
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 331

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

PART 11

DISCIPLINE

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.