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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 331**

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

**PART 1**

**GENERAL**

**Interpretation**

**2.—(1)** In these Rules—

“the Act” means the Prisons (Scotland) Act 1989<sup>(1)</sup>;

“the 1993 Act” means the Prisoners and Criminal Proceedings (Scotland) Act 1993<sup>(2)</sup>;

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

“the 2006 Rules” means the Prisons and Young Offenders Institutions (Scotland) Rules 2006<sup>(3)</sup>;

“accommodation” means the cells or rooms used to accommodate prisoners for living and sleeping purposes;

“appellant” means, subject to rule 2(3), a prisoner—

- (a) who appeals under section 106 or 175 of the 1995 Act<sup>(4)</sup> 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<sup>(5)</sup>;
- (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<sup>(6)</sup> against his or her conviction or sentence, or both conviction and sentence, or who appeals under

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<sup>(1)</sup> 1989 c.45.

<sup>(2)</sup> 1993 c.9.

<sup>(3)</sup> S.S.I. 2006/94.

<sup>(4)</sup> 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.

<sup>(5)</sup> Section 194B was inserted by the Crime and Punishment (Scotland) Act 1997, section 25, and was amended by S.I. 1999/1181, Article 3.

<sup>(6)</sup> 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.

section 39(1) of that Act<sup>(7)</sup> 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;

“appropriate member”, in relation to a member of the chaplaincy team, means a member who represents the religious denomination concerned or who has pastoral care of the prisoner concerned;

“biometric data” includes fingerprints or other physical measurements and any other data specified by direction made by Scottish Ministers;

“chaplain” means the person who is appointed pursuant to section 3(2) of the Act 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<sup>(8)</sup>;
- (b) under section 4 or 6 of the Civil Imprisonment (Scotland) Act 1882<sup>(9)</sup>;
- (c) by virtue of a warrant granted under section 1(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940<sup>(10)</sup>;
- (d) for contempt of court or for non payment of a fine imposed for contempt of court; or
- (e) for breach of interdict;

“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<sup>(11)</sup>;

“contracted out prison” means a prison or part of a prison the running of which a contract under section 106 of the 1994 Act<sup>(12)</sup> is for the time being in force;

“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>(13)</sup>;

“Deputy Governor” means any 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 51 of the Scotland Act 1998<sup>(14)</sup>;

“film” has the same meaning as in Part I of the Copyright, Designs and Patents Act 1988<sup>(15)</sup>;

“Governor” means—

- (a) in this rule, rules 90(1), 93, 94 and any rule in Part 12 (other than rule 120(3)), the Governor in Charge;

(7) 1968 c.20; section 39 was amended by the Constitutional Reform Act 2005, Schedule 9, paragraph 17.

(8) 1988 c.36.

(9) 1882 c.42; sections 4 and 6 were amended by the Sheriff Courts (Scotland) Act 1971 (c.58), section 4.

(10) 1940 c.42.

(11) 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.

(12) 1994 c.33; section 106 was relevantly amended by S.I. 1999/1820, Schedule 2, paragraph 115.

(13) 1971 c.38.

(14) 1998 c.46; section 51 was amended by the Constitutional Reform and Governance Act 2010 (c.25) Schedule 2, paragraph 9.

(15) 1988 c.48; section 5B was inserted by S.I. 1995/3297, article 9.

(b) in rules 6, 7, 14, 35 and 81 and in any rule in Parts 3, 8, 10 (other than rules 90(1), 93 and 94), 11 and 14 to 17 and, unless otherwise expressly provided for, in directions made under rules 19(2)(g), 21(1)(b)(iii), 22, 26, 55(5), 62(2), 77(3) and 86, 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 paragraphs (i) to (iii) 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;

“healthcare professional” has the same meaning as in section 17CA of the National Health Service (Scotland) Act 1978<sup>(16)</sup>;

“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 Union,

and, except for the purposes of rule 113(9), includes the authorised clerk or employee of such a person;

“legal custody” is to be interpreted in accordance with section 13 of the Act<sup>(17)</sup> and section 295 of the 1995 Act<sup>(18)</sup>;

“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) a photographer, cameraman, researcher or producer for, or of, any television, radio or other programme intended for broadcast or transmission by any form of electronic medium; or
- (b) a journalist or author;

“officer” means an officer of the prison appointed by the Scottish Ministers and includes the Governor but—

- (a) for the purposes of searching a prisoner under rule 92(2)(a) and for the purposes of rule 99, includes a prisoner custody officer who is authorised to perform escort functions in accordance with section 114 of the 1994 Act<sup>(19)</sup>; and

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<sup>(16)</sup> 1978 c.29; section 17CA was added by the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3), section 38.

<sup>(17)</sup> Section 13 was amended by the Criminal Justice (Scotland) Act 2003 (asp 7), section 24(1).

<sup>(18)</sup> Section 295 was amended by the Criminal Justice (Scotland) Act 2003 (asp 7), section 24(2).

<sup>(19)</sup> 1994 c.33, section 114(1) was amended by S.I. 1999/1820, article 4 and paragraph 115 of Schedule 2.

- (b) in the case of a legalised police cell, means any constable;
- “personal communication device” has the same meaning as in section 41(9B) of the 1989 Act<sup>(20)</sup>;
- “photograph” has the same meaning as in Part I of the Copyright, Designs and Patents Act 1988<sup>(21)</sup>;
- “police member of the Scottish Crime and Drug Enforcement Agency” means a police member appointed in accordance with paragraph 7 of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006<sup>(22)</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>(23)</sup>;
  - (b) any firearm or any ammunition within the meaning of the Firearms Act 1968<sup>(24)</sup>;
  - (c) any offensive weapon within the meaning of section 47(4) of the Criminal Law (Consolidation) (Scotland) Act 1995<sup>(25)</sup>;
  - (d) any article to which section 49 of the Criminal Law (Consolidation) (Scotland) Act 1995<sup>(26)</sup> applies;
  - (e) alcohol, within the meaning given by section 2 of the Licensing (Scotland) Act 2005<sup>(27)</sup>; or
  - (f) any personal communication device;
- “reception” means, in relation to a prisoner committed to prison, the process of receiving a prisoner into prison—
- (a) on his or her removal to prison from court, or any other place, in implementation of the warrant, order or direction 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>(28)</sup> as extended by the Protocol thereto which entered into force on 4th October 1987<sup>(29)</sup> or, as the case may be, the Protocol relating to the status of refugees done at New York on 31st January 1967<sup>(30)</sup>; or

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(20) 1989 c.45; section 41(9B) was added by the Criminal Justice and Licensing (Scotland) Act 2010, section 34.

(21) 1988 c.48.

(22) 2006 asp 10.

(23) 1971 c.38.

(24) 1968 c.27.

(25) 1995 c.39; section 47 was amended by the Offensive Weapons Act 1996 (c. 26), section 2(2); the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), section 74(2); and the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) section 37.

(26) 1995 c.39; section 49 was amended by the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10) section 73 and the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) section 37.

(27) 2005 asp 16.

(28) Treaty Series No. 39 (1951), Cmnd 9171.

(29) Treaty Series No. 50 (1987), Cmnd 222.

(30) Treaty Series No. 15 (1969), Cmnd 3906.

(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 first line manager” means an officer who is required by the Governor to manage 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(31);

“sound recording” has the same meaning as in Part I of the Copyright, Designs and Patents Act 1988(32);

“special cell” means a cell or room 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(33);

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

“temporary release” means any of the forms of temporary release defined in rule 136;

“unauthorised property” means any property which the prisoner has not been authorised by any officer or by virtue of these Rules to possess within the prison or within a particular part of the prison.

“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(34); or
- (c) by virtue of detention under Schedule 2 or 3 to the Immigration Act 1971(35);
- (d) following conviction but awaiting sentence,

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 religious denomination in terms of section 9(3) of the Act;

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(31) 2005 asp 13.

(32) 1988 c.48; Section 5A was inserted by S.I. 1995/3297, article 9.

(33) Cmnd 1098 of 1960.

(34) 2003 c.41.

(35) 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).

“young offender” means an offender who—

- (a) has attained 16 years of age but has not yet attained 21 years of age;
- (b) is being detained in a prison or young offenders institution; and
- (c) has been sentenced to a period of detention.

(2) Except where the context otherwise requires, for the purposes of any reference, however expressed, in these Rules to—

- (a) the term of imprisonment or other detention to which a person has been sentenced; or
- (b) the term of imprisonment or other detention which a person, having been sentenced, has served in whole or in part,

consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term.

(3) For the purposes of the definition of “appellant” in paragraph (1), a prisoner is deemed to be an appellant—

- (a) in the case of an appeal as mentioned in sub-paragraph (a) of that definition in solemn proceedings, from the time the prisoner lodges an intimation of intention to appeal in terms of section 109(1) of the 1995 Act<sup>(36)</sup> or, in the case of an appeal against sentence only, a note of appeal in terms of section 110(1) of that Act<sup>(37)</sup>;
- (b) in the case of an appeal as mentioned in sub-paragraph (a) of that definition in summary proceedings, from the time the prisoner 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) of that Act<sup>(38)</sup>;
- (c) in the case of a reference as mentioned in sub-paragraph (b) of that definition, from the time the Scottish Criminal Cases Review Commission refer the case to the High Court of Justiciary;
- (d) in the case of an appeal as mentioned in sub-paragraph (c) of that definition, from the time the prisoner lodges the bill of suspension;
- (e) in the case of an appeal as mentioned in sub-paragraph (d) of that definition, from the time the prisoner presents a petition in terms of section 8(2) of the Courts-Martial (Appeals) Act 1968<sup>(39)</sup>; or
- (f) in the case of an appeal as mentioned in sub-paragraph (e) of that definition, from the time the prisoner 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.

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

- (a) any reference in these Rules to a prison is to be construed as including a young offenders institution;
- (b) any reference in these Rules to a prisoner, imprisonment or a sentence of imprisonment is to be construed respectively as including a young offender, detention or a sentence of detention in a young offenders institution;

<sup>(36)</sup> Section 109(1) amended by the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraph 29.

<sup>(37)</sup> 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.

<sup>(38)</sup> Section 186(1) was amended by the Protection of Children (Scotland) Act (asp 5), section 16.

<sup>(39)</sup> 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.

- (c) any reference in these Rules to a prisoner, imprisonment or a sentence of imprisonment is to be construed respectively as including any person mentioned in rule 3(2) or any detention or sentence of detention imposed on such a person under any the provisions mentioned in rule 3(2);
- (d) any reference in these Rules to a prisoner, imprisonment or a sentence of imprisonment is to be construed respectively as including any person mentioned in rule 3(3) or any imprisonment or detention or period of imprisonment or detention imposed on such a person under any of the provisions mentioned in rule 3(3); and
- (e) any reference in these Rules to a visitor is to be interpreted in accordance with rule 105(9).