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STATUTORY INSTRUMENTS

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**1993 No. 2227 (S.237)**

**PRISONS**

**The Prison (Scotland) Amendment Rules 1993**

*Made* - - - - *9th September 1993*  
*Laid before Parliament* *10th September 1993*  
*Coming into force* - - *1st October 1993*

The Secretary of State, in exercise of the powers conferred on him by section 39 of the Prisons (Scotland) Act 1989(1) and of all other powers enabling him in that behalf, hereby makes the following Rules:

**Citation, commencement and interpretation**

1.—(1) These Rules may be cited as the Prison (Scotland) Amendment Rules 1993 and shall come into force on 1st October 1993.

(2) In these Rules, “the principal Rules” means the Prison (Scotland) Rules 1952(2).

**Amendment of Rule 1 of the principal Rules**

2. In Rule 1(1) of the principal Rules there shall be inserted—

(a) after the definition of “Civil Prisoner” the following definition:—

““existing prisoner” shall have the same meaning as in Schedule 6 to the Prisoners and Criminal Proceedings (Scotland) Act 1993(3);”;

(b) after the definition of “legal adviser” the following definitions:—

““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;

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(1) 1989 c. 45; section 39 was amended by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9), sections 24 and 25 and Schedule 5, paragraph 6(6) and Schedule 7 ( see S.I. 1993/2050).  
(2) S.I.1952/565, amended by S.I. 1954/240, 1956/671, 1966/1552, 1970/2013, 1976/1889, 1979/1630, 1981/1222, 1984/2058, 1987/2231 and 1988/537.  
(3) 1993 c. 9.

“long-term prisoner” means a person who is a long-term prisoner within the meaning of Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993 and who is sentenced on or after 1st October 1993;”;

(c) after the definition of “Officer” the following definition:–

““postal packet” includes newspaper, printed packet, sample packet, or parcel and any packet or article transmissible by post or other delivery service;”;

(d) after the definition of “Prohibited Article” the following definition:–

““short-term prisoner” means a person who is a short-term prisoner within the meaning of Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993 and who is sentenced on or after 1st October 1993;”.

### **Amendment of Rule 37 of the principal Rules**

**3.** For paragraph (1) of rule 37 of the principal Rules(4) there shall be substituted the following paragraph:–

“(1) An existing prisoner who is serving a sentence of imprisonment for a term of more than 5 days may, subject to Rule 43, be granted remission of part of his term of imprisonment not exceeding one third of that term on the ground of his industry and good conduct:

Provided that this Rule shall not authorise the reduction of the actual term which an existing prisoner serves to less than 5 days.”.

### **Amendment of Rule 42 of the principal Rules**

**4.** In Rule 42 of the principal Rules the following words shall be omitted:–

“(15) Mutinies or incites other prisoners to mutiny.”.

### **Amendment of Rule 43 of the principal Rules**

**5.—(1)** Rule 43 of the principal Rules shall be amended in accordance with the following paragraphs of this Rule.

(2) In Rule 43(2)(a) there shall be inserted at the beginning the words “in the case of an existing prisoner who is serving a sentence of imprisonment for a term of more than 5 days,”.

(3) In Rule 43(2) there shall be inserted after sub-paragraph (a) the following:–

“(aa) in the case of a short-term or long-term prisoner, but subject to paragraphs (3) and (4), an award of additional days not exceeding 14 days;”.

(4) After rule 43(2) there shall be inserted the following:–

“(3) Subject to paragraph (4), if a prisoner is found guilty of more than one breach of discipline arising out of an incident, awards of additional days under paragraph (2)(aa) may be ordered to run consecutively but the total awarded shall not exceed 28 days.

(4) Notwithstanding paragraph (2)(aa) above, in the case of a short-term or long-term prisoner found guilty of a breach of discipline, an award of additional days shall not exceed one sixth of his sentence, either–

(a) in respect of that breach; or

(b) when aggregated with the total of any award or awards of additional days which the prisoner may have been or is awarded under paragraph (2)(aa) or (3).”.

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(4) Rule 37 was substituted by S.I. [1981/1222](#).

### **Amendment of Rule 47 of the principal Rules**

6. In Rule 47 of the principal Rules, for paragraph (2) there shall be substituted the following:–

“(2) A punishment awarded under Rule 43, other than paragraph (2)(a), may be terminated or mitigated at any time during its currency by the Governor who made the award.”.

### **Amendment of Rule 74 of the principal Rules**

7. In Rule 74 of the principal Rules, at the end of paragraph (1) there shall be inserted the following words:–

“The provisions of this Rule do not apply to letters or postal packets to which Rules 74A and 74B apply.”.

### **Insertion of new Rules 74A and 74B into the principal Rules**

8. After Rule 74 of the principal Rules there shall be inserted the following Rules:–

“**74A.**—(1) This Rule applies to letters and postal packets which a prisoner sends to, or receives from, any court.

(2) Any letter or postal packet to which this Rule applies shall not–

- (a) except where paragraph (3) applies, be opened; or
- (b) be read,

by the Governor or an officer.

(3) Any letter or postal packet which a prisoner sends to a court shall not be opened except where–

- (a) the Governor or an officer has cause to believe that it contains a prohibited article; and
- (b) the prisoner concerned is present.

(4) Where a letter or postal packet to which this Rule applies is found to contain any prohibited article the Governor may confiscate that article.

(5) For the purposes of this Rule, “court” includes the European Court of Justice, the European Court of Human Rights and the European Commission of Human Rights.

**74B.**—(1) This Rule applies only to letters and postal packets which a prisoner sends to, or receives from, his legal adviser.

(2) Any letter or postal packet to which this Rule applies shall not–

- (a) except where paragraph (3) applies, be opened; or
- (b) except where paragraph (4) applies, be read,

by the Governor or an officer.

(2) Any letter or postal packet to which this Rule applies shall not be opened except where–

- (a) the Governor or an officer has cause to believe that it contains a prohibited article; and
- (b) the prisoner concerned is present.

(4) A letter to which this Rule applies shall not be read by the Governor or an officer except in exceptional circumstances where the Governor has reasonable cause to believe

that the contents of the letter endanger the security of the prison or the safety of any person, or relate to a criminal activity.

(5) Where the Governor is of the opinion that any letter to which this Rule applies may be read in terms of paragraph (4)–

- (a) the prisoner shall be informed that the letter shall be read; and
- (b) the letter shall be read by the Governor or an officer specially authorised by him for that purpose.

(6) Where a letter or postal packet to which this Rule applies is found to contain any prohibited article the Governor may confiscate that article.”.

### **Insertion of new Rule 126A into the principal Rules**

9. After Rule 126 of the principal Rules there shall be inserted the following Rule:–

“**126A.**—(1) Subject to paragraph (2), where a breach of discipline is committed by a person remanded in custody, additional days may be awarded under Rule 43(2)(aa) notwithstanding that the prisoner has not (or had not at the time of the breach being committed) been sentenced.

(2) An award of additional days in the case of a person mentioned in paragraph (1) shall have effect only if he subsequently becomes a short-term or long-term prisoner whose sentence commences, by virtue of section 218(1) or 431(1) of the Criminal Procedure (Scotland) Act 1975(5), on a date earlier than the date on which the sentence is passed.”.

### **Amendment of Rule 144 of the principal Rules**

10. In rule 144(3) of the principal Rules(6) there shall be inserted at the end the following words:–  
“if their sentence or detention was imposed before 1st October 1993”.

### **Revocations**

11. Rules 45, 124(2) and (3), 132(2) and 193 of the principal Rules are hereby revoked.

St Andrew’s House,  
Edinburgh  
9th September 1993

*Fraser of Carmyllie*  
Minister of State, Scottish Office

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(5) 1975 c. 21; sections 218 and 431 were amended by the Criminal Justice (Scotland) Act 1980 (c. 62), Schedule 7, paragraphs 40 and 70 and Schedule 8 and by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9.), section 41.  
(6) Rule 144(3) was substituted by S.I. 1966/1552 and amended by S.I. 1981/1222.

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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules make various amendments to the Prison (Scotland) Rules 1952.

Provision is made for awards of additional days which replaces forfeiture of remission as a punishment available to the Governor of a prison in respect of a short-term or long-term prisoner, or a prisoner on remand who subsequently becomes such a prisoner, who is guilty of an offence against discipline. Short-term and long-term prisoners have the same meaning as in Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993.

The existing Rule 37 relating to remission is saved for existing prisoners, that is, prisoners who are already serving a sentence of imprisonment on 1st October 1993, because Part I of the 1993 Act does not apply to such prisoners.

The disciplinary offences in Rule 42 are amended to delete the offence of mutiny or incitement of other prisoners to mutiny.

These Rules are also amended to include new provisions relating to correspondence between a prisoner and his legal adviser or any court. “Court” is deemed to include the European Court of Justice, the European Court of Human Rights and the European Commission of Human Rights. All such correspondence may only be opened where there is cause to believe that it contains a prohibited article. Correspondence with a legal adviser may only be read in exceptional circumstances. Correspondence between a prisoner and a court may not be read even if it has been opened because there is cause to believe it may contain a prohibited article.

The Rules also revoke certain provisions in consequence of the main amendments. The provisions relating to disciplinary functions of visiting committees are also revoked.