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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 94**

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

**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(1);
- (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(2);
- (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.

(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.

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(1) 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.

(2) 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.

(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.