
SCOTTISH STATUTORY INSTRUMENTS

2006 No. 94

**The Prisons and Young Offenders
Institutions (Scotland) Rules 2006**

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.