend prisoners**

**33.** A medical officer shall attend prisoners who complain of illness at such times, and with such frequency, as the medical officer judges necessary in the circumstances.

#### **Notification to a medical officer of prisoners requiring attention**

**34.** The Governor shall, without delay, bring to the attention of a medical officer any prisoner whose physical or mental condition appears to require the attention of the medical officer.

### **Arrangements for care by other medical practitioners or other persons providing professional services or at outside facilities**

**35.**—(1) A medical officer who considers it appropriate to call into consultation, or refer a prisoner to, another medical practitioner or a specialist, shall—

- (a) inform the Governor; and
- (b) thereafter make such arrangements as are necessary.

(2) Where a medical officer considers that the condition of a prisoner’s health requires treatment at a medical facility outwith the prison, the Governor shall make such arrangements for the transfer of the prisoner to such facility as the Governor considers appropriate.

(3) In this rule, “medical facility” includes any hospital and any other premises at which any form of services for the care of a person’s health is provided.

### **Duty of medical officer to visit prisoners subject to cellular confinement**

**36.** Where cellular confinement is imposed on a prisoner in terms of rule 119(1)(d), a medical officer shall visit the prisoner as soon as practicable and no later than 24 hours after the imposition of that confinement and thereafter as the medical officer considers is necessary.

### **Duty of medical officer to notify certain matters**

**37.**—(1) A medical officer who is of the opinion on medical grounds that a prisoner should—

- (a) be confined in specified conditions;
- (b) not participate in specified activities;
- (c) participate in specified activities only in accordance with such conditions as the medical officer considers necessary;
- (d) not be subject to cellular confinement where this has been imposed in terms of rule 119(1)(d); or
- (e) not be placed under a restraint in terms of rule 97,

shall notify the Governor, who shall give effect to the medical officer’s opinion without delay.

(2) A medical officer shall notify the Governor without delay of any matter connected with a prisoner or the treatment of prisoners which appears to the medical officer to require attention on medical grounds.

(3) If in respect of any prisoner a medical officer is of the opinion on medical grounds that—

- (a) the prisoner is totally and permanently unfit to be detained further in prison;
- (b) the life of the prisoner is likely to be endangered by continued detention in prison; or
- (c) the health of the prisoner is such that the prisoner is unlikely to survive the sentence or the period for which the prisoner is remanded or detained,

the medical officer shall notify the Governor without delay.

(4) A medical officer shall—

- (a) where a matter notified to the Governor pursuant to paragraph (2) remains unattended, report the matter to the Scottish Ministers; and
- (b) notify the Scottish Ministers of any case notified to the Governor pursuant to paragraph (3).

### **Notification of relatives and friends of prisoners suffering serious illness, etc**

**38.**—(1) If a prisoner becomes seriously ill or sustains serious injury or is admitted to a hospital outwith the prison, the Governor shall, where possible, ask the prisoner if any relative or friend, or any other person, should be informed.

(2) Subject to paragraph (3) where the prisoner wishes any relative, friend or other person to be informed of any event mentioned in paragraph (1), the Governor shall notify any such person accordingly.

(3) The Governor shall not be required to notify more than 2 persons in accordance with paragraph (2).

(4) In the case of a young prisoner, or a young offender who is under the age of 16 years, the Governor shall notify the parent or guardian of that prisoner or young offender of any event mentioned in paragraph (1).

### **Transfer to hospital for treatment for mental disorder**

**39.**—(1) Where it appears to a medical officer that a prisoner to whom section 52C(1)(a) to (c) of the 1995 Act(71) applies has a mental disorder such that an application may be made under section 52C of that Act to the court for an assessment order, the medical officer shall make arrangements to obtain the evidence of a medical practitioner which may be presented to the court in terms of section 52D of that Act.

(2) Where it appears to a medical officer that a prisoner to whom section 52L(1)(a) to (c) of the 1995 Act applies has a mental disorder such that an application may be made under section 52L of that Act to the court for a treatment order, the medical officer shall make arrangements to obtain the evidence of two medical practitioners which may be presented to the court in terms of section 52M of that Act.

(3) Where the evidence mentioned in paragraphs (1) or (2) above is to the effect that the matters specified in section 52D(3) or, as the case may be, section 52M(4) of the 1995 Act are met, the medical officer shall submit it to the Scottish Ministers.

(4) Where it appears to a medical officer that a prisoner to whom section 136(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003(72) applies may have a mental disorder, he or she shall—

- (a) obtain the written reports of two medical practitioners, one of whom must be an approved medical practitioner within the meaning of section 22 of that Act, and
- (b) if such reports are to the effect that the matters specified in section 136(6) of that Act are met, submit them to the Scottish Ministers.

### **Records of medical treatment**

**40.**—(1) Subject to paragraph (2), a medical officer shall in respect of each prisoner maintain a record of the prisoner's health and of all medical treatment given to that prisoner in prison, or at a medical facility outwith prison, during the period the prisoner is committed to that prison.

(2) Where—

- (a) a prisoner is moved from any prison to any other prison; or

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(71) 1995 c. 46; sections 52A to 52U were inserted by the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), section 130.

(72) [asp 13](#).



(b) a young offender is moved from any young offenders institution to any other institution or to a prison in terms of section 20A or 21 of the Act(73),

a medical officer of the prison or young offenders institution from which the person is moved shall send the prisoner's or young offender's medical record to a medical officer of the prison or young offenders institution to which the prisoner or young offender is moved.

(3) For the purposes of this rule, "medical treatment" shall be deemed to include any examination, consultation, diagnosis, operation, treatment or prescription.

### **Prisoners' welfare**

41. The Governor shall ensure that every prisoner is given reasonable assistance and facilities to maintain and develop relationships with family and friends and with such other persons and agencies outwith the prison as may best offer the prisoner assistance during the sentence or period of committal, and in preparation for and after release.

### **Visits to untried and civil prisoners by medical and dental practitioners**

42.—(1) Subject to paragraph (2), the Governor shall at the request of an untried prisoner or a civil prisoner permit a medical or dental practitioner of the prisoner's own choice to visit the prisoner for the purpose of giving treatment.

(2) Where an untried prisoner or a civil prisoner is permitted to be visited by a medical or dental practitioner in terms of this rule, the prisoner shall be responsible for the expenses of that visit and any treatment rendered.

## **PART 6**

### **RELIGION**

#### **Facilities for religious practice**

43.—(1) Every prisoner shall be allowed to observe the requirements of the prisoner's religious and moral beliefs subject to and in accordance with the provisions of the Act, these Rules and of any direction made for the purposes of these Rules.

(2) The Governor shall ensure that every prisoner is informed of the facilities or arrangements which exist or may be made for the purposes of paragraph (1).

#### **Duties of members of the chaplaincy team**

44.—(1) Each member of the chaplaincy team shall, for the purposes of prisoners of their respective religious denomination—

- (a) visit each such prisoner as soon as practicable after reception into prison and at such other times thereafter as the prisoner and the member may agree;
- (b) conduct religious services or meetings at such times as the member after consultation with the Governor considers appropriate;
- (c) with the approval of the Governor, make any other arrangements which the member considers necessary for the provision of religious ministrations to such prisoners.

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(73) 1989 c. 45; section 20A was inserted by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9), section 23 and was amended by the Crime and Punishment (Scotland) Act 1997 (c. 48), section 62 and Schedule 1, paragraph 13; section 21 was amended by the said Act of 1993, Schedule 5, paragraph 6(5) and Schedule 7 and by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40), Schedule 4, paragraph 75(3) and also by the said Act of 1995, Schedule 4.

- (2) Subject to the approval of the Governor, any person may—
- (a) act on behalf of the member of the chaplaincy team in the member's absence; or
  - (b) assist the member,

for the purposes of carrying out any of the duties specified in paragraph (1).

(3) A member of the chaplaincy team may make arrangements, with the approval of the Governor, for the purpose of enabling a prisoner to be visited by a minister of any religious denomination or an authorised representative.

### **Visiting ministers**

**45.** Where a visiting minister is allowed to visit prisoners, the Governor shall make arrangements, so far as practicable, to enable the minister—

- (a) to conduct religious services or meetings for such prisoners; and
- (b) to make any other arrangements which the minister considers necessary for the provision of religious ministrations to such prisoners,

in accordance with such guidance as the Governor may give.

### **Religious services and visits**

**46.—**(1) Subject to rule 94(1) and to paragraph (2) below, every prisoner who belongs to a religion or a religious denomination may attend such services or meetings of their denomination as may, with the consent of the Governor, be arranged by the chaplain or minister concerned.

(2) The Governor may prevent a prisoner from attending any service or meeting of his or her religious denomination if, in exceptional circumstances, the Governor considers it is necessary to do so in the interests of good order.

(3) The Governor shall notify the chaplain or the appropriate prison minister as soon as practicable following receipt of any request by a prisoner to receive a visit by the chaplain or, as the case may be, the prison minister.

(4) Any visit to a prisoner by a member of the chaplaincy team shall be held outwith the sight and hearing of an officer except where—

- (a) the member concerned requests otherwise; or
- (b) the Governor considers it would be prejudicial to the interests of security or to the safety of the member for an officer not to be present.

### **Religious books, items and practices**

**47.—**(1) The Governor shall provide such literature and other materials as the Governor considers appropriate for prisoners' religious needs.

(2) Every prisoner shall, so far as reasonably practicable, be allowed—

- (a) to have in their possession and for their personal use, religious books, items and materials appropriate to his or her religious denomination; and
- (b) to engage in the practices of his or her religious denomination.

## PART 7

### PRIVILEGES AND PRISONERS' PROPERTY

#### **Possession of tobacco by untried and civil prisoners**

**48.** An untried prisoner or a civil prisoner shall be entitled to keep tobacco in his or her possession provided that he or she is at least 16 years old.

#### **Privileges**

**49.**—(1) The Governor of each prison shall establish, subject to paragraph (3), such system of privileges as may be appropriate to the groups or categories of prisoners detained in the prison.

(2) A system of privileges may include privileges which apply to different classes of prisoners or in respect of different parts of the prison.

(3) A system of privileges established under this rule shall make provision at least in relation to—

- (a) the items of property which the Governor may, in terms of rule 52, allow a prisoner to have in their room or cell;
- (b) the arrangements whereby a prisoner may purchase items within, or outwith, the prison;
- (c) the use of recreational and library facilities provided, or the participation in recreational activities organised, by virtue of rule 90;
- (d) the arrangements whereby a prisoner may have tobacco in his or her possession;
- (e) the circumstances in which privileges may be withdrawn from a prisoner; and
- (f) any other matter as may be specified in a direction made by the Scottish Ministers under and for the purposes of this rule.

(4) A system of privileges shall not make provision which prejudices or derogates from any entitlement or right of a prisoner which is specified in any provision of these Rules, or in any direction made for any purpose specified in these Rules, and any such entitlement or right shall not be regarded as a privilege granted by virtue of this rule and shall not be capable of being forfeited under rule 119(1)(b).

(5) The Governor shall ensure that every prisoner is provided with information, in a manner which enables the prisoner to understand it, in relation to—

- (a) the application to the prisoner of the system of privileges established under this rule; and
- (b) the circumstances in which privileges may be withdrawn.

(6) Where the Governor—

- (a) withdraws any privilege enjoyed by a prisoner; or
- (b) refuses to grant to any prisoner a privilege which is enjoyed by other prisoners,

the Governor shall give reasons for that decision to the prisoner concerned.

#### **Reception of personal property of prisoners**

**50.**—(1) The items of property belonging to any prisoner which are received into or purchased within prison shall be managed in accordance with this rule and rules 51 and 52.

(2) Subject to the other provisions of these Rules, the Governor may refuse to receive any item of property sent to the prison for a prisoner and, where appropriate, may return it to the sender.

(3) All items of property belonging to a prisoner which are received into prison other than—

- (a) property purchased by the prisoner within the prison;

- (b) letters or other written communications sent to the prisoner; or
  - (c) any of his or her property which is perishable or edible,
- shall be recorded by an officer in the prisoner's record.
- (4) Where a record is prepared in terms of paragraph (3), the prisoner concerned shall—
    - (a) be given the opportunity to check its accuracy; and
    - (b) thereafter, be required to sign it.

### **Storage or disposal of personal property of prisoners**

**51.**—(1) Subject to paragraph (2), the Governor shall make arrangements for the safe storage of all items of property belonging to a prisoner which have been received into prison, except for items which a prisoner is allowed to keep in his or her room or cell or on his or her person.

(2) Where the Governor is of the opinion that any item of property belonging to or which has been sent to a prisoner and which has been received into prison is prejudicial to health, safety, security or good order—

- (a) the Governor shall notify the prisoner; and
- (b) except where it is reasonably practicable for the prisoner to arrange for disposal, may make arrangements for the disposal or, in the case of anything perishable, the destruction of any such item.

### **Personal property of prisoners in rooms or cells**

**52.**—(1) Every prisoner shall be entitled to keep in his or her room or cell such items of property as may be specified in a direction by the Scottish Ministers.

(2) Without prejudice to paragraph (1), the Governor may allow a prisoner to have in his or her possession or to keep in his or her room or cell such items of property as are compatible with—

- (a) the size and furnishings of the room or cell;
- (b) matters of health, safety, security and good order; and
- (c) any other matter which the Governor considers relevant.

### **Prisoners' money**

**53.**—(1) The Governor may specify in relation to any prisoner or any category of prisoner—

- (a) whether such a prisoner, or such category of prisoner, may have cash in his or her possession; or
- (b) if any such prisoner is permitted to have cash in his or her possession, the maximum amount of, or the denominations of, cash which that prisoner may possess.

(2) The Governor shall hold on behalf of a prisoner any other money belonging to the prisoner which—

- (a) represents earnings paid by virtue of rule 88; or
- (b) has been received in the prison and which does not exceed any restrictions as to the amount of money which a prisoner may receive as may be prescribed in a direction made for the purposes mentioned in rule 60(2).

(3) Subject to paragraph (4), a prisoner may withdraw money held on his or her behalf in terms of paragraph (2) by authorising the Governor to deduct such sums as are required for the purpose of making specific payments to persons outwith prison or for the purpose of purchasing any article in prison or any article to be delivered to prison.

(4) The Governor may specify in relation to any prisoner, or any category of prisoner, the maximum amount which may be so withdrawn—

- (a) during any specified period; and
- (b) for the purposes of purchasing any article in prison or any article to be delivered to prison.

(5) The Governor shall, in respect of each prisoner, keep a record of all money deposited in an account held by the Governor under paragraph (2) and of all money withdrawn therefrom under paragraph (3).

(6) Nothing in this rule shall prevent a prisoner from opening, or continuing to maintain, an account with a bank or a building society but the use of such an account shall be subject to the other provisions of these Rules.

### **Supplies of books, newspapers, etc to prisoners**

54. Subject to rules 50 to 52, a prisoner shall be entitled to arrange, at their own expense or at the expense of a person outwith the prison, the delivery to the prison of such books, newspapers, writing materials and other means of occupation as the prisoner may wish to use.

## **PART 8**

### **COMMUNICATIONS**

#### **Current affairs**

55.—(1) Subject to paragraph (2), every prisoner may keep informed of current affairs by means of—

- (a) books, newspapers, periodicals or a radio; and
- (b) any other medium the Governor may allow.

(2) The Governor may restrict, or impose conditions as to, the exercise of the entitlement referred to in paragraph (1) where the Governor considers it is necessary to do so—

- (a) to protect the prisoner from self-injury; or
- (b) to prevent the prisoner from injuring others.

#### **Prisoners' correspondence**

56. Subject to rules 57 to 61, a prisoner may send and receive letters and packages by means of the postal service or otherwise.

#### **Opening and reading of correspondence from and to courts**

57.—(1) This rule applies only to letters and packages which—

- (a) are addressed to a court and which a prisoner gives to an officer for the purpose of posting to that court; or
- (b) are sent to a prisoner at the prison by a court.

(2) A prisoner who wishes to send a letter or package to a court shall mark prominently on the outer face of the envelope or packaging the words “Legal Correspondence” as well as their own name.

(3) Any letter or package to which this rule applies shall not be opened by an officer except where paragraph (5) applies.

- (4) The contents of any letter or package to which this rule applies shall not be read by an officer.
- (5) Any letter or package which a prisoner wishes to send to a court may only be opened where—
  - (a) the officer has cause to believe that it contains a prohibited article;
  - (b) the officer has explained to the prisoner concerned the reason for that belief; and
  - (c) the prisoner concerned is present.
- (6) Where a letter or package to which this rule applies is found to contain any prohibited article the Governor shall seize and detain that article.
- (7) For the purposes of this rule, “court” includes the European Court of Justice, the European Court of Human Rights, the European Commission of Human Rights, the Principal Reporter, the Scottish Criminal Cases Review Commission and the Parole Board for Scotland.

### **Opening and reading of correspondence from and to legal advisers**

- 58.**—(1) This rule applies only to letters and packages which—
- (a) are addressed to a legal adviser and which a prisoner gives to an officer for the purpose of posting to that legal adviser; or
  - (b) are sent to a prisoner at the prison by a legal adviser.
- (2) A prisoner who wishes to send a letter or package to a legal adviser shall mark prominently on the outer face of the envelope or packaging the words “Legal Correspondence” as well as their own name.
- (3) Any letter or package to which this rule applies shall not be opened by an officer except where paragraph (5) applies.
- (4) The contents of any letter or package to which this rule applies shall not be read by an officer except where paragraph (6) applies.
- (5) Any letter or package to which this rule applies may only be opened by an officer where—
- (a) the officer has cause to believe that it contains a prohibited article;
  - (b) the officer has explained to the prisoner concerned the reason for that belief; and
  - (c) the prisoner concerned is present.
- (6) The contents of any letter or package to which this rule applies may only be read by an officer in exceptional circumstances where the Governor has reasonable cause to believe that the contents of the letter endanger the security of the prison or the safety of any person, or relate to a criminal activity.
- (7) Where the Governor is of the opinion that the contents of any letter or package to which this rule applies may be read in terms of paragraph (6)—
- (a) the prisoner shall be informed that the letter or written material shall be read and the reasons why; and
  - (b) the letter or written material shall be read by the Governor or an officer specially authorised by the Governor for the purpose.
- (8) Where a letter or package to which this rule applies is found to contain a prohibited article or any article which the prisoner is not authorised to possess or keep in terms of these Rules, the Governor shall deal with the article in terms of rule 95 or 96, whichever is appropriate.

### **Opening and reading of other correspondence**

- 59.**—(1) Any letter or package, other than one to which rule 57 or 58 applies, which a prisoner wishes to send or which is addressed to the prisoner may be opened by an officer.

(2) The contents of any such letter or package may only be read by an officer where the officer considers that they may be, or may contain anything, in contravention of the restrictions specified in any direction by the Scottish Ministers made for the purposes mentioned in rule 60(2).

(3) Where a letter or package is found to contain anything in contravention of such restrictions, or which the prisoner may not be permitted to receive by virtue of those restrictions, an officer may—

- (a) prevent the letter or package, or anything contained in it, being sent or, as the case may be, received by the prisoner; and
- (b) deal with the letter or package, or anything contained in it, in accordance with such arrangements as may be specified in a direction by the Scottish Ministers for these purposes.

### **Restrictions on prisoners' correspondence**

**60.**—(1) A prisoner's entitlement under rule 56 to send and receive letters and packages, other than letters and packages to which rule 57 or 58 applies, shall be subject to such restrictions as are mentioned in paragraph (2).

(2) The restrictions mentioned in this paragraph are such restrictions as may be specified in a direction by the Scottish Ministers for any of the following purposes:—

- (a) to prescribe in relation to the reading by an officer in terms of rule 59(2) of the contents of any letter or package—
  - (i) the circumstances when this may occur, and
  - (ii) the officers who may be authorised to do so;
- (b) to prescribe any restrictions as to the number of letters and packages which a prisoner may send;
- (c) to prescribe in relation to money (whether in the form of cash, cheques, bankers' drafts or otherwise) restrictions as to—
  - (i) the amount of money which a prisoner may send or receive; and
  - (ii) the times and frequency at which prisoners may send or receive money;
- (d) to prescribe the persons, authorities and organisations to whom a prisoner is prohibited from sending any letters and packages;
- (e) to prescribe particular restrictions and conditions which shall apply where a prisoner wishes to send letters and packages to prescribed persons, authorities and organisations whom the prisoner is not otherwise prohibited from corresponding with; and
- (f) to prescribe the nature and description of letters, written material and items of property in general which a prisoner may not send or receive.

### **Provision of writing materials and payment of postage**

**61.**—(1) Subject to the following paragraphs, every prisoner shall be allowed to send one letter every week, the postage for which shall be paid for by the Scottish Ministers, and the Governor shall provide the prisoner with the necessary writing materials for this purpose.

(2) The writing materials which shall be provided by the Governor shall comprise—

- (a) a ballpoint pen;
- (b) one sheet of writing paper and a reasonable number of further sheets if the prisoner so requires; and
- (c) an envelope.

(3) The Governor may, for the purposes of paragraph (1), allow the prisoner to send more than one letter every week at the expense of the Scottish Ministers if it appears to the Governor that this is justified in the prisoner's circumstances.

### **Communication by telephone**

**62.**—(1) A prisoner may have the use of a telephone subject to the provisions of paragraph (2).

(2) A prisoner's entitlement to the use of a telephone shall be subject to the provisions of any direction which the Scottish Ministers may make in relation to—

- (a) the groups or categories of prisoners who may have the use of a telephone;
- (b) the times of day and circumstances in which a telephone may be available for use;
- (c) the conditions applicable to the use of such a telephone; and
- (d) the logging, monitoring and recording by any means by an officer of telephone calls made by a prisoner.

(3) Where an officer informs a prisoner that he or she may not have the use of a telephone by virtue of the provisions of any direction as mentioned in paragraph (2), the officer shall also inform the prisoner of the reasons for that decision.

### **Visits by persons of a prisoner's choice**

**63.**—(1) This rule applies to visits to a prisoner (other than an untried prisoner or a civil prisoner) by any person with whom the prisoner wishes to communicate.

(2) Subject to paragraph (3) and rules 77 and 78, the Governor shall allow a prisoner, at such times as the Governor considers reasonable, either—

- (a) not less than 30 minutes in any period of 7 consecutive days; or
- (b) not less than 2 hours in any period of 28 consecutive days,

for the purposes of receiving visits in terms of this rule.

(3) Subject to rules 77 and 78, the Governor shall allow a young prisoner (who is not also an untried prisoner), at such times as the Governor considers reasonable, not fewer than 2 visits, each of not less than 30 minutes, in any period of 7 consecutive days.

(4) The number of persons who shall be allowed to visit a prisoner at any time shall be at the discretion of the Governor.

(5) Where a prisoner receives a visit in terms of this rule—

- (a) the visit shall take place within the sight of an officer; but
- (b) except where the Governor otherwise authorises, and subject to the provisions of any direction made for the purposes of rule 77, no officer shall listen to any conversation between the prisoner and his or her visitor.

(6) Where the Scottish Ministers consider that it is not practicable to allow prisoners the minimum periods for visits specified in paragraph (2) due to the circumstances pertaining in, or facilities available at, any prison, they may by direction provide that paragraph (2) shall apply in relation to prisoners of that prison subject to such reduced minimum periods as may be specified in the direction.

(7) A prisoner shall only be entitled to receive a visit from a person who is a prisoner at another prison in exceptional circumstances and if the Governors of the respective prisons both give consent and, in the event that either or both Governors refuse consent, the prisoners concerned shall be given an explanation of the reasons for such refusal.



(8) A Governor shall only permit a visit in terms of this rule by a friend or relative of a prisoner who is, or has previously carried on the profession or vocation of, a journalist, author or media representative if—

- (a) the person is visiting on a personal basis and not for professional or vocational purposes; and
- (b) before being admitted to the prison the person gives a written undertaking to the effect that any material obtained during the visit—
  - (i) will not be used for professional or vocational purposes and in particular for publication or broadcast or use on, or transmission by, any form of electronic medium; and
  - (ii) will not be disclosed to any other person for use by that person or anyone else for the purposes of journalism, broadcasting or publishing.

(9) This rule does not apply to visits which a prisoner may receive by virtue of rules 44 to 46 and 66 to 76, and the entitlement of a prisoner to receive visits in terms of this rule is separate from any entitlement under those rules.

#### **Visits to untried and civil prisoners by persons of a prisoner's choice**

**64.**—(1) This rule applies to visits to an untried prisoner or a civil prisoner by any person with whom the prisoner wishes to communicate.

- (2) An untried prisoner or a civil prisoner—
  - (a) shall be allowed to receive (other than on 1st January or 25th December in any year)—
    - (i) a visit of at least 30 minutes' duration in terms of this rule on any day of the week other than a Saturday or Sunday; and
    - (ii) where the prisoner has not received a visit on every day of the preceding Monday to Friday, a visit of at least 30 minutes' duration on a Saturday or a Sunday; and
  - (b) at the discretion of the Governor may receive a visit of such duration as he or she thinks fit on a Saturday or a Sunday or on 1st January or 25th December in any year.
- (3) For the purposes of this rule—
  - (a) a visit may take place during such hours and, subject to the other provisions of this rule, under such conditions as the Governor may specify;
  - (b) the number of persons who shall be allowed to visit a prisoner at any time shall be at the discretion of the Governor.
- (4) Where an untried prisoner or a civil prisoner receives a visit in terms of this rule—
  - (a) the visit shall take place within the sight of an officer; but
  - (b) no officer shall listen to any conversation between the prisoner and his or her visitor except where the Governor otherwise directs.

(5) Where the Scottish Ministers consider that it is not practicable to allow untried prisoners or civil prisoners the minimum period for visits specified in paragraph (2) due to circumstances pertaining in, or facilities available at, any prison, they may by direction provide that paragraph (2) shall apply in relation to untried prisoners or civil prisoners in that prison subject to such reduced minimum period as may be specified in the direction.

(6) Paragraph (8) of rule 63 shall apply to visits to an untried prisoner or a civil prisoner in terms of this rule as it applies to other prisoners.

(7) This rule does not apply to visits which a prisoner may receive by virtue of rules 44 to 46 and 66 to 76, and the entitlement of a prisoner to receive visits in terms of this rule is separate from any entitlement under those rules.

### **Entitlement to accumulated visits**

**65.**—(1) This rule applies to a prisoner who—

- (a) is a life prisoner or is serving a sentence of imprisonment for a term of more than 12 months and has served at least 6 months of that sentence;
- (b) is moved from a prison to any other prison, whether or not for the purpose of enabling the prisoner to use any accumulated unused allowance of visits; and
- (c) has accumulated an unused allowance of visits in terms of rule 63 at the prison from which he or she is moved which is not less than the amount of visits which the prisoner would have been entitled to receive at that prison in terms of that rule in a period of 6 months.

(2) Subject to paragraph (3), a prisoner to whom this rule applies shall be entitled to carry forward the accumulated period of unused allowance and to use that accumulated allowance at the prison to which the prisoner is moved in addition to the allowance in terms of rule 63 at that prison.

(3) The exercise by a prisoner of his or her entitlement under paragraph (2) shall be subject to any direction by the Scottish Ministers in relation to—

- (a) the circumstances in which a prisoner who is moved from a prison to any other prison may not be allowed to carry forward, or may be restricted from carrying forward, any accumulated allowance of visits; and
- (b) the conditions which may be imposed (including conditions as to the period in which an accumulated allowance must be used) by the Governor where a prisoner is entitled to carry forward such an allowance.

(4) In the application of this rule to a young offender any reference to a prison shall be construed as a reference to a young offenders institution or a prison.

### **Visits by legal advisers**

**66.**—(1) A prisoner shall be entitled to receive a visit from his or her legal adviser at any reasonable time for the purposes of consulting about any legal matter in which the prisoner is or may be directly interested.

(2) Where a prisoner receives a visit by a legal adviser in terms of this rule the visit—

- (a) may take place within the sight of an officer; but
- (b) shall take place outwith the hearing of any officer.

(3) A legal adviser may use sound recording equipment to record the discussions with the prisoner during a visit in terms of this rule, subject to such conditions as the Governor may specify.

### **Visits by procurators fiscal**

**67.**—(1) A procurator fiscal or any person authorised by the procurator fiscal may, for the purpose of discharging his or her public duties, visit and examine a prisoner at any reasonable time.

(2) A visit to a prisoner by a procurator fiscal or any person authorised by the procurator fiscal may take place in such area of the prison and under such conditions as the Governor may specify except that such a visit shall take place—

- (a) within the sight of an officer; but
- (b) outwith the hearing of any officer.

### **Visits by police constables**

**68.**—(1) A police constable may, on production of the written authority of either a procurator fiscal or the Chief Constable,—

- (a) visit any prisoner for the purposes of interviewing that prisoner, provided the prisoner is willing to be interviewed;
  - (b) see any prisoner for the purposes of identification; or
  - (c) see any prisoner for the purpose of charging that prisoner with any offence.
- (2) A visit to a prisoner in terms of paragraph (1)(a) may take place in such area of the prison and under such conditions as the Governor may specify except that such a visit shall take place—
- (a) within the sight of an officer; and
  - (b) within the hearing of an officer.

### **Visits by representatives of diplomatic services and national or international authorities or organisations**

- 69.**—(1) A prisoner who is a foreign national shall be entitled to communicate with and receive a visit at any reasonable time from a diplomatic representative of the prisoner’s choice.
- (2) A prisoner who is a refugee or stateless person shall be entitled to communicate with and receive a visit at any reasonable time from—
- (a) a diplomatic representative of a state which the prisoner considers may look after his or her interests; or
  - (b) subject to such limit as to numbers of authorities or organisations as the Governor may reasonably impose, an authorised representative of national or international authorities or organisations whose principal purpose is to serve the interests of refugees or stateless persons or to protect the civil rights of such persons.
- (3) Where a prisoner receives a visit in terms of this rule—
- (a) the visit shall take place within the sight of an officer; but
  - (b) no officer shall listen to any conversation between the prisoner and the visitor unless either the prisoner or the visitor otherwise requests.

### **Special visits to certain prisoners in connection with further proceedings**

- 70.**—(1) This rule applies to a prisoner who—
- (a) is an untried prisoner;
  - (b) is a civil prisoner;
  - (c) is an appellant;
  - (d) has been remanded in custody following conviction to await sentence or further inquiry; or
  - (e) is serving a sentence of imprisonment and who is—
    - (i) subject to a further charge; or
    - (ii) the respondent in an appeal by the Lord Advocate or the prosecutor under section 108(74) or 175(3)(75) of the 1995 Act,
- but shall apply to such a prisoner only for so long as the proceedings in respect of the further charge or the appeal are pending against him.

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(74) 1995 c. 46; section 108 was substituted by the Crime and Punishment (Scotland) Act 1997 (c. 48), section 21 and was amended by the Crime and Disorder Act 1998 (c. 37) section 94 and Schedule 6, paragraph 6, and also by the Proceeds of Crime Act 2002 (c. 29) Part 3, section 115; section 108A was added by the Crime and Punishment (Scotland) Act 1997 (c. 48), section 18 and was amended by the Crime and Disorder Act 1998 (c. 37) section 119 and Schedule 8, paragraph 120.

(75) 1995 c. 46; section 175 was amended by Crime and Punishment (Scotland) Act 1997 (c. 48), section 17, section 21, section 23, by the Crime and Disorder Act 1998 (c. 37) section 119 and paragraph 123 of Schedule 8, by the Proceeds of Crime Act 2002 (c. 29) Part 3, section 115, and also by the Protection of Children (Scotland) Act 2003 (asp 5), section 16.

(2) A prisoner to whom this rule applies shall be allowed a visit at any reasonable time to consult a registered medical practitioner, where the Governor considers it is in the interests of justice, or any other person for the purposes of—

- (a) in the case of an untried prisoner, the proceedings in respect of which he or she is remanded in custody or complying with a condition of bail which requires the deposit of a sum of money pursuant to section 24(6) of the 1995 Act<sup>(76)</sup>;
- (b) in the case of a civil prisoner, the proceedings in respect of which he or she is committed to prison;
- (c) in the case of an appellant, the appeal or, as the case may be, the reference;
- (d) in the case of a prisoner mentioned in paragraph (1)(d), preparing representations to the court which will pass sentence or otherwise dispose of his or her case; or
- (e) in the case of a prisoner mentioned in paragraph (1)(e), the proceedings in respect of the further charge or, as the case may be, the appeal.

(3) The number of persons who shall be allowed to visit a prisoner at any time shall be at the discretion of the Governor.

(4) Where a prisoner receives a visit in terms of this rule—

- (a) the visit shall take place within the sight of an officer; but
- (b) no officer shall listen to any conversation between the prisoner and the visitor—
  - (i) in the case of a visit by a registered medical practitioner, under any circumstances; and
  - (ii) in the case of any other visitor, except where the Governor otherwise directs.

### **Visits by Members of Parliament, members of the Scottish Parliament and representatives of the European Parliament**

**71.**—(1) A prisoner shall be entitled to receive a visit from a member of Parliament, a member of the Scottish Parliament or a representative of the European Parliament.

(2) A visit to a prisoner by a member of Parliament, a member of the Scottish Parliament or a representative of the European Parliament may take place in such area of the prison and under such conditions as the Governor may specify except that such a visit shall take place—

- (a) within the sight of an officer; but
- (b) outwith the hearing of any officer unless the member of Parliament, member of the Scottish Parliament, representative of the European Parliament or prisoner requests otherwise or the Governor so requires for reasons of security.

(3) A member of Parliament, or the Scottish Public Services Ombudsman or any person authorised by that Ombudsman, a member of the Scottish Parliament or a representative of the European Parliament with the prisoner's consent may use sound recording equipment to record any interview held with the prisoner.

### **Visits by the Parliamentary Commissioner for Administration or Officers on the Commissioner's behalf**

**72.**—(1) The Scottish Public Services Ombudsman or any person authorised by that Ombudsman, may, for the purpose of discharging his or her public duties, visit a prisoner at any reasonable time with that prisoner's consent.

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<sup>(76)</sup> 1995 c. 46; section 24(6) amended by the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#) Schedule 1, paragraph 5.

(2) A visit to a prisoner by the Scottish Public Services Ombudsman or any person authorised by him or her, shall take place in such area of the prison and under such conditions as the Governor may specify except that such a visit shall take place—

- (a) within the sight of an officer; but
- (b) outwith the hearing of any officer unless the Ombudsman or his or her representative requests otherwise or the Governor otherwise requires for reasons of security.

### **Visits by journalists, authors or media representatives**

**73.**—(1) This rule applies to a person who visits, or seeks to visit, a prisoner—

- (a) as a journalist, author or media representative in a professional or vocational capacity; or
- (b) in circumstances where the person's visit is wholly or partially connected with the purposes of journalism, broadcasting or publishing.

(2) A Governor shall permit visits to prisoners by persons to whom this rule applies only in exceptional circumstances and where satisfied that it is appropriate to permit such a visit.

(3) If the Governor intends to permit a visit to a prisoner for the purposes mentioned in paragraph (1) the Governor shall require the person, before being admitted to the prison, to give a written undertaking to the effect that—

- (a) no interview shall begin, nor shall any photographs, filming or sound recording be taken or conducted, except with the express prior consent of both the prisoner and the Governor;
- (b) any such interview, photography, filming or recording shall be conducted or taken in accordance with such other conditions as the Governor considers necessary;
- (c) the person shall not make any payment or gratuity to the prisoner or any other person in relation to the holding of the interview or any material obtained at it; and
- (d) any material obtained at the interview, or any photographs, films or recordings so taken, will not be used for professional or vocational purposes and in particular for publication or broadcast or use on, or transmission by, any form of electronic medium by the person or anyone else except in accordance with the prior written consent of the Governor and subject to and in accordance with such conditions as the Governor may impose.

(4) A visit to a prisoner in terms of this rule shall take place in such area of the prison as the Governor may specify and—

- (a) shall take place within the sight of an officer; and
- (b) within the hearing of an officer.

### **Visits by members of the Parole Board for Scotland**

**74.**—(1) A prisoner may receive a visit from one or two members of the Parole Board for Scotland where the purpose of that visit is to interview the prisoner in terms of rule 15(3) of the Parole Board (Scotland) Rules 2001(77).

(2) Where a prisoner receives a visit in terms of this rule—

- (a) the visit may take place within the sight of an officer; but
- (b) shall take place outwith the hearing of any officer unless a member of the Board or the prisoner otherwise requests.

### **Visits by members or employees of the Scottish Criminal Cases Review Commission**

75.—(1) A prisoner may receive a visit from one or two members or employees of the Scottish Criminal Cases Review Commission for the purpose of assisting the Commission in the exercise of any of its functions.

- (2) Where a prisoner receives a visit in terms of this rule—
- (a) the visit shall take place within the sight of an officer; but
  - (b) shall take place outwith the hearing of an officer unless the member or employee of the Commission or the prisoner otherwise requests.

### **Visits by persons in connection with disciplinary proceedings**

76.—(1) This rule applies to visits to a prisoner who has been charged with a breach of discipline by a person where—

- (a) the prisoner wishes to call, or consider calling, that person as a witness at the inquiry into the charge; and
- (b) the Governor holding that inquiry has agreed that the prisoner should have the opportunity to discuss with that person whether that person could give evidence which would be relevant to the defence to the charge.

(2) A prisoner to whom this rule applies shall be allowed to receive a visit at any reasonable time from that person for the purpose of discussing whether that person could give evidence which would be relevant to the defence to the charge.

(3) The number of persons who shall be allowed to visit a prisoner at any time shall be at the discretion of the Governor.

(4) Where a prisoner receives a visit in terms of this rule, it shall take place under such conditions as the Governor may specify except that—

- (a) such a visit shall take place within the sight of an officer; but
- (b) no officer shall listen to any conversation between the prisoner and the visitor except where the Governor otherwise directs.

### **Restrictions and conditions applicable to visits under Part 8**

77.—(1) The Governor may prohibit a prisoner from receiving a visit from any person in particular in terms of this Part of these Rules where the Governor considers that it is necessary to do so in the interests of security, discipline or the prevention of disorder or crime.

(2) If in the case of any visit taking place in terms of rule 63(8), 64(6) or 73 the Governor considers that the terms of any undertaking mentioned in any of those provisions have been breached or that there has been a contravention of any restrictions or conditions specified in a direction made by virtue of paragraph (3), the Governor may terminate the visit.

(3) The entitlement of a prisoner to receive visits in terms of this Part of these Rules shall be subject to such restrictions and conditions as may be specified in a direction by the Scottish Ministers for the following purposes:—

- (a) to allow the use of video cameras and sound recording equipment for the monitoring of the visits area during visits to prisoners;
- (b) to impose a prohibition on, or restrictions in relation to, the possession and use by prisoners and their visitors of photographic equipment, sound recording equipment and writing materials;
- (c) to impose restrictions as to the introduction of, or possession or consumption of, food and drink by prisoners and their visitors during such visits;

- (d) to provide for the issuing of visitors' permits; and
- (e) to prescribe the terms of any written undertaking which may be required to be given pursuant to rule 63(8), 64(6) or 73(3).

### **Closed visiting facilities**

**78.**—(1) The Governor may, for any reason specified in paragraph (2), order that any visits which a prisoner receives for the purposes of rules 44 to 46, 63, 64 and 68 to 70 shall be held in closed visiting facilities.

(2) The Governor may make an order under paragraph (1) for any of the following reasons:—

- (a) he is of the opinion that there are reasonable grounds for suspecting that the prisoner—
  - (i) has previously obtained; or
  - (ii) is likely in the future to attempt to obtain,  
from any visitor any prohibited article or any property which the prisoner was not or, as the case may be, would not be authorised to possess in prison or in any particular part of the prison;
- (b) the prisoner's behaviour makes it necessary for the purposes of security and control for any visit to be received in closed visiting facilities;
- (c) any visit to the prisoner has been terminated in terms of rule 77(1) due to the conduct of the visitor;
- (d) a person who wishes to visit the prisoner has previously been refused access to the prison; or
- (e) the Governor is of the opinion that it is necessary to ensure, in relation to a visit for the purposes of rule 70, that the visit is genuinely required for any purpose specified in rule 70(2).

(3) The Governor may make an order under paragraph (1) in relation to any particular visit received in terms of any rule mentioned in paragraph (1) or in relation to every visit received in terms of any of those rules, but any order made in relation to every such visit shall be reviewed by the Governor not less than once in every 3 months and may be revoked by the Governor at any time.

(4) No order under paragraph (1) shall be made as a punishment in respect of a breach of discipline within the meaning of Part 11 of these Rules.

### **Arrangements for securing release of prisoners committed to prison in default of payments**

**79.**—(1) This rule applies to any prisoner who is committed to prison—

- (a) in default of payment of any sum which requires to be paid by virtue of any order of a court; and
- (b) in circumstances where the prisoner may be released on payment of any sum.

(2) A prisoner to whom this rule applies shall be entitled to communicate at any reasonable time with any person for the purpose of arranging payment of the sum which would secure his or her release.

## PART 9

### WORK, EDUCATION, EARNINGS AND RECREATION

#### Application of Part 9

- 80.**—(1) Rules 81 to 84, 86(3) and 87(2) shall not apply to untried and civil prisoners.  
(2) Rules 81 to 84, 86(3), 87(2) and 88 shall not apply to young prisoners.

#### Arrangements for work, education and counselling

**81.**—(1) As soon as practicable after the reception into prison of a prisoner, the Governor shall obtain reports about that prisoner's particular needs and wishes concerning work and education.

(2) Following receipt of such reports, the Governor shall in consultation with the prisoner determine a programme of work, educational activities and counselling for the prisoner with the objective of improving the prospects for the prisoner's successful resettlement in the community, and the prisoner's morale, attitude and self respect.

#### Prisoners' work

**82.**—(1) Subject to the following provisions of this Part, every prisoner shall be required to work in prison.

(2) No prisoner shall be required to work, or to do work which is of a particular class, at any time when excused from working, or from doing any particular class of work—

- (a) by a medical officer on medical grounds; or
- (b) by the Governor on any other ground.

(3) A prisoner shall be excused from the requirement to work at a time when undertaking an educational class arranged in terms of rule 86 or undertaking counselling provided in terms of rule 87.

(4) Except with the authority of the Governor, no prisoner shall work in the service of another prisoner or of an officer.

#### Conditions of work or activities in lieu of work

**83.**—(1) No prisoner shall be required to work, or take part in an educational class arranged in terms of rule 86 in lieu of work, for more than 40 hours a week (excluding meal breaks).

(2) Every prisoner shall be entitled to a minimum of one day each week as a rest day on which he or she shall not be required to work or take part in an educational class in lieu of work.

(3) Insofar as it may be reasonably practicable, having regard to the requirements of the prison regime, a prisoner who has declared him or herself to belong to a religious denomination shall—

- (a) be entitled to take the rest day on the recognised day of religious observance; and
- (b) not be required to work or take part in an educational class arranged in terms of rule 86 in lieu of work on such other days in a year as are recognised days of religious observance for the religious denomination and are specified in a direction made by the Scottish Ministers.

(4) A prisoner shall be entitled to work in association with other prisoners except where—

- (a) an order has been made under rule 94 removing him or her from association with other prisoners either generally or during any period the prisoner is undertaking work;
- (b) the prisoner has been removed from association in terms of rule 114(2); or
- (c) the prisoner is subject to cellular confinement imposed under rule 119(1)(d).



### **Work opportunities**

**84.**—(1) The Governor shall provide a range of work which, so far as reasonably practicable, takes into account—

- (a) the interests and need of prisoners to obtain skills and experience which will be of use to them after their release; and
- (b) the requirements of the operation and maintenance of the prison.

(2) The range of work which the Governor may provide may include—

- (a) vocational training;
- (b) work placements outside the prison; and
- (c) voluntary work outside the prison.

(3) The Scottish Ministers may, in relation to such work placements outside the prison, specify in a direction—

- (a) the groups or categories of prisoners who may be allowed to undertake such work;
- (b) the circumstances in which, and the conditions subject to which, such work may be provided to any eligible group or category of prisoners; and
- (c) the conditions which shall apply to any prisoner or group or category of prisoners undertaking such work.

### **Work undertaken by untried and civil prisoners**

**85.**—(1) An untried prisoner or a civil prisoner shall not be required to work in prison but may undertake, if the prisoner so chooses and with the agreement of the Governor, such work or an educational class arranged in terms of rule 86.

(2) Where an untried prisoner or a civil prisoner undertakes work, they shall be entitled to be paid earnings in accordance with rule 88.

(3) Except with the authority of the Governor and with the consent of the prisoner, no untried prisoner or civil prisoner shall work in the service of another prisoner or of an officer.

### **Education**

**86.**—(1) The Governor shall arrange a programme of educational classes to provide prisoners, so far as reasonably practicable, with an opportunity to pursue their interests and needs.

(2) In relation to young prisoners, the Governor shall arrange a programme of educational classes which meet their needs and can assist them to develop their potential.

(3) Where an educational class is undertaken by a prisoner in terms of this rule and for that purpose the prisoner is excused from the requirement to work in terms of rule 82, the educational class shall be treated as an activity which may be undertaken in lieu of work.

### **Counselling**

**87.**—(1) The Governor may arrange provision of counselling (including group work activity) appropriate to the needs of prisoners.

(2) Where counselling is provided to a prisoner in terms of this rule and for that purpose the prisoner is excused from the requirement to work in terms of rule 82, the counselling shall be treated as an activity in lieu of work.

## Earnings

### 88. Where—

- (a) a prisoner undertakes work in terms of rule 82 or 85; or
- (b) a prisoner (other than an untried or civil prisoner) takes part in an educational class arranged in terms of rule 86 or any counselling provided in terms of rule 87,

the prisoner shall be entitled to be paid earnings at such rates and in accordance with such conditions as may be specified in a direction by the Scottish Ministers.

## Exercise and time in the open air

### 89.—(1) Subject to paragraphs (2) to (6)—

- (a) every prisoner shall be given the opportunity—
  - (i) to take exercise for not less than one hour every day except where a medical officer has not passed the prisoner as fit on admission; and
  - (ii) to spend time in the open air at least once every day; and
- (b) every young offender shall be given the opportunity—
  - (i) on a regular basis to participate in physical recreation, activities and pursuits which are consistent with maintaining good health and physical wellbeing; and
  - (ii) to spend time in the open air at least once every day.

(2) A prisoner or young offender shall be allowed to participate in any activity mentioned in paragraph (1)(a)(i) and (b)(i) and spend time in the open air in association with other prisoners or, as the case may be, young offenders except where—

- (a) an order has been made under rule 94 removing him or her from association with other prisoners or, as the case may be, young offenders either generally or during any period he or she is participating in any activity mentioned in paragraph (1)(a)(i) or (b)(i) or spending time in the open air;
- (b) he or she has been removed from association in terms of rule 114(2); or
- (c) he or she is subject to cellular confinement imposed under rule 119(1)(d).

(3) Where at any time it appears to the Governor that it is not practicable to give prisoners or young offenders, or any particular group or category of prisoners or young offenders, the opportunity to participate in any activity mentioned in paragraph (1)(a)(i) or (b)(i) or spend time in the open air due to exceptional circumstances pertaining in that prison or young offenders institution, or in any other prison or young offenders institution, the Governor may order in writing that such prisoners or young offenders or group or category of prisoners or young offenders shall not be given either or both of the opportunities mentioned in sub paragraph (a) or, as the case may be, sub paragraph (b) of paragraph (1) until such time as the Governor considers that it is so practicable.

### (4) An order made under paragraph (3) shall—

- (a) specify the reasons why the Governor is making it; and
- (b) record the date and time it is made.

### (5) After making an order under paragraph (3) the Governor shall—

- (a) take such steps as are practicable to notify prisoners or, as the case may be, young offenders who are subject to the order of the effect of the order; and
- (b) provide a copy of the order to the Scottish Ministers.

(6) An order made under paragraph (3) shall cease to have effect 48 hours after the time at which it was made unless the Scottish Ministers specify in a direction made before the expiry of that period

that the order shall continue to have effect until revoked by a further order made by the Governor or by a further direction made for that purpose by the Scottish Ministers.

### **Recreation**

**90.**—(1) The Governor shall provide reasonable facilities and opportunities to enable prisoners to participate in recreational activities outwith normal working hours.

(2) The Governor shall make arrangements for lending library services for the use of prisoners which take into account so far as reasonably practicable their educational, informational and recreational interests.

(3) The extent to which any prisoner or group or category of prisoner may at any time be permitted to use facilities provided, or to participate in recreational activities organised, by virtue of this rule shall be determined in accordance with the system of privileges established under rule 49.

### **Prohibition on prisoners' carrying on any trade, profession or vocation from prison**

**91.**—(1) Subject to paragraph (2), no prisoner shall be permitted to carry on any trade, profession or vocation from the prison.

(2) Paragraph (1) shall not be construed as preventing a prisoner—

- (a) from taking such steps, whether by means of correspondence, telephone calls or visits, as are necessary to protect the value of any interest the prisoner has in any property or business; or
- (b) from writing articles or books intended for publication, whether or not such articles or books are written by the prisoner in a professional or vocational capacity, but any such activity shall only be permissible insofar as it is compatible with these Rules or any direction made for the purpose of these Rules and the prison regime in general.

## **PART 10**

### **SECURITY AND CONTROL**

#### **Supervision of the prison and control of prisoners**

**92.**—(1) Subject to the provisions of these Rules, the Governor shall be responsible for—

- (a) the supervision of the whole prison; and
- (b) the control of prisoners confined therein.

(2) The Governor shall as far as practicable visit and inspect daily those parts of the prison where prisoners are employed or accommodated.

#### **Control of prisoners**

**93.**—(1) In the control of prisoners, an officer shall seek—

- (a) to influence by example and leadership; and
- (b) to enlist the willing cooperation of prisoners.

(2) An officer in dealing with a prisoner shall not use force unnecessarily and, when the application of force to a prisoner is necessary, no more force than is necessary shall be used.

(3) No officer shall act in a manner deliberately calculated to provoke a prisoner.

## Removal from association

94.—(1) Where it appears to the Governor desirable for the purpose of—

- (a) maintaining good order or discipline;
- (b) protecting the interests of any prisoner; or
- (c) ensuring the safety of other persons,

the Governor may order in writing that a prisoner shall be removed from association with other prisoners, either generally or during any period the prisoner is engaged or taking part in a prescribed activity.

(2) If the Governor makes an order under paragraph (1) in relation to a prescribed activity, the Governor may specify only one prescribed activity in the order.

(3) In this rule, “prescribed activity” means—

- (a) work required to be undertaken in terms of rule 82;
- (b) educational classes undertaken in terms of rule 86;
- (c) counselling provided in terms of rule 87;
- (d) participating in any activity mentioned in rule 89(1)(a)(i) or (b)(i) or spending time in the open air in accordance with rule 89(1)(a)(ii) or (b)(ii);
- (e) recreational activities; or
- (f) attendance at any religious service or meeting which the prisoner would otherwise have been entitled to attend in terms of rule 46(1).

(4) The Governor when making an order under paragraph (1), shall—

- (a) specify in the order whether the removal from association is—
  - (i) in general; or
  - (ii) in relation to a prescribed activity;
- (b) if the removal is in relation to a prescribed activity, specify which activity the order relates to;
- (c) specify in the order the reasons why the order is made;
- (d) record in the order the date and time it is made; and
- (e) explain to the prisoner the reasons why the order is made and provide the prisoner with a copy of the written order.

(5) A prisoner who has been removed from association generally or during any period that the prisoner is engaged in or taking part in a prescribed activity by virtue of an order made by the Governor in terms of paragraph (1) shall not be subject to such removal for a period in excess of 72 hours from the time of the order, except where the Scottish Ministers have granted written authority on the application of the Governor, prior to the expiry of the said period of 72 hours.

(6) An authority granted by the Scottish Ministers under paragraph (5) shall have effect for a period of one month commencing from the expiry of the period of 72 hours mentioned in paragraph (5) but the Scottish Ministers may, on any subsequent application of the Governor, renew the authority for further periods of one month commencing from the expiry of the previous authority.

(7) The Governor—

- (a) may—
  - (i) cancel an order under paragraph (1) at any time if the Governor considers it appropriate to do so;
  - (ii) vary an order made under paragraph (1) in terms of which the prisoner has been removed from association generally in order to restrict the effect of that order to

removal from association during any period the prisoner is engaged in or taking part in any one or more prescribed activities as may be specified in the variation order;

(iii) if appropriate, further vary an order under paragraph (1) which has previously been varied under sub paragraph (ii) above by further restricting the number of prescribed activities to which removal from association applies; or

(b) shall cancel any order under paragraph (1) if a medical officer advises on medical grounds that the Governor should do so.

(8) The Governor may allow a prisoner who has been removed from association under this rule to associate with other prisoners who have been removed from association under this rule, for the purpose of engaging or taking part in a prescribed activity.

(9) If a prisoner is moved by the Scottish Ministers from any prison to any other prison in terms of section 10 of the Act(78), any order under paragraph (1), or any authority under paragraph (5), made or granted in relation to the prisoner whilst confined in the former prison shall cease to have effect, but without prejudice to the power of the Governor of the prison to which the prisoner is moved to make a new order under paragraph (1).

(10) Where a prisoner has been removed from association under this rule, a medical officer shall visit that prisoner as soon as practicable and thereafter as often as is necessary but at least once in every 7 days.

### **Prohibited articles**

**95.**—(1) Subject to paragraph (2), no prisoner shall have in their possession, or conceal or deposit anywhere within a prison, any prohibited article.

(2) A prisoner may be allowed to receive alcoholic liquor or controlled drugs under a written order of a medical officer specifying—

- (a) the quantity and description of the liquor or drugs to be given; and
- (b) the name of the prisoner for whose use it is intended.

(3) No person shall—

- (a) convey or throw into, or conceal or deposit in, a prison;
- (b) convey to a prisoner, whether inside or outside a prison; or
- (c) conceal or deposit in any place with a view to its coming into the possession of a prisoner,

any prohibited article.

(4) The Governor may seize and detain any prohibited article which is—

- (a) found in the possession of a prisoner or a visitor; or
- (b) conveyed or thrown into, or concealed or deposited in, the prison,

in contravention of this rule.

### **Unauthorised property**

**96.**—(1) No prisoner shall have in his or her possession, or conceal or deposit anywhere within a prison, any property which he or she has not been authorised to possess or keep in terms of these Rules or by any officer.

(2) No prisoner shall have in his or her possession any property in a part of the prison which he or she has been authorised to possess only in some other part of the prison.

(3) Subject to paragraph (4), no person shall—

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(78) Section 10 was substituted by the 1993 Act, section 22.

- (a) convey or throw into, or conceal or deposit in, a prison;
  - (b) convey to a prisoner, whether inside or outside a prison; or
  - (c) conceal or deposit in any place with a view to its coming into the possession of a prisoner, any article whatsoever.
- (4) Paragraph (3) does not apply to any property which—
- (a) the Governor has authorised a person—
    - (i) to convey into, or deposit in, the prison; or
    - (ii) to convey to a prisoner whether inside or outside a prison; or
  - (b) consists of a letter or package addressed to a prisoner and sent to the prison by means of the postal service or otherwise.
- (5) The Governor may seize and detain—
- (a) any property which a prisoner is not authorised to possess or keep in accordance with these Rules or by any officer and which is found in the possession of a prisoner, or concealed or deposited anywhere in the prison; or
  - (b) any article or property conveyed or thrown into, or concealed or deposited in, prison in contravention of paragraph (3).
- (6) No prisoner (other than untried and civil prisoners) shall be allowed to have any tobacco in his or her possession except as a privilege granted by virtue of rule 49 and provided that the prisoner is at least 16 years old.

### **Orders as to the use of restraints**

- 97.—(1) In this rule and rule 98, “restraint” means a body belt.
- (2) The Governor may order that a prisoner be placed under a restraint where it appears to the Governor that it is necessary to do so in order to restrain a prisoner—
- (a) who threatens to injure, or is in the course of injuring, him or herself or other persons; or
  - (b) who threatens to damage, or is in the course of damaging, property; or
  - (c) who threatens to create, or is in the course of creating, a disturbance.
- (3) Where the Governor makes an order under paragraph (2), notice of the order shall be given by the Governor to a medical officer as soon as possible.
- (4) On receipt of a notice under paragraph (3), the medical officer shall inform the Governor whether he or she concurs in the order and, if not, the Governor shall order the restraint to be removed immediately.
- (5) A medical officer may order that a prisoner be placed under a restraint if satisfied that it is necessary to do so in order to prevent self-injury.
- (6) Where a medical officer makes an order under paragraph (5), the medical officer shall give notice of the order to the Governor as soon as possible.
- (7) No prisoner shall be placed under a restraint as a punishment.

### **Conditions of use of restraints**

- 98.—(1) A prisoner shall not be placed under a restraint—
- (a) any longer than is necessary; and
  - (b) without prejudice to sub paragraph (a), for a period of more than 24 hours except with the authority of the Scottish Ministers.

- (2) An authority given under paragraph (1) shall—
  - (a) state the grounds for continued use of the restraint and the time during which it may continue to be used; and
  - (b) require a medical officer to visit the prisoner at regular intervals.
- (3) A restraint—
  - (a) shall be applied in such a manner; and
  - (b) when applied, shall be temporarily removed in such circumstances, as may be specified in a direction by the Scottish Ministers.
- (4) A prisoner who is placed under a restraint shall be visited by an officer at least once in every 15 minutes during the period that the prisoner is under restraint.
- (5) A medical officer shall examine a prisoner who is placed under a restraint immediately following—
  - (a) the placing of the restraint; and
  - (b) its removal (other than for a temporary purpose).
- (6) The Governor shall forthwith—
  - (a) record particulars of every case of a prisoner placed under a restraint; and
  - (b) give notice to the Scottish Ministers of those particulars.

#### **Temporary confinement in a special cell**

- 99.**—(1) The Governor may order the temporary confinement in a special cell of any prisoner who is refractory or acting in a violent manner.
- (2) No prisoner shall be confined in a special cell pursuant to paragraph (1)—
    - (a) as a punishment; or
    - (b) for any longer than necessary and, in any event, no longer than a continuous period of 24 hours.
  - (3) Where an order is made under paragraph (1), the Governor shall—
    - (a) give notice of the order to a medical officer as soon as possible; and
    - (b) record the particulars of the case.
  - (4) A prisoner who is temporarily confined pursuant to an order under paragraph (1) shall be visited—
    - (a) by a medical officer where a prisoner has been so confined for a continuous period in excess of 15 hours; and
    - (b) by an officer at least once in every 15 minutes during the period of the prisoner’s temporary confinement.

#### **Temporary confinement to cell**

- 100.**—(1) An officer may cause a prisoner to be temporarily confined in a cell or room at a time when other prisoners detained in the same part of the prison or, as the case may be, prisoners at the prison in general are permitted to be in association if the officer is of the opinion that—
  - (a) the prisoner is acting in a disobedient or disorderly manner and that temporary confinement is both appropriate for the purpose of controlling such behaviour and is in the prisoner’s best interests; or

(b) by reason of the prisoner's emotional state, it is desirable in the interests of the prisoner to be temporarily confined to a cell or room.

(2) A prisoner shall not be confined to a cell or room by virtue of paragraph (1) for longer than one hour on any occasion.

(3) An officer, having exercised the power conferred by paragraph (1), shall inform a supervising officer of that fact orally and as soon as is reasonably practicable.

(4) If the officer concerned is of the opinion that a prisoner who has been confined to a cell or room by virtue of paragraph (1) is acting in a disobedient or disorderly manner at the expiry of the period permitted by paragraph (2), the officer shall forthwith report any suspected breach of discipline in accordance with rule 114.

### **Admission of visitors**

**101.**—(1) Where any person seeks to enter a prison as a visitor, an officer may ask the visitor—

- (a) to state his or her name and address and the purpose of his or her visit; and
- (b) to deposit for the duration of the visit any article in the visitor's possession which the officer considers may be prejudicial to security, good order or safety.

(2) No visitor shall smoke in any building which forms part of a prison.

(3) A person to whom rule 73 applies who seeks to enter a prison as a visitor for the purposes of a visit as mentioned in that rule shall, immediately on arrival, inform an officer of their wish to visit the prison in accordance with that rule.

(4) A person who is, or has previously carried on the profession or vocation of, a journalist, an author or a media representative and who seeks to enter a prison for the purpose of visiting a prisoner who is a friend or relative on a personal basis, and not for professional or vocational purposes, shall, immediately on arrival, inform an officer of that fact.

(5) Without prejudice to the powers conferred by section 41 of the Act, an officer may refuse to admit a visitor and may remove the visitor from the prison where—

- (a) that visitor refuses to comply with a request made in terms of paragraph (1);
- (b) that visitor refuses to give consent for the purposes of rule 102(1) or (3) or, having given consent, is obstructive in the course of the relevant search; or
- (c) the officer has reasonable grounds for suspecting that the visitor has in their possession or concealed about their person any article which the Governor has not authorised to be conveyed into the prison or any article which may be prejudicial to security, good order or discipline.

(6) An officer who refuses admission to a visitor in terms of this rule, shall record particulars of the matters, including the reasons for such refusal.

(7) In this rule, and in rules 102 and 103, "visitor" includes any person (other than an officer or employee) visiting the premises comprising the prison (or any part thereof).

(8) The Governor shall ensure that a notice explaining the effect of the provisions of this rule, of rules 102 and 103, of section 41 of the Act and of any direction made for any purpose specified in rule 77(3) shall be displayed prominently in the visits area of the prison.

### **Searching of visitors**

**102.**—(1) Without prejudice to any power of search referred to in the Act, an officer may ask a visitor to consent to a search or searches in accordance with the provisions of this rule of—

- (a) their person and any of their personal possessions;



- (b) their open mouth, but without the use of force or any instruments; and
  - (c) where the visitor is in charge of any vehicle which they intend to take into any area forming part of the premises of the prison, that vehicle.
- (2) Where the visitor has given consent to a search or searches in accordance with paragraph (1), a search thereunder may take place—
- (a) prior to their admission to the part of the prison where the visit is to take place; and
  - (b) where the Governor considers that—
    - (i) the visitor has failed to comply with rule 101(3) or (4) or;
    - (ii) in the case of any visit taking place in terms of rule 63(8), 64(6) or 73, the terms of any undertaking mentioned in any of those provisions have been breached or that there has been a contravention of any restrictions or conditions specified in the direction by virtue of rule 77(3),
- in addition to a search on admission, at any time whilst the visitor is in the prison.
- (3) Where the visitor has given consent to a search or searches in accordance with paragraph (1) (c), the search of the vehicle may also be made prior to the visitor's leaving the prison.
- (4) Where a visitor is searched with their consent in terms of paragraph (1)—
- (a) except in the case of a search mentioned in paragraph (1)(b), the officer carrying out the search shall be of the same sex as the visitor; and
  - (b) the search shall be carried out as expeditiously and decently as possible.
- (5) A visitor shall not be asked in terms of paragraph (1) to remove, nor shall a search thereunder involve the removal of, any clothing other than an outer coat, jacket, headgear, gloves and footwear.
- (6) A search of a visitor's personal possessions (including any item of clothing which he or she may be asked to remove in terms of paragraph (5)) or of any vehicle under paragraph (1) may, in addition to being carried out by hand but subject to paragraphs (5) and (8), be carried out—
- (a) by the use of equipment involving—
    - (i) the application of a suction device or a swab on or to such possessions or such a vehicle (or anything in it) in order to collect particles from their surface; and
    - (ii) the analysis of such particles for the purpose of ascertaining whether any of them consists of a controlled drug or an explosive substance;
  - (b) by the use of equipment designed to detect the existence of metal objects; and
  - (c) in accordance with such procedures and conditions as may be specified in a direction by the Scottish Ministers.
- (7) Where in the course of a search undertaken in accordance with paragraph (1) an officer finds any prohibited article, he or she may seize and detain that article.
- (8) Where a visitor is searched by an officer under section 41(2A) of the Act—
- (a) the officer carrying out the search shall be of the same sex as the visitor;
  - (b) subject to sub paragraph (d), the search shall be undertaken outwith the sight of any prisoner, any other visitor or officers who are not of the same sex as the visitor;
  - (c) the search shall be carried out as expeditiously and decently as possible; and
  - (d) where the visitor is under 16 years of age, the search shall be carried out in the presence of an accompanying adult.

### Removal of visitors

**103.**—(1) Without prejudice to section 41(3) of the Act, an officer may terminate a visit and remove a visitor from the prison where—

- (a) the officer—
  - (i) has reasonable grounds for suspecting that the visitor has in their possession or is taking out, or attempting to take out, any article which the Governor has not authorised the visitor to convey into the prison or any article which may be prejudicial to security, good order or discipline;
  - (ii) considers that the visitor’s conduct is prejudicial to security, good order or safety or that it is otherwise necessary to terminate the visit in the interests of security, discipline or the prevention of disorder or crime;
  - (iii) has reasonable grounds for suspecting that the visitor has failed to comply with rule 101(3) or (4);
  - (iv) in the case of any visit taking place in terms of rule 63(8), 64(6) or 73, considers that the terms of any undertaking mentioned in any of those provisions have been breached or that there has been contravention of any restrictions or conditions specified in a direction made by virtue of rule 77(3); or
- (b) the visitor smokes in breach of rule 101(2).

(2) An officer who terminates a visit in terms of this rule, shall record particulars of the matter, including the reasons for termination.

### Searching of persons providing contracted out services

**104.**—(1) Without prejudice to any power of search referred to in the Act, the Governor may order the carrying out of a search—

- (a) of a person providing contracted out services to the prison;
- (b) of any article of property belonging to that person which is in the person’s possession whilst in the prison, or which is kept by the person in a locker or any other place within the prison; and
- (c) where that person is in charge of any vehicle which is to be taken into any area forming part of the premises of the prison, that vehicle.

(2) A search under paragraph (1) of any vehicle, clothing or other article or property belonging to that person which is being worn, or as the case may be, is otherwise in that person’s possession whilst in prison, or which is kept by the person in a locker or any other place within the prison, may, in addition to being carried out by hand, but subject to paragraphs (3) and (4), be carried out—

- (a) by the use of equipment involving—
    - (i) the application of a suction device or a swab on or to such possessions in order to collect particles from their surface; and
    - (ii) the analysis of such particles for the purpose of ascertaining whether any of them consists of a controlled drug or an explosive substance;
  - (b) by the use of equipment designed to detect the existence of metal objects; and
  - (c) in accordance with any such procedures and conditions as may be specified in a direction by the Scottish Ministers.
- (3) The power of search conferred by paragraph (1) shall—
- (a) not be construed as authorising the Governor to require that person to remove any clothing other than an outer coat, jacket, headgear, footwear and gloves; and

- (b) include power to use reasonable force where necessary.
- (4) A search of a person providing contracted out services shall be carried out within the prison—
  - (a) by at least 2 officers who shall be of the same sex as the person being searched;
  - (b) outwith the sight of any other person; and
  - (c) as expeditiously and decently as possible.

### **Viewing of prisons**

**105.**—(1) No person shall be permitted to view a prison unless authorised by any enactment or by the Governor or the Scottish Ministers.

(2) No person viewing the prison shall be permitted to take a photograph, make any film, sound recording or sketch or communicate with a prisoner unless authorised by any enactment or by the Governor or the Scottish Ministers.

(3) Without prejudice to paragraph (2), no person viewing the prison shall be permitted to take a photograph or make a film of a prisoner or an officer without obtaining the prior consent of the prisoner or officer.

### **Searching of prisoners**

**106.**—(1) Every prisoner may be searched by an officer in accordance with the provisions of this rule.

- (2) A search of a prisoner may take the form of—
  - (a) an examination of the prisoner’s person and clothing but without removal of the clothing;
  - (b) the removal and examination of the prisoner’s clothing;
  - (c) the visual examination of the external parts of the prisoner’s body following removal of the prisoner’s clothing; or
  - (d) the visual examination of the prisoner’s open mouth without the use of force or any instrument.
- (3) A search of a prisoner shall be carried out—
  - (a) except in the case of a search mentioned in paragraph (2)(d), only by an officer who is of the same sex;
  - (b) as expeditiously and decently as possible;
  - (c) in the case of a search of the type mentioned in paragraph (2)(b) and (c)—
    - (i) by 2 officers of the same sex; and
    - (ii) outwith the sight of any other prisoner; and
  - (d) in accordance with any other conditions as may be specified in a direction by the Scottish Ministers.

(4) A prisoner may be searched at such times and in such circumstances as the Governor considers necessary.

(5) Subject to paragraph (2)(d), the power to search conferred by this rule shall not be construed as authorising the physical examination of a prisoner’s body orifices.

### **Compulsory testing for controlled drugs**

**107.**—(1) This rule applies where an officer, acting under the powers conferred by section 41B of the Act<sup>(79)</sup> (testing prisoners for drugs), requires a prisoner to provide a sample for the purpose of ascertaining whether he or she has any controlled drug in his or her body.

(2) In this rule “sample” means a sample of urine or any other description of sample specified in the authorisation by the Governor for the purposes of section 41B.

(3) When requiring a prisoner to provide a sample, an officer shall, so far as is reasonably practicable, inform the prisoner—

- (a) that he or she is being required to provide a sample in accordance with section 41B of the Act; and
- (b) that a refusal to provide a sample may lead to disciplinary proceedings being brought against the prisoner.

(4) An officer shall require a prisoner to provide a fresh sample, free from any adulteration.

(5) An officer requiring a sample shall make such arrangements and give the prisoner such instructions for its provision as may be reasonably necessary in order to prevent or detect its adulteration or falsification.

(6) A prisoner who is required to provide a sample may be kept apart from other prisoners for a period not exceeding one hour to enable arrangements to be made for the provision of the sample.

(7) A prisoner who is unable to provide a sample of urine when required to do so may be kept apart from other prisoners until he or she has provided the required sample, save that a prisoner may not be kept apart under this paragraph for a period of more than 5 hours.

(8) A prisoner required to provide a sample of urine shall be afforded such degree of privacy for the purposes of providing the sample as may be compatible with the need to prevent or detect any adulteration or falsification of the sample; in particular a prisoner shall not be required to provide such a sample in the sight of a person of the opposite sex.

### **Compulsory testing for alcoholic liquor**

**108.**—(1) This rule applies where an officer, acting under the powers conferred by section 41C of the Act (testing of prisoners for alcohol), requires a prisoner to provide a sample for the purpose of ascertaining whether a prisoner has any alcoholic liquor in their body.

(2) In this rule “sample” means a sample of breath or any other description of sample specified in the authorisation by the Governor for the purposes of section 41C.

(3) When requiring a prisoner to provide a sample, an officer shall, so far as is reasonably practicable, inform the prisoner—

- (a) of the requirement to provide a sample in accordance with section 41C of the Act; and
- (b) that a refusal to provide a sample may lead to disciplinary proceedings being brought against the prisoner.

(4) An officer shall require a prisoner to provide a fresh sample, free from any adulteration.

(5) An officer requiring a sample shall make such arrangements and give the prisoner such instructions for its provision as may be reasonably necessary in order to prevent or detect its adulteration or falsification.

(6) A prisoner who is required to provide a sample may be kept apart from other prisoners for a period not exceeding 1 hour to enable arrangements to be made for provision of the sample.

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<sup>(79)</sup> Section 41B was inserted by the Criminal Justice and Public Order Act 1994, section 151(2).

(7) A prisoner who is unable to provide a sample of urine (if by virtue of an authorisation an officer is empowered to require such a sample) when required to do so may be kept apart from other prisoners until the required sample has been provided, save that a prisoner may not be kept apart under this paragraph for a period of more than 5 hours.

(8) A prisoner required to provide a sample of urine shall be afforded such degree of privacy for the purposes of providing the sample as may be compatible with the need to prevent or detect any adulteration or falsification of the sample; in particular a prisoner shall not be required to provide such a sample in the sight of a person of the opposite sex.

### **Searching of prisoners' property and cells**

**109.**—(1) Any item of property belonging to a prisoner may be searched by an officer at any time.

(2) The room or cell of every prisoner, including any item of property kept in it, shall be searched at such times as the Governor considers necessary.

### **Custody outside prison**

**110.**—(1) A prisoner required to be taken in legal custody anywhere outside a prison shall be kept in the custody or under the control of an officer or a constable.

(2) A prisoner being taken to or from a prison shall be—

- (a) exposed to public view as little as possible; and
- (b) protected so far as reasonably practicable from insult, curiosity and publicity in any form.

(3) A prisoner who is allowed or is required to be present at any court, shall wear their own clothing or ordinary civilian clothing provided by the Governor.

### **Special escorted leave**

**111.**—(1) In this rule, “special escorted leave” means leave of absence from the prison of a prisoner for the purpose of being escorted to their home or other approved place for a visit not exceeding 2 hours, excluding travelling time.

(2) On the application of an eligible prisoner, the Governor may grant special escorted leave if he or she of the opinion that, having regard to the relevant criteria applicable to the granting of such leave and to any operational requirements, it is appropriate to do so.

(3) For the purposes of this rule, a prisoner is an eligible prisoner if at the time of the application the prisoner—

- (a) is confined in a prison, or a category of prison, or a particular part of a prison, to which this rule applies;
- (b) is a life prisoner or is serving a sentence for a term of more than one year;
- (c) is and has been for at least 3 months assigned low supervision level; and
- (d) if serving a sentence for a term of more than one year, has served at least one third of his or her sentence.

(4) For the purposes of special escorted leave in terms of this rule, the Scottish Ministers may specify in a direction—

- (a) the prisons, categories of prisons, or parts of prisons to which this rule applies;
- (b) the manner in which the Governor shall consider an application for special escorted leave;
- (c) the criteria about which the Governor must be satisfied before he or she may grant special escorted leave;

- (d) the conditions which may be imposed in relation to any approval of such an application; and
- (e) the timing and duration of special escorted leave and the frequency with which it may be granted to an eligible prisoner.

### **Escorted day absence**

**112.**—(1) In this rule, “escorted day absence” means leave of absence granted to a prisoner, under escort from the prison, for a period not exceeding 1 day, to enable the prisoner—

- (a) to visit a near relative who it appears to the Governor is dangerously ill;
- (b) to attend the funeral of a near relative; or
- (c) to attend at any place for any other reason where the Governor is of the view there are exceptional circumstances.

(2) On the written application of a prisoner, the Governor may grant, subject to and in accordance with the provisions of this rule and any operational requirements, escorted day absence to the prisoner if satisfied that the purpose of the application is genuine and appropriate.

(3) Where the Governor grants escorted day absence, the prisoner concerned shall be escorted by an officer or officers throughout the period of absence from the prison.

(4) For the purposes of escorted day absence in terms of this rule, the Scottish Ministers may specify in a direction—

- (a) the criteria about which the Governor must be satisfied before granting leave of absence for the purpose specified in paragraph (1)(a);
- (b) the persons who are to be treated as near relatives of the prisoner; and
- (c) the proceedings, services or ceremonies which a prisoner may attend for the purpose specified in paragraph (1)(b).

## **PART 11**

### **DISCIPLINE**

#### **Conduct constituting a breach of discipline**

**113.** In this part, “breach of discipline” shall be interpreted in accordance with Schedule 1 to these Rules.

#### **Reports of breaches of discipline and removal from association**

**114.**—(1) Every suspected breach of discipline shall be reported forthwith in writing to the Governor by the officer to whose notice it has come.

(2) Subject to paragraphs (3) and (4), where any officer has reasonable grounds for suspecting that a prisoner has committed a breach of discipline the officer may, if considering it appropriate to do so, remove the prisoner from association with other prisoners in general pending the making of a report in terms of paragraph (1) and the adjudication of the charge of breach of discipline.

(3) A prisoner shall not be subject to such removal for a period in excess of 72 hours from the time of the removal except where there are exceptional circumstances and, on the application of the Governor, the written authority of the Scottish Ministers has been obtained prior to the expiry of the 72 hour period.

(4) An authority granted by the Scottish Ministers under paragraph (3) shall—

- (a) have effect for a period of one month commencing from the expiry of the said period of 72 hours but the Scottish Ministers may, on any subsequent application of the Governor, renew the authority for further periods of one month commencing from the expiry of the previous authority; and
- (b) in any case cease to have effect when the charge has been adjudicated.

(5) Where a prisoner has been removed from association under this rule, a medical officer shall visit that prisoner as soon as practicable and thereafter as often as is necessary but at least once in every 7 days.

### **Disciplinary charges**

**115.**—(1) Where a prisoner is to be charged with a breach of discipline, the charge shall be brought as soon as possible and in any event, save in exceptional circumstances, within 48 hours of the discovery of the act or omission giving rise to the charge.

(2) Every charge of a breach of discipline shall be brought by serving a written notice of the charge on the prisoner and any such notice shall be served no later than 2 hours before the time when it is to be inquired into by the Governor.

(3) Where an untried prisoner is reported for a suspected breach of discipline on the date before the prisoner's trial is due to commence, or on the day of (or any day during) the trial, the officer concerned may delay bringing a charge in accordance with the foregoing provisions until the relevant criminal proceedings are concluded and, where the prisoner is sentenced to imprisonment, the officer may bring the charge no later than 48 hours after the time at which sentence is passed.

### **Inquiry into disciplinary charges**

**116.**—(1) Subject to paragraph (4), every charge of breach of discipline shall be inquired into by the Governor not later, save in exceptional circumstances, than the next day after it is brought or, where the next day is a Sunday or a public holiday, the day after that Sunday or public holiday.

(2) The Governor shall be satisfied before commencing an inquiry into any charge that the prisoner concerned has had sufficient time to prepare his or her case.

(3) The Governor shall adjourn an inquiry, for such period of time as may be reasonably necessary, if satisfied that the prisoner requires further time to prepare or that there exist other reasonable grounds for an adjournment.

(4) Every prisoner against whom a charge is brought shall be given a full opportunity of—

- (a) hearing the allegations made;
- (b) presenting his or her own case and, subject to paragraph (5), calling witnesses; and
- (c) subject to rule 117(3), cross-examining any other witnesses.

(5) The Governor may refuse to allow a prisoner to call any witness if, having discussed the matter with the prisoner, he or she is reasonably satisfied that the evidence which the witness is likely to give will be of no relevance or value in determining whether the charge is proven.

(6) A prisoner may choose to be seated or may stand during the inquiry.

(7) The Governor may, on the application of a prisoner, permit the prisoner to be represented at the inquiry by a person who is entitled to practise in any part of the United Kingdom as a solicitor, an advocate or a barrister where in exceptional circumstances the Governor considers such representation is necessary or desirable.

(8) Where, following an adjournment under paragraph (3), the person who made the adjournment is unable to proceed at the time fixed for the inquiry to recommence, another person (being, as the case may be, the Governor-in-charge, the Deputy Governor, an authorised unit manager or, if none

of those is present for the time being in the prison, the most senior officer who is present in the prison at that time) may continue to inquire into the matter.

(9) Paragraph (8) does not apply in any inquiry where, at the time of the adjournment under paragraph (3), evidence had been led, in which case another person as mentioned in paragraph (8) may desert the charge but authorise any officer to bring a new charge in relation to the same suspected breach of discipline.

### **Adjudication of charges**

**117.**—(1) Subject to paragraph (2), the Governor shall be entitled to take into account any evidence, in whatever form, at the inquiry into any charge of breach of discipline.

(2) Subject to paragraph (3), the Governor may only take into account the evidence of any person who has not given oral evidence at the inquiry if the prisoner concerned agrees.

(3) In any inquiry into a charge of a breach of discipline contrary to paragraph (v) or (x) of Schedule 1, the Governor may take into account written evidence of any person (other than an officer or employee) relating to an analysis of a sample required to be provided in accordance with rule 107 or 108 which was carried out by that person, without requiring the attendance of that person, if—

- (a) notwithstanding an objection by the prisoner, the prisoner has been afforded the opportunity to make representations why the person should give oral evidence; and
- (b) having heard the prisoner, the Governor is satisfied that it is appropriate to admit the evidence and that there is no sufficient reason why the person need give oral evidence.

(4) At the conclusion of an inquiry into any such charge, the Governor shall consider whether the charge has been proven beyond any reasonable doubt.

(5) If the Governor finds a prisoner guilty of a breach of discipline, the Governor shall afford the prisoner an opportunity to make a plea in mitigation before considering whether to impose a punishment in terms of rule 119.

(6) It shall be a defence for a prisoner charged with a breach of discipline contrary to paragraph (y) of Schedule 1 to show that—

- (a) the controlled drug had been, prior to its administration, lawfully in the prisoner's possession for the prisoner's use or was administered to the prisoner in the course of a lawful supply of the drug to the prisoner by another person;
- (b) the controlled drug was administered by or to the prisoner in circumstances in which the prisoner did not know and had no reason to suspect that such a drug was being administered; or
- (c) the controlled drug was administered by or to the prisoner under duress or to the prisoner without consent in circumstances where it was not reasonable for the prisoner to have resisted.

### **Breaches of discipline occurring before reception into prison**

**118.**—(1) If a report is made under rule 114(1) by an officer in relation to a person liable to be detained in a young offenders institution who is moved from that institution to any prison, or a person detained in any prison who is moved to any other prison, and the suspected breach comes to the reporting officer's notice within 3 days (or 4 days if that period would include a Sunday or a public holiday) of the day on which the person is moved from the institution or prison concerned, the Governor of the prison to which the person is moved may, if there was insufficient time to investigate and adjudicate the matter at the institution or prison concerned, receive the report and deal with the matter as if it had occurred after reception of the person in that prison.



(2) If a report is made under rule 114(1) by an officer in relation to a person detained in a young offenders institution who is moved to a prison, or a person detained in any prison who is moved to any other prison, and the suspected breach related to a period during which the person was in the course of being moved, the Governor of the prison to which the person is moved shall receive the report and deal with the matter as if it had occurred after reception of the person in that prison.

(3) If, following reception on a transfer from another prison, a prisoner is charged with a breach of discipline contrary to paragraph (y) of Schedule 1 in circumstances where—

- (a) the controlled drug specified in the relevant charge may have been administered to the prisoner before reception in the prison; but
- (b) the prisoner was detained in a prison throughout the period during which the drug might have been administered,

the Governor may deal with that matter in accordance with this Part of these Rules as if the controlled drug, which it is alleged was administered, had been administered whilst the prisoner was in the prison to which he or she has been transferred.

(4) Where—

- (a) a prisoner who provided a sample in accordance with rule 107 was at that time an untried prisoner;
- (b) the prisoner was detained in a prison throughout the period during which the drug might have been administered;
- (c) following an analysis of the sample there are grounds for believing that the prisoner was guilty of a breach of discipline contrary to paragraph (x) of Schedule 1; and
- (d) following the provision of the sample the prisoner is convicted and sentenced to imprisonment,

the Governor of the prison to which the prisoner is committed following conviction may deal with the charge in accordance with this Part of these Rules irrespective of whether the controlled drug, which it is alleged was administered, had been administered whilst the prisoner was in the prison to which the prisoner has been committed.

### **Governor's punishments**

**119.—**(1) A Governor, when finding a prisoner guilty of a breach of discipline, may impose one or more of the following punishments:—

- (a) a caution;
- (b) forfeiture of any privileges granted under the system of privileges applicable to a prisoner for a period not exceeding 14 days;
- (c) stoppage of or deduction from earnings for a period not exceeding 56 days and of an amount not exceeding one half of the prisoner's earnings in any week (or part thereof) falling within the period specified;
- (d) except in the case of a young prisoner, cellular confinement for a period not exceeding 3 days;
- (e) in the case of an untried prisoner guilty of escaping or attempting to escape, forfeiture of the entitlement to wear their own clothing under rule 25 for any period as may be specified;
- (f) in the case of an untried prisoner or a civil prisoner, forfeiture of any or all of the entitlements referred to in rules 48, 49 and 54 for any period as may be specified; or
- (g) forfeiture of the entitlement to withdraw money in terms of rule 53(3) for any period not exceeding 14 days.

(2) If a prisoner is found guilty of more than one breach of discipline arising out of an incident, punishments under this rule (except for cellular confinement imposed under paragraph (1)(d)) may be ordered to run consecutively.

- (3) Where cellular confinement is imposed on a prisoner under paragraph (1)(d)–
- (a) the Governor shall inform a medical officer as soon as possible;
  - (b) any entitlement of the prisoner in terms of these Rules shall not, by reason only of the imposition of such confinement, be affected except insofar as expressly provided in a direction made for the purposes of sub paragraph (c); and
  - (c) the prisoner shall serve the period of confinement in accordance with the provisions of, and subject to any conditions imposed by, a direction made by the Scottish Ministers.

### **Suspended punishments**

**120.**—(1) The power of the Governor to impose a punishment under rule 119(1) (other than a caution) includes power to direct that the punishment shall not take effect unless, during such period of the prisoner’s sentence as shall be specified in the direction (not being more than 6 months (or 3 months in the case of an untried prisoner) from the date of the direction), the prisoner commits another breach of discipline and a direction is given under paragraph (2).

(2) Where a prisoner is found guilty of a breach of discipline committed during the period specified in a direction by the Governor under paragraph (1) then the Governor dealing with that breach may–

- (a) direct that the suspended punishment shall take effect;
- (b) reduce the period or the amount of the suspended punishment and direct that it shall take effect as so reduced;
- (c) vary the original direction by substituting for the period specified a period expiring not later than six months from the date of variation; or
- (d) give no direction with respect to the suspended punishment.

## **PART 12**

### **REQUESTS AND COMPLAINTS**

#### **Requests to speak to an officer of the Scottish Ministers, a member of the visiting committee, a sheriff or a justice of the peace**

**121.** Where a prisoner makes a request to speak to–

- (a) an officer of the Scottish Ministers;
- (b) a member of the visiting committee; or
- (c) a sheriff or a justice of the peace visiting the prison in terms of section 15 of the Act,

the officer to whom the request is made shall, without delay, record the request in writing and shall arrange for the request to be brought to the attention of the person with whom the prisoner wishes to speak.

#### **Requests and complaints to the visiting committee**

**122.** Every prisoner intimating to an officer his or her desire to write a letter of request or complaint to the visiting committee shall be supplied with paper for the purpose, and the Governor shall ensure that every such letter is posted without delay.

### **Complaints to the residential officer**

**123.**—(1) A prisoner who desires to make a complaint concerning any matter, other than a matter to which rules 121, 122, 127, 128, 129 and 130 apply, may do so subject to and in accordance with the following provisions of this rule.

(2) Subject to paragraph (3), such a complaint—

(a) may be made orally or in writing; but

(b) shall be made by the prisoner to the residential officer in the first instance.

(3) If the prisoner intends to make a complaint against any officer or employee the complaint must be made in writing.

(4) If a prisoner requires assistance with the making of the written complaint, an officer appointed by the Governor for the purpose shall provide such assistance as is reasonably practicable in the circumstances.

(5) Subject to paragraph (6), the residential officer shall give a reply to the prisoner within 24 hours of receiving the complaint and shall give a written reply to any complaint which was made in writing.

(6) If the residential officer is unable to reply within the period specified in paragraph (5), that officer shall inform the prisoner within that period of the timescale within which the reply will be given and shall thereafter give a written reply as soon as reasonably practicable.

(7) This rule does not affect any right of a prisoner to make any complaint at any time to any person or body other than the Scottish Ministers and any officer of the prison.

### **Complaints to the residential unit manager**

**124.**—(1) A prisoner who has made a complaint in terms of rule 123 and is dissatisfied with the reply given, may refer the complaint in writing to the residential unit manager.

(2) If the prisoner requires assistance with the making of the written complaint, an officer appointed by the Governor for the purpose shall provide such assistance as is reasonably practicable in the circumstances.

(3) Subject to paragraph (4), the residential unit manager shall give a written reply within 24 hours of receiving the written complaint.

(4) If the residential unit manager is unable to reply within the period specified in paragraph (3), that manager shall inform the prisoner within that period of the timescale within which the reply will be given and shall thereafter give a reply as soon as reasonably practicable.

(5) When the residential unit manager gives the reply to the prisoner, the prisoner shall be informed by the residential unit manager of the right to refer the complaint to the internal complaints committee if dissatisfied with his or her reply.

### **Referral of complaints to the internal complaints committee**

**125.**—(1) If a prisoner is dissatisfied with the reply given in relation to a complaint by the residential unit manager in terms of rule 124(3) or (4), the prisoner may make a written referral of the complaint to the internal complaints committee (“the committee”) consisting of not fewer than 3 officers or employees.

(2) If the prisoner requires assistance with the making of the written complaint, an officer appointed by the Governor for the purpose shall provide such assistance as is reasonably practicable in the circumstances.

(3) The complaint shall be inquired into by the committee not later than 7 days after the date on which the referral is made.

- (4) The prisoner making the referral may—
- (a) attend the inquiry and make representations to the committee;
  - (b) be assisted at the inquiry by—
    - (i) an officer or an employee, a member of the visiting committee, or any person who ordinarily works at the prison but who is not employed by the Scottish Ministers; or
    - (ii) where the officer acting as chairman of the committee is satisfied that there are exceptional circumstances, another prisoner at the prison concerned, if the person concerned has agreed to assist the prisoner;
  - (c) subject to paragraphs (5) and (6), call witnesses to give evidence in support of his or her complaint; and
  - (d) ask questions of any person giving evidence at the inquiry.

(5) If a prisoner making a referral intends—

- (a) to call witnesses to give evidence in support of the complaint; or
- (b) to be assisted by any person as mentioned in paragraph (4)(b),

the prisoner shall give written notice of that intention and the reasons for considering this to be necessary.

(6) The officer acting as chairman of the committee may refuse to allow a prisoner to call a particular witness if, having discussed the matter with the prisoner, he or she reasonably satisfied that the evidence which the witness is likely to give will be of no relevance or value in considering the complaint and, in that event, the officer shall inform the prisoner concerned prior to the hearing.

(7) Subject to paragraphs (8) and (9), at the conclusion of the inquiry, the committee shall—

- (a) consider and decide upon such recommendations as it sees fit in relation to the complaint;
- (b) inform the prisoner of its decision at that time; and
- (c) confirm the decision in writing as soon as reasonably practicable thereafter.

(8) Subject to paragraph (9), if the committee is unable to give a decision at the time of the inquiry, it shall inform the prisoner of the decision in writing within 48 hours of the conclusion of the inquiry.

(9) If in exceptional circumstances the committee is unable to inform the prisoner of its decision within the period specified in paragraph (8), it shall inform the prisoner—

- (a) within that period of the reasons for the delay and when the committee considers it will be able to give its decision; and
- (b) of its decision as soon as reasonably practicable thereafter.

(10) The officer acting as chairman of the committee shall inform the Governor of the decision.

(11) The Governor shall take such action as is possible in order to give effect to any recommendation the committee may make in relation to the complaint.

### **Referral of complaints to the Governor**

**126.—**(1) A prisoner if dissatisfied with the decision of the internal complaints committee in terms of rule 125 in relation to a complaint which he or she referred to it, may refer the complaint to the Governor.

(2) If the prisoner requires assistance with the making of the written complaint, an officer appointed by the Governor for the purpose shall provide such assistance as is reasonably practicable in the circumstances.

(3) The Governor shall consider the complaint within 7 days of the date on which it is referred except where it is not reasonably practicable to do so.

- (4) The Governor may, at the request of the prisoner, discuss the complaint with the prisoner.
- (5) If the Governor refuses a request by a prisoner to discuss the complaint, the Governor shall inform the prisoner of the reasons for that refusal and shall record that decision in writing.
- (6) After considering the referral, the Governor may—
  - (a) reject the complaint; or
  - (b) substitute or amend any recommendation made by the internal complaints committee in terms of rule 125(7) or make any other recommendation as he or she considers appropriate and give effect to the recommendations as substituted or amended.
- (7) The Governor shall inform the prisoner of the decision in writing.

### **Complaints to the Governor in relation to confidential matters**

**127.**—(1) Notwithstanding rules 123 to 126, a prisoner who desires to make a complaint to the Governor concerning any confidential matter which is of an exceptionally sensitive or serious nature may do so in writing subject to and in accordance with the following provisions of this rule.

(2) The prisoner shall, if wishing to make such a complaint, give a sealed envelope containing the written complaint to the residential officer, who shall convey the complaint without delay to the Governor.

(3) The Governor if of the opinion that the complaint is not of an exceptionally sensitive or serious nature, shall inform the prisoner without delay that the complaint must be made in accordance with rule 123 and shall return the written complaint in a sealed envelope.

(4) Subject to paragraph (3), the Governor shall consider the complaint and inform the prisoner of his or her decision within 7 days of the date on which the complaint was made except where it is not reasonably practicable to do so.

### **Complaints concerning medical treatment**

**128.**—(1) A prisoner who desires to make a complaint to a medical officer concerning any aspect of the care provided by that medical officer at the prison may do so subject to and in accordance with paragraphs (2) to (8).

(2) The prisoner shall make the complaint in writing by—

- (a) enclosing the written complaint in a sealed envelope addressed to the medical officer to whom the prisoner wishes to complain; and
- (b) giving that sealed envelope to the residential officer, who shall convey the complaint without delay to the medical officer to whom it is addressed.

(3) As soon as reasonably practicable after receiving a complaint in terms of paragraph (2), the medical officer to whom it is made shall inform the Governor in writing that a complaint has been received and thereafter confirm whether the complaint has been satisfactorily resolved.

(4) If a prisoner requires assistance with the making of a complaint, an officer appointed by the Governor for the purpose shall provide such assistance as is reasonably practicable in the circumstances.

(5) A medical officer who receives a complaint in accordance with this rule shall consider the complaint and reply to the prisoner within 7 days of the date on which the complaint was made except where it is not reasonably practicable to do so.

(6) A prisoner may refer the complaint concerning any aspect of the care provided by any medical officer of the prison to the Scottish Ministers if dissatisfied with the reply given by the medical officer in terms of paragraph (5), but the Scottish Ministers shall be under no obligation to consider the complaint unless it has been so referred.

(7) The Scottish Ministers shall give a written decision within 28 days of the date on which the complaint has been referred to them except where it is not reasonably practicable for them to do so.

(8) The Scottish Ministers shall inform the prisoner, the Governor and the medical officer of their decision; and the Governor and the medical officer shall each take any such action as they are required to take to give effect to any instruction which the Scottish Ministers make in relation to the complaint.

### **Requests, complaints and representations to the Scottish Ministers in relation to certain matters**

**129.**—(1) A prisoner who desires to make any request or complaint, or representations, in relation to any matter mentioned in paragraph (2) may do so in writing directly to the Scottish Ministers.

(2) This rule applies to the following matters—

- (a) a request or complaint by a prisoner in connection with a transfer out of the United Kingdom under the Repatriation of Prisoners Act 1984<sup>(80)</sup>;
- (b) a request to be transferred to another part of the United Kingdom or to any of the Channel Islands or the Isle of Man under Schedule 1 to the Crime (Sentences) Act 1997<sup>(81)</sup>;
- (c) a complaint which involves any allegation against the Governor; and
- (d) representations to the Scottish Ministers as regards any matter concerning a prisoner's release on licence under the Act or Part I of the 1993 Act or his or her return to prison or detention by virtue of the Act or Part I of the 1993 Act.

### **Appeals in relation to disciplinary proceedings**

**130.**—(1) A prisoner who is found guilty of any breach of discipline may, where any officer other than the Governor adjudicated the charge, appeal in writing to the internal complaints committee not later than 14 days after the date on which the charge was adjudicated—

- (a) against such a finding of guilt and any punishment imposed in respect of the breach; or
- (b) in the case of any punishment imposed under rule 119(1), against the punishment only.

(2) An appeal under paragraph (1) shall be dealt with as if it were a complaint made under rule 125 and the Governor shall, if recommended to do so by the internal complaints committee,—

- (a) quash any finding of guilt; or
- (b) remit or mitigate any punishment (other than a punishment imposed under sub paragraph (b), (d), (f) or (h) of rule 119(1) where the period for which the punishment was imposed has expired by the date of the decision of the appeal).

(3) If a prisoner who has appealed under paragraph (1) to the internal complaints committee is dissatisfied with the decision of the committee and refers the matter to the Governor under rule 126, the powers of the Governor under rule 126(6) shall include the same powers as mentioned in paragraph (2) above.

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<sup>(80)</sup> 1984 c. 47, which has been relevantly amended as follows: section 1 was amended by S.I. 1999/1820, article 4 and paragraph 75 of Schedule 2; section 3 was amended by Schedule 5 to the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9), by section 62 and paragraph 10 of Schedule 1 of the Crime and Punishment (Scotland) Act 1997 (c. 48); section 119 of the Crime and Disorder Act 1998 (c. 37), by S.I. 1999/1820, article 4 and paragraph 75 of Schedule 2, and also by the Criminal Justice (Scotland) Act 2003 asp 7; section 3 was repealed in part by the Crime and Punishment (Scotland) Act, section 62, paragraph 10 of Schedule 1 and Schedule 3, and also by the Criminal Justice Act 2003 (c. 44), Schedule 37, Part 8; section 4 was amended by S.I. 1999/1820 article 4 and paragraph 75 of Schedule 2; section 5 was amended by the Merchant Shipping Act 1995 (c. 21), Schedule 13 and also by S.I. 1999/1820, article 4 and paragraph 75 of Schedule 2; paragraph 2 of the Schedule was substituted by the Criminal Justice Scotland Act 2003 (asp 7), section 33 and amended by S.I. 1998/2327, article 5.

<sup>(81)</sup> 1997 c. 43; Schedule 1, paragraph 1 was relevantly amended by S.I. 1997/1775, article 2 and paragraph 1 of the Schedule, and also by S.I. 1999/1820, article 4 and Schedule 2, paragraph 130.

(4) Following the conclusion of the appeals procedure in relation to an appeal under paragraph (1), a prisoner shall not be entitled to make any further request, complaint or appeal under this Part of these Rules in relation to the same matter to which the breach of discipline in question related.

#### **Power of Scottish Ministers to quash findings of guilt and to remit or mitigate punishments**

**131.**—(1) The Scottish Ministers may in relation to a prisoner who has been found guilty of any breach of discipline—

- (a) quash any finding of guilt;
- (b) remit or mitigate any punishment (other than a punishment imposed under sub paragraph (b), (d), (e) or (g) of rule 119(1) where the period for which the punishment was imposed has expired); or
- (c) substitute another punishment which is, in the Scottish Ministers' opinion, less severe.

(2) If the Scottish Ministers quash any finding of guilt, the Governor shall destroy any record in the prisoner's file which relates to the alleged breach of discipline except where the record, or a part of it, relates to any other finding of breach of discipline which continues to form part of the prisoner's record.

#### **Direction with respect to complaints procedures**

**132.**—(1) The Scottish Ministers may provide in a direction such conditions as they consider appropriate with respect to the form and manner in which—

- (a) any complaint as mentioned in rules 123 to 128 may be made or referred; and
  - (b) any reply or decision in relation to such a complaint may be given.
- (2) The Governor shall ensure that—
- (a) supplies of any form specified in a direction made for the purposes of paragraph (1); and
  - (b) information as to where prisoners may obtain assistance in the completion of any such form,

are readily available to prisoners.

## **PART 13**

### **FEMALE PRISONERS**

#### **Separation of male and female prisoners**

**133.** Female prisoners shall be accommodated in rooms or cells which are entirely separate from rooms or cells used for the accommodation of male prisoners.

#### **Pregnancy and confinement**

**134.**—(1) A medical officer shall notify the Governor if of the opinion that a prisoner is pregnant or if a prisoner is likely to give birth prior to the expiration of her sentence or period of committal.

(2) The Governor shall not notify any friend or relative of the prisoner of her pregnancy without her consent except where—

- (a) in the case of a young offender who is under 18 years of age, the Governor considers it appropriate to do so; or

- (b) in any other case, the prisoner is incapable of giving consent by reason of illness and the Governor has no reason to think that such consent would be refused.
- (3) A prisoner who is pregnant shall—
  - (a) not be required to undertake any work of a strenuous nature in the later stages of her pregnancy;
  - (b) be provided with food and drink which take into account any dietary requirements during pregnancy; and
  - (c) where by virtue of her condition she requires to be removed from association with other prisoners, be kept under supervision to such extent as is reasonably practicable or be required to share accommodation in a room or cell with a suitable prisoner where the Governor, on the advice of a medical officer, considers this is appropriate.
- (4) A medical officer shall arrange for the transfer of any prisoner who is pregnant to a hospital outwith the prison for the purposes of giving birth.

#### **Accommodation of female prisoners' babies**

**135.**—(1) Subject to paragraph (2), the Governor may permit a female prisoner to have her baby with her in prison, and everything necessary for the baby's maintenance and care, including a suitable cot, shall be provided by the Governor.

(2) Subject to any direction by the Scottish Ministers for the purposes of this rule, the Governor may in granting permission under paragraph (1) impose such conditions as the Governor thinks fit.

(3) A female prisoner who is permitted to have her baby with her in prison may, with the consent of the Governor, arrange, at her expense or at the expense of some other person, for the provision of additional articles or food for the baby's maintenance or care.

## **PART 14**

### **TRANSFER AND DISCHARGE OF PRISONERS**

#### **Pre-release preparation**

**136.** The Governor shall at the appropriate time discuss with every prisoner his or her immediate needs on release and may also arrange for any other person to see the prisoner to discuss such needs.

#### **Medical assessment prior to transfer or release**

**137.**—(1) A medical officer shall assess every prisoner within a period of 7 days before the time when they are due to be released from prison.

(2) The form of an assessment shall be a matter for the judgment of the medical officer and may include any physical examination as the medical officer considers appropriate.

(3) Without prejudice to paragraph (1), a medical officer shall—

- (a) examine the medical records of any prisoner who is receiving medical treatment or is for the time being under the medical officer's supervision; and
- (b) where the medical officer considers it necessary, or where a request for medical assistance has been made by a prisoner, examine the prisoner,

before that prisoner is taken from prison to any place or released from prison.

(4) No prisoner as mentioned in paragraph (3) shall be taken from prison to any place (other than a hospital in an emergency) unless a medical officer has certified that the prisoner is fit to travel.



(5) Subject to paragraph (6), no prisoner as mentioned in paragraph (3) who is due to be released shall be discharged from prison unless a medical officer has certified that the prisoner is fit to travel.

(6) Paragraph (5) shall not apply where the prisoner does not consent to remain in prison after the time the prisoner is due to be released.

#### **Provision of clothing and return of property on release of prisoner**

**138.**—(1) At the time of release, a prisoner shall be entitled to the return of all his or her clothing and other items of property which have been accepted into or purchased within prison and which have not been disposed of or destroyed pursuant to rule 51(2).

(2) Where at the time of release, a prisoner has insufficient clothing of his or her own, the Governor shall provide suitable clothing for his or her immediate needs following release.

#### **Part payment of fines by fine defaulters**

**139.**—(1) This rule applies to a prisoner who is committed to prison or otherwise detained in a prison for failure to pay a fine imposed by a court.

(2) A prisoner to whom this rule applies may be treated for the purposes of section 220 of the 1995 Act<sup>(82)</sup> as having paid to the Governor any sum in part satisfaction of the fine if the conditions specified in paragraph (3) or, as the case may be, paragraph (4) are fulfilled.

(3) The conditions specified are—

- (a) the sum is in cash and is deposited with the Governor; or
- (b) the sum is paid by means of a cheque and the Governor is satisfied that the further conditions in paragraph (4) are fulfilled.

(4) If the prisoner offers to pay the Governor by means of a cheque, the further conditions are—

- (a) except where a cheque is drawn on an account in the name of a firm of solicitors, the sum does not exceed £50; and
- (b) the cheque is drawn and signed and supported by such other form of identity or guarantee as may be specified in a direction made by the Scottish Ministers.

## **PART 15**

### **TEMPORARY RELEASE**

#### **Short leave and winter and summer leave**

**140.**—(1) In this rule—

- (a) “short leave” means temporary release from a prison of a prisoner for the purpose of enabling the prisoner to visit his or her home or other approved place for a period not exceeding 7 nights excluding travelling time; and
- (b) “winter and summer leave” means temporary release from a prison of a prisoner for the purpose of enabling the prisoner to visit his or her home or other approved place for a period of up to 5 nights, excluding travelling time, during the winter or summer.

(2) On the application of an eligible prisoner and subject to rule 147, the Governor may grant the prisoner short leave or winter and summer leave if the Governor is of the opinion that, having regard to the relevant criteria applicable to the grant of such leave, it is appropriate to do so.

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<sup>(82)</sup> 1995 c. 46; section 220 was amended by the Criminal Justice (Scotland) Act 2003, Schedule 4, paragraph 3.

(3) For the purposes of this rule, a prisoner is an eligible prisoner only if at the time of application the prisoner—

- (a) is confined at a prison or in a particular hall or part of a prison to which this rule applies;
- (b) is assigned low supervision level; and
- (c) is not disqualified from consideration for any reason specified in rule 145(1).

#### **Pre-release leave**

**141.**—(1) In this rule, “pre-release leave” means temporary release of an eligible prisoner to enable the prisoner to visit his or her home or other approved place for a period not exceeding 3 days and 3 nights for the purpose of assisting in the prisoner’s preparation for release.

(2) On the application of an eligible prisoner and subject to rule 147, the Governor may grant the prisoner pre-release leave if he or she is of the opinion that, having regard to the relevant criteria applicable to the granting of such leave, it is appropriate to do so.

(3) For the purposes of this rule, a prisoner is an eligible prisoner only if at the time of the application—

- (a) he or she is not disqualified from consideration for any reason specified in rule 146(1);
- (b) he or she is assigned low supervision level; and
- (c) he or she is—
  - (i) a prisoner serving a sentence of imprisonment for a term of 4 years or more; or
  - (ii) a life prisoner,

whose release date is within 6 weeks of the commencement of the pre release leave.

#### **Unescorted day release of prisoners assigned low supervision level**

**142.**—(1) In this rule “unescorted day release” means the temporary release of an eligible prisoner for a period not exceeding one day, including travelling time, who is, for the time being, assigned low supervision level for the purposes of enabling the prisoner, in preparation for eventual release—

- (a) to develop further, or to re-establish, links with his or her family or community; or
- (b) to develop educational or employment opportunities.

(2) For the purposes of this rule, a prisoner is an eligible prisoner only if at the time of the application he or she is—

- (a) not an untried or a civil prisoner; and
- (b) not disqualified from consideration for any reason specified in rule 145(1).

(3) The Governor may grant unescorted day leave on the written application of an eligible prisoner.

#### **Unescorted day release of prisoners assigned low supervision level for compassionate reasons**

**143.**—(1) In this rule “unescorted day release” means the temporary release for a period not exceeding one day, excluding travelling time, of an eligible prisoner who is, for the time being, assigned low supervision level for the purpose of enabling the prisoner—

- (a) to visit any relative who it appears to the Governor is dangerously ill;
- (b) to attend the funeral of a near relative;
- (c) to visit a parent who is either too old or too ill to travel to the prison; or

- (d) to attend at any place for any other reason where the Governor is of the opinion that the circumstances warrant it.
- (2) For the purposes of this rule, a prisoner is an eligible prisoner only if at the time of application he or she is—
  - (a) not an untried or a civil prisoner; and
  - (b) not disqualified from consideration for any reason specified in rule 145(1).
- (3) The Governor may grant unescorted day release on the written application of an eligible prisoner.

#### **Temporary release for work etc.**

- 144.**—(1) The Governor may grant temporary release to an eligible prisoner for the purpose of enabling the prisoner—
- (a) to undertake an unescorted work placement outside prison in terms of rule 84;
  - (b) to attend unescorted at a college, university or other educational establishment in order to participate in vocational training or an educational class;
  - (c) to undertake unescorted voluntary work outside the prison in terms of rule 84;
  - (d) to attend, unescorted, for treatment at a medical facility outwith the prison; or
  - (e) to attend, unescorted, for counselling outwith the prison.
- (2) For the purposes of this rule, a prisoner is an eligible prisoner only if at the time of the temporary release being granted—
- (a) the prisoner is not disqualified from consideration for any reason specified in rule 145(1); and
  - (b) the prisoner is assigned low supervision level.

#### **Unavailability of temporary release**

- 145.**—(1) A prisoner shall be disqualified from being considered for temporary release in terms of rules 140 to 144 if he or she is for the time being—
- (a) an appellant;
  - (b) subject to proceedings under the Extradition Act 2003;
  - (c) in the opinion of a medical officer, suffering from mental disorder; or
  - (d) in the opinion of a medical officer, otherwise unfit.
- (2) A life prisoner shall not be granted temporary release under rules 140 to 144 unless the Governor has obtained the prior consent of the Scottish Ministers to—
- (a) the life prisoner’s first grant of temporary release; and
  - (b) any further grant of temporary release where the prisoner has been assigned a supervision level other than low supervision level following the consent of the Scottish Ministers having been obtained under sub paragraph (a).

#### **Recall of prisoners granted temporary release**

- 146.** The Scottish Ministers may recall to prison any prisoner who has been granted temporary release, whether the conditions upon which the prisoner has been granted such release have been broken or not.

### **Direction with respect to temporary release**

**147.** For the purposes of temporary release consisting of any form of leave or release specified in rules 140 to 144, the Scottish Ministers may specify in a direction—

- (a) the prisons or any halls within or parts of particular prisons to which any of those rules applies;
- (b) the manner in which the Governor shall consider an application for any such form of temporary release;
- (c) the relevant criteria about which the Governor must be satisfied before granting any such form of temporary release;
- (d) the conditions which may be imposed in relation to any approval of such an application;
- (e) the timing and duration of any such form of temporary release and the frequency with which it may be granted to an eligible prisoner; and
- (f) the persons who are to be treated as a near relative of the prisoner.

## **PART 16**

### **OFFICERS AND EMPLOYEES**

#### **General duty of officers and employees**

**148.** It shall be the duty of every officer and employee—

- (a) to conform to these Rules;
- (b) to obey any lawful instructions of the Governor or of the Scottish Ministers; and
- (c) to inform the Governor promptly of any breach of these Rules or any abuse or impropriety which comes to his or her knowledge.

#### **Transactions with prisoners or in connection with the prison**

**149.**—(1) No officer or employee shall take part in any business or pecuniary transaction with, or on behalf of, a prisoner, except with the authority of the Scottish Ministers.

(2) Except with the authority of the Governor, no officer or employee shall—

- (a) bring in or take out, or attempt to bring in or take out, or knowingly allow to be brought in or taken out, to or for any prisoner; or
- (b) deposit in any place with intent that it shall come into the possession of any prisoner, any article whatsoever.

#### **Fees and gratuities**

**150.** No officer or employee shall—

- (a) receive any unauthorised fee, gratuity or other consideration in connection with his or her duties as an officer or employee;
- (b) directly or indirectly, have any interest in any contract in connection with the prison or any other prison; or
- (c) receive any fee, gratuity or other consideration from or on behalf of any contractor at, or any person tendering for a contract in connection with, the prison or any other prison.

### **Searches of officers and employees**

**151.**—(1) Without prejudice to any power of search referred to in the Act, the Governor may order the carrying out of a search—

- (a) of any officer or employee; and
- (b) of any article of property belonging to any officer or employee which is in his or her possession whilst in the prison, or which is kept by them in his or her locker or any other place within the prison.

(2) A search under paragraph (1) of any clothing or other article of property belonging to an officer or employee which is being worn or, as the case may be, otherwise in his or her possession whilst in the prison, or which is kept by them in their locker or any other place within the prison, may, in addition to being carried out by hand but subject to paragraphs (3) and (4), be carried out—

- (a) by the use of equipment involving—
  - (i) the application of a suction device or a swab on or to such possessions in order to collect particles from their surface; and
  - (ii) the analysis of such particles for the purpose of ascertaining whether any consists of a controlled drug or an explosive substance;
- (b) by the use of equipment designed to detect the existence of metal objects; and
- (c) in accordance with any such procedures and conditions as may be specified in a direction by the Scottish Ministers.

(3) The power of search conferred by paragraph (1) shall—

- (a) not be construed as authorising the Governor to require an officer or employee to remove any clothing other than an outer coat, jacket, headgear, footwear and gloves; and
- (b) include power to use reasonable force where necessary.

(4) A search of an officer or employee shall be carried out within the prison—

- (a) by at least 2 officers who shall be of the same sex as the officer or employee being searched;
- (b) outwith the sight of any other person; and
- (c) as expeditiously and decently as possible.

### **Communications to the press etc.**

**152.**—(1) No officer or employee shall make, directly or indirectly, any unauthorised communication to a representative of the press or any other person concerning matters which have become known to them in the course of his or her duties.

(2) No officer or employee shall, without the authority of the Governor or, in such circumstances as the Scottish Ministers may specify in a direction, publish any matter or make any public pronouncement relating to the administration of any institution to which the Act applies or to any person who may be lawfully confined therein.

### **Code of conduct**

**153.**—(1) The Scottish Ministers may approve a code regulating the conduct and discipline of officers and employees, or such categories of officers and employees as may be specified in the code.

(2) Any such code may include provision regulating—

- (a) the procedures which may be invoked where it is suspected that the acts or omissions of an officer or employee may constitute misconduct;

- (b) the disciplinary action which may be taken against an officer or employee who is found to have misconducted themselves; and
- (c) the rights of appeal of any such officer or employee.

## PART 17

### VISITING COMMITTEES

#### Application of Part 17

**154.**—(1) Except as mentioned in paragraphs (2) and (3), this Part shall apply to visiting committees for prisons and young offenders institutions.

(2) Rule 156 does not apply to visiting committees for prisons.

(3) In the application of this part to young offenders institutions and visiting committees for such institutions—

(a) in rule 157—

(i) paragraph (2) shall not apply; and

(ii) in paragraph (5), the words “required to be” shall be omitted; and

(b) rules 155 and 164 and Schedule 2 and 3 shall not apply.

#### Constitution of visiting committees

**155.**—(1) There shall be a visiting committee constituted in accordance with this rule for each prison specified in column 1 of Schedule 2.

(2) The members of a visiting committee constituted in accordance with this rule for each prison specified in column 1 of Schedule 2 shall be appointed in accordance with this rule by the council or councils specified in column 2 of that Schedule in relation to that prison and each such council shall appoint the number of members of the committee specified in column 3 of that Schedule in relation to that council.

(3) In appointing the members of a visiting committee for each prison specified in column 1 of Schedule 2 each council responsible for appointing the members shall ensure that the total number of members specified in column 3 of that Schedule in relation to that prison and council shall include not fewer than the number of members specified (where a number is specified) in column 4 of that Schedule in relation to that prison and council being persons who are not members of the council which appoints them.

(4) Any person with a direct financial interest in any contract for the supply of goods or services to any prison shall not be eligible for appointment to a visiting committee in terms of this rule.

(5) The member or members of a visiting committee to be appointed by a council in terms of paragraph (2) shall be appointed at a meeting of the council and thereafter shall be so appointed at a meeting of that council held not later than 2 months after the date of the ordinary election of councillors.

(6) Any member of a visiting committee appointed by a council in accordance with paragraphs (2) and (5) shall take office on the day which falls 2 months after the date of the respective ordinary election of councillors and shall hold office, unless they earlier cease to hold office by virtue of paragraph (7), until the day prior to the day which falls 2 months after the date of the next ordinary election of councillors.

(7) A member of a visiting committee shall cease to hold office if—

- (a) he or she resigns;
- (b) either the council who appointed the member or the Scottish Ministers terminate the member's appointment if either is satisfied that—
  - (i) the member has failed satisfactorily to perform his or her duties;
  - (ii) the member is for any other reason incapable of carrying out his or her duties;
  - (iii) subsequent to his or her appointment, the member has been convicted of such a criminal offence, or their conduct has been such, that it is not fitting that he or she should remain a member; or
  - (iv) the member has a direct financial interest contrary to the terms of rule 163; or
- (c) having been appointed a member whilst also a member of the council, the council terminate his or her appointment by reason of having ceased to be a member of the council.

(8) The chairman of a visiting committee shall report to the council responsible for appointing any member of the visiting committee any circumstances which the chairman considers might reasonably give cause for termination in terms of paragraph (7) of the appointment of the member appointed by that council.

(9) If for any reason the requisite number of members of a visiting committee is not appointed at the proper time in terms of paragraph (5), or if for any cause a vacancy occurs in a visiting committee, the council responsible for the appointment may at any time and as soon as possible after the vacancy occurs appoint a person to fill the vacancy.

#### **Minimum number of women members of visiting committees for young offenders institutions**

**156.** Of the total membership of the visiting committee for each young offenders institution appointed by the Scottish Ministers under section 19(3) of the Act, not fewer than one third, with a minimum of two, shall be women.

#### **Proceedings of visiting committees**

**157.—**(1) At the first meeting of a visiting committee, the members shall—

- (a) elect from the membership, a chair and a deputy chair each for a period of 4 years, and thereafter shall fill any vacancy in that office promptly; and
- (b) appoint a person (not being an officer of the Scottish Ministers) to act as a clerk to the Committee.

(2) The chair of the visiting committee shall report to the Scottish Ministers the names and addresses of the members of the committee immediately after the first meeting and, thereafter, whenever a change in these details or in the membership occurs.

(3) The visiting committee for a prison shall meet at the prison at least once in every period of 3 months.

(4) A visiting committee may appoint from its membership sub committees and may delegate specific duties to any such sub committee for the purpose of carrying out its functions.

(5) A visiting committee shall fix a quorum of not less than one-third of the total number of members required to be appointed to that committee for the purpose of its proceedings, and for the proceedings of any sub committee appointed under paragraph (4).

(6) The proceedings of a visiting committee shall not be invalidated by any vacancy in the membership or any defect in the appointment of a member.

(7) A visiting committee shall keep minutes of its proceedings and shall send a copy of such minutes to the Governor and to the Scottish Ministers as soon as reasonably practicable after the relevant proceedings.

### **General duties of visiting committees and members of committees**

**158.**—(1) A visiting committee shall co-operate with the Scottish Ministers and the Governor in promoting the efficiency of the prison and shall inquire into and report to the Scottish Ministers upon any matter into which they may ask it to inquire.

(2) The visiting committee shall—

- (a) immediately bring to the notice of the Governor any circumstances relating to the administration of the prison or the condition of any prisoner which appear to it to be expedient to report for the Governor's consideration; and
- (b) bring such circumstances to the notice of the Scottish Ministers if it appears to the committee that the Governor has not remedied any matter which the Committee has notified to the Governor in terms of sub paragraph (a) within such period as appears to the committee to be reasonable.

(3) The visiting committee shall from time to time inquire into the state of the prison premises and shall—

- (a) inspect, in particular, the food and drink provided to prisoners; and
- (b) in relation to any such inquiry—
  - (i) record particulars of every visit made, together with any deficiencies found during such visits, in the committee's minute book; and
  - (ii) promptly send a copy of such particulars to the Scottish Ministers and to the Governor.

(4) The visiting committee shall also discharge such other duties as the Scottish Ministers may from time to time assign to it.

(5) No person who is or has been a member of a visiting committee shall disclose any information mentioned in paragraph (6) which the person holds or has held as a member.

(6) The information referred to in paragraph (5) is any information obtained—

- (a) by any member of a visiting committee which relates to the prison, any officer of the prison or any prisoner; and
- (b) on terms or in circumstances requiring it to be held in confidence.

(7) Paragraph (5) does not apply to any disclosure of information mentioned in paragraph (6) made to any person, or for any purpose, permitted by the provisions of this Part.

### **Investigation of complaints**

**159.**—(1) The visiting committee and any member shall hear and investigate any complaint which a prisoner makes to the committee and the member.

(2) Where a member of the committee wishes to see any prisoner in connection with a complaint, the Governor shall make arrangements for the member to do so, whether in the prisoner's room or cell or in some other part of the prison, but in any case outwith the sight and hearing of an officer unless either party requests otherwise.

(3) The visiting committee shall—

- (a) record particulars of its findings in relation to its investigation of a prisoner's complaint in its minute book;



- (b) promptly send a copy of such findings to the Scottish Ministers and to the Governor; and
- (c) orally inform the prisoner concerned of its findings.

### **Visits to prisons by members of visiting committees**

**160.** Not fewer than 2 members of a visiting committee shall visit the prison at least fortnightly and for this purpose the committee shall arrange a rota of attendance at the prison.

### **Inspection of prison records**

**161.**—(1) The visiting committee or any member of the committee may inspect prison records other than—

- (a) personnel records;
- (b) prisoners' records; and
- (c) security manuals or other papers which have implications for security.

(2) The visiting committee shall record particulars of any inspection of prison records in its minute book.

### **Annual report**

**162.**—(1) The visiting committee shall make an annual report for the period of 12 months ending on 31st March each year to the Scottish Ministers concerning the state of the prison and its administration and may include in it any advice and suggestions it considers appropriate.

(2) The said annual report shall be delivered as soon as possible after the last day of March in each year.

### **Conflicts of interest**

**163.** A member of the visiting committee shall not have any direct financial interest in any contract for the supply of goods or services to the prison for which the committee is appointed or any other prison.

### **Visiting committees for legalised police cells**

**164.**—(1) There shall be a visiting committee constituted in accordance with this rule for the legalised police cells specified in column 1 of Schedule 3 to these Rules.

(2) The members of a visiting committee for the legalised police cells specified in column 1 of Schedule 3 shall be appointed in accordance with this rule by the council or councils specified in column 2 of that Schedule in relation to those cells and each such council shall appoint the number of members of the committee specified in column 3 of that Schedule in relation to that council.

(3) In relation to the legalised police cells specified in Schedule 3 and to the visiting committees constituted in accordance with this rule and to the members and officers of any such committees, the following provisions of these Rules shall apply subject to the modifications specified in paragraphs (4) to (7):—

- (a) in rule 155, paragraphs (4) to (8);
- (b) in rule 157, paragraphs (1) to (3) and (6) and (7);
- (c) rule 158;
- (d) rule 159;
- (e) rule 160;

- (f) rule 161;
  - (g) rule 162; and
  - (h) rule 163.
- (4) The provisions specified in sub paragraphs (a) to (h) of paragraph (3) shall apply as if–
- (a) any reference to “prison” were a reference to the relevant legalised police cells;
  - (b) any reference to “Governor” were a reference to the constable who is in charge of the cells.
- (5) Rule 157(7) shall apply as if the words “the Governor and to” were omitted.
- (6) Rule 160 shall apply as if for the words from the beginning to the word “fortnightly” read “A member of a visiting committee shall visit the legalised police cells on at least one occasion in a month if any prisoners have been detained in the cells within the preceding month”.
- (7) Rule 161 shall apply as if–
- (a) in paragraph (1), the words after “inspect” read “records relating to the legalised police cells and any record kept at the cells which relates to a prisoner who is or has been detained in them.”; and
  - (b) in paragraph (2), the words “prison records” read “any such records as mentioned in paragraph (1)”.

## PART 18

### SUPPLEMENTARY

#### **Directions**

**165.** Where any provision of these Rules provides that the Scottish Ministers may give a direction, unless the contrary intention appears, the Scottish Ministers may make provision in the direction–

- (a) in relation to all cases in respect of which the direction may be given, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or classes of case;
- (b) as respects the cases in relation to which it is given, that the direction applies either unconditionally, or subject to any specified condition; or
- (c) which is incidental or supplementary to the purpose in respect of which the direction may be given.

#### **Revocations**

**166.** Subject to rule 167, the rules and the Order specified in Schedule 4 are hereby revoked.

#### **Savings and transitional provisions**

**167.** Notwithstanding rule 166, the savings and transitional provisions specified in Schedule 5 shall have effect.

St Andrew's House,  
Edinburgh  
2nd March 2006

*CATHY JAMIESON*  
A member of the Scottish Executive

## SCHEDULE 1

Rule 113

## BREACHES OF DISCIPLINE

A prisoner shall be guilty of a breach of discipline if he or she—

- (a) commits any assault;
- (b) detains any person against his or her will;
- (c) denies access to any part of the prison to any officer or any person (other than a prisoner) who is at the prison for the purpose of working there;
- (d) fights with any person;
- (e) intentionally endangers the health or personal safety of others or, by his or her conduct, is reckless whereby such health or personal safety is endangered.
- (f) intentionally obstructs an officer in the execution of his or her duty or any person (other than a prisoner), who is at the prison for the purpose of working there, in the performance of his or her work;
- (g) escapes or absconds from prison or from legal custody;
- (h) fails—
  - (i) to return to prison when he or she should return after being temporarily released under Part 15 of these Rules; or
  - (ii) to comply with any condition upon which he or she is so temporarily released;
- (i) have—
  - (i) in his or her possession, or concealed about his or her body or in any body orifice, any article or substance which he or she is not authorised to have or a greater quantity of any article or substance than he or she is authorised to have; or
  - (ii) in his or her possession whilst in a particular part of the prison any article or substance which he or she is not authorised to have when in that part of the prison;
- (j) sells or delivers to any person any article which he or she is not authorised to have;
- (k) sells or, without permission, delivers to any person any article which he or she is allowed to have only for his or her own use;
- (l) takes improperly any article belonging to another person or to the prison;
- (m) intentionally or recklessly sets fire to any part of a prison or any other property, whether or not that property belongs to him or her;
- (n) destroys or damages any part of a prison or any other property, other than his or her own;
- (o) absents his or herself from any place where he or she is required to be or is present at any place where he or she is not authorised to be;
- (p) is disrespectful to any officer, or any person (other than a prisoner) who is at the prison for the purpose of working there, or any person visiting a prison;
- (q) uses threatening, abusive or insulting words or behaviour;
- (r) intentionally fails to work properly or, being required to work, refuses to do so;
- (s) disobeys any lawful order;
- (t) disobeys or fails to comply with any rule, direction or regulation applying to a prisoner;
- (u) inhales any substance, or the fumes of any substance, which is—
  - (i) a prohibited article;

- (ii) an article which he or she is not authorised to possess or keep in terms of these Rules or by any officer; or
- (iii) an article which he or she is so authorised to keep or possess but not for the purpose of inhaling or inhaling the fumes thereof;
- (v) smokes in an area of a prison where smoking is not permitted by virtue of rule 31;
- (w) consumes, takes, injects, ingests or conceals inside a body orifice any substance which is a prohibited article;
- (x) commits any indecent or obscene act;
- (y) administers a controlled drug to him or herself or fails to prevent the administration of a controlled drug to him or herself by another person (but subject to rule 117(6));
- (z) fails, without reasonable excuse, to open his or her mouth for the purpose of enabling a visual examination in terms of rule 106(2)(d); or
- (aa) attempts to commit, incites another prisoner to commit, or assists another prisoner to commit or to attempt to commit, any of the foregoing breaches;

## SCHEDULE 2

Rule 155

## CONSTITUTION OF VISITING COMMITTEES

(1) Name of Prison	(2) Name of Appointing Authorities	(3) Number of Members to be appointed	(4) Number of Members who are non members of Appointing Authority
ABERDEEN	Aberdeen City Council	4	2
	Aberdeenshire Council	2	2
BARLINNIE	West Dumbarton Council	2	1
	East Ayrshire Council	1	–
	Glasgow City Council	10	4
	Inverclyde Council	1	–
	North Ayrshire Council	2	1
	North Lanarkshire Council	4	2
	Renfrewshire Council	1	–
CASTLE HUNTLY	South Lanarkshire Council	4	2
	Perth and Kinross Council	5	2
	Dundee City Council	3	1

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(1) Name of Prison	(2) Name of Appointing Authorities	(3) Number of Members to be appointed	(4) Number of Members who are non members of Appointing Authority
CORNTON VALE	Clackmannanshire Council	2	1
	Stirling Council	7	3
	Falkirk Council	6	2
DUMFRIES	Dumfries and Galloway Council	11	4
EDINBURGH	City of Edinburgh Council	10	4
	East Lothian Council	2	1
	West Lothian Council	2	1
	Midlothian Council	3	1
GLENOCHIL	Clackmannanshire Council	5	2
	Stirling Council	4	2
	Fife Council	5	2
GREENOCK	Inverclyde Council	5	2
	North Ayrshire Council	2	
	Argyle and Bute Council	1	
INVERNESS	Highland Council	10	4
KILMARNOCK	East Ayrshire Council	4	2
	South Ayrshire Council	4	2
	North Ayrshire Council	4	2
	East Renfrewshire Council	2	1
	South Lanarkshire Council	1	—
LOW MOSS	City of Glasgow Council	3	1
	North Lanarkshire Council	3	1
	East Dunbartonshire Council	4	2

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(1) Name of Prison	(2) Name of Appointing Authorities	(3) Number of Members to be appointed	(4) Number of Members who are non members of Appointing Authority
NORANSIDE	Angus Council	5	2
	Dundee City Council	3	1
PERTH	Perth and Kinross Council	10	4
	Dundee City Council	9	3
PETERHEAD	Aberdeenshire Council	5	2
	Aberdeen City Council	3	1
SHOTTS	North Lanarkshire Council	9	3
	South Lanarkshire Council	8	3

## SCHEDULE 3

Rule 164

## CONSTITUTION OF VISITING COMMITTEES FOR LEGALISED POLICE CELLS

(1) Legalised Police Cells	(2) Names of Appointing Authorities	(3) Number of members to be appointed
CAMPBELTOWN	Argyll and Bute Council	3
DUNOON	Inverclyde Council	1
	Argyll and Bute Council	2
HAWICK	Scottish Borders Council	3
KIRKWALL	Orkney Islands Council	3
LERWICK	Shetland Islands Council	3
LOCHMADDY	Comhairle nan Eilean Sair	3
OBAN	Argyll and Bute Council	3
STORNOWAY	Comhairle nan Eilean Sair	3
THURSO	Highland Council	3

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

## SCHEDULE 4

Rule 166

## REVOCATIONS

<i>(1)</i> <i>Rules revoked</i>	<i>(2)</i> <i>References</i>
The Prisons and Young Offenders Institutions (Scotland) Rules 1994	S.I.1994/1931
The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 1996	S.I. 1996/32
The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 1997	S.I. 1997/2007
The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 1998	S.I. 1998/1589
The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 1998	S.I. 1998/2504
The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 1999	S.I. 1999/374
The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2000	S.S.I. 2000/187
The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2002	S.S.I. 2002/107
The Scottish Public Services Ombudsman Act 2002 (Consequential Modification of Instruments) Order 2003	S.S.I. 2003/242
The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2006	S.S.I. 2006/5

## SCHEDULE 5

Rule 167

## SAVINGS AND TRANSITIONAL PROVISIONS

**Savings and transitional provisions for the 1994 Rules**

1. Subject to the following sub paragraphs of this paragraph, where at the date of revocation of the 1994 Rules by rule 167 of these Rules—

- (a) there remains extant any privilege or certificate granted;
- (b) there remains in force any authority, direction order or permission given;
- (c) any record or minute requires to be made in respect of any matter;
- (d) any complaint made requires to be or is being investigated; or
- (e) any inquiry or investigation requires to be or is being carried out,

under any provision of the 1994 Rules, then, insofar as any matter specified in heads (a) to (e) above could be granted, given, made, investigated or carried out under a corresponding provision of these



Rules, that matter shall be treated as if it had been granted, made or given, or as if it had to be made, investigated, or carried out, under the corresponding provision of these Rules.

(2) Any award of a punishment under any one or more of sub paragraphs (a) to (d) and (g) to (i) of rule 100(1) of the 1994 Rules which was made in respect of a prisoner prior to the date of coming into force of these Rules shall be deemed to have effect as if awarded under rule 119 of these Rules.

(3) Where, at the date of coming into force of these Rules, any report of an offence against discipline which was made in terms of rule 96 of the 1994 Rules has not been adjudicated, the report shall be deemed not to have been made, but without prejudice to the right of an officer, if appropriate, to make a report in terms of rule 114(1) of these Rules.

(4) The Scottish Prison Service Code of Discipline 1993 made by the Secretary of State on 24th October 1992 shall continue to apply as if it had been approved under rule 155 of these Rules.

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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules replace the Prisons and Young Offenders Institutions (Scotland) Rules 1994 as amended and introduce a new rule (31) about smoking in prisons and a new rule (142) about temporary release for eligible prisoners to maintain family and community links. In addition the following amendments have been made:

Rule 39 reflects the arrangements now in place following the introduction of the Mental Health (Care and Treatment) (Scotland) Act 2003 relating to the transfer to hospital of a prisoner, for the assessment and treatment for mental disorder.

Rule 102(4)(a) now allows the visual examination (without the use of force or any instruments) of a visitor's open mouth by an officer of either gender;

Rule 106(3)(a) now allows the visual examination (without the use of force or instruments) of a prisoner's open mouth by an officer of either gender;

The rules (and parts of rules) relating to the awarding of additional days and the forfeiture of remission by Governor's as a punishment for a breach of discipline have been removed from these (2006) Rules.

These Rules have been drafted in gender neutral terms. Consequently there have been a number of textual changes from the 1994 Rules.

Part 1 of the Rules (rules 1 to 7) makes provision for citation, commencement, application and interpretation. It also provides for certain duties of the Governor in relation to elimination of discrimination and the making available of a copy of the Rules and of any directions to officers and prisoners. Rule 2 provides that the Rules apply to young offenders institutions and to young offenders as they apply to prisons and prisoners. Rule 3 makes provision for the application of the rules to contracted out prisons.

Part 2 (rules 8 to 15) deals with matters relating to reception of prisoners, prisoner records, classification of prisoners and location of prisoners within prisons. In relation to reception, there are provisions as to the manner in which a prisoner is to be dealt with including the information the prisoner must be given (rules 9 to 11). Rule 12 deals with registration and records of prisoners. Rule 13 relates to classification and rule 14 deals with the allocation of prisoners within prisons.

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Part 3 (rules 16 to 21) relate to procedures for assigning supervision levels. Separate provision is made for imposition of special security measures. Part 4 (rules 22 to 30) regulates matters affecting the physical and personal environment in which prisoners are confined.

Part 4 (Rules 22 to 24) specify conditions relating to cellular accommodation. Rules 25 to 28 make provision for requirements in relation to clothing. Subject to certain conditions, untried prisoners are allowed to wear their own clothes except where the provisions of rule 25(2) apply. Rule 26 specifies the circumstances in which any prisoner other than an untried prisoner may wear their own clothing. Rules 29 and 30 set out requirements in relation to the provision of food and prisoners' hygiene.

Part 5 (rules 31 to 42) makes provision in relation to the health and welfare of prisoners. The duties of medical officers are specified in rules 33, 34 to 37, 38 to 40. Rule 41 requires the governor to provide assistance and facilities to assist prisoners to maintain relationships with family, friends and agencies who may offer them assistance. Special provision is made for visits to untried and civil prisoners by their own doctors and dentists (rule 42).

Part 6 (rules 43 to 47) makes provision in relation to religious practice by a prisoner. Rule 44 enables the Chaplain, any prison minister appointed under section 9(1) of the Prisons (Scotland) Act 1989, and any other minister ("visiting minister") allowed to visit prisoners in terms of section 9(3) of the Act to visit prisoners and conduct religious services or meetings for prisoners. Rule 45 requires the Governor to make arrangements for visits by visiting ministers. Rule 46 permits prisoners to attend services or meetings of their religious denomination and makes provision in relation to visits by the Chaplain or other minister.

Part 7 (rules 48 to 54) makes provision for privileges and the regulation of property belonging to prisoners which is received or kept at the prison. Rule 49 requires governors to establish a system of privileges in the prison. Such a system shall not affect any entitlement of a prisoner as specified in the rules and any such entitlement is not to be regarded as a privilege for the purposes of disciplinary punishment which may provide for forfeiture of privileges. The handling of prisoners' property in general and money in particular is dealt with in rules 50 to 54.

Part 8 (rules 55 to 79) deals with various matters relating to arrangements enabling prisoners to communicate with persons outwith the prison. Correspondence is dealt with in rules 56 to 61. Special provisions relating to the correspondence between prisoners and courts and legal advisers are contained in rules 57 and 58. Other correspondence is regulated by rules 56 and 59 to 61. Every prisoner is entitled to send at least one letter every week at the expense of the Scottish Ministers. Entitlement of prisoners to make telephone calls from the prison is regulated by rule 62 and any direction which may be made for the purposes of that rule. Visits to prisoners are provided for in rules 63 to 78. Rule 63 specifies the minimum entitlement to visits for prisoners (rule 64 making similar provision for untried and civil prisoners). Rule 65 enables certain prisoners to carry forward their unused visiting allowance where they are moved to another prison. Rules 66 to 69 make special provision in relation to visits by legal advisers, procurators fiscal, police constables, and representatives of diplomatic services and national or international authorities or organisations. Rule 70 makes special provision where a prisoner requires to see persons in connection with legal proceedings. Rules 71 to 76 make express provision with regard to visits by Members of Parliament, members of the Scottish Parliament, representatives to the European Parliament, the Parliamentary Commissioner for Administration, the Parole Board for Scotland, journalists, authors or media representatives and persons in connection with disciplinary proceedings. Rule 77 enables the governor to terminate visits in certain circumstances and enables the Scottish Ministers to impose such conditions as may be specified in a direction on the entitlement of a prisoner to receive visits. Rule 78 provides for the use of closed visiting facilities in certain circumstances. Special arrangements for prisoners committed to prison in default of payments are set out in rule 79 to enable them to communicate with any person to arrange payment of money in order to secure their release.

Part 9 (rules 80 to 91) makes provision in relation to work, education, earnings, counselling and recreational activity. Except for young prisoners and untried and civil prisoners, all prisoners are required to work, for which they are entitled to receive earnings in terms of rule 88. Rules 89 and 90

make provision in relation to exercise and recreational activity. Prisoners are not permitted to carry on any trade, profession or vocation from the prison but are not prevented from writing articles or books (rule 91).

Part 10 (rules 92 to 112) makes provision in relation to security matters and the control of prisoners. General duties are dealt with in rules 92 and 93. Removal of a prisoner from association with other prisoners is dealt with in rule 94. Rules 95 and 96 regulate possession of prohibited articles and other property. The use of restraints for the control of prisoners is regulated by rules 97 and 98. Provision for the temporary confinement in special cells of violent prisoners is made in rule 99. Provision is also made in rule 100 to enable temporary confinement for a short period (not exceeding 30 minutes) where a prisoner's behaviour is such that it is appropriate to require him or her to remain in his or her cell. Admission and searching and removal of visitors is regulated by rules 101, 102 and 103. The searching of persons providing contracted out services is dealt with by rule 104. The searching of prisoners is regulated by rule 106. Compulsory testing for controlled drugs and alcohol are dealt with by rules 107 and 108 respectively. Searching prisoners' property is regulated by rule 108. Provision for prisoners' leave of absence under escort is made in rules 111 and 112.

Part 11 (rules 113 to 120) makes provision in relation to the disciplinary system. The acts or omissions constituting a breach of discipline are specified in Schedule 1. Rules 114 to 118 relate to the adjudication of charges of breaches of discipline and specify the procedure to be followed. Rules 119 and 120 regulate the imposition of punishments in relation to breaches of discipline.

Part 12 (rules 121 to 132) makes provision in relation to requests and complaints by prisoners. Rules 122 to 132 deal with the internal grievance procedures which a prisoner may invoke. The system provides for complaints to be made initially to a designated officer in the prisoner's accommodation hall. Thereafter, the complaint may be referred progressively to the manager of that hall, the internal complaints committee, and finally to the Governor in charge. There is a separate procedure prescribed for referring confidential matters directly to the Governor in charge for making complaints against medical officers and for referring certain categories of request directly to the Scottish Ministers (rule 128). Rules 129 and 130 make provision in relation to appeals and requests concerning disciplinary matters. Rule 131 makes provision for the Scottish Ministers to quash findings of guilt and to remit or mitigate punishments notwithstanding the conclusion of the internal appeals procedures within the prison.

Part 13 (rules 133 to 135) makes provision in relation to female prisoners, particularly pregnant prisoners or prisoners who have babies and who are permitted to have them in prison.

Part 14 (rules 136 to 139) makes provision in relation to arrangements for prisoners who are being transferred or discharged; and for part payment of fines by fine defaulters.

Part 15 (rules 140 to 147) sets out provisions in terms of which prisoners may be temporarily released from prison. The provisions describe different temporary release schemes comprising short leave and winter and summer leave (rule 140); pre-release leave (rule 141); unescorted day release of prisoners assigned low supervision level (rules 142 and 143); and temporary release for work etc (rule 144).

Part 16 (rules 148 to 153) makes provision in relation to officers and employees. It prescribes general duties and obligations and provides power to the governor to order the search of officers and employees in certain circumstances.

Part 17 (rules 154 to 164) makes provision in relation to visiting committees. Rule 155 sets out the requirement for the constitution of visiting committees of prisons. Rule 156 requires at least one third of the members of each visiting committee for young offenders institutions to be women. Rules 157 to 164 regulate the proceedings of the visiting committees and the duties of members.

Part 18 (rules 165 to 167) contains supplementary provisions in relation to various matters. Rule 165 contains supplementary provision as to the making of directions where any provision of the Rules authorises the making of a direction for a specified purpose. Rules 166 and 167, and Schedules 4 and 5, provide for revocation of various rules and savings and transitional provisions in connection therewith.

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