
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 331

**The Prisons and Young Offenders
Institutions (Scotland) Rules 2011**

PART 11

DISCIPLINE

Breach of discipline

110. In this Part “breach of discipline” is to be interpreted in accordance with Schedule 1 to these Rules.

Reporting breaches of discipline

- 111.** An officer must inform the Governor in writing immediately where he or she—
- (a) becomes aware, or suspects, that a prisoner has committed a breach of discipline; and
 - (b) decides to charge the prisoner under rule 112.

Charging breaches of discipline

- 112.—**(1) A prisoner may be charged with a breach of discipline by an officer where—
- (a) the officer becomes aware, or suspects, that the prisoner has committed a breach of discipline; and
 - (b) the officer has complied with rule 111.
- (2) Where an officer decides to charge a prisoner with a breach of discipline—
- (a) the charge must be brought by the officer serving a written notice of the charge on the prisoner;
 - (b) the charge must be brought within 48 hours of the discovery of the act or omission giving rise to the charge but, where this is not possible because of any delay in notifying the Governor under rule 111 due to exceptional circumstances, the charge must be brought within 48 hours after the Governor has been notified; and
 - (c) written notice of the charge must be served on the prisoner at least 2 hours before the Governor commences a disciplinary hearing under rule 113.
- (3) Where an untried prisoner is reported by an officer under rule 111 at any time between the day before the start of the prisoner’s trial and the conclusion of the trial—
- (a) the officer may delay bringing a charge under paragraph (1) until the relevant criminal proceedings are concluded; and
 - (b) where the officer delays bringing the charge and the prisoner is subsequently sentenced to imprisonment, the officer may only bring the charge if it is brought no later than 48 hours after the prisoner returns to custody at any prison.

(4) A charge under paragraph (1) may be brought against a prisoner for an alleged breach of discipline committed in another prison but only in accordance with rule 116.

Disciplinary hearings

113.—(1) Where a charge has been brought against a prisoner under rule 112, the Governor must hold a hearing into the alleged breach of discipline no later than—

- (a) the next day after the charge has been brought; or
- (b) where the next day is a Sunday or a public holiday, the day after that Sunday or public holiday,

unless in exceptional circumstances, the Governor considers that a later hearing is necessary.

(2) A hearing into an alleged breach of discipline under paragraph (1) is to be known as a disciplinary hearing.

(3) The Governor must be satisfied that the prisoner has had sufficient time to prepare his or her case before commencing the disciplinary hearing.

(4) The Governor must adjourn the disciplinary hearing for such period of time as may be reasonably necessary, where the Governor is satisfied —

- (a) that the prisoner requires further time to prepare his or her case; or
- (b) there are other reasonable grounds for an adjournment.

(5) Where an adjournment is granted under paragraph (4)—

- (a) the disciplinary hearing may continue before any Governor provided no submissions have been made by the prisoner; but
- (b) the disciplinary hearing must only be continued by the Governor who granted the adjournment where submissions have been made by the prisoner.

(6) Where the Governor who granted the adjournment is not able to continue the disciplinary hearing under paragraph (5)(b) within a reasonable period of time after the adjournment then—

- (a) the disciplinary hearing must be abandoned; and
- (b) the charge may only be brought again if it is brought within 48 hours of the abandonment of the disciplinary hearing.

(7) At the disciplinary hearing, the Governor must—

- (a) inform the prisoner of the breach of discipline alleged;
- (b) allow the prisoner the opportunity to present his or her case;
- (c) allow the prisoner the opportunity to call witnesses where permitted to do so under paragraph (8); and
- (d) subject to paragraph (12), allow the prisoner to cross-examine any other witnesses.

(8) At the disciplinary hearing, the prisoner may request that a witness be called and this request must be granted by the Governor where the Governor is reasonably satisfied that the evidence the witness is likely to give will be relevant to the determination of the charge.

(9) The Governor may, on the application of a prisoner, permit the prisoner to be represented at the hearing by a legal adviser where in exceptional circumstances the Governor considers such representation is necessary or desirable.

(10) Subject to paragraphs (11) and (12), the Governor may, at the disciplinary hearing, take into account any relevant evidence in any form, including—

- (a) oral evidence from any person;
- (b) written evidence from any person;

- (c) documents and records;
 - (d) film and photographs;
 - (e) sound recordings; and
 - (f) other physical evidence.
- (11) For the purposes of paragraph (10)—
- (a) where any evidence in paragraph (10)(c) to (e) is to be considered at the disciplinary hearing, the prisoner must be given an opportunity to look at and consider that evidence before presenting his or her case to the disciplinary hearing; and
 - (b) evidence listed in paragraph (10)(b) to (f) may only be considered at the disciplinary hearing without associated oral evidence if the prisoner agrees or if paragraph (12) applies.
- (12) The Governor may take into account written evidence relating to the analysis of a sample provided in accordance with rule 93 or 94, written by the person who carried out that analysis, without requiring the person's attendance at the disciplinary hearing if—
- (a) the person is not an officer or employee;
 - (b) the prisoner has been afforded the opportunity to make representations about why the person should give oral evidence; and
 - (c) the Governor is satisfied, having considered any representations from the prisoner, that it is appropriate to admit the evidence and that there is no sufficient reason why the person needs to give oral evidence.
- (13) The Governor must consider all the relevant evidence before making a finding and, for a prisoner to be found guilty of a breach of discipline, the Governor must be satisfied beyond reasonable doubt.
- (14) The Governor must inform the prisoner whether the prisoner has been found guilty or not guilty of the breach of discipline alleged and of the reasons for that decision.
- (15) Where the Governor finds that the prisoner is guilty of the breach of discipline alleged, but before determining whether a punishment under rule 114 is appropriate, the Governor must—
- (a) consider whether the breach of discipline is aggravated by virtue of containing an element of discrimination as described in rule 6 and, if so, inform the prisoner of the aggravation; and
 - (b) give the prisoner an opportunity to raise any relevant matters in mitigation.
- (16) Where the Governor finds that the prisoner is guilty of the breach of discipline charged and that a punishment under rule 114 is appropriate, the Governor must inform the prisoner of—
- (a) the punishment to be imposed on the prisoner under rule 114 including whether the punishment is to be suspended under rule 115; and
 - (b) the reasons for the Governor's decision to impose the punishment.

Punishment

114.—(1) A Governor may impose on a prisoner one or more of the following punishments where a prisoner is found guilty of a breach of discipline—

- (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) cellular confinement for a period not exceeding 3 days;
 - (e) in the case of an untried prisoner found guilty of escaping or attempting to escape, forfeiture of the entitlement to wear his or her own clothing under rule 32 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 45 and 52 for any period as may be specified; and
 - (g) forfeiture of the entitlement to withdraw money in terms of rule 51(3) for a period not exceeding 14 days.
- (2) In setting the level of punishment, the Governor must consider whether the breach of discipline was aggravated in terms of rule 113(15)(a).
- (3) If a prisoner is found guilty of more than one breach of discipline arising out of an incident, the punishments that may be imposed under this rule (except for cellular confinement under paragraph (1)(d)) may be ordered to run consecutively.
- (4) Where cellular confinement is imposed on a prisoner under paragraph (1)(d)—
- (a) the Governor must inform a healthcare professional as soon as possible;
 - (b) any entitlement of the prisoner under these Rules will not be affected by the imposition of cellular confinement, except insofar as expressly provided in a direction under subparagraph (c); and
 - (c) the prisoner must 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

115.—(1) The Governor may order that a punishment imposed under rule 114(1), other than a caution, is to be suspended for a period of up to six months from the date of the Governor’s decision under rule 113(16).

(2) Where a prisoner is found guilty of a further breach of discipline committed during the period of suspension ordered by the Governor under paragraph (1), the Governor dealing with that breach of discipline may direct—

- (a) that the suspended punishment is to take effect;
- (b) that the suspended punishment and the further punishment (except for cellular confinement under rule 114(1)(d)) are to be served consecutively;
- (c) that the period or amount of the suspended punishment is to be reduced and will take effect as so reduced;
- (d) that the suspended punishment is to be suspended again for a period of up to six months from the date of the Governor’s direction;
- (e) that the further punishment is to be suspended for a period of up to six months from the date of the Governor’s direction; or
- (f) that both the suspended punishment and the further punishment are to be suspended for a period of up to six months from the date of the Governor’s direction.

(3) In this rule “suspended punishment” means a punishment suspended in accordance with paragraph (1) and “further punishment” means a punishment imposed for a further breach of discipline committed during the period of suspension referred to in paragraph (1).

Breaches of discipline committed in another prison or during transfer

116.—(1) This rule applies where a prisoner has been transferred from one prison (“the transferring prison”) to another (“the receiving prison”).

(2) The prisoner may be charged with a breach of discipline alleged to have taken place prior to the prisoner’s reception at the receiving prison only if—

- (a) an officer of the transferring prison reports the alleged breach to the Governor of the receiving prison within 3 days of the prisoner’s reception at the receiving prison (excluding Sundays and public holidays); and
- (b) no charge in respect of the breach of discipline has been brought at the transferring prison.

Breaches of discipline involving the use of controlled drugs

117.—(1) If a prisoner is charged with a breach of discipline by contravening paragraph 27 of Schedule 1 in circumstances where—

- (a) the prisoner has been transferred to the prison (“the receiving prison”) from another prison;
- (b) the controlled drug specified in the relevant charge may have been administered to the prisoner before reception in the receiving prison; but
- (c) the prisoner was detained in a prison throughout the period during which the drug might have been administered,

the Governor of the receiving prison may deal with that matter as if the breach of discipline occurred within the receiving prison.

(2) Where an untried prisoner—

- (a) provides a sample in accordance with rule 93;
- (b) is alleged to have committed a breach of discipline by contravening paragraph 27 of Schedule 1;
- (c) has been detained in a prison throughout the period during which the drug might have been administered; and
- (d) is convicted and sentenced to imprisonment following the provision of the sample,

the Governor of the prison to which the prisoner is committed following conviction may deal with that matter as if the breach of discipline occurred within that prison.

(3) It is a defence for a prisoner charged with a breach of discipline by contravening paragraph 27 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.

Disciplinary appeals

118.—(1) A prisoner who is found guilty of any breach of discipline, in accordance with rule 113, may appeal the decision in accordance with this rule not later than 14 days after the date of the decision.

(2) An appeal brought under this rule must be in writing and is to be known as a disciplinary appeal.

(3) A disciplinary appeal may be against—

- (a) both the finding of guilt and any punishment imposed under rule 114; or
- (b) only the punishment imposed under rule 114,

but the appeal does not suspend that punishment.

(4) A disciplinary appeal may only be made where the disciplinary hearing—

- (a) was chaired by any officer other than the Governor in Charge, to the internal complaints committee;
- (b) was chaired by the Governor in Charge, to the Scottish Ministers;
- (c) took place in a contracted out prison, to the Scottish Ministers.

(5) An appeal under paragraph (4)(a) must be dealt with as if it were a complaint to the internal complaints committee made under rule 123 but the Governor must, 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 rule 114 where the period for which the punishment was imposed has expired by the date of the decision of the appeal).

(6) Where an appeal is made under paragraph (4)(b) or (c) the Scottish Ministers must—

- (a) investigate any relevant matters raised in the appeal; and
- (b) provide a written decision to the prisoner within 20 days of the appeal being made.

(7) The Scottish Ministers may, either in the course of a disciplinary appeal brought under paragraph (4)(b) or (c) or of their own volition, 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 rule 114 where the period for which the punishment was imposed has expired by the date of the decision of the appeal);
- (c) substitute another punishment which is, in the Scottish Ministers' opinion, less severe; or
- (d) in the case of a disciplinary appeal, refuse the appeal.

(8) If the Governor quashes any finding of guilt under paragraph (5)(a), or Scottish Ministers quash any finding of guilt under paragraph (7)(a), the Governor must 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.

(9) Following the conclusion of the appeals procedure in relation to any appeal brought under this rule, a prisoner is not entitled to make any further appeal or complaint under these Rules in relation to the same matter to which the breach of discipline in question related.

Direction with respect to the disciplinary appeals procedure

119.—(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) a disciplinary appeal may be made; and
- (b) any decision in relation to a disciplinary appeal may be given.

- (2) The Governor must ensure that the following are provided for prisoners—
- (a) supplies of any form specified in a direction made under paragraph (1);
 - (b) assistance in the completion of any such form; and
 - (c) assistance in writing a disciplinary appeal under rule 118.