

2022 No. 194

PRISONS

**The Prisons and Young Offenders Institutions (Scotland)
Amendment Rules 2022**

<i>Made</i> - - - -	<i>31st May 2022</i>
<i>Laid before the Scottish Parliament</i>	<i>1st June 2022</i>
<i>Coming into force</i> - -	<i>4th July 2022</i>

The Scottish Ministers make the following Rules in exercise of the powers conferred by section 39 of the Prisons (Scotland) Act 1989(a) and all other powers enabling them to do so.

Citation and Commencement

1. These Rules may be cited as the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2022 and come into force on 4 July 2022.

Amendment of the Prisons and Young Offenders Institutions (Scotland) Rules 2011

2.—(1) The Prisons and Young Offenders Institutions (Scotland) Rules 2011(b) are amended in accordance with paragraphs (2) to (7).

(2) In rule 35 (prisoners' food and drink), after paragraph (5) insert—

“(6) This rule does not apply to prisons, categories of prisons or parts of prisons specified by the Scottish Ministers in a direction under rule 35B(1) (prisoners' food and drink: preparation of meals by prisoner for own consumption).”.

(3) After rule 35 insert—

“35B. Prisoners' food and drink: preparation of meals by prisoner for own consumption

(1) The Scottish Ministers may specify in a direction the prisons, categories of prisons or parts of prisons to which this rule applies in place of rule 35.

(2) Where this rule applies to a prison or part of a prison by virtue of a direction under paragraph (1), the Governor must—

(a) ensure that every prisoner has access to the facilities reasonably required to—

(i) safely prepare and consume food and drink for their own consumption, and

(a) 1989 c. 45. Section 39 was amended by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9), sections 24 and 25, schedule 5, paragraph 6(6)(b) and schedule 7, Part 1, paragraph 1; the Criminal Justice and Public Order Act 1994 (c. 33), section 116(4); the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40), schedule 4, paragraph 75(4)(a); the Crime and Disorder Act 1998 (c. 37), schedule 8, paragraph 71 and schedule 10, paragraph 1; the Management of Offenders (Scotland) Act 2019 (asp 14), section 55(2) and the Counter-Terrorism and Sentencing Act 2021 (c. 11), schedule 13(7), paragraph 51(2). The functions of the Secretary of State, insofar as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (c. 46), section 53.

(b) S.S.I. 2011/331; relevant amending instruments are S.S.I. 2011/356, S.S.I. 2012/26, S.S.I. 2016/131 and S.S.I. 2020/122.

- (ii) safely store the food and drink to be used for their own consumption,
 - (b) ensure that the facilities referred to in paragraph (2)(a) are inspected on a regular basis, and
 - (c) ensure that food and drink purchased by prisoners is monitored to check that every prisoner makes purchases that will allow them to consume wholesome and nutritious food and drink on a daily basis.
- (3) The Governor may arrange for an allowance to be paid to a prisoner for the sole purpose of making purchases of food and drink to enable that prisoner to prepare wholesome and nutritious food for their own consumption on a daily basis.
- (4) If, as a result of monitoring under paragraph (2)(c), it is concluded that a prisoner is not making purchases that will allow them to consume wholesome and nutritious food and drink on a daily basis, an officer will provide the prisoner with information on consuming a healthy diet.
- (5) Where an officer has provided a prisoner with information on consuming a healthy diet under paragraph (4), but as a result of further monitoring under paragraph (2)(c) it is concluded that the prisoner continues not to make purchases that will allow them to consume wholesome and nutritious food and drink on a daily basis, an officer may—
- (a) prevent the prisoner purchasing any food and drink, and
 - (b) provide the food and drink needed for the prisoner to prepare wholesome and nutritious food and drink for their own consumption.
- (6) The Governor must ensure that every prisoner has access to and can safely prepare and store food and drink which take into account, so far as practicable, the prisoner’s age, health and religious, cultural, dietary or other requirements.
- (7) The Governor must ensure that a prisoner who is pregnant is able to purchase, prepare and consume food and drink which take into account any dietary requirements during pregnancy.
- (8) If it is impractical for the Governor to comply with paragraphs (2), (3), (6) or (7) due to circumstances pertaining in the prison, or a temporary lack of available facilities, then—
- (a) subject to sub-paragraph (b) the Governor must seek to comply with paragraphs (2), (3), (6) and (7) so far as reasonably practicable, and
 - (b) where the circumstances or temporary lack of available facilities persist for more than 48 hours, the Scottish Ministers may by direction provide that paragraphs (2), (3), (6) and (7) apply in relation to prisoners (or categories of prisoners) in that prison subject to such restrictions as the Scottish Ministers consider appropriate but only for a period not exceeding one month.”.
- (4) In rule 99 (custody outside prison), after paragraph (2) insert—
- “(3) For the purposes of special escorted leave, paragraph (1)(b) does not apply in the circumstances specified by the Scottish Ministers in a direction made under rule 100(5).”.
- (5) In rule 100 (special escorted leave)—
- (a) in paragraph (2), for “he or she”, substitute “the Governor”,
 - (b) for paragraph (4), substitute—
- “(4) For the purposes of this rule, “eligible prisoner” means—
- (a) a person who is serving a sentence of imprisonment,
 - (b) is confined in a prison, or a category of prison, or a particular part of a prison, to which this rule applies, and
 - (c) is and has been for at least 3 months assigned low supervision level.”, and

(c) in paragraph (5)—

(i) in sub-paragraph (c), for “he or she may grant”, substitute “granting”, and

(ii) after sub-paragraph (e) insert—

“(f) the circumstances in which rule 99(1)(b) does not apply to special escorted leave.”.

(6) In rule 127 (pregnancy and confinement), after paragraph (9) insert—

“(10) Paragraph (7) does not apply to prisons, categories of prisons or parts of prisons specified by the Scottish Ministers in a direction under rule 35B(1) (prisoners’ food and drink: preparation of meals by prisoner for own consumption).”.

(7) In rule 136 (forms of temporary release), after the definition of “unescorted release for health reasons”, insert—

““regular unescorted day release” means the unescorted temporary release from prison of an eligible prisoner for a period not exceeding one day on each occasion for the purposes of enabling the prisoner, in preparation for eventual release—

(a) to develop further, or to re-establish, links with their family or community,

(b) to develop educational or employment opportunities in the local community,

(c) to attend an appointment in the local community,

(d) to make purchases of food and drink in the local community in accordance with rule 35B, or

(e) to undertake wellbeing activities in the local community.”.

KEITH BROWN

A member of the Scottish Government

St Andrew’s House,
Edinburgh
31st May 2022

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Prisons and Young Offenders Institutions (Scotland) Rules 2011 (“the Prison Rules”).

Rule 2(3) inserts a new rule 35B into the Prison Rules to make provision in relation to prisoners who prepare their own meals within a prison. The new rule will apply to any prisons, categories of prisons or parts of prisons specified in a direction by the Scottish Ministers. Rule 2(2) provides that rule 35 (prisoners’ food and drink) will not apply to any prisons, categories of prisons or parts of prisons specified by the Scottish Ministers in a direction under rule 35B.

Rule 2(4) amends rule 99 (custody outside prison) of the Prison Rules. This will provide that paragraph (1)(b) of rule 99 will not apply for the purposes of special escorted leave, in circumstances specified by the Scottish Ministers in a direction made under rule 100(5) of the Prison Rules. Rule 2(5)(c)(ii) adds new sub-paragraph (f) to rule 100(5) of the Prison Rules which enables the Scottish Ministers to specify in a direction the circumstances in which rule 99(1)(b) does not apply to special escorted leave.

Rule 2(5) also amends rule 100 of the Prison Rules, to extend the definition of “eligible prisoner” to include short-term prisoners. The effect of this is to allow short-term prisoners, who meet the other eligibility criteria, to apply for special escorted leave.

Rule 2(6) excludes from the scope of rule 127(7) (pregnancy and confinement) of the Prison Rules, a pregnant prisoner confined in a prison or part of a prison to which rule 35B of the Prison Rules applies. Rule 127(7) requires that a prisoner who is pregnant must be provided with food and drink which take into account any dietary requirements during pregnancy. New rule 35B(7) of the Prison Rules makes equivalent provision for pregnant prisoners who prepare their own meals and requires that such a pregnant prisoner is able to purchase, prepare and consume food and drink which take into account any dietary requirements during pregnancy.

Rule 2(7) introduces a new category of temporary release, known as “regular unescorted day release”, through an amendment to rule 136 (forms of temporary release) of the Prison Rules. Subject to a direction made by the Scottish Ministers under rule 138 (direction with respect to temporary leave) of the Prison Rules (which, among other things, may specify the forms of temporary release available to prisoners accommodated in particular prisons, halls or parts of prisons), an eligible prisoner may apply for regular unescorted day release. Under this category of temporary release, a prisoner cannot leave the prison in which they are confined for more than one day at a time. Its purpose is to enable the prisoner, in preparation for release, to develop further or re-establish links with their family or community, or to develop educational or employment opportunities, attend an appointment, make purchases of food and drink or undertake wellbeing activities in the local community.

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