

## **EXPLANATORY MEMORANDUM TO**

### **The Attorney General's Human Rights Guidance (Northern Ireland Prison Service – Conditions of Imprisonment) Order (Northern Ireland) 2014**

#### **SR 2014 No. 132**

#### **1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the the Attorney General for Northern Ireland to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under the powers conferred by section 8(3)(c) of the Justice (Northern Ireland) Act 2004 and is subject to the negative resolution procedure.

#### **2. Purpose**

- 2.1. The Statutory Rule brings into operation human rights guidance for the Northern Ireland Prison Service (in relation to conditions of imprisonment) by the Attorney General for Northern Ireland on the exercise of Northern Ireland Prison Service functions in a manner consistent with international human rights standards.

#### **3. Background**

- 3.1. Section 8(1) of the Justice (Northern Ireland) Act 2004 obliges the Attorney General for Northern Ireland to issue guidance for criminal justice organisations on the exercise of their functions in a manner consistent with international human rights standards. This Statutory Rule brings into operation guidance for the Northern Ireland Prison Service in relation to Conditions of Imprisonment, as required by section 8(3)(c) of the 2004 Act.

#### **4. Consultation**

- 4.1. The Attorney General has consulted with the Advocate General pursuant to section 8(1A) and section 8(5A) of the Justice (Northern Ireland) Act 2004.

#### **5. Equality Impact**

- 5.1. The Attorney General for Northern Ireland is not listed as a public authority for the purpose of section 75 of the Northern Act 1998.
- 5.2. The Statutory Rule provides for the coming into force of the guidance under section 8 of the Justice (Northern Ireland) Act 2004. This guidance is based upon international human rights standards and therefore the principles of equality and non-discrimination form a central component of the guidance which the Statutory Rule brings into operation.

#### **6. Regulatory Impact**

- 6.1. A Regulatory Impact Assessment is not required.

## **7. Financial Implications**

7.1. Not applicable.

## **8. Section 24 of the Northern Ireland Act 1998**

8.1. It is the view of the Attorney General that this Statutory Rule is compliant with section 24 of the Northern Ireland Act 1998.

## **9. EU Implications**

9.1. Not applicable.

## **10. Parity or Replicatory Measure**

10.1. The Attorney General is making the Statutory Rule in fulfilment of a legal requirement under section 8 of the Justice (Northern Ireland) Act 2004.

10.2. The Statutory Rule applies to Northern Ireland only. There is no corresponding Great Britain Statutory Instrument.

## **11. Additional Information**

11.1. The text of the guidance is attached to this Explanatory Memorandum at Annex A.

ANNEX A

**HUMAN RIGHTS GUIDANCE FOR THE NORTHERN IRELAND  
PRISON SERVICE IN RELATION TO CONDITIONS OF  
IMPRISONMENT**

**INTRODUCTION**

1. Human rights standards are designed to make life better for individuals and communities and they should not be, and not be viewed as, burdens to competent professionals conscientiously carrying out their duties. When competent professionals are working diligently to the high standards set by their own disciplines they will almost invariably comply with human rights standards. This guidance is designed to assist professionals by offering them a framework within which their own professional standards can safely operate. By following this guidance those to whom it is addressed can be confident that their work is compliant with international human rights standards.
2. This guidance is without prejudice to the requirement on all public authorities to comply with their obligations under section 6 of the Human Rights Act 1998 and with EU law.

**THIS GUIDANCE IS ADDRESSED TO THE NORTHERN IRELAND  
PRISON SERVICE IN RELATION TO CONDITIONS OF  
IMPRISONMENT**

3. This guidance draws on the international human rights standards of most relevance and assistance to the Northern Ireland Prison Service. Guidance under section 8 of the Justice (Northern Ireland) Act 2004 is not designed to be static or unduly rigid. As a matter of domestic law, the Northern Ireland Prison Service must comply with the Prison and Young

Offenders Centre Rules (Northern Ireland) 1995, as amended, 'the Prison Rules'. This guidance either supplements the Prison Rules or constitutes a guide to how the Prison Rules should be applied.

## **INTERNATIONAL STANDARDS**

4. This guidance reflects the international standards from the following instruments:
  - European Convention for the Protection of Human Rights and Fundamental Freedoms;
  - European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
  - Recommendation (2006) 2 of the Committee of Ministers to member states on the European Prison Rules;
  - Recommendation No. R (98) 7 of the Committee of Ministers to member states concerning the ethical and organisational aspects of health care in prison;
  - Recommendation (2006) 13 of the Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse;
  - United Nations Standard Minimum Rules for the Treatment of Prisoners;
  - United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ("The Bangkok Rules");
  - United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules");
  - Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, United Nations General Assembly Resolution 43/173;

- Universal Declaration of Human Rights;
- International Covenant on Civil and Political Rights.

## **HEALTH AND WELL-BEING**

### **Religious Freedom**

*This section of the Guidance supplements Rules 56, 57, 63, and 64.*

5. A prisoner's freedom of thought, conscience, and religion should be respected.
6. A prisoner's freedom to practise his or her religion should be respected to the extent that it does not interfere with the rights and freedoms of other prisoners. Restriction on the religious practices or observances of prisoners should only be applied where necessary to protect the interests of order within the prison, public health, safety, or decency.
7. In order that a prisoner may enjoy freedom to practise his or her religion, accurate records of the religious allegiance of each prisoner should be maintained; no disciplinary action should be taken against a prisoner who does not disclose his or her religious allegiance. A prisoner may require that the record of his or her religious allegiance be changed and the governor shall record such a change unless there are grounds for considering that the asserted change is mischievous and does not reflect a prisoner's actual religious allegiance.
8. Where a prisoner receives a visit from an ordained Minister from his or her denomination, including a prison chaplain, the confidentiality of that visit shall be respected.
9. The right to religious freedom and conscience includes the right to possess religious or spiritual texts. A prisoner's choice and possession of religious or spiritual texts should not be subject to

restrictions save where these are necessary to protect the interests or order within the prison, public health, safety, or decency.

### **Accommodation**

*This section of the Guidance supplements Rules 11, 12, 13, and 14.*

10. Prisoners should be accommodated in conditions with the least restrictive security possible based on an assessment of the risk of their escaping or harming themselves or others.
11. As far as possible, prisoners should be given a choice before being required to share sleeping accommodation. The governor is responsible for ensuring that the accommodation is suitable for sharing purposes, and occupied by prisoners suitable to associate with each other. Any shared accommodation should meet health and hygiene requirements for the number in occupancy, accounting for adequate floor space, ceiling height, light, climatic conditions, proper ventilation and flow of fresh air. There should be regular supervision throughout the night of any shared accommodation due to the heightened potential for prisoner harm in shared conditions.
12. Maintaining habitable spaces in any part of the prison where prisoners and prison staff live and work is critical to preserving health and dignity.
13. Regular access to natural light is essential even where artificial light is available. Prisoners should be able to read and work under normal conditions by natural and artificial light without strain.
14. Prison cells or other prisoner accommodation to which prisoners are allocated should be clean at the time of reception, and

regularly maintained throughout. Beds and bedding assigned to prisoners should be clean, in good order, and appropriate to climatic conditions.

## **Reception, Transfer and Release**

### **Reception**

*This section of the Guidance supplements Rules 20, 21, 23, and 24.*

15. Prisoners should be offered the opportunity to take a hot bath or shower upon reception, barring obvious or legitimate health concerns that may prevent them from doing so at that time. All prisoners should have ready access to sanitary facilities that are hygienic and respect privacy at all times.
16. In order to aid prison officers in the prisoner evaluation and allocation process, every prisoner should within 24 hours of arrival receive a physical and mental health screening. The results of that screening should be accurately recorded along with any relevant medical information or medical history of the prisoner concerned. All relevant health information collected should be consolidated with the prisoner's health file to ensure it is a complete profile.
17. Specifically, particular attention should be paid to detecting and treating or addressing:
  - Any alcohol or drug-related abuse or dependencies, or withdrawal symptoms resulting from use of drugs, medication or alcohol;
  - Any visible injuries or signs indicating prior ill-treatment, including sexual or violent abuse that may have been suffered prior to admission;

- Any history of mental illness, self-harm and attempts of suicide, and emotional trauma;
  - Diagnosing physical or mental illnesses and taking the appropriate measures necessary to treat them;
  - Any prescribed medication or treatment that prisoner has been receiving and when appropriate, making arrangements for its continuation without delay; and
  - Any contagious or chronic conditions.
18. Any indication of the potential for self-harm or harm to other prisoners should be immediately recorded and reported and positive steps taken to address and monitor the risk.
19. Every prisoner should receive information on rights and obligations, the internal regulation of the prison as well as how and where to get help and advice. The Northern Ireland Prison Service should ensure this information is understood by each prisoner. Prior to or on admission, those prisoners with responsibilities for dependent children should be allowed to make arrangements for those children.
20. Prisoners who are foreign nationals should be informed of their right to request contact and be allowed reasonable facilities to communicate with the diplomatic or consular representative of their state, or the state which takes charge of their interests. Specific information about legal assistance should be provided.

## **Transfer**

*This section of the Guidance supplements Rule 26.*

21. During transfer prisoners should be exposed to public view as little as possible and proper safeguards should be adopted to secure their anonymity.



22. Transfer vehicles should have adequate ventilation and light and should not subject any prisoner to unnecessary hardship or indignity.
23. All transfers to other prisons should be accompanied by complete medical records and notes.

### **Release**

*This section of the Guidance supplements Rule 28.*

24. Where release is pre-arranged the prisoner should be offered a medical examination as close as possible to the time of release.
25. Released prisoners should be provided with immediate means of subsistence, be suitably and adequately clothed for the climate and season and have sufficient means to reach their destination.

### **Work, Education, and Exercise**

*This section of the Guidance supplements Rules 51, 52, 53, 54 and 55.*

#### **Work**

26. The experience of prison work should be positive, and prison work should not be viewed as or used as a form of punishment. There should be equitable remuneration for work. Discrimination on the basis of gender, ethnicity, or religious affiliation for work assignments must not be permitted. To encourage productivity and engagement, prisoners should normally be allowed to choose the type of work or activity in which they wish to participate, within the limits of what is available and having regard to resettlement needs.

27. Prisoners should not have to choose between work and education. Educational programmes should be accessible to prisoners who work, and prison staff should make arrangements to support prisoners with schedules that include both activities.
28. Work of a “useful nature” is generally that which will maintain or develop prisoners’ ability to earn a living after release. Such work often encompasses vocational training, or resembles as closely as possible similar work in the community. Prisoners should be allowed to spend part of their earnings on approved articles, to allocate a part of their earnings to supporting their families, or to save their earnings.

### **Education**

29. Education is essential in supporting successful rehabilitation and in preparing prisoners for reintegration back into the community. Prison staff should encourage prisoner interest and participation in educational programmes and should ensure the appropriate resources are available and made accessible to all prisoners without discrimination on the basis of gender, ethnicity, nationality, or religious affiliation.
30. Prisoners should have regular access to libraries, books, and educational resources without arbitrary restriction by prison staff.
31. Special priority in educational assistance should be given to:
  - young inmates to help minimise the disruption of their education while in detention;
  - prisoners with literacy or numeracy needs; and
  - prisoners who lack basic or vocational education.

32. Young inmates in particular should have their educational programme continue as best and as soon as possible while in custody, and positive efforts should be made to ensure the education provided matches the educational standards in the community as closely as possible.

### **Exercise and Association**

33. Prisoners should have daily opportunities for outdoor exercise and free association outside the prison cells, for at least one hour a day, regardless of weather conditions. Alternative arrangements for exercise and free association outside should be organised in a way that makes it possible even during times of inclement weather.
34. Arrangements should also be made to organise special activities for those prisoners who need them.

## **FAMILY AND PRIVATE LIFE**

*This section of the Guidance supplements Rules 65, 66, 67 and 68.*

### **Communications**

35. Prison staff should assist with the positive maintenance of family relationships between prisoners and their families, and should provide prisoners with the appropriate welfare support to do so.
36. Prisoners and their families should be allowed to communicate with each other as often as possible by letter or telephone correspondence. Regular correspondence and visits should be seen as part of a family member's right to family life, rather than a prisoner's privilege and they should not be revoked as a

form of punishment or used as an incentive. Foreign nationals in particular should be given the support necessary to contact their families abroad on the same basis as other prisoners.

37. Prison staff should, unless the prisoner otherwise requests, always keep a prisoner's family informed of any critical information regarding the prisoner, including the prisoner's admission into prison, death or serious illness or injury, or the urgent transfer of a prisoner to a hospital or another institution, where it is not possible for the prisoner to do so personally.
38. Any information received of the death or serious illness of any near relative of a prisoner should be promptly communicated to the prisoner concerned, and positive assistance should be given to support the prisoner including sympathetic consideration of any request for temporary release. The prisoner should be allowed temporary release in order to visit a sick relative or attend a funeral of a close relative following due consideration and authorisation.

### **Current Affairs**

39. Unless a court imposes a specific prohibition in an individual case, prisoners should be free to keep themselves informed of public affairs by subscribing to and reading newspapers, periodicals and other publications, and by listening to radio or television transmissions. Restrictions on newspapers and periodicals should only be applied when these are necessary to protect the interests of order within the prison or public decency.

### **Personal Letters and Visits**

40. A prisoner should be allowed to send and receive at minimum one letter each week. Restriction on correspondence may be applied where specifically ordered by a judicial authority in an individual case.
41. A prisoner should be allowed as a minimum a one hour visit once each week. The governor may exercise discretion to permit more visits, particularly in the interest of maintaining family ties or fostering positive prisoner rehabilitation and should do so when reasonably necessary for either of these purposes.
42. There should be a preference for open visits unless screened visits are objectively justified.

### **Legal Advisers**

43. All prisoners are entitled to and should be clearly made aware of the availability of legal advice, and reasonable facilities should be available for gaining access to such advice.
44. Foreign nationals in particular should be given access to a legal adviser who is competent in advising on issues such as bail.

### **Legal Correspondence**

45. Prisoners should have access to, or be allowed to keep in their possession, documents relating to their legal proceedings, and should be given the means to do so.
46. With the exception of legally authorised restrictions on solicitor-client privilege in order to prevent serious crime or major breaches of prison safety and security, consultations and other communications including correspondence about legal matters

between prisoners and their legal advisers should remain confidential.

### **Media Communication**

47. Prisoners should be allowed to communicate with the media unless there are compelling reasons to forbid this for the maintenance of safety and security, in the public interest or in order to protect the integrity of victims, other prisoners or staff.

## **PHYSICAL WELFARE**

*This section of the Guidance supplements Rules 81, 82 and 84.*

### **Hygiene**

48. Prisoners should have easy and unrestricted access to toilet facilities at all times, and those without in-cell access to toilet facilities should be released from their cells without undue delay in order to access toilet facilities. The sanitary facilities should respect individual privacy and be kept as hygienic as possible.
49. Facilities should be provided for the proper care of the hair and beard, and men should be allowed to and provided with the means to shave regularly.
50. Prisoners should be allowed to bathe or shower daily if possible.
51. Prisoners should be encouraged and enabled to keep their person, clothing, and sleeping accommodation clean and tidy. Prison staff should ensure that prisoners are provided with the means for doing so, including toiletries and general cleaning implements and materials.

52. Special care and sensitivity should be paid to the sanitary needs of women and those prisoners who undertake personal hygiene in accordance with their religious beliefs. Women in particular should be allowed to wash themselves and their undergarments as often as they need to; and female sanitary material should be provided in conditions which women prisoners would not consider embarrassing.

### **Food and Nutrition**

53. The age, health, physical condition, religion and culture of prisoners should be respected and taken into account for dietary considerations and meal preparation.
54. Prison staff should always ensure that all food and drink provisions are stored properly and the meals hygienically prepared and served at an appropriate temperature.
55. Clean drinking water should be available and easily accessible to prisoners at all times.
56. There should be at least three regular meals a day with reasonable intervals between them, particularly between the last meal of one day and the first meal of the next. Consideration should be given to those who may as a matter of health or physical condition require a higher food intake than other prisoners and efforts should be made to accommodate specific nutritional needs.

### **Clothing**

57. Prison clothing should be kept in good order, clean, appropriate to the climate conditions, and replaced or supplemented when necessary. Prison staff should ensure that any prison clothing

issued is not degrading or humiliating to those in custody and does not immediately identify individuals as prisoners, particularly in circumstances where prisoners are authorised to travel outside prison.

58. If prison dress is assigned to untried prisoners, their clothing should be different from that supplied to convicted prisoners as far as possible.
59. Prisoners should be allowed to change and wash their underclothing as often as necessary for the maintenance of hygiene.

### **General Health**

*This section of the Guidance supplements Rules 80, 87, 88 and 88A.*

60. Full and accurate records relating to a prisoner's physical and mental health should be up to date and easily accessible to the appropriate custodial staff, nurses, doctors, and relevant agencies. Such health records and notes should always be consolidated with a prisoner's overall health file to ensure completeness and to ensure that the full picture of a prisoner's health status is always available and clearly communicated.
61. Health care personnel may operate with complete independence within the bounds of their qualifications and competence. Procedures should ensure that a qualified medical practitioner is available without delay in cases of urgency. If a trained medical officer or nurse is not always available on the premises, there should always be present on the prison premises someone competent in and able to provide first aid in case of emergencies. Clear and accessible guidelines should be readily available for those responding to health emergencies in urgent or potentially fatal cases; active participation and commitment



of custodial staff is essential in supporting the work of health care personnel.

62. Clear and easily comprehensible guidelines and basic health training should be provided to assist custodial staff in recognising physical and particularly mental health problems that may be detected in the prison population. Custodial staff should immediately report any behaviour in a prisoner that may indicate potential self harm.
63. Particular attention should be paid to the needs of prisoners who may have experienced physical, mental or sexual abuse.
64. A prison health care service should be able to provide medical, psychiatric and dental treatment and to implement programmes of hygiene and preventive medicine to the standard expected in the community. Treatment of the withdrawal symptoms of abuse of drugs, alcohol or medication in prison should similarly be conducted to the same standard as in the community.
65. Sick prisoners who require specialist treatment should be transferred to specialised institutions or to hospitals when such treatment is not available in prison.
66. The decision as to when prisoners subject to short term fatal prognosis should be transferred to outside hospital units should be taken on medical grounds. While awaiting such transfer, patients should receive optimum nursing care during the terminal phase of their illness within the prison health care centre and consideration should be given to periodic respite care in an outside hospice. The possibility for early release should also be sympathetically examined.
67. Prisoners who reasonably fear acts of violence including possible sexual offences from other prisoners, or who have

recently been assaulted or injured by other prisoners, should be able to have access to the full protection of the custodial staff.

### **Mental Health**

68. Those suffering from mental illness and whose state of mind is incompatible with detention in a prison should be detained in an establishment specifically designed for that purpose. When such persons are exceptionally held in prison there should be special regulations that take account of their status and needs. Prisoners suffering from serious mental disturbance should be allocated and cared for in a hospital facility that is adequately equipped and possesses specialised trained staff. A psychiatrist should be able to assess a prisoner's need for transfer and should be allowed to make this decision, subject to authorisation by the appropriate authorities.
69. Close confinement of mentally ill patients in cases where absolutely necessary should be reduced to the least restriction possible, and there should be one-to-one continuous nursing care as soon as possible.
70. Under very exceptional circumstances, physical restraint for a brief period in cases of severely mentally ill patients may be considered, while the calming action of appropriate medication begins to take effect.

### **Refusal of Food or Treatment**

71. The principle of informed consent to medical treatment or examination should be respected and any derogation from this should be legally justified and guided by the principles applicable to the population as a whole. For the avoidance of

doubt, the principle of informed consent applies to those who are mentally ill and to those who are refusing treatment or food. Where a prisoner refuses treatment or food action should be taken to ensure that full information is given to the prisoner by a doctor on the harmful effects upon their physical well-being, the likely benefits of any treatment, possible therapeutic alternatives, and the risks associated with no treatment so that a prisoner fully understands his or her decision.

72. The clinical assessment of a prisoner refusing food should be carried out only with the express permission of the patient, unless he or she suffers from serious mental illness which requires the transfer to a psychiatric service. If a doctor assesses that the condition of a prisoner refusing food is becoming significantly worse, he or she should immediately report the worsening condition to the appropriate authority and take positive action, particularly if it is considered that the prisoner may not have decision-making capacity in relation to acceptance of food and drink. See also paragraph 73 below in relation to suicide and self-harm.

### **Suicide and Self-Harm**

73. The risk of suicide should be constantly assessed both by medical and custodial staff. Physical methods designed to avoid self-harm, close and constant supervision, dialogue and reassurance should be used when necessary.

### **Women Prisoners**

*This section of the Guidance supplements Rules 90, 91 and 92.*

74. Particular attention should be paid to the requirements of women such as their physical, vocational, social and psychological needs when making decisions that affect any aspect of their detention.
75. Particular efforts should be made to give access to special services for women prisoners who have suffered physical, mental or sexual abuse.
76. Pregnant inmates should be medically monitored and should be able to deliver in an external hospital service more appropriate to their condition. In being escorted to the hospital, the patient should be accompanied by medical or nursing staff as required, and the use of restraints should be as limited as possible.
77. Infants may stay in prison with a parent only when it is in the best interests of the infant concerned. They should not be treated as prisoners.

## **UNTRIED PRISONERS**

*This section of the Guidance supplements Rules 97-106.*

78. Until sentenced, untried prisoners should be able to maintain their daily routines to the fullest extent consistent with custody. The treatment of untried prisoners should always reflect their status as persons not convicted of any offence.
79. In keeping with this status, untried prisoners should be allowed to participate in voting in public elections, in prison work or educational programmes, and should be able to maintain contact with relatives and others without restriction, save for judicial orders or restrictions in particular cases.
80. Untried prisoners should be able to maintain their external appearance as they so choose while in custody. All untried

prisoners should be provided opportunities and the appropriate means to maintain their appearance.

81. Untried prisoners should have opportunities to associate with other prisoners, and should have the option to participate in certain activities or educational and work programmes in the prison regime.
82. Every reasonable effort should be made to ensure that young untried prisoners should not have their education disrupted because of custody. Prison staff should make positive efforts to arrange for educational programmes appropriate to the continuing education of such prisoners.
83. Staff working with untried prisoners should be trained so as to be able to take full account of the particular status and needs of untried prisoners.

#### **PHYSICAL DISABILITY**

84. Prisoners with serious physical disabilities and those of advanced age should be accommodated in such a way as to allow as normal a life as possible consistent with custody, and should not be segregated from the general prison population. Structural alterations should, where necessary, be effected to assist wheelchair users and those with physical disabilities to avail of prison facilities.

#### **GENERAL**

85. The Northern Ireland Prison Service should ensure that the above guidance is circulated to all staff to ensure that it is properly taken into account.

86. The Northern Ireland Prison Service should ensure that this guidance is made available to all prisoners.
87. Regard must be had to this guidance when making or reviewing contractual or other agreements with other statutory agencies.

## **REVIEW AND MONITORING**

88. Difficulties encountered in the application of this guidance by the Northern Ireland Prison Service should be notified to the Attorney General as soon as possible.
89. The Attorney General will formally seek the views of the Northern Ireland Prison Service on the revision or amendment of this guidance annually. It is open to the Northern Ireland Prison Service to suggest revision or amendment of this guidance at any time.

John F Larkin QC

Attorney General for Northern Ireland