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STATUTORY INSTRUMENTS

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**1999 No. 374 (S. 21)**

**PRISONS  
YOUNG OFFENDERS  
INSTITUTIONS, SCOTLAND**

The Prisons and Young Offenders Institutions  
(Scotland) Amendment Rules 1999

*Made* - - - - 13th February 1999  
*Laid before Parliament* 19th February 1999  
*Coming into force* - - 15th March 1999

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 Prisons and Young Offenders Institutions (Scotland) Amendment Rules 1999.

(2) These Rules shall come into force on 15th March 1999.

(3) In these Rules, a reference to “the principal Rules” is a reference to the Prisons and Young Offenders Institutions (Scotland) Rules 1994(2).

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- (1) 1989 c. 45; section 39 was amended by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9) (“the 1993 Act”), sections 24 and 25, Schedule 5, paragraph 6(6) and Schedule 7, by the Criminal Justice and Public Order Act 1994 (c. 33) (“the 1994 Act”), sections 116(4) and 130(4) and by the Crime and Disorder Act 1998 (c. 37), Schedule 8, paragraph 71; section 39 is to be read with sections 3A(5), (6) and (7) (which was inserted by the Crime and Punishment (Scotland) Act 1997 (c. 48) (“the 1997 Act”)), section 43(2), 8(1) and (2), 11(1), 12 (as amended by the 1993 Act, Schedule 5, paragraph 6(2)), 14(1) (as amended by the 1993 Act, Schedule 5, paragraph 6(3)), 19(3) and (4) (as amended by the 1993 Act, Schedule 5, paragraph 6(4)), 24 (which was repealed by the 1993 Act, Schedule 7 but was saved by Schedule 6 to that Act in relation to any “existing prisoner” within the meaning specified in paragraph 1 of Schedule 6), 33A (which was inserted by the 1994 Act, section 116(3)), 41(2B) (which was inserted by the 1994 Act, section 153(3)), 41B(1) (which was inserted by the 1994 Act, section 151(2)) and 41C(1) (which was inserted by the 1997 Act, section 42) of the 1989 Act; section 39 is also to be read with sections 107(4), 110(7) and 114(3) of the 1994 Act; section 39 was extended by the Courts-Martial (Appeals) Act 1968 (c. 20), section 52 (as amended by the 1989 Act, Schedule 2, paragraph 10).
- (2) S.I. 1994/1931, amended by S.I. 1996/32, 1997/2007, 1998/1589 and 1998/2504.

## **Substitution of rule 2 of the principal Rules**

2. For rule 2 of the principal Rules (application to young offenders institutions and young offenders)(3) there are substituted the following rules:—

### **“Application of Rules**

2.—(1) Subject to the following provisions of this rule, these Rules apply to prisons and young offenders institutions and to any person who is required to be detained in any such prison or institution.

(2) Subject to any exception or modification specified in any provision of these Rules or where the context otherwise requires, any reference in these Rules to a prison shall be construed as including a young offenders institution.

(3) Subject to any exception or modification specified in any provision of these Rules or where the context otherwise requires, these Rules apply to persons on whom detention in a young offenders institution has been imposed under section 207(2) or 415(2) of the Criminal Procedure (Scotland) Act 1975(4) or 207(2) of the Criminal Procedure (Scotland) Act 1995(5) as they apply to prisoners who are serving sentences of imprisonment; and any reference in these Rules to a prisoner, imprisonment or a sentence of imprisonment shall respectively be construed as including a young offender, detention or a sentence of detention in a young offenders institution.

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

- (a) any person under 16 years of age who has been committed to a prison under section 51 of the Criminal Procedure (Scotland) Act 1995;
- (b) a person sentenced under section 205 of the Criminal Procedure (Scotland) Act 1975(6) or section 205 of the said Act of 1995 to be detained without limit of time or for life and who is directed or sentenced to be detained in a prison or a young offenders institution; and
- (c) a person sentenced to be detained under section 206 of the said Act of 1975 or section 208 of the said Act of 1995 and who is directed to be detained in a prison or a young offenders institution,

as they apply to prisoners who are serving sentences of imprisonment; and any reference in these Rules to a prisoner, imprisonment or a sentence of imprisonment shall respectively be construed as including any such person, detention or a sentence of detention under any of those provisions.

(5) Subject to any exception or modification specified in any provision of these Rules or where the context otherwise requires, these Rules apply to any other person on whom imprisonment, or as the case may be detention in a young offenders institution, has been imposed or who is committed to prison, including persons who are imprisoned or detained—

- (a) under section 219 of the Criminal Procedure (Scotland) Act 1995 (imprisonment for non-payment of fine) or, by virtue of that section, under section 207 of that Act (detention of young offenders);
- (b) for examination or trial on any criminal charge;
- (c) by virtue of remand in custody under the Extradition Act 1989(7);

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(3) Rule 2 was amended by S.I. 1998/1589, rule 2(2).

(4) 1975 c. 21; sections 207 and 415 were substituted by the Criminal Justice (Scotland) Act 1980 (c. 62), section 45.

(5) 1995 c. 46.

(6) Section 205 was substituted by the Criminal Justice (Scotland) Act 1980 (c. 62), section 43.

(7) 1989 c. 33.

- (d) by virtue of detention under Schedule 2 or 3 to the Immigration Act 1971<sup>(8)</sup>;
- (e) by virtue of non-compliance with an order under section 45 of the Court of Session Act 1988<sup>(9)</sup>;
- (f) under section 4 or 6 of the Civil Imprisonment (Scotland) Act 1882<sup>(10)</sup>;
- (g) by virtue of a warrant granted under section 1(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940<sup>(11)</sup>;
- (h) for contempt of court or for non-payment of a fine for contempt of court;
- (i) for breach of interdict; and
- (j) by virtue of, or by virtue of any rules or regulations made under, the Army Act 1955<sup>(12)</sup>, the Air Force Act 1955<sup>(13)</sup>, the Naval Discipline Act 1957<sup>(14)</sup> or the Courts-Martial (Appeals) Act 1968<sup>(15)</sup>,

as they apply to persons serving sentences of imprisonment; and any reference in these Rules to a prisoner, imprisonment or a sentence of imprisonment shall therefore respectively be construed as including any such person, any such imprisonment or detention or any such period of imprisonment or detention imposed on such a person.

(6) Any reference in the foregoing provisions of this rule to a person sentenced to imprisonment or other detention includes a person who is detained in a prison or young offenders institution and is—

- (a) by virtue of section 26 of the Criminal Justice Act 1961<sup>(16)</sup>, Schedule 1 to the Crime (Sentences) Act 1997<sup>(17)</sup> or the Transfer of Prisoners (Restricted Transfers) (Channel Islands and Isle of Man) Order 1998<sup>(18)</sup>, treated for any purpose as if his sentence had been an equivalent sentence passed by a court in Scotland; or
- (b) serving a sentence of imprisonment or detention by virtue of a warrant authorising his detention which has been issued under the Repatriation of Prisoners Act 1984<sup>(19)</sup>.

### **Application of Rules to contracted out prisons**

**2A.—**(1) Subject to the following paragraphs of this rule, these Rules apply to a contracted out prison.

(2) Where the Secretary of State has entered into a contract for the running of a contracted out prison, these Rules shall have effect in relation to the prison, with the following modifications:—

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<sup>(8)</sup> 1971 c. 77; Schedule 2 was modified by the Criminal Justice (International Co-operation) Act 1990 (c. 5) section 6(6)(b).  
<sup>(9)</sup> 1988 c. 36.  
<sup>(10)</sup> 1882 c. 42; sections 4 and 6 were amended by the Sheriff Courts (Scotland) Act 1971 (c. 58), section 4.  
<sup>(11)</sup> 1940 c. 42.  
<sup>(12)</sup> 1955 c. 18.  
<sup>(13)</sup> 1955 c. 19.  
<sup>(14)</sup> 1957 c. 53.  
<sup>(15)</sup> 1968 c. 20.  
<sup>(16)</sup> 1961 c. 39; section 26 was repealed by the Crime (Sentences) Act 1997 (c. 43), Schedule 6 but, by virtue of article 5(6) of the Crime (Sentences) Act 1997 (Commencement No.2 and Transitional Provisions) Order 1997 (S.I. 1997/2200), that repeal does not apply in respect of any person who on 1st October 1997 was in Scotland by virtue of an order made under section 26 of the 1961 Act, for so long as that order has effect under Part III of that Act.  
<sup>(17)</sup> 1997 c. 43.  
<sup>(18)</sup> S.I. 1998/2798.  
<sup>(19)</sup> 1984 c. 47.

- (a) references to “an officer” in these Rules shall include references to a prisoner custody officer certified as such under section 114(1) of the 1994 Act and performing custodial duties at that or any other prison;
- (b) references to “an employee” in these Rules shall include references to an employee of the contractor or any sub-contractor;
- (c) subject to sub-paragraphs (d) and (h), references to a “Governor” in these Rules shall include references to a director approved by the Secretary of State for the purpose of section 107(1) of the 1994 Act except in rules 15(2), 29, 80, 83, 84, 85, 112, 112A and in any rule in Parts 10 and 14 where references to a “Governor” shall be construed as references to a controller appointed by the Secretary of State under section 107(1) of the 1994 Act;
- (d) where a director exercises the powers set out in section 107(3)(c) of the 1994 Act (removal of a prisoner from association with other prisoners, the temporary confinement of a prisoner in a special cell or the application to a prisoner of any other special control or restraint in cases of urgency) he shall notify the controller of the fact forthwith;
- (e) “Governor-in-Charge” in these Rules means the director except where the function has been conferred on the controller in terms of sub-paragraph (c) and in such cases references to the “Governor-in-Charge” mean the controller;
- (f) rules 86A(8), 111 and paragraphs (b) and (c) of rule 129 shall not apply;
- (g) references to an officer in rule 95(2) shall be construed as references to the controller;
- (h) in rule 108 where a prisoner desires to make a complaint concerning a matter referred to in rule 108(1) in relation to the controller, references to “the Governor” in paragraphs (2) to (4) shall be construed as references to “the Secretary of State”; and
- (i) the reference to “the Governor” in paragraph (b) of rule 127 shall include reference to the director and the controller.

### **Suspension of certificate of a prisoner custody officer**

**2B.** The prescribed circumstances for the purposes of paragraph 3(2)(b) of Schedule 6 to the 1994 Act (suspension of certificate) are—

- (a) where—
  - (i) an allegation has been made against a prisoner custody officer acting in pursuance of prisoner escort arrangements or performing custodial duties at a prison; or
  - (ii) the officer has been charged with a criminal offence or disciplinary action is being taken against him by the contractor; or
  - (iii) it appears to the prisoner escort monitor or (as the case may be) controller that the officer is, by reason of physical or mental illness, or for any other reason, incapable of satisfactorily carrying out his duties; and
- (b) where the prisoner escort monitor or (as the case may be) controller considers that the suspension of the certificate would be conducive to the maintenance of order or discipline in the prison or (as the case may be) the performance of the functions set out in section 102(2) of the 1994 Act (arrangements for the provision of prisoner escorts).”.

### **Amendment of rule 3 of the principal Rules**

3.—(1) Rule 3 of the principal Rules (interpretation)(20) is amended in accordance with the following paragraphs of this rule.

(2) After the definition of “the 1993 Act”, there is inserted the following definition:–

““the 1994 Act” means the Criminal Justice and Public Order Act 1994(21);”.

(3) After the definition of “constable”, there are inserted the following definitions:–

““contracted out prison” means a prison or part of a prison for the running of which a contract under section 106 of the 1994 Act 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;”.

(4) At the end of the definition of “Governor-in-Charge” there is inserted–  
“or in the case of legalised police cells the constable who is in charge of the cells”.

(5) For the definition of “officer” there is substituted the following definition:–

““officer” means–

(a) an officer of the prison appointed by the Secretary of State and includes the Governor and for the purposes of rule 90 includes a prisoner custody officer who is authorised to perform escort functions in accordance with section 114 of the 1994 Act; or

(b) in the case of a legalised police cell any constable”.

(6) After the definition of “photograph”, there is inserted the following definition:–

““Principal Reporter” means the Principal Reporter appointed under section 127 of the Local Government etc. (Scotland) Act 1994(22) or any officer of the Scottish Children’s Reporter Administration to whom there is delegated, under section 131(1) of that Act, any function of the Principal Reporter under the Children (Scotland) Act 1995(23);”.

(7) In the definition of “prohibited article”–

(a) for the words “the Prevention of Crime Act 1953” there are substituted the words “section 47(4) of the Criminal Law (Consolidation) (Scotland) Act 1995(24)”; and

(b) for the words “1 of the Carrying of Knives etc. (Scotland) Act 1993” there are substituted the words “49 of the Criminal Law (Consolidation) (Scotland) Act 1995”.

(8) The definition of “training for freedom hostel” is omitted.

### **Amendment of rule 7 of the principal Rules**

4.—(1) Rule 7 of the principal Rules (procedure on reception of prisoners) is amended in accordance with the following paragraphs of this rule.

(2) In paragraph (3)(b), for the words “the medical officer”, there are substituted the words “a medical officer”.

(3) In paragraph (5), after the word “or”, there is inserted the word “a”.

### **Amendment of rule 9 of the principal Rules**

5.—(1) Rule 9 of the principal Rules (information to be given to prisoners on reception) is amended in accordance with paragraph (2) of this rule.

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(20) Rule 3 was amended by S.I. 1996/32, rule 2 and S.I. 1998/1589, rule 3.

(21) 1994 c. 33.

(22) 1994 c. 39.

(23) 1995 c. 36.

(24) 1995 c. 39.

(2) For paragraph (6)(e)(i), there is substituted the following:–

“(i) section 106 or 175 of the Criminal Procedure (Scotland) Act 1995<sup>(25)</sup> or, as the case may be, section 19 of the Prisoners and Criminal Proceedings (Scotland) Act 1993<sup>(26)</sup>; or”.

#### **Amendment of rule 14C of the principal Rules**

6.—(1) Rule 14C of the principal Rules (information regarding assignment of a security category)<sup>(27)</sup> is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (2)(b)(ii), the word “of” where it occurs for the third time is omitted.

#### **Amendment of rule 14D of the principal Rules**

7.—(1) Rule 14D of the principal Rules (assignment of security category A)<sup>(28)</sup> is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (4)(b)(ii), the word “of” where it occurs for the third time is omitted.

#### **Amendment of rule 15 of the principal Rules**

8.—(1) Rule 15 of the principal Rules (accommodation of prisoners in cells and rooms) is amended in accordance with the following paragraphs of this rule.

(2) In paragraph (2) for sub-paragraph (b) there is substituted the following sub-paragraph:–

“(b) either the Governor, or a medical officer with the consent of the Governor, instructs this.”.

(3) In paragraph (3) for the words “the medical officer”, there are substituted the words “, or a medical officer on medical grounds,”.

#### **Amendment of rule 16 of the principal Rules**

9.—(1) Rule 16 of the principal Rules (standard of accommodation) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (3)(a), for the words “the medical officer”, there are substituted the words “a medical officer”.

#### **Amendment of rule 17 of the principal Rules**

10.—(1) Rule 17 of the principal Rules (provision of bedding) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (1) for the words “The Secretary of State”, there are substituted the words “The Governor”.

#### **Amendment of rule 18 of the principal Rules**

11.—(1) Rule 18 of the principal Rules (entitlement of a prisoner to wear his own clothing) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (2)(b), for the words “the medical officer”, there are substituted the words “a medical officer”.

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<sup>(25)</sup> 1995 c. 46.

<sup>(26)</sup> 1993 c. 9.

<sup>(27)</sup> Rule 14C was inserted by S.I. 1998/1589, rule 7.

<sup>(28)</sup> Rule 14D was inserted by S.I. 1998/1589, rule 7.

#### **Amendment of rule 19 of the principal Rules**

12.—(1) Rule 19 of the principal Rules (provision of clothing to prisoners) is amended in accordance with the following paragraphs of this rule.

(2) In paragraph (1) for the words “The Secretary of State”, there are substituted the words “The Governor”.

(3) In paragraph (4), for the words “the medical officer”, there are substituted the words “a medical officer”.

#### **Amendment of rule 21 of the principal Rules**

13.—(1) Rule 21 of the principal Rules (prisoners' food)(29) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (5), for the words “the medical officer”, there are substituted the words “a medical officer”.

#### **Amendment of rule 31 of the principal Rules**

14.—(1) Rule 31 of the principal Rules (transfer to hospital for treatment for mental disorder)(30) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (3), for the words “the medical officer”, there are substituted the words “a medical officer”.

#### **Amendment of rule 49 of the principal Rules**

15.—(1) Rule 49 of the principal Rules (opening and reading of correspondence from and to courts) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (7), for the word “and”, there are substituted the words “, the Principal Reporter and”.

#### **Amendment of rule 55 of the principal Rules**

16.—(1) Rule 55 of the principal Rules (visits by persons of a prisoner’s choice)(31) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (8) for the word “62D” there is substituted the word “62E”.

#### **Amendment of rule 56 of the principal Rules**

17.—(1) Rule 56 of the principal Rules (visits to untried and civil prisoners by persons of a prisoner’s choice) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (6), for the word “62D”, there is substituted the word “62E”.

#### **Amendment of rule 61 of the principal Rules**

18.—(1) Rule 61 of the principal Rules (visits by representatives of diplomatic services and national or international authorities or organisations) is amended in accordance with paragraph (2) of this rule.

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(29) Rule 21 was amended by S.I. 1996/32, rule 5 and by 1998/1589, rule 9(2).

(30) Rule 31 was amended by S.I. 1998/1589, rule 18(2).

(31) Rule 55(8) was amended by S.I. 1998/1589, rule 24(5).

(2) In paragraph (3), for the words “Scottish Council for Civil Liberties”, there are substituted the words “Scottish Human Rights Centre”.

#### **Amendment of rule 62 of the principal Rules**

**19.**—(1) Rule 62 of the principal Rules (special visits to certain prisoners in connection with further proceedings) is amended in accordance with the following paragraphs of this rule.

(2) In paragraph (1)(e)(ii), for the words “section 228A or 442(1)(c) of the Criminal Procedure (Scotland) Act 1975”, there are substituted the words “section 108 or 175(3) of the Criminal Procedure (Scotland) Act 1995”.

(3) In paragraph (2), after the words “practitioner or” there are inserted the words “, where the Governor considers it is in the interests of justice,”.

(4) In paragraph (2)(a), for the words “section 1(3) of the Bail etc. (Scotland) Act 1980”, there are substituted the words “section 24(6) of the Criminal Procedure (Scotland) Act 1995”.

#### **Insertion of new rule 62E into the principal Rules**

**20.** After rule 62D of the principal Rules (visits by members of the Parole Board for Scotland)(**32**) there is inserted the following rule:—

##### **“Visits by persons in connection with disciplinary proceedings**

**62E.**—(1) This rule applies to visits to a prisoner who has been charged with a breach of discipline by a person where—

- (a) the prisoner wishes to call, or consider calling, that person as a witness at the inquiry into the charge; and
- (b) the Governor holding that inquiry has agreed that the prisoner should have the opportunity to discuss with that person whether he could give evidence which would be relevant to the defence to the charge.

(2) A prisoner to whom this rule applies shall be allowed to receive a visit at any reasonable time from that person for the purpose of discussing whether that person could give evidence which would be relevant to the defence to the charge.

(3) The number of persons who shall be allowed to visit a prisoner at any time shall be at the discretion of the Governor.

(4) Where a prisoner receives a visit in terms of this rule, it shall take place under such conditions as the Governor may specify except that—

- (a) such a visit shall take place within the sight of an officer; but
- (b) no officer shall listen to any conversation between the prisoner and his visitor except where the Governor otherwise directs.”.

#### **Amendment of rule 64 of the principal Rules**

**21.**—(1) Rule 64 of the principal Rules (closed visiting facilities) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (2)(c), for the words “rule 63(1)(b)”, there are substituted the words “rule 63(1)”.

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(32) Rule 62D was inserted by [S.I. 1998/1589](#), rule 28.

### **Amendment of rule 73 of the principal Rules**

**22.**—(1) Rule 73 of the principal Rules (counselling) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph 1 after the word “counselling” there are inserted the words “(including group work activity)”.

### **Amendment of rule 75 of the principal Rules**

**23.**—(1) Rule 75 of the principal Rules (exercise and time in the open air)(**33**) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (5), for the words “paragraph (1)”, there are substituted the words “paragraph (3)”.

### **Amendment of rule 86 of the principal Rules**

**24.**—(1) Rule 86 of the principal Rules (admission and searching of visitors) is amended in accordance with paragraph (2) of this rule.

(2) For paragraph (4), there is substituted the following paragraph:—

“(4) Without prejudice to the powers conferred by section 41 of the Act, an officer may refuse to admit a visitor and may remove the visitor from the prison where—

- (a) that visitor refuses to comply with a request made in terms of paragraph (1);
- (b) that visitor refuses to give consent for the purposes of rule 86A(1) or (3) or, having given consent, is obstructive in the course of the relevant search; or
- (c) the officer has reasonable grounds for suspecting that the visitor has in his possession or concealed about his person any article which the Governor has not authorised him to convey into the prison or any article which may be prejudicial to security, good order or discipline.”.

### **Amendment of rule 86A of the principal Rules**

**25.**—(1) Rule 86A of the principal Rules (searching of visitors)(**34**) is amended in accordance with the following paragraphs of this rule.

(2) In paragraph (1), for the words “the visitor” where they occur for the first time, there are substituted the words “a visitor”.

(3) For paragraph (8), there is substituted the following paragraph:—

“(8) Where a visitor is searched by an officer under section 41(2A) of the Act—

- (a) the officer carrying out the search shall be of the same sex as the visitor;
- (b) subject to sub-paragraph (d), the search shall be undertaken outwith the sight of any prisoner, any other visitor or officers who are not of the same sex as the visitor;
- (c) the search shall be carried out as expeditiously and decently as possible; and
- (d) where the visitor is under 16 years of age, the search shall be carried out in the presence of an accompanying adult.”.

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(33) Rule 75 was substituted by S.I. 1996/32, rule 14 and amended by S.I. 1998/1589, rule 31.

(34) Rule 86A was inserted by S.I. 1998/1589, rule 38.

### **Amendment of rule 86B of the principal Rules**

26.—(1) Rule 86B of the principal Rules (removal of visitors)(35) is amended in accordance with the following paragraphs of this rule.

(2) In paragraph (1), for the words “the visitor” where they occur for the first time, there are substituted the words “a visitor”.

(3) In paragraph (1)(b), for the words “to the”, there is substituted the word “to”.

(4) In paragraph (2), after the word “visit”, there are inserted the words “in terms”.

### **Insertion of new rule 86C into the principal Rules**

27. After rule 86B of the principal Rules (removal of visitors) there is inserted the following rule:—

#### **“Searching of persons providing contracted out services**

**86C.**—(1) Without prejudice to any power of search referred to in the Act, the Governor may order the carrying out of a search—

- (a) of a person providing contracted out services to the prison;
- (b) of any article of property belonging to that person which is in his possession whilst he is in the prison, or which is kept by him in his locker or any other place within the prison; and
- (c) where that person is in charge of any vehicle which he intends to take into any area forming part of the premises of the prison, that vehicle.

(2) A search under paragraph (1) of any vehicle, clothing or other article of property belonging to that person which is being worn, or as the case may be, is otherwise in his possession whilst he is in prison, or which is kept by him in his locker or any other place within the prison, may, in addition to being carried out by hand, but subject to paragraphs (3) and (4), be carried out—

- (a) by the use of equipment involving—
  - (i) the application of a suction device or a swab on or to such possessions in order to collect particles from their surface; and
  - (ii) the analysis of such particles for the purpose of ascertaining whether any consists of a controlled drug or an explosive substance;
- (b) by the use of equipment designed to detect the existence of metal objects; and
- (c) in accordance with any such procedures and conditions as may be specified in a direction by the Secretary of State.

(3) The power of search conferred by paragraph (1) shall—

- (a) not be construed as authorising the Governor to require that person to remove any of his clothing other than an outer coat, jacket, headgear, footwear and gloves; and
- (b) include power to use reasonable force where necessary.

(4) A search of a person providing contracted out services shall be carried out within the prison—

- (a) by at least 2 officers who shall be of the same sex as the person being searched;
- (b) outwith the sight of any other person; and

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(35) Rule 86B was inserted by [S.I. 1998/1589](#), rule 38.

(c) as expeditiously and decently as possible.”.

#### **Amendment of rule 110 of the principal Rules**

**28.**—(1) Rule 110 of the principal Rules (requests, complaints and representations to the Secretary of State in relation to certain matters)(**36**) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (2)(b), for the words “section 26 or 27 of the Criminal Justice Act 1961”, there are substituted the words “Schedule 1 to the Crime (Sentences) Act 1997”.

#### **Amendment of rule 115 of the principal Rules**

**29.**—(1) Rule 115 of the principal Rules (pregnancy and confinement)(**37**) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (1), for the words “The medical officer”, there are substituted the words “A medical officer”.

#### **Amendment of rule 122 of the principal Rules**

**30.**—(1) Rule 122 of the principal Rules (pre-parole/pre-life licence leave) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (3)(d)(v), for the word “discretionary”, there is substituted the word “designated”.

#### **Amendment of rule 124 of the principal Rules**

**31.**—(1) Rule 124 of the principal Rules (circumstances where prisoners are disqualified from consideration for temporary release)(**38**) is amended in accordance with paragraph (2) of this rule.

(2) For the words “the medical officer” in each place where they occur there are substituted the words “a medical officer”.

#### **Amendment of rule 130 of the principal Rules**

**32.**—(1) Rule 130 of the principal Rules (searches of officers and employees)(**39**) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (1), for the words “the officer” where they occur in sub-paragraphs (a) and (b), there are substituted the words “any officer”.

#### **Amendment of Schedule 3 to the principal Rules**

**33.**—(1) Schedule 3 to the principal Rules (breaches of discipline)(**40**) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (t) after the words “any rule” there are inserted the words “, direction”.

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(36) Rule 110 was amended by [S.I. 1996/32](#), rule 35.

(37) Rule 115 was amended by [S.I. 1998/1589](#), rule 46.

(38) Rule 124 was amended by [S.I. 1996/32](#), rule 45.

(39) Rule 130 was amended by [S.I. 1996/32](#), rule 47 and by [S.I. 1998/1589](#), rule 51.

(40) Schedule 3 was substituted by [S.I. 1996/32](#), rule 54 and Schedule 1 and was amended by [S.I. 1998/1584](#), rule 58(2) and 58(3).

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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#### **Amendment of Schedule 4 to the principal Rules**

**34.**—(1) Schedule 4 to the principal Rules (constitution of visiting committees)(**41**) is amended in accordance with the following paragraphs of this rule.

(2) For the entry in relation to Low Moss, for the words “City of Glasgow”, there are substituted the words “Glasgow City”.

(3) After the entry in relation to Inverness, there is inserted the following entry:—

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“KILMARNOCK	East Ayrshire Council	4	2
	South Ayrshire Council	4	2
	North Ayrshire Council	4	2
	East Renfrewshire Council	2	1
	South Lanarkshire Council	1	—”.

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#### **Amendment of Schedule 4A to the principal Rules**

**35.**—(1) Schedule 4A to the principal Rules (constitution of visiting committees for legalised police cells)(**42**) is amended in accordance with paragraph (2) of this rule.

(2) For the entry in relation to Campbeltown, for the word “council”, there is substituted the word “Council”.

#### **Revocation**

**36.** Rule 31(5) of the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 1998(**43**) is hereby revoked.

St Andrew’s House,Edinburgh  
13th February 1999

*Henry McLeish*  
Minister of State, Scottish Office

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(41) Schedule 4 was substituted by [S.I. 1996/32](#), rule 55 and Schedule 2 and was amended by [S.I. 1998/1589](#), rule 59.

(42) Schedule 4A was inserted by [S.I. 1996/32](#), rule 56 and Schedule 3 and was amended by [S.I. 1998/1589](#), rule 60.

(43) [S.I. 1998/1589](#).

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## EXPLANATORY NOTE

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

These Rules further amend the Prisons and Young Offenders Institutions (Scotland) Rules 1994 (“the principal Rules”).

In addition to minor and drafting amendments the Rules make the following substantive changes.

For clarification, revised provision is made with respect to the application of the principal Rules to make express provision in relation to categories of persons to whom the principal Rules apply other than those sentenced to imprisonment for a criminal offence or serving sentences of detention in a young offenders institution (rule 2).

New provision is made to apply the principal Rules, with modifications, to contracted out prisons. Sections 106 to 111 and 114, 115 and 117 of the Criminal Justice and Public Order Act 1994 (“the 1994 Act”) make provision in respect of contracted out prisons. The Secretary of State can enter into a contract under section 106(1) of the 1994 Act and a contracted out prison is a prison or part of a prison for the running of which such a contract is in force. By virtue of section 106(2) the principal Rules apply to a contracted out prison. Section 107 of the 1994 Act provides that a contracted out prison will have a director and a controller instead of a governor. The director is a prisoner custody officer appointed by the contractor and approved by the Secretary of State. The controller is a Crown Servant appointed by the Secretary of State.

By virtue of section 107 of the 1994 Act the director has the same functions as the governor under the principal Rules subject to the following exceptions. The director shall not have any function conferred on the controller by prison rules. In particular he shall not inquire into a discipline charge and, except in a case of urgency, shall not remove a prisoner from association or order a prisoner to be confined, restrained or subjected to special control. The main purpose of the modifications to the principal Rules is to split the functions of the governor between the director and controller in accordance with the provisions of the 1994 Act.

Other modifications are made to the principal Rules so as to ensure their proper application in respect of contracted out prisons. Modifications are made to the definitions of “officer” and “employee” in relation to contracted out prisons. Rules 86A(8), 111, 129(b) and (c) are disapplied in relation to contracted out prisons. Rule 86A(8) refers to the search of a visitor under section 41(2A) of the 1989 Act. This section of the 1989 Act does not apply to a contracted out prison. Rule 111 relates to appeals in disciplinary proceedings where an officer, other than the Governor, adjudicates a charge of breach of discipline. In contracted out prisons, rule 111 is not relevant because the controller will adjudicate all charges. Rule 129(b) and (c) provides that no officer or employee shall have any interest in a contract or receive any consideration from a contractor. These provisions are not appropriate in relation to a contracted out prison. Rule 95(2) is modified to provide that the controller can remove a prisoner from association where he has reasonable grounds for suspecting that a prisoner has committed a breach of discipline. Rule 108 is modified to provide that where a prisoner wishes to make a complaint concerning a confidential matter in relation to the controller that complaint shall be dealt with by the Secretary of State. Rule 127(b) is modified so as to place a duty on officers and employees to obey any lawful instruction of the controller in addition to the director and Secretary of State (rule 2A).

New provision is made for the circumstances in which a prison custody officers certificate may be suspended by the controller or prison escort monitor, in terms of paragraph 3(2)(b) of Schedule 6 to the 1994. New rule 2B prescribes those circumstances.

An amendment is made to rule 49 of the principal Rules (opening and reading correspondence from and to courts) to include for the purposes of this rule correspondence to the Principal Reporter (rule 15).

An amendment is made to rule 62 of the principal Rules (special visits to certain prisoners) to allow such visits only where the Governor considers they are in the interest of justice (rule 19).

New provision is made, by inserting new rule 62E, with regard to visits to prisoners by potential witnesses in disciplinary proceedings (rule 20).

Minor amendment is made to rule 73 of the principal Rules (counselling) to include group work activity (rule 22).

Revised provision is made to rule 86 of the principal Rules (admitting and searching of visitors) in relation to the basis on which an officer may refuse a visitor admission and remove that visitor from prison (rule 24).

The provisions of rule 86A of the principal Rules (searching of visitors) are revised in relation to a visitor aged under 16 to allow an accompanying adult to be present where a search is carried out under section 41(2A) of the Prisons (Scotland) Act 1989 (rule 25).

New provision is made in relation to the searching of persons providing contracted out services (rule 27).

An amendment is made to Schedule 3 of the principal Rules (breaches of discipline) making it a breach of discipline to disobey or fail to comply with any direction (rule 33).

An amendment is made to Schedule 4 of the principal Rules (constitution of visiting committees) to include Kilmarnock (rule 34).