

2007 No. 190

PRISONS

YOUNG OFFENDERS INSTITUTIONS

**The Prisons and Young Offenders Institutions (Scotland)
Amendment Rules 2007**

Made - - - - - *6th March 2007*

Laid before the Scottish Parliament *7th March 2007*

Coming into force in accordance with Rule 1

The Scottish Ministers, in exercise of the powers conferred by section 39 of the Prisons (Scotland) Act 1989(a) and of all other powers enabling them in that behalf, hereby make the following Rules:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2007 and, subject to paragraph (2), shall come into force on 1st April 2007.

(2) Rule 6(b) shall come into force on 28th May 2007.

(3) In these Rules, a reference to “the principal Rules” is a reference to the Prisons and Young Offenders Institutions (Scotland) Rules 2006(b).

Amendment of rule 5 of the principal Rules

2. In rule 5(1) of the principal Rules (interpretation)—

(a) for the definition of “Deputy Governor” substitute—

““Deputy Governor” means any officer who is appointed to act in place of the Governor-in-Charge during any period when the Governor-in-Charge is temporarily absent from the prison;”;

(b) for the definition of “employee” substitute—

(a) 1989 c.45; the functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46); 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, paragraphs 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Act, Schedule 5, paragraph 6(3)), 19(3) and (4) (as amended by the 1993 Act, Schedule 5, paragraph 6(4)), 24 (which was repealed by the 1993 Act, Schedule 7 but was saved by Schedule 6 to that Act in relation to any “existing prisoner” within the meaning specified in paragraph 1 of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); 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).

(b) S.S.I. 2006/94.

““employee” means an employee (not being an officer of a prison) appointed by the Scottish Ministers under section 51 of the Scotland Act 1998(a);”; and

(c) after the definition of “photograph” insert—

““police member of the Scottish Crime and Drug Enforcement Agency” means a police member appointed in accordance with paragraph 7 of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006(b);”.

Amendment of rule 68 of the principal Rules

3. In rule 68(1) of the principal Rules (visits by police constables)—

(a) after “police constable” insert “or a police member of the Scottish Crime and Drug Enforcement Agency”; and

(b) after “Chief Constable” insert “or, as the case may be, the Director General of that Agency”.

Amendment of rule 117 of the principal Rules

4. In rule 117(3) of the principal Rules (adjudication of charges), for “paragraph (v) or (x)” substitute “paragraph (w) or (y)”.

Amendment of rule 141 of the principal Rules

5. In rule 141(3)(a) of the principal Rules (pre-release leave) for “146(1)” substitute “145(1)”.

Amendment of Schedule 2 of the principal Rules

6. In Schedule 2 of the principal Rules (constitution of visiting committees)—

(a) the entries relating to Castle Huntly and Noranside are omitted;

(b) the entry relating to Low Moss is omitted; and

(c) in the appropriate place insert—

“ OPEN ESTATE	Angus Council	5	2	
	Dundee City Council	6	2	
	Perth and Kinross Council	5	2	”.

Savings and Transitional Provisions

7.—(1) In this rule—

“existing visiting committees” means the visiting committees for Castle Huntly, Noranside and Low Moss prisons”;

“the discontinuance date” means 1st April 2007 in the case of Castle Huntly and Noranside prisons and 28th May 2007 in the case of Low Moss prison; and

“the relevant date” means 30th May 2007 in the case of Castle Huntly and Noranside prisons and 27th July 2007 in the case of Low Moss prison.

(2) Notwithstanding the amendments made by rule 6 of these Rules, the provisions of rule 155(1) to (4) of, and Schedule 2 to, the principal Rules, as in force immediately before the discontinuance date, shall continue to have effect until the relevant date in relation to the existing visiting committees for the purposes set out in paragraphs (5),(6) and (7) and accordingly until the relevant date—

(a) the existing visiting committees shall continue to exist;

(a) 1998 c.46.
(b) 2006 asp 10.

- (b) each of the members of the existing visiting committees shall (unless he or she ceases to hold office) remain in office;
- (c) the chair and deputy chair of, and the clerk to, each of the existing visiting committees shall (unless he or she otherwise ceases to hold his or her appointment) continue to hold his or her appointment; and
- (d) so far as relating to any of the existing visiting committees and to a member thereof, references in Part 17 of the principal Rules to a visiting committee or a member of such a committee shall be construed as references to an existing visiting committee or a member thereof.

(3) The members of the existing visiting committees for Castle Huntly and Noranside prisons shall, from the discontinuance date, be deemed to be appointed as members of the visiting committee for the Open Estate prison in accordance with rule 155(5) of the principal Rules; and thereafter members of the visiting committee for the Open Estate prison shall be appointed by the relevant council in terms of rule 155(2) of those rules at a meeting of the relevant council held not later than 2 months after the date of the ordinary election of councillors.

(4) Where before the discontinuance date—

- (a) any of the existing visiting committees has undertaken any inquiry in terms of rule 158(2)(a) of the principal Rules in relation to the condition of any prisoner and has not concluded that inquiry and made a report in relation to it by the discontinuance date;
- (b) any of the existing visiting committees has received a complaint by a prisoner in terms of rule 159(1) of the principal Rules and has not concluded its hearing and investigation of the complaint by the discontinuance date; or
- (c) a member of any of the existing visiting committees has received a complaint by a prisoner in terms of rule 159(1) of the principal Rules and has not concluded his or her hearing and investigation of the complaint by the discontinuance date,

the visiting committee for the prison that the prisoner is detained in on the discontinuance date shall deal with the inquiry, hearing or investigation, as the case may be, as if that committee had been asked to make the inquiry and report or had received the complaint from the prisoner and shall conclude that inquiry, hearing or investigation whether or not the prisoner is subsequently transferred to another prison.

(5) The minute book and any other documents held by or on behalf of the existing visiting committees for Castle Huntly and Noranside prisons shall transfer to the visiting committee for the Open Estate prison on the discontinuance date and the chair of those committees shall make such arrangements as are necessary to ensure that the minute book and any such documents are delivered to the chair of the visiting committee for the Open Estate prison before the relevant date.

(6) The minute book and any other documents held by or on behalf of the existing visiting committee for Low Moss prison shall transfer to the Scottish Ministers on the discontinuance date and the chair of that committee shall make such arrangements as are necessary to ensure that the minute book and any such documents are delivered to the Scottish Ministers before the relevant date.

(7) Before the relevant date, each of the existing visiting committees shall—

- (a) so far as reasonably practicable, make, or conclude the making of the annual report for the relevant prison for the period of 12 months ending on 31st March 2007 and shall deliver that report to the Scottish Ministers; and

- (b) in the case of the existing visiting committee for Low Moss prison, make a report to the Scottish Ministers on the matters specified in rule 162(1) of the principal Rules and any other matters that appear to it to be relevant in respect of the period from 1st April 2007 until the discontinuance date, and deliver that report to the Scottish Ministers.

St Andrew's House,
Edinburgh
6th March 2007

CATHY JAMIESON
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Prisons and Young Offenders Institutions (Scotland) Rules 2006 (“the 2006 Rules”).

Rule 2 amends rule 5(1) of the 2006 Rules by–

- inserting a new definition of “Deputy Governor” to reflect the fact that more than one Deputy Governor may be appointed in relation to a prison;
- amending the definition of “employee”; and
- inserting a new definition of “police member of the Scottish Crime and Drug Enforcement Agency” in consequence of the amendment to rule 68(1) of the 2006 Rules.

Rule 3 amends rule 68(1) of the 2006 Rules to enable police members of the Scottish Crime and Drug Enforcement Agency to visit prisoners on production of the relevant written authority in the same way that police constables can.

Rule 4 amends rule 117(3) of the 2006 Rules to correct an erroneous cross-reference to provisions in Schedule 1 to the 2006 Rules concerning prisoner breaches of discipline.

Rule 5 amends rule 141(3)(a) of the 2006 Rules also to correct an error in that rule, to ensure the correct cross reference is to rule 145(1) which is the relevant rule concerning disqualification of prisoners from temporary release.

Rule 6 amends Schedule 2 to the 2006 Rules. Schedule 2 to the 2006 Rules makes provision for the constitution of visiting committees for prisons. An entry is inserted for the Open Estate prison in consequence of the amalgamation of Castle Huntly and Noranside prisons into the Open Estate prison on 1st April 2007. The entries relating to Castle Huntly and Noranside prisons are therefore omitted. The entry relating to Low Moss prison is also omitted with effect from 28th May 2007 in view of the forthcoming discontinuance of that prison on that date.

Rule 7 makes saving and transitional provisions in relation to the visiting committees for the prisons that are to discontinue.

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£3.00

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