

## SCOTTISH STATUTORY INSTRUMENTS

# 2011 No. 331

## PRISONS

### The Prisons and Young Offenders Institutions (Scotland) Rules 2011

*Made* - - - - 12th September 2011  
*Laid before the Scottish  
Parliament* - - - - 14th September 2011  
*Coming into force* - - 1st November 2011

The Scottish Ministers make the following Rules in exercise of the powers conferred by section 52 of the Courts-Martial (Appeals) Act 1968<sup>M1</sup>, sections 3A, 8, 11, 12, 14, 33A and 39 of the Prisons (Scotland) Act 1989<sup>M2</sup> and sections 104(6) and 114(3) of, and paragraph 3(2)(b) of Schedule 6 to, the Criminal Justice and Public Order Act 1994<sup>M3</sup> and all other powers enabling them to do so.

#### Marginal Citations

- M1** 1968 c.20; section 52 was amended by the Prisons (Scotland) Act 1989 (c.45), section 45(1) and Schedule 2, paragraph 10.
- M2** 1989 c.45; section 3A is to be added by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (“the 2010 Act”), section 110; section 8 was amended by the Management of Offenders etc. (Scotland) Act 2005 (asp 14) (“the 2005 Act”) section 21(6); section 11 was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40) (“the 1995 Act”) Schedule 4, paragraph 75(2); section 12 was amended by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9) (“the 1993 Act”) Schedule 5, paragraph 6(2)(a) and Schedule 7, paragraph 1; section 14 was amended by the 1993 Act, Schedule 5, paragraph 6(3) and by the Local Government etc. (Scotland) Act 1994 (c.39) Schedule 13, paragraph 162(3) and Schedule 14, paragraph 1; section 33A was added by the Criminal Justice and Public Order Act 1994 (c.33) (“the 1994 Act”), section 116(3). Section 39 was amended by the 1993 Act, section 24 and 25, Schedule 5, paragraph 6(6)(b) and Schedule 7, paragraph 1; the 1994 Act, section 116(4); the 1995 Act, Schedule 4, paragraph 75(4)(a), by the Crime and Disorder Act 1998 (c. 37), Schedule 8, paragraph 71 and Schedule 10, paragraph 1. Section 39 is to be read with the following sections of the 1989 Act: 19 (as amended by the 1993 Act, Schedule 5, paragraph 6(4)), 20A (which was added by the 1993 Act, section 23); 41(2B) (which was added by the 1994 Act section 153(3) and amended by the 2010 Act section 34(1)); 41B(1) (which was added by the 1994 Act, section 151(2) and amended by the 2005 Act, section 16); and 41C(1) (which was added by the Crime and Punishment (Scotland) Act 1997 (c.48), section 42). 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).

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**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Prisons and Young Offenders Institutions (Scotland) Rules 2011. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

M3 1994 c.33.

## PART 1

### GENERAL

#### Citation and commencement

1. These Rules may be cited as the Prisons and Young Offenders Institutions (Scotland) Rules 2011 and come into force on 1st November 2011.

#### Interpretation

2.—(1) In these Rules—

“the Act” means the Prisons (Scotland) Act 1989<sup>M4</sup>;

“the 1993 Act” means the Prisoners and Criminal Proceedings (Scotland) Act 1993<sup>M5</sup>;

“the 1994 Act” means the Criminal Justice and Public Order Act 1994;

“the 2006 Rules” means the Prisons and Young Offenders Institutions (Scotland) Rules 2006<sup>M6</sup>;

“accommodation” means the cells or rooms used to accommodate prisoners for living and sleeping purposes;

“appellant” means, subject to rule 2(3), a prisoner—

- (a) who appeals under section 106 or 175 of the 1995 Act<sup>M7</sup> against his or her conviction or sentence, or against both conviction and sentence;
- (b) whose case has been referred to the High Court of Justiciary by the Scottish Criminal Cases Review Commission pursuant to section 194B(1) of the 1995 Act<sup>M8</sup>;
- (c) who appeals by way of bill of suspension against his or her conviction or sentence, or both conviction and sentence, in summary proceedings;
- (d) who appeals under section 8 of the [F1Court Martial Appeals Act 1968]<sup>M9</sup> against his or her conviction or sentence, or both conviction and sentence, or who appeals under section 39(1) of that Act<sup>M10</sup> from any decision of the [F2Court Martial Appeal Court] on an appeal under section 8 of that Act; or
- (e) who is returned to prison under section 18(2) of the 1993 Act and who appeals under section 19 of that Act;

“appropriate member”, in relation to a member of the chaplaincy team, means a member who represents the religious denomination concerned or who has pastoral care of the prisoner concerned;

[F3“biometric data” means fingerprints and any other data specified by direction made by the Scottish Ministers;]

“chaplain” means the person who is appointed pursuant to section 3(2) of the Act as the chaplain to a prison;

“chaplaincy team” consists of the chaplain and any prison minister and any visiting minister;

“civil prisoner” means a person who is committed to prison—

- (a) by virtue of non compliance with an order under section 45 of the Court of Session Act 1988<sup>M11</sup>;

- (b) under section 4 or 6 of the Civil Imprisonment (Scotland) Act 1882 <sup>M12</sup>;
  - (c) by virtue of a warrant granted under section 1(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 <sup>M13</sup>;
  - (d) for contempt of court or for non payment of a fine imposed for contempt of court; or
  - (e) for breach of interdict;
- “clothing” includes footwear, jewellery and other objects worn for personal adornment;
- “constable” has the same meaning as in section 51(1) of the Police (Scotland) Act 1967 <sup>M14</sup>;
- “contracted out prison” means a prison or part of a prison the running of which a contract under section 106 of the 1994 Act <sup>M15</sup> 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;
- “controlled drug” means any drug which is a controlled drug for the purposes of the Misuse of Drugs Act 1971 <sup>M16</sup>;
- “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;
- “employee” means an employee (not being an officer of a prison) appointed by the Scottish Ministers under section 51 of the Scotland Act 1998 <sup>M17</sup>;
- “film” has the same meaning as in Part I of the Copyright, Designs and Patents Act 1988 <sup>M18</sup>;
- “Governor” means—
- (a) in this rule, rules 90(1), 93, 94 and any rule in Part 12 (other than rule 120(3)), the Governor in Charge;
  - (b) in rules 6, 7, 14, 35 and 81 and in any rule in Parts 3, 8, 10 (other than rules 90(1), 93 and 94), 11 and 14 to 17 and, unless otherwise expressly provided for, in directions made under rules 19(2)(g), 21(1)(b)(iii), 22, 26, 55(5), 62(2), 77(3) and 86, any of the following—
    - (i) the Governor in Charge;
    - (ii) the Deputy Governor;
    - (iii) any authorised Unit Manager; and
    - (iv) where there is no officer as mentioned in paragraphs (i) to (iii) present for the time being in the prison, the most senior officer who is present in prison at that time; and
  - (c) in any other provision in these Rules, any officer;
- “Governor in Charge” means the officer who is appointed as the Governor in overall charge of the prison or, in the case of legalised police cells, the constable who is in charge of the cells;
- “healthcare professional” has the same meaning as in section 17CA of the National Health Service (Scotland) Act 1978 <sup>M19</sup>;
- “legal adviser” means a person who is entitled to practise—
- (a) as a solicitor, an advocate or a barrister in any part of the United Kingdom; or
  - (b) as a member of the corresponding profession of solicitor, advocate or barrister in any Member State of the European Union, and, except for the purposes of rule 113(9), includes the authorised clerk or employee of such a person;
- “legal custody” is to be interpreted in accordance with section 13 of the Act <sup>M20</sup> and section 295 of the 1995 Act <sup>M21</sup>;

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“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;

“life prisoner” means a person serving a sentence of imprisonment for life;

“long-term prisoner” means a person serving a sentence of imprisonment for a term of four years or more which was imposed on or after 1st October 1993 and includes any person who is treated as such a prisoner for the purposes of any provision of Part I of the 1993 Act;

“media representative” means—

- (a) a photographer, cameraman, researcher or producer for, or of, any television, radio or other programme intended for broadcast or transmission by any form of electronic medium; or
- (b) a journalist or author;

“officer” means an officer of the prison appointed by the Scottish Ministers and includes the Governor but—

- (a) for the purposes of searching a prisoner under rule 92(2)(a) and for the purposes of rule 99, includes a prisoner custody officer who is authorised to perform escort functions in accordance with section 114 of the 1994 Act <sup>M22</sup>; and
- (b) in the case of a legalised police cell, means any constable;

“personal communication device” has the same meaning as in section 41(9B) of the 1989 Act <sup>M23</sup>,

“photograph” has the same meaning as in Part I of the Copyright, Designs and Patents Act 1988 <sup>M24</sup>,

“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 <sup>M25</sup>,

“prison minister” means a person who is appointed by the Scottish Ministers pursuant to section 9(1) of the Act as a minister to a prison;

“prohibited article” means—

- (a) any drug which is a controlled drug for the purposes of the Misuse of Drugs Act 1971 <sup>M26</sup>;
- (b) any firearm or any ammunition within the meaning of the Firearms Act 1968 <sup>M27</sup>;
- (c) any offensive weapon within the meaning of section 47(4) of the Criminal Law (Consolidation) (Scotland) Act 1995 <sup>M28</sup>;
- (d) any article to which section 49 of the Criminal Law (Consolidation) (Scotland) Act 1995 <sup>M29</sup> applies;
- (e) alcohol, within the meaning given by section 2 of the Licensing (Scotland) Act 2005 <sup>M30</sup>, or
- (f) any personal communication device;

“reception” means, in relation to a prisoner committed to prison, the process of receiving a prisoner into prison—

- (a) on his or her removal to prison from court, or any other place, in implementation of the warrant, order or direction ordering or authorising his or her detention in custody; or

- (b) on his or her transfer to any prison from any other prison, or from any remand centre, young offenders institution or other place where he or she was liable to be detained in custody, and cognate expressions shall be construed accordingly;

“refugee” means—

- (a) a person who is recognised by Her Majesty's Government as a refugee within the meaning of the UN Convention relating to the Status of Refugees done at Geneva on 28th July 1951<sup>M31</sup> as extended by the Protocol thereto which entered into force on 4th October 1987<sup>M32</sup> or, as the case may be, the Protocol relating to the status of refugees done at New York on 31st January 1967<sup>M33</sup>; or
- (b) a person who enjoys asylum in the United Kingdom in pursuance of a decision of Her Majesty's Government though not yet recognised;

“residential first line manager” means an officer who is required by the Governor to manage areas of living accommodation for prisoners;

“short term prisoner” means a person serving a sentence of imprisonment for a term of less than four years which was imposed on or after 1st October 1993 and includes any person who is treated as such a prisoner for the purposes of any provision of Part I of the 1993 Act;

“smoke” has the meaning assigned to it in the Smoking, Health and Social Care (Scotland) Act 2005<sup>M34</sup>;

“sound recording” has the same meaning as in Part I of the Copyright, Designs and Patents Act 1988<sup>M35</sup>;

“special cell” means a cell or room which is adapted for the temporary accommodation of refractory or violent prisoners and whose features may include special sound-proofing, strengthened fixtures and fittings or the absence of any window;

“stateless person” has the meaning assigned to it in article 1 of the Convention relating to the Status of Stateless Persons 1954<sup>M36</sup>;

“supervision level” means a supervision level which may be assigned to a prisoner in accordance with Part 3 of these Rules;

“temporary release” means any of the forms of temporary release defined in rule 136;

“unauthorised property” means any property which the prisoner has not been authorised by any officer or by virtue of these Rules to possess within the prison or within a particular part of the prison.

“Unit Manager” means an officer who is appointed to manage a function or group of functions within the prison;

“untried prisoner” means a person who is committed to prison—

- (a) for examination or trial on any criminal charge;
- (b) by virtue of remand in custody under the Extradition Act 2003<sup>M37</sup>; or
- (c) by virtue of detention under Schedule 2 or 3 to the Immigration Act 1971<sup>M38</sup>;
- (d) following conviction but awaiting sentence, but does not include any such person who is for the time being serving a sentence of imprisonment;

“visiting minister” means a minister who is allowed to visit prisoners of his or her religious denomination in terms of section 9(3) of the Act;

“young offender” means an offender who—

- (a) has attained 16 years of age but has not yet attained 21 years of age;
- (b) is being detained in a prison or young offenders institution; and

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(c) has been sentenced to a period of detention.

(2) Except where the context otherwise requires, for the purposes of any reference, however expressed, in these Rules to—

- (a) the term of imprisonment or other detention to which a person has been sentenced; or
- (b) the term of imprisonment or other detention which a person, having been sentenced, has served in whole or in part,

consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term.

(3) For the purposes of the definition of “appellant” in paragraph (1), a prisoner is deemed to be an appellant—

- (a) in the case of an appeal as mentioned in sub-paragraph (a) of that definition in solemn proceedings, from the time the prisoner lodges an intimation of intention to appeal in terms of section 109(1) of the 1995 Act <sup>M39</sup> or, in the case of an appeal against sentence only, a note of appeal in terms of section 110(1) of that Act <sup>M40</sup>;
- (b) in the case of an appeal as mentioned in sub-paragraph (a) of that definition in summary proceedings, from the time the prisoner lodges an application for a stated case under section 176(1) of the 1995 Act or, in the case of an appeal against sentence only, a note of appeal under section 186(1) of that Act <sup>M41</sup>;
- (c) in the case of a reference as mentioned in sub-paragraph (b) of that definition, from the time the Scottish Criminal Cases Review Commission refer the case to the High Court of Justiciary;
- (d) in the case of an appeal as mentioned in sub-paragraph (c) of that definition, from the time the prisoner lodges the bill of suspension;
- [<sup>F4</sup>(e) in the case of an appeal as mentioned in sub-paragraph (d) of that definition, from the time the prisoner lodges the appeal;]
- (f) in the case of an appeal as mentioned in sub-paragraph (e) of that definition, from the time the prisoner lodges a note of appeal, until the appeal, or, as the case may be, the reference is finally disposed of or abandoned in its entirety.

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

- (a) any reference in these Rules to a prison is to be construed as including a young offenders institution;
- (b) any reference in these Rules to a prisoner, imprisonment or a sentence of imprisonment is to be construed respectively as including a young offender, detention or a sentence of detention in a young offenders institution;
- (c) any reference in these Rules to a prisoner, imprisonment or a sentence of imprisonment is to be construed respectively as including any person mentioned in rule 3(2) or any detention or sentence of detention imposed on such a person under any the provisions mentioned in rule 3(2);
- (d) any reference in these Rules to a prisoner, imprisonment or a sentence of imprisonment is to be construed respectively as including any person mentioned in rule 3(3) or any imprisonment or detention or period of imprisonment or detention imposed on such a person under any of the provisions mentioned in rule 3(3); and
- (e) any reference in these Rules to a visitor is to be interpreted in accordance with rule 105(9).

### Textual Amendments

- F1** Words in rule 2(1) substituted (1.11.2011) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2011 \(S.S.I. 2011/356\)](#), rules 1, **2(2)(a)**
- F2** Words in rule 2(1) substituted (1.11.2011) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2011 \(S.S.I. 2011/356\)](#), rules 1, **2(2)(b)**
- F3** Words in rule 2(1) substituted (19.3.2012) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2012 \(S.S.I. 2012/26\)](#), rules 1, **2(2)**
- F4** Rule 2(3)(e) substituted (1.11.2011) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2011 \(S.S.I. 2011/356\)](#), rules 1, **2(3)**

### Marginal Citations

- M4** 1989 c.45.
- M5** 1993 c.9.
- M6** S.S.I. 2006/94.
- M7** 1995 c.46; has been relevantly amended as follows: section 106 was amended by the [Crime and Punishment \(Scotland\) Act 1997 \(c.48\)](#), **sections 17**, 18 and 23, by the [Crime and Disorder Act 1998 \(c.37\)](#) section 119 and paragraph 119 of Schedule 8, by the [Protection of Children \(Scotland\) Act 2003 \(asp 5\)](#), **section 16** and also by the [Criminal Justice Scotland Act 2003 \(asp 7\)](#), **Schedule 1**, paragraph 2; section 106A was inserted by the [Crime and Punishment \(Scotland\) Act 1997](#), section 19; section 175 was amended by [Crime and Punishment \(Scotland\) Act 1997 \(c.48\)](#), **section 17**, section 21, section 23, by the [Crime and Disorder Act 1998 \(c.37\)](#) section 119 and paragraph 123 of Schedule 8, by the [Proceeds of Crime Act 2002 \(c.29\)](#) Part 3, section 115, and also by the [Protection of Children \(Scotland\) Act 2003 \(asp 5\)](#), **section 16**.
- M8** Section 194B was inserted by the [Crime and Punishment \(Scotland\) Act 1997](#), section 25, and was amended by S.I. 1999/1181, Article 3.
- M9** 1968 c.20; section 8 was amended by the [Armed Forces Act 1971 \(c. 33\)](#), **section 73(2)** and Schedule 2, paragraph 1(2), by the [Armed Forces Act 1976 \(c.52\)](#), **section 22(5)** and Schedule 9, paragraph 16, by the [Armed Forces Act 1991 \(c.62\)](#), **Schedule 3**, by the [Armed Forces Act 1996 \(c.46\)](#), **section 17** and Schedule 7, Part III, and by the [Armed Forces Act 2001 \(c.19\)](#), **section 34** and Schedule 6, paragraph 55.
- M10** 1968 c.20; section 39 was amended by the [Constitutional Reform Act 2005](#), Schedule 9, paragraph 17.
- M11** 1988 c.36.
- M12** 1882 c.42; sections 4 and 6 were amended by the [Sheriff Courts \(Scotland\) Act 1971 \(c.58\)](#), **section 4**.
- M13** 1940 c.42.
- M14** 1967 c.77; section 51(1) was amended by the [Police and Magistrates Courts Act 1994 \(c.29\)](#), **section 63** and Schedule 9, by the [Anti-terrorism, Crime and Security Act 2001 \(c.24\)](#), **section 101** and Schedule 7, paragraph 7, by the [Railways and Transport Safety Act 2003 \(c.20\)](#), **Schedule 5**, paragraph 4, and by the [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#) section 76.
- M15** 1994 c.33; section 106 was relevantly amended by S.I. 1999/1820, **Schedule 2**, paragraph 115.
- M16** 1971 c.38.
- M17** 1998 c.46; section 51 was amended by the [Constitutional Reform and Governance Act 2010 \(c.25\)](#) Schedule 2, paragraph 9.
- M18** 1988 c.48; section 5B was inserted by S.I. 1995/3297, **article 9**.
- M19** 1978 c.29; section 17CA was added by the [Tobacco and Primary Medical Services \(Scotland\) Act 2010 \(asp 3\)](#), section 38.
- M20** Section 13 was amended by the [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), **section 24(1)**.
- M21** Section 295 was amended by the [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), **section 24(2)**.
- M22** 1994 c.33, **section 114(1)** was amended by S.I. 1999/1820, **article 4** and paragraph 115 of Schedule 2.
- M23** 1989 c.45; section 41(9B) was added by the [Criminal Justice and Licensing \(Scotland\) Act 2010](#), section 34.
- M24** 1988 c.48.

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- M25** 2006 asp 10.
- M26** 1971 c.38.
- M27** 1968 c.27.
- M28** 1995 c.39; section 47 was amended by the [Offensive Weapons Act 1996 \(c. 26\)](#), [section 2\(2\)](#); the [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#), [section 74\(2\)](#); and the [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#) section 37.
- M29** 1995 c.39; section 49 was amended by the [Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(asp 10\)](#) section 73 and the [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#) section 37.
- M30** 2005 asp 16.
- M31** Treaty Series No. 39 (1951), Cmnd 9171.
- M32** Treaty Series No. 50 (1987), Cmnd 222.
- M33** Treaty Series No. 15 (1969), Cmnd 3906.
- M34** 2005 asp 13.
- M35** 1988 c.48; Section 5A was inserted by [S.I. 1995/3297](#), [article 9](#).
- M36** Cmnd 1098 of 1960.
- M37** 2003 c.41.
- M38** 1971 c.77; Schedule 2 was relevantly amended as follows: paragraph 16(1A) was inserted by paragraph 60 of Schedule 14 to the [Immigration and Asylum Act 1999 \(c.33\)](#); paragraph 16(2) was substituted by section 140(1) of the [Immigration and Asylum Act 1999 \(c.33\)](#); paragraph 16(3) was substituted by paragraph 1(11) of Schedule 4 to the [Channel Tunnel \(International Arrangements\) Order 1993 \(S.I. 1993/1813\)](#); paragraph 16(2) was amended by section 73(5) of the [Nationality, Immigration and Asylum Act 2002 \(c.41\)](#), and by paragraph 1(11) of Schedule 4 to the [Channel Tunnel \(International Arrangements\) Order 1993 \(S.I. 1993/1813\)](#); Schedule 3 was relevantly amended as follows: paragraph 2(1A) was inserted by paragraph 1(b) of Schedule 10 to the [Criminal Justice Act 1982 \(c.48\)](#); paragraph 2(1) was amended by section 34(1) of the [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c.19\)](#), by section 54(2) of the [Immigration and Asylum Act 1999 \(c.33\)](#) and also by paragraph 1(a) of Schedule 10 to the [Criminal Justice Act 1982 \(c.48\)](#); paragraph 2(2) was amended by section 34(2) of the [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c.19\)](#) and also by paragraph 7 of Schedule 7 to the [Nationality, Immigration and Asylum Act 2002 \(c.41\)](#); paragraph 2(3) was amended by section 54(3) of the [Immigration and Asylum Act 1999 \(c.33\)](#). In addition, Schedule 2 is subject to the modifications contained in section 6(6)(b) of the [Criminal Justice \(International Co-operation\) Act 1990 \(c.5\)](#).
- M39** Section 109(1) amended by the [Proceeds of Crime Act 2002 \(c.29\)](#), [Schedule 11](#), paragraph 29.
- M40** Section 110(1) amended by the [Crime and Punishment \(Scotland\) Act 1997 \(c.48\)](#), [section 19](#), by the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), [section 24](#), and also by [S.S.I. 2002/387](#), [article 2](#).
- M41** Section 186(1) was amended by the [Protection of Children \(Scotland\) Act \(asp 5\)](#), section 16.

### Application of Rules

3.—(1) Subject to paragraphs (2) to (4), 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, these Rules apply to—

- (a) a person sentenced under section 205 of the 1995 Act<sup>M42</sup> 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;
- (b) persons on whom detention in a young offenders institution has been imposed under section 207(2) of the 1995 Act<sup>M43</sup>; and



(c) a person sentenced to be detained under section 208<sup>M44</sup> of the 1995 Act 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.

(3) 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 1995 Act (imprisonment for non payment of fine)<sup>M45</sup> or, by virtue of that section, under section 207 of that Act (detention of young offenders)<sup>M46</sup>;
- (b) for examination or trial on any criminal charge;
- (c) by virtue of remand in custody under the Extradition Act 2003<sup>M47</sup>;
- (d) by virtue of detention under Schedule 2 or 3 to the Immigration Act 1971<sup>M48</sup>;
- (e) by virtue of non compliance with an order under section 45 of the Court of Session Act 1988<sup>M49</sup>;
- (f) under section 4 or 6 of the Civil Imprisonment (Scotland) Act 1882<sup>M50</sup>;
- (g) by virtue of a warrant granted under section 1(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940<sup>M51</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 Armed Forces Act 2006<sup>M52</sup> or the [F<sup>5</sup>Court Martial Appeals Act 1968]<sup>M53</sup>,

as they apply to persons serving sentences of imprisonment.

(4) Any reference in paragraphs (1) to (3) 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>M54</sup>, Schedule 1 to the Crime (Sentences) Act 1997<sup>M55</sup> or the Transfer of Prisoners (Restricted Transfers) (Channel Islands and Isle of Man) Order 1998<sup>M56</sup>, treated for any purpose as if his or her 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 or her detention which has been issued under the Repatriation of Prisoners Act 1984<sup>M57</sup>.

#### Textual Amendments

- F5** Words in rule 3(3)(j) substituted (1.11.2011) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2011 \(S.S.I. 2011/356\)](#), rules 1, **2(4)**

#### Marginal Citations

- M42** [1995 c.46](#); section 205(1) amended by the Convention Rights (Compliance) (Scotland) Act 2001, section 2(1)(a); section 205(4) and (6) were repealed by the Convention Rights (Compliance) (Scotland) Act 2001, section 2(1)(b).
- M43** [1995 c.46](#); section 207(2) was amended and section 207(4A) inserted by the Crime and Punishment (Scotland) Act 1997, section 6(4), Schedule 1, paragraph 21.
- M44** [1995 c.46](#); section 208 was amended and section 208(2) was inserted by the [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), **section 10(3)** and section 10(4); section 208 was substituted and section 208(2) was inserted by the Criminal Justice Act 2003, section 290(3).

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- M45** 1995 c.46; section 219(1) was amended and section 219(1A) was inserted by the Antisocial Behaviour etc. (Scotland) Act 2004, section 144(1), Schedule 4, paragraph 5(4), section 219(8)(b) amended by the Proceeds of Crime Act 2002, Schedule 11, paragraph 29(4).
- M46** 1995 c.46.
- M47** 2003 c.41.
- M48** 1971 c.77; Schedule 2 was relevantly amended as follows: paragraph 16(1A) was inserted by paragraph 60 of Schedule 14 to the [Immigration and Asylum Act 1999 \(c.33\)](#); paragraph 16(2) was substituted by section 140(1) of the [Immigration and Asylum Act 1999 \(c.33\)](#); paragraph 16(3) was substituted by paragraph 1(11) of Schedule 4 to the [Channel Tunnel \(International Arrangements\) Order 1993 \(S.I. 1993/1813\)](#); paragraph 16(2) was amended by section 73(5) of the [Nationality, Immigration and Asylum Act 2002 \(c.41\)](#), and by paragraph 1(11) of Schedule 4 to the [Channel Tunnel \(International Arrangements\) Order 1993 \(S.I. 1993/1813\)](#); Schedule 3 was relevantly amended as follows: paragraph 2(1A) was inserted by paragraph 1(b) of Schedule 10 to the [Criminal Justice Act 1982 \(c.48\)](#); paragraph 2(1) was amended by section 34(1) of the [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c.19\)](#), by section 54(2) of the [Immigration and Asylum Act 1999 \(c.33\)](#) and also by paragraph 1(a) of Schedule 10 to the [Criminal Justice Act 1982 \(c.48\)](#); paragraph 2(2) was amended by section 34(2) of the [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c.19\)](#) and also by paragraph 7 of Schedule 7 to the [Nationality, Immigration and Asylum Act 2002 \(c.41\)](#); paragraph 2(3) was amended by section 54(3) of the [Immigration and Asylum Act 1999 \(c.33\)](#). In addition, Schedule 2 is subject to the modifications contained in section 6(6)(b) of the [Criminal Justice \(International Co-operation\) Act 1990 \(c.5\)](#).
- M49** 1988 c.36.
- M50** 1882 c.42; sections 4 and 6 were amended by the [Sheriff Courts \(Scotland\) Act 1971 \(c.58\)](#), **section 4**.
- M51** 1940 c.42.
- M52** 2006 c.52.
- M53** 1968 c.20; section 43 was relevantly amended by paragraph 17 of Schedule 9 to the [Constitutional Reform Act 2005 \(c.4\)](#).
- M54** 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.
- M55** 1997 c.43; paragraphs 1 and 2 of Schedule 1 were amended by [S.I. 1997/1775](#), **article 2** and paragraph 1 of the Schedule and also by [S.I. 1999/1820](#), **article 4** and paragraph 130 of Schedule 2.
- M56** [S.I. 1998/2798](#).
- M57** 1984 c.47, which has been relevantly amended as follows: section 1 was amended by [S.I. 1999/1820](#), **article 4** and paragraph 75 of Schedule 2; section 3 was amended by Schedule 5 to the [Prisoners and Criminal Proceedings \(Scotland\) Act 1993 \(c.9\)](#), by section 62 and paragraph 10 of Schedule 1 of the [Crime and Punishment \(Scotland\) Act](#); section 119 of the [Crime and Disorder Act 1998 \(c.37\)](#), by [S.I. 1999/1820](#), **article 4** and paragraph 75 of Schedule 2, and also by the [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#); section 3 was repealed in part by the [Crime and Punishment \(Scotland\) Act](#), section 62, paragraph 10 of Schedule 1 and Schedule 3, and also by the [Criminal Justice Act 2003 \(c.44\)](#), **Schedule 37**, Part 8; section 4 was amended by [S.I. 1999/1820](#) article 4 and paragraph 75 of Schedule 2; section 5 was amended by the [Merchant Shipping Act 1995 \(c.21\)](#), **Schedule 13** and also by [S.I. 1999/1820](#), **article 4** and paragraph 75 of Schedule 2; paragraph 2 of the Schedule was substituted by the [Criminal Justice Scotland Act 2003 \(asp 7\)](#), **section 33** and amended by [S.I. 1998/2327](#), **article 5**.

## Application of Rules to contracted out prisons

4.—(1) Where the Scottish Ministers have entered into a contract for the running of a contracted out prison, these Rules have effect in relation to the contracted out prison, with the following modifications—

- (a) references to “an officer” include references to a prisoner custody officer certified as such under section 114(1) of the 1994 Act <sup>M58</sup> and performing custodial duties at that or any other prison;
- (b) references to “an employee” include references to an employee of the contractor or any sub contractor;
- (c) subject to sub-paragraphs (d), (e) and (h), references to a “Governor” include references to a director approved by the Scottish Ministers for the purpose of section 107(1) of the 1994 Act <sup>M59</sup>;
- (d) in rules 40, 95, 96 and 97 and in any rule in Parts 11 and 15 references to a “Governor” are to be construed as references to a controller appointed by the Scottish Ministers under section 107(1) of the 1994 Act;
- (e) “Governor in Charge” means the director except where the function has been conferred on the controller in terms of sub-paragraph (d) and in such cases references to the “Governor in Charge” are to be construed as references to the controller;
- <sup>F6</sup>(f) rules 106(8), 108(8), 141(b) and (c) and 142(7) do not apply;
- (g) in rules 122 and 123, references to “residential first line manager” or “RFLM” are to be construed as references to the senior prison custody officer;
- (h) in rule 124 where a prisoner desires to make a complaint concerning any confidential matter which relates to the controller, references to “the Governor” in rule 124 are to be construed as references to “the Scottish Ministers”; and
- (i) the reference to “the Governor” in rule 139(b) includes reference to the director and the controller.

(2) 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) the director must notify the controller of the fact forthwith.

### Textual Amendments

**F6** Rule 4(1)(f) substituted (1.11.2011) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2011 \(S.S.I. 2011/356\)](#), rules 1, **2(5)**

### Marginal Citations

**M58** 1994 c.33; section 114(1) was amended by [S.I. 1999/1820](#), [article 4](#) and paragraph 115 of Schedule 2.

**M59** 1994 c.33; section 107(1) was amended by [S.I. 1999/1820](#), [article 4](#) and paragraph 115 of Schedule 2.

## Suspension of certificate of a prisoner custody officer

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

- (a) either—
  - (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;

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- (ii) the officer has been charged with a criminal offence or disciplinary action is being taken against him or her 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 or her duties; and
- (b) 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).

### **Elimination of discrimination<sup>[F7]</sup>, harassment and victimisation]**

6. Subject to the provisions of these Rules or of any direction made for any purpose specified in these Rules, the Governor must seek to eliminate within the prison discrimination<sup>[F8]</sup>, harassment and victimisation] against prisoners on the grounds of—

- (a) age;
- (b) disability;
- (c) gender reassignment;
- (d) marriage and civil partnership;
- (e) pregnancy and maternity;
- (f) race;
- (g) religion or belief;
- (h) sex;
- (i) sexual orientation; or
- (j) other status.

#### **Textual Amendments**

- F7** Words in rule 6 heading inserted (19.3.2012) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2012 \(S.S.I. 2012/26\)](#), rules 1, **2(3)**
- F8** Words in rule 6 inserted (19.3.2012) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2012 \(S.S.I. 2012/26\)](#), rules 1, **2(3)**

### **Availability of Rules and directions**

7. The Governor must ensure that a copy of these Rules, and any direction made under these Rules, as in force from time to time, is readily available for inspection by officers and prisoners in each accommodation block and in the prison library.

## **PART 2**

### **RECEPTION, RECORDS, CATEGORISATION AND ALLOCATION**

#### **Production of warrant, order, direction or certificate**

8. A person may only be received into and detained in a prison where the Governor is satisfied that a valid warrant, order or direction exists which authorises that person to be detained in prison.

### **Procedure on reception of prisoners**

- 9.—(1) This rule applies to every prisoner on reception.
- (2) Every prisoner must be searched in accordance with rule 92.
- (3) The Governor may in the course of, or following, a search under paragraph (2)—
- (a) deal with any prohibited article in the possession of the prisoner in accordance with rule 104; and
  - (b) deliver any medicines and medical appliances in the possession of the prisoner to a healthcare professional.
- (4) An officer may—
- (a) order that a prisoner must take a shower or a bath; or
  - (b) on the advice of a healthcare professional, order that a prisoner must not take a shower or bath.

### **Interview of prisoners on reception**

10. Every prisoner must be interviewed by an officer at the time of reception in order to identify any problems which may require immediate attention.

### **Information to be given to prisoners on reception**

11.—(1) Paragraphs (2) to (5), and (7) do not apply in relation to a prisoner who is received into prison on transfer from any other prison.

(2) Every prisoner must be informed by the Governor at the time of reception how the prisoner may inform—

- (a) up to two persons; and
- (b) a legal adviser,

of the prisoner's reception into prison, and the Governor must make available reasonable facilities for that purpose.

(3) A prisoner who is a foreign national must be informed of his or her entitlement to contact, in addition to the persons mentioned in paragraph (2), a diplomatic representative of the prisoner's choice.

(4) A prisoner who is a refugee or stateless person must also be informed of his or her entitlement to contact, in addition to the persons mentioned in paragraph (2)—

- (a) a diplomatic representative of a state which the prisoner considers may look after his or her interests; and
- (b) subject to such limit as to numbers as the Governor may reasonably impose, national or international authorities and organisations whose principal purpose is to serve the interests of refugees or stateless persons or to protect the civil rights of such persons.

(5) A prisoner who is committed to prison on default of payment of any sum of money due to be paid by the prisoner must be informed by the Governor at the time of reception of the facilities available in terms of rule 79 to arrange the making of such payment as will entitle the prisoner to be released from prison.

(6) On reception every prisoner must be provided with information by the Governor concerning the following matters:—

- (a) the rules and directions which apply in that prison;
- (b) the prison routine and regime;

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- (c) how the prisoner may make requests and complaints; and
  - (d) how the prisoner may maintain contact with relatives and friends.
- (7) In the case of any prisoner whose date of release can be calculated at the time of reception, the Governor must inform the prisoner of that date as soon as may be reasonably practicable.
- (8) The information to be provided to any prisoner in terms of this rule must be provided in a manner which enables the prisoner to understand it.

### Registration and records of prisoners

**[F9 12.—**(1) For any of the purposes specified in paragraph (2), the Governor may take from a prisoner and record—

- (a) the prisoner's biometric data;
- (b) the prisoner's description including any distinctive marks on his or her body;
- (c) the prisoner's photograph;
- (d) details of the prisoner's next of kin or another emergency contact; and
- (e) any other personal particulars of the prisoner that are relevant.

(2) The purposes for which the Governor may take and record the particulars specified in paragraph (1) are—

- (a) the identification of a prisoner;
- (b) the management of a prisoner or prisoners in general;
- (c) the administration of the prison; and
- (d) the prevention, detection and prosecution of crime.

(3) Any photograph or biometric data must be destroyed—

- (a) in the case of an untried prisoner, if the prisoner is released before trial or disposal of proceedings or is acquitted after trial and is not further remanded; or
- (b) in the case of a prisoner who is the subject of extradition, removal or deportation proceedings, if the prisoner successfully defends those proceedings and is released from custody.

(4) Any biometric data taken from a prisoner, other than a prisoner mentioned in paragraph (3) (a) or (b), must be destroyed no later than 24 months after the prisoner is released from prison.

(5) The Scottish Ministers may specify in a direction the conditions under which information recorded in terms of this rule must be recorded, stored, updated, disclosed and destroyed.]

#### Textual Amendments

- F9** Rule 12 substituted (19.3.2012) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2012 \(S.S.I. 2012/26\)](#), rules 1, 2(4)

### Recording data about a prisoner's religion

**13.—**(1) Details about a prisoner's religion, belief or non-belief must be recorded by the Governor in accordance with this rule.

(2) A prisoner is to be treated as having a particular religion, belief or non-belief for the purposes of these Rules if he or she has declared this upon reception at the prison or at any other time.

(3) A prisoner is not obliged to give any information about having a particular religion, belief or non-belief at reception or at any other time.

(4) Any information provided in accordance with paragraph (2) must be recorded and passed to the chaplaincy team.

### **Categorisation of prisoners**

14. Every prisoner may be categorised by the Governor according to—

- (a) age;
- (b) gender;
- (c) offence or matter in respect of which the prisoner is committed to prison;
- (d) period of sentence or committal;
- (e) previous criminal record; and
- (f) any other matter which the Governor considers appropriate.

### **Allocation of prisoners**

15.—(1) The Scottish Ministers may set aside particular prisons or parts of prisons for particular categories of prisoners or particular purposes.

(2) Subject to paragraph (1), the Governor may allocate within a prison a particular part of the prison in which a prisoner, or any particular category of prisoners, may be confined having regard to—

- (a) the categorisation of a prisoner;
- (b) the supervision level of a prisoner; and
- (c) any other matter affecting the management of a prisoner.

(3) A prisoner may request reasons from the Governor as to why the prisoner has been allocated to a particular prison or part of the prison and the Governor must provide those reasons as soon as it is practicable to do so.

### **Separation of different categories of prisoners**

16. The Governor must, so far as reasonably practicable, keep civil prisoners and untried prisoners apart from other categories of prisoners.

## **PART 3**

### **SUPERVISION LEVELS**

#### **Supervision levels**

17.—(1) Every prisoner must be assigned a supervision level.

(2) The supervision levels which may be assigned to a prisoner—

- (a) relate to the amount of supervision the prisoner requires within the prison; and
- (b) do not relate to the assessment of the risk that the prisoner may abscond or pose a danger to the public while on temporary release from the prison.

(3) The supervision level which may be assigned to a prisoner is specified in column 1 of the table set out below and the description of each level is set out opposite that level in column 2 of the table—

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<i>Column 1 Supervision Level</i>	<i>Column 2 Description</i>
High Supervision	A prisoner for whom all activities and movements require to be authorised, supervised and monitored by an officer.
Medium Supervision	A prisoner for whom activities and movements are subject to limited supervision and restrictions.
Low Supervision	A prisoner for whom activities and movements are subject to minimum supervision and restrictions, and who may be given the opportunity to participate in supervised or unsupervised activities in the community.

### Assignment of supervision levels on reception

**18.**—(1) Subject to paragraph (2) and any direction made by the Scottish Ministers under rule 22, all prisoners, on reception, must be assigned high supervision level.

(2) On reception, a prisoner who is—

- (a) transferred under paragraph 1 of Schedule 1 to the Crime (Sentences) Act 1997<sup>M60</sup> where the transfer is—
  - (i) a restricted transfer within the meaning of paragraph 6(1) of that Schedule; and
  - (ii) has been made for a temporary purpose; or
- (b) transferred under paragraph 2 or 3 of that Schedule,

must be assigned, for the period of the detention, a supervision level which, in the opinion of the Governor, is the nearest equivalent to the prisoner's classification in the prison or place in the part of the United Kingdom, the Channel Islands or the Isle of Man in which the prisoner was detained immediately before the transfer took place.

[<sup>F10</sup>(3) Untried prisoners must be assigned high supervision level at all times.]

#### Textual Amendments

**F10** Rule 18(3) inserted (19.3.2012) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2012 \(S.S.I. 2012/26\)](#), rules 1, 2(5)

#### Marginal Citations

**M60** 1997 c.43.

### Assignment of supervision levels on review

**19.**—(1) The supervision level of prisoners, except [<sup>F11</sup>untried prisoners and] those mentioned in rule 18(2), must be reviewed in accordance with the provisions of these Rules—

- (a) for all prisoners, within 72 hours of reception;
- (b) for prisoners assigned medium or high supervision level on a review under subparagraph (a), within 6 months of that review;
- (c) for prisoners assigned medium or high supervision level on a review under subparagraph (b) or any subsequent review, within 12 months of that review; and
- (d) for all prisoners, whenever the Governor deems it necessary to do so.



(2) On the review of a prisoner's supervision level under this rule, and subject to paragraph (3) and any direction made by the Scottish Ministers under rule 22, the prisoner must be assigned the appropriate supervision level having regard, so far as applicable, to the following criteria:—

- (a) the seriousness of the offence for which the prisoner has been convicted;
- (b) the prisoner's previous convictions;
- (c) any outstanding charges;
- (d) the length of time that the prisoner has spent in custody;
- (e) the prisoner's conduct in custody;
- (f) the prisoner's trustworthiness and stability; and
- (g) any other criteria as may be specified in a direction made by the Scottish Ministers for the purposes of this rule.

<sup>F12</sup>(3) .....

(4) The entitlement of any prisoner who is assigned low supervision level to participate in supervised or unsupervised activities in the community is subject to the requirements of rule 100 and of Part 15.

**Textual Amendments**

- F11** Words in rule 19(1) inserted (19.3.2012) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2012 \(S.S.I. 2012/26\)](#), rules 1, **2(6)(a)**
- F12** Rule 19(3) revoked (19.3.2012) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2012 \(S.S.I. 2012/26\)](#), rules 1, **2(6)(b)**

**Maintaining or lowering a supervision level on review**

**20.**—(1) This rule applies to the assignment of supervision levels other than—

- (a) the assignment of high supervision level on reception;
- (b) the assignment of a supervision level under rule 18(2); or
- (c) the assignment of a supervision level to which rule 21 applies.

(2) Following the assignment of a supervision level to which this rule applies, the Governor must inform the prisoner in writing—

- (a) in the case of the assignment of a lower supervision level than that previously assigned, of the reasons why the lower supervision level is appropriate; or
- (b) in the case of a review which has resulted in no change of supervision level, of the reasons why a lower supervision level is not appropriate.

(3) Following the assignment of a supervision level to which this rule applies, the Governor must, if asked to do so by the prisoner concerned, but subject to rule 27, provide the prisoner with—

- (a) a copy of any document to which the Governor has had regard in reaching the decision; and
- (b) a summary of any other information of which the Governor was aware and had regard to in reaching the decision.

**Assigning certain supervision levels on review**

**21.**—(1) This rule applies to the assignment of a prisoner's supervision level in the following circumstances:—

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- (a) the prisoner is assigned a higher supervision level than that previously assigned to the prisoner; or
  - (b) a supervision level other than low supervision level is assigned to a prisoner who is—
    - (i) a long-term prisoner who is eligible to be considered by the Parole Board for Scotland in terms of Part I of the 1993 Act;
    - (ii) a life prisoner who has served the part of his or her sentence specified in an order made under section 2(3) of the 1993 Act <sup>M61</sup>; or
    - (iii) a long-term prisoner or life prisoner who has not yet served the part of his or her sentence specified in sub-paragraph (i) or (ii), as the case may be, but who has served such part of his or her sentence as may be specified in a direction made by the Scottish Ministers.
- (2) Prior to the assignment of a supervision level to which this rule applies, the Governor must provide the prisoner with a written notice informing the prisoner of—
- (a) the supervision level that it is proposed should be assigned to the prisoner;
  - (b) the reasons for that proposal; and
  - (c) the procedure by which the prisoner may make written representations in relation to the proposed assignment of the supervision level.
- (3) The Governor must, if asked to do so by the prisoner concerned, but subject to rule 27, provide the prisoner with—
- (a) a copy of any document to which the Governor has had regard in considering the matter; and
  - (b) a summary of any other information of which the Governor was aware and to which he or she has had regard in considering the matter.
- (4) The Governor must—
- (a) consider any representations made by the prisoner prior to making a decision in relation to the assignment of a supervision level; and
  - (b) if the supervision level is assigned in circumstances as mentioned in paragraph (1), provide the prisoner with a written statement of reasons for his or her decision.

#### Marginal Citations

**M61** 1993 c.9; section 2 was amended as follows: by the [Crime and Punishment \(Scotland\) Act 1997 \(c.48\)](#), [section 16](#); by the [Convention Rights \(Compliance\) \(Scotland\) Act 2001 \(asp 7\)](#), [section 1](#); and by the [Criminal Justice \(Scotland\) Act 2003 \(asp 7\)](#), [section 29](#) and Schedule 1, paragraph 1.

#### Direction with respect to supervision levels

- 22.** The Scottish Ministers may specify in a direction—
- (a) the relative importance that is to be given to each of the criteria specified in rule 19(2) in determining the assignment of a supervision level;
  - (b) the form and content of any document that may be required to be completed by the Governor when assigning, or when reviewing the assignment of, a supervision level under rules 18 and 19;
  - (c) the procedure in terms of which notices may be provided to a prisoner, and representations may be made, under rule 21;
  - (d) the form in which any such notice or representations may be provided or made; and

- (e) the time limits within which the procedure mentioned in rule 21 may be carried out.

### **Imposition of special security measures**

- 23.**—(1) For the purposes of this Part, “special security measures” are measures which are—
- (a) separate from and additional to anything that can be done under Part 10; and
  - (b) specified in a direction by the Scottish Ministers.
- (2) Subject to paragraphs (3) to (5) and to rule 24, the Governor may impose special security measures on any prisoner who is assigned high supervision level, where the Governor considers that the imposition of these measures is necessary—
- (a) in the interests of the health, welfare or safety of the prisoner or any other person; or
  - (b) to prevent an escape from legal custody or the doing of any act prejudicial to the safe keeping of persons in legal custody.
- (3) Prior to imposing special security measures on a prisoner, the Governor must provide the prisoner with a written notice stating—
- (a) the measures that are to be imposed;
  - (b) the reasons why they are to be imposed; and
  - (c) the procedure by which the prisoner may make written representations in relation to the imposition of the special security measures.
- (4) The Governor must, if asked to do so by the prisoner concerned, but subject to rule 27, provide the prisoner with—
- (a) a copy of any document to which the Governor has had regard in considering the matter; and
  - (b) a summary of any other information of which the Governor was aware and to which he or she has had regard in considering the matter.
- (5) The Governor must—
- (a) consider any representations made by the prisoner prior to imposing special security measures on the prisoner; and
  - (b) if special security measures are imposed, provide the prisoner with a written statement of reasons for this decision.

### **Provisional imposition of special security measures**

- 24.**—(1) The Governor may impose special security measures on a prisoner on a provisional basis without having recourse to the procedure contained in rule 23 where the Governor considers that the immediate provisional imposition of the measures is necessary—
- (a) in the interests of the health, welfare or safety of the prisoner or any other person; or
  - (b) to prevent an escape from legal custody or the doing of any act prejudicial to the safe keeping of persons in legal custody.
- (2) Special security measures may only be provisionally imposed on a prisoner under paragraph (1) where—
- (a) the prisoner is informed in writing of the provisional imposition of the special security measures; and
  - (b) the procedure contained in rule 23 is commenced within 48 hours of the provisional imposition of the special security measures.

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(3) If the Governor decides that the provisional imposition of the special security measures does not require to extend beyond a 48 hour period—

- (a) the prisoner must be informed in writing, within 24 hours of the Governor's decision, that the special security measures are no longer provisionally imposed; and
- (b) there is no requirement to follow the procedure contained in rule 23.

### **Reviews of imposition of special security measures**

**25.**—(1) Where special security measures are imposed by the Governor under rules 23 or 24, the Governor must—

- (a) keep the imposition of those special security measures under review, and
- (b) conduct a formal review as to whether the imposition of the special security measures continues to be necessary under rule 23, at least once in every period of 2 months while the special security measures are in force.

(2) If the Governor proposes to continue to impose special security measures on a prisoner, following a review conducted under this rule, the Governor must, prior to ordering the continued imposition of those measures, provide the prisoner with a written notice stating—

- (a) the measures that the Governor proposes to continue to impose;
- (b) the reasons why they are to be continued; and
- (c) the procedure by which the prisoner may make written representations in relation to the continued imposition of the special security measures.

(3) The Governor must, if asked to do so by the prisoner concerned, but subject to rule 27, provide the prisoner with—

- (a) a copy of any document to which the Governor has had regard in considering the matter; and
- (b) a summary of any other information of which the Governor was aware and to which he or she has had regard in considering the matter.

(4) The Governor must—

- (a) consider any representations made by the prisoner prior to ordering the continued imposition of special security measures on the prisoner; and
- (b) if special security measures are to continue to be imposed, provide the prisoner with a written statement of reasons for this decision.

### **Direction with respect to special security measures**

**26.** The Scottish Ministers may make a direction for the purposes of prescribing—

- (a) the special security measures for the purposes of this Part;
- (b) the procedure in terms of which notices may be provided to a prisoner, and representations may be made, under rules 23 and 25;
- (c) the form in which any such notice or representations may be provided or made; and
- (d) the time limits within which the procedure mentioned in rules 23 and [F1325] may be carried out.

### Textual Amendments

- F13** Word in [rule 26\(d\)](#) substituted (1.11.2011) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2011 \(S.S.I. 2011/356\)](#), rules 1, **2(6)**

### Disclosure of information considered by the Governor under this Part

**27.—**(1) The Governor is not obliged to provide the prisoner with a copy of a document or a summary of information under rules 20(3), 21(3), 23(4) and 25(3) if the Governor is of the opinion that the document or information, if disclosed to the prisoner, would be likely to be damaging on one or more of the following grounds—

- (a) that it would be likely to adversely affect the health, welfare or safety of the prisoner or of any other person;
- (b) that it would be likely to result in the commission of an offence;
- (c) that it would be likely to facilitate an escape from legal custody or the doing of any act prejudicial to the safe keeping of persons in legal custody;
- (d) that it would be likely to impede the prevention or detection of offences or the apprehension or prosecution of suspected offenders; or
- (e) that it would be otherwise likely to damage the public interest.

(2) Where a prisoner is not provided with a copy of a document or a summary of information by virtue of paragraph (1), the Governor must inform the prisoner in writing of the gist of that document or information, but only insofar as is practicable without prejudicing the purposes for which that document or other information is not disclosed.

(3) Where a prisoner makes a request to the Governor—

- (a) under rule 21(3), prior to the Governor making a decision in relation to the assignment of a supervision level;
- (b) under rule 23(4) prior to the Governor making a decision in relation to imposition of special security measures; or
- (c) under rule 25(3), prior to the Governor making a decision in relation to the continued imposition of special security measures;

the Governor must comply with the obligations contained in those rules and this rule prior to making his or her decision.

## PART 4

### ACCOMMODATION, CLOTHING, HYGIENE AND FOOD

#### Accommodation of prisoners

**28.—**(1) The Governor may require a prisoner to be accommodated in single accommodation or shared accommodation with other prisoners, subject to paragraphs (2) to (4).

(2) The Governor may require two or more prisoners to share accommodation where—

- (a) the nature of the accommodation in the prison, or the circumstances pertaining in that or any other prison to which these Rules apply, make such sharing necessary; or
- (b) the Governor receives advice from a healthcare professional that shared accommodation is appropriate in order to protect the health of the relevant prisoners or any of them.

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(3) The Governor must not require a prisoner to share accommodation if the Governor receives a recommendation from a healthcare professional that, in order to protect the health of any prisoner, the prisoner should not share accommodation with another prisoner.

(4) Before two or more prisoners are required to share accommodation the Governor must consider whether the prisoners are suitable to associate with each other in that accommodation.

(5) Any consideration by the Governor in terms of paragraph (4) must include a risk assessment as to whether, if the prisoners were required to share the accommodation they would be likely to—

- (a) cause injury or harm to each other;
- (b) cause damage to property; or
- (c) otherwise prejudice the good order and running of the prison.

### **Standard of accommodation**

**29.**—(1) Each cell or room used to accommodate prisoners must be of an adequate size and fitted with means of communication with an officer.

(2) Each cell or room used to accommodate prisoners or any other part of a prison to which prisoners are permitted to have access must be adequately—

- (a) lit by natural or artificial light;
- (b) heated and ventilated; and
- (c) furnished as is necessary and appropriate for the type of accommodation or area of the prison,

all as necessary for the health and safety of prisoners.

(3) Every prisoner must keep the cell or room in which that prisoner is accommodated in a clean and tidy condition except when excused from doing so by the Governor.

### **Provision of bedding**

**30.**—(1) The Governor must—

- (a) provide every prisoner with a separate bed or sleeping plinth;
- (b) provide sufficient bedding as necessary for the prisoner's warmth and health; and
- (c) make provision for the bedding to be changed or cleaned as frequently as required to ensure good hygiene.

(2) A prisoner may request to have only a mattress instead of a bed and the Governor may agree to this.

(3) A prisoner may only have bedding which the Governor has provided under this rule or which the Governor has consented to the prisoner having.

### **Convicted prisoners wearing their own clothing**

**31.**—(1) Where the Governor has granted permission, a convicted prisoner may wear his or her own clothing.

(2) The Governor—

- (a) may only grant permission after considering the terms of any direction under paragraph (5), and being satisfied that none of the conditions specified in paragraph (4) apply; and
- (b) must detail any times or circumstances in which the permission does or does not apply.

(3) The Governor may withdraw permission at any time if the Governor considers it appropriate to do so.

- (4) For the purposes of paragraph (2) the conditions are that—
  - (a) the Governor considers that the prisoner's clothing—
    - (i) is in poor condition or too unsanitary to clean;
    - (ii) may be prejudicial to security, good order or discipline within the prison; or
    - (iii) is incompatible with the facilities at, or management of, the prison;
  - (b) the Governor receives advice from a healthcare professional that—
    - (i) the prisoner's clothing is prejudicial to the prisoner's health; or
    - (ii) special clothing is required on health grounds;
  - (c) special or protective clothing is required for particular work or activities being undertaken by the prisoner; or
  - (d) particular clothing is or may be required for the purposes of legal proceedings.
- (5) The Scottish Ministers may make a direction for the purposes of specifying—
  - (a) the types of clothes that a prisoner may or may not wear;
  - (b) whether it is appropriate to allow prisoners to wear or be prohibited from wearing their own clothing;
  - (c) that the matters in sub-paragraphs (a) and (b) apply to specific prisoners, categories or classes of prisoner; and
  - (d) that the matters in sub-paragraphs (a) and (b) apply to parts of a prison, within a particular prison or across a class of prisons.

**Untried and civil prisoners wearing their own clothing**

- 32.—(1) An untried or civil prisoner may wear his or her own clothing.
- (2) Paragraph (1) does not apply if—
    - (a) the prisoner has received a punishment under rule 114(1)(e); <sup>F14</sup>...
    - (b) the Governor has ordered the prisoner to wear other appropriate clothing for any of the reasons specified in paragraph (4) [<sup>F15</sup>or]
    - <sup>F16</sup>(c) the Governor has ordered the prisoner to wear other appropriate clothing so as to comply with the terms of a direction made under paragraph (5).]
  - (3) The Governor may revoke any order under paragraph 2(b) when it is appropriate to do so.
  - (4) For the purposes of paragraph (2)(b) the reasons are that—
    - (a) the Governor considers that the prisoner's clothing—
      - (i) is in poor condition or too unsanitary to clean;
      - (ii) may be prejudicial to security, good order or discipline within the prison; or
      - (iii) is incompatible with the facilities at, or management of, the prison;
    - (b) the Governor receives advice from a healthcare professional that—
      - (i) the prisoner's clothing is prejudicial to the prisoner's health; or
      - (ii) special clothing is required on health grounds;
    - (c) special or protective clothing is required for particular work or activities being undertaken by the prisoner [<sup>F17</sup>or];
    - (d) particular clothing is or may be required for the purposes of legal [<sup>F18</sup>proceedings.]
    - <sup>F19</sup>(e) .....

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- (5) The Scottish Ministers may make a direction for the purposes of specifying—
- (a) the types of clothes that a prisoner may or may not wear;
  - (b) whether it is appropriate to allow prisoners to wear or be prohibited from wearing their own clothing;
  - (c) that the matters in sub-paragraphs (a) and (b) apply to specific prisoners, categories or classes of prisoner; and
  - (d) that the matters in sub-paragraphs (a) and (b) apply to parts of a prison, within a particular prison or across a class of prisons.

#### Textual Amendments

- F14** Word in rule 32(2)(a) omitted (19.3.2012) by virtue of [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2012 \(S.S.I. 2012/26\)](#), rules 1, **2(7)(a)**
- F15** Word in rule 32(2)(b) inserted (19.3.2012) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2012 \(S.S.I. 2012/26\)](#), rules 1, **2(7)(b)**
- F16** Rule 32(2)(c) inserted (19.3.2012) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2012 \(S.S.I. 2012/26\)](#), rules 1, **2(7)(c)**
- F17** Word in rule 32(4)(c) inserted (19.3.2012) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2012 \(S.S.I. 2012/26\)](#), rules 1, **2(7)(d)**
- F18** Word in rule 32(4)(d) substituted (19.3.2012) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2012 \(S.S.I. 2012/26\)](#), rules 1, **2(7)(e)**
- F19** Rule 32(4)(e) revoked (19.3.2012) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2012 \(S.S.I. 2012/26\)](#), rules 1, **2(7)(f)**

#### Provision of clothing to prisoners

- 33.**—(1) The Governor must provide suitable clothing for every prisoner who—
- (a) is not permitted to wear their own clothes under these Rules; or
  - (b) does not possess or have access to any or enough of their own clothes.
- (2) Any clothing provided in terms of paragraph (1) must—
- (a) so far as reasonably practicable, be issued by the Governor for use only by the prisoner concerned;
  - (b) where required to be worn by the prisoner on occasions when outwith the prison, not give any obvious indication that the prisoner is such a person;
  - (c) be fit for purpose and, having regard to the circumstances, be suitable for the health and safety of the prisoner; and
  - (d) be maintained in good repair in accordance with arrangements made by the Governor.
- (3) The Governor must ensure that every prisoner has sufficient clothing (whether their own or provided by the Governor) to enable a prisoner—
- (a) to have a clean change of socks and underwear everyday; and
  - (b) to have a clean change of other clothing as often as is necessary for the purposes of health and hygiene.
- (4) If the Governor receives advice from a healthcare professional that any article of clothing belonging to, or provided to, a prisoner is unsanitary, the Governor—
- (a) may require the prisoner to change out of the article, if applicable;
  - (b) must provide the prisoner with alternative clean clothing to change into; and



- (c) must arrange for the decontamination or disinfection of the relevant article by such process as is necessary unless the article is too unsanitary to clean in which case the article may be disposed of appropriately.
- (5) If it is impractical for the Governor to comply with paragraph (3) due to exceptional circumstances pertaining in the prison, or a temporary lack of facilities at the prison, then—
  - (a) subject to sub-paragraph (b) the Governor must seek to comply with paragraph (3) so far as reasonably practicable; and
  - (b) where the exceptional circumstances or temporary lack of facilities persist for more than 48 hours, the Scottish Ministers may by direction provide that paragraph (3) applies in relation to prisoners (or categories of prisoners) in that prison subject to such restrictions as the Scottish Ministers consider appropriate but only for a period not exceeding one month.

### Personal hygiene

- 34.**—(1) The Governor must provide every prisoner with the opportunity to keep clean by providing access at reasonable times to such facilities for washing, bathing and showering as are necessary for health and hygiene in order that a prisoner can bathe or shower—
- (a) on a daily basis where adequate arrangements can be made; or
  - (b) where adequate arrangements cannot be made under sub-paragraph (a), at least every other day.
- (2) The Governor must provide suitable towels and toiletries as are necessary for the prisoner's health and hygiene, including—
- (a) soap and shampoo;
  - (b) shaving materials if required; and
  - (c) in the case of female prisoners, sanitary protection.
- (3) An officer may—
- (a) order that a prisoner must take a shower or a bath; or
  - (b) on the advice of a healthcare professional, order that a prisoner must not take a shower or bath for such period as the officer, on the advice of a healthcare professional, considers appropriate.
- (4) A prisoner's hair must not be cut without the consent of the prisoner.

### Prisoners' food and drink

- 35.**—(1) The Governor must—
- (a) ensure that every prisoner is provided with wholesome and nutritious food and drink on a daily basis;
  - (b) ensure that the quantity of food and drink provided to each prisoner is adequate for health and nutrition and is well prepared and well presented;
  - (c) taste and otherwise check samples of the food and drink prepared for prisoners on a daily basis to ensure its quality and condition; and
  - (d) ensure that the facilities and conditions under which such food and drink are stored, prepared and served are inspected on a regular basis.
- (2) If an officer finds any deficiency as a result of any sampling or inspection, the Governor must remedy that deficiency as soon as reasonably practicable.
- (3) The Governor must ensure that every prisoner is provided with food which takes into account, so far as practicable, the prisoner's age, health and religious, cultural, dietary or other requirements.

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- (4) A prisoner must not receive or possess any food or drink unless—
  - (a) it has been provided to the prisoner in terms of this rule;
  - (b) the prisoner was permitted to purchase it within the prison and purchased it in the prison; or
  - (c) the Governor has otherwise given permission.
- (5) If it is impractical for the Governor to comply with paragraphs (1) or (3) due to exceptional circumstances pertaining in the prison, or a temporary lack of facilities at the prison, then—
  - (a) subject to sub-paragraph (b) the Governor must seek to comply with paragraphs (1) and (3) so far as reasonably practicable; and
  - (b) where the exceptional circumstances or temporary lack of facilities persist for more than 48 hours, the Scottish Ministers may by direction provide that paragraphs (1) and (3) apply in relation to prisoners (or categories of prisoners) in that prison subject to such restrictions as the Scottish Ministers consider appropriate but only for a period not exceeding one month.

## PART 5

### HEALTH AND WELFARE

#### Smoking

- 36.**—(1) Prisoners may only smoke in the following areas of a prison—
- (a) in a cell or room in which a single prisoner is accommodated;
  - (b) subject to paragraph (2), in a cell or room in which two or more prisoners are accommodated; or
  - (c) in the open air, in any place specified in a direction by the Scottish Ministers.
- (2) Prisoners must not smoke in a cell or room which—
- (a) accommodates two or more prisoners; and
  - (b) has been designated by the Governor as a non-smoking cell or room in accordance with a direction given by the Scottish Ministers.
- (3) No person may smoke in the facilities provided in a prison for mothers and babies.

#### Provision of accommodation for healthcare services

**37.**—(1) The Scottish Ministers must make such arrangements as they consider necessary to provide accommodation within every prison for the provision of healthcare services by healthcare professionals.

(2) For the purposes of this rule “accommodation” does not include machinery or equipment used in the provision of healthcare services.

#### Notification to a healthcare professional of prisoners requiring attention

**38.** The Governor must, without delay, bring to the attention of a healthcare professional any prisoner whose physical or mental condition appears to require the attention of a healthcare professional.

### **Arrangements for care by other medical practitioners, specialists or medical facilities outwith prison**

**39.**—(1) Where the Governor receives a recommendation from a healthcare professional that the condition of a prisoner's health requires the prisoner to be—

- (a) referred to a medical practitioner or a specialist outwith the prison; or
- (b) treated at a medical facility outwith the prison,

the Governor must make such arrangements as the Governor considers appropriate to give effect to that recommendation.

(2) In this rule and rule 42, “medical facility” includes any hospital and any other premises at which any form of services for the care of a person's health is provided.

### **Recommendations by healthcare professionals**

**40.** Where the Governor receives a recommendation from a healthcare professional that, having regard to a prisoner's health, the prisoner—

- (a) should not participate in specified activities;
- (b) should participate in specified activities only in accordance with such conditions as the healthcare professional considers necessary; or
- (c) should not be subject to cellular confinement where this has been imposed in terms of rule 114(1)(d),

the Governor must give effect to that recommendation without delay.

### **Accommodation in specified conditions**

**41.**—(1) The Governor must order that a prisoner be accommodated in specified conditions where a healthcare professional—

- (a) advises the Governor that it is appropriate to do so in order to protect the health or welfare of the prisoner or any other prisoners; and
- (b) informs the Governor of the care and treatment planned for the prisoner while the prisoner is accommodated in specified conditions.

(2) For the purpose of this rule “specified conditions” include, but are not limited to—

- (a) accommodation in a specified part of the prison,
- (b) accommodation separate from other prisoners, and
- (c) confining the prisoner to his or her own cell.

(3) The following conditions apply to an order made under paragraph (1)—

- (a) the order must be in writing;
- (b) the order must detail the reasons why it is being made;
- (c) the order cannot last for more than 72 hours from the time it is made unless an extension has been authorised by the Scottish Ministers in accordance with paragraphs (10) or (11);
- (d) the Governor must explain to the prisoner, if it is practicable to do so, the reasons why the order has been made; and
- (e) the Governor must provide the prisoner with a copy of the written order.

(4) The Governor may, on the advice of a healthcare professional, allow a prisoner who has been accommodated in specified conditions separate from other prisoners under this rule, to associate with other prisoners—

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- (a) for the purpose of engaging or taking part in a prescribed activity or a number of prescribed activities; or
  - (b) in general for a specified period of time each day.
- (5) The Governor must keep a written record of every decision made under paragraph (4).
- (6) The Governor must revoke an order made under paragraph (1) where the Governor is advised by a healthcare professional that it is appropriate to do so on health or welfare grounds.
- (7) An application to the Scottish Ministers to extend an order made under paragraph (1) in accordance with paragraphs (10) or (11) may only be made by the Governor where the Governor is advised by a healthcare professional, prior to the expiry of the order, that it is appropriate to do so on health or welfare grounds and the Governor must make an application under paragraph (10) or (11) as appropriate on the receipt of such advice.
- (8) A prisoner is entitled to make representations to the Governor—
- (a) where the Governor is of the opinion that it is practicable to do so, prior to an order being made under paragraph (1);
  - (b) at any time after an order is made under paragraph (1) but before the Governor applies to the Scottish Ministers for an extension to the order under paragraph (10); and
  - (c) as part of the Governor's application to the Scottish Ministers under paragraphs (10) or (11) to extend an order made under paragraph (1).
- (9) Representations made by the prisoner under paragraph (8) must be taken into account by the Governor and must be made in writing—
- (a) personally by the prisoner; or
  - (b) by the prisoner but transcribed by an officer.
- (10) The Scottish Ministers may—
- (a) on the application of the Governor prior to the expiry of an order made under paragraph (1); and
  - (b) where they are satisfied that it is appropriate in order to protect the health or welfare of the prisoner or any other prisoners,
- grant an extension to an order made under paragraph (1) for a period of no more than one month, to be calculated in accordance with paragraph (12).
- (11) The Scottish Ministers may—
- (a) on the application of the Governor made prior to the expiry of any extension granted under paragraph (10) or this paragraph; and
  - (b) where they are satisfied that it is appropriate in order to protect the health or welfare of the prisoner or any other prisoners,
- grant any number of further extensions to an order made under paragraph (1) for successive periods of no more than one month, to be calculated in accordance with paragraph (12).
- (12) Where an order made by the Governor under paragraph (1) has been extended by the Scottish Ministers under paragraphs (10) or (11), the period of the extension shall run until no later than 23:59 hours on the day falling one month from the expiry of—
- (a) the period of 72 hours stated in paragraph (3)(c); or
  - (b) as the case may be, the previous extension granted by the Scottish Ministers under paragraphs (10) or (11).
- (13) Where an order made by the Governor under paragraph (1) has been extended by the Scottish Ministers under paragraph (10) or (11), the Governor must—
- (a) inform the prisoner in writing that the order has been extended; and

(b) explain to the prisoner, where it is practicable to do so, the reasons why the order has been extended.

(14) A prisoner subject to an order made under paragraph (1) may only be transferred to another prison where the Governor of the prison from which the prisoner is to be transferred is satisfied that—

(a) a healthcare professional at that prison; and

(b) a healthcare professional at the prison to which the prisoner is to be transferred,

have reached agreement on the continuing care and treatment planned for the prisoner following the transfer.

(15) Where a prisoner is transferred to another prison, any order made under paragraph (1) in relation to the prisoner by the Governor of the prison from which the prisoner is being transferred continues to have effect.

(16) In this rule, “prescribed activity” means—

(a) work required to be undertaken in terms of rule 82;

(b) educational classes undertaken in terms of rule 84;

(c) counselling provided in terms of rule 84;

(d) taking exercise or spending time in the open air in terms of rule 87;

(e) recreational activities; or

(f) attendance at any religious service or meeting arranged by the chaplaincy team which the prisoner would otherwise have been entitled to attend in terms of rule 44.

### **Notification of relatives and friends of prisoners suffering serious illness, etc**

**42.**—(1) If a prisoner becomes seriously ill or sustains serious injury or is admitted to a medical facility outwith the prison, the Governor must, where possible, ask the prisoner if any relative or friend, or any other person, should be informed.

(2) Subject to paragraph (3) where the prisoner wishes any relative, friend or other person to be informed of any event mentioned in paragraph (1), the Governor must notify any such person accordingly.

(3) The Governor is not required to notify more than 2 persons in accordance with paragraph (2).

### **Prisoners' welfare**

**43.** The Governor must ensure that every prisoner is given reasonable assistance and facilities to maintain and develop relationships with family and friends and with such other persons and agencies outwith the prison as may best offer the prisoner assistance—

(a) during the sentence or period of committal;

(b) in preparation for release from prison other than temporary release; and

(c) after release from prison.

## **PART 6**

### **RELIGION**

#### **Practising religion or belief within prison**

**44.**—(1) Subject to the provisions of the Act, these Rules and any direction made under these Rules, every prisoner is entitled to—

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- (a) observe the requirements and engage in the practices of their religion or belief;
  - (b) possess religious books, items and materials for their own personal use which are appropriate to their religion or belief;
  - (c) attend religious services or meetings arranged by members of the chaplaincy team; and
  - (d) make a request to the Governor to see, or to speak to, an appropriate member of the chaplaincy team.
- (2) The Governor must—
- (a) inform every prisoner of the facilities or arrangements which exist or may be made for the purposes of this rule;
  - (b) provide such literature and other materials as the Governor considers appropriate for the purposes of paragraph (1)(a) and (b); and
  - (c) as soon as practicable after a request made by a prisoner under paragraph (1)(d), notify the appropriate member of the chaplaincy team of the prisoner's request.
- (3) The Governor may prevent a prisoner from attending a religious service or meeting arranged by the chaplaincy team if the Governor considers it is necessary to do so—
- (a) for the maintenance of good order and discipline within the prison;
  - (b) in the interests of the safety of any person within the prison; or
  - (c) for the protection of the health of any person within the prison.
- (4) Any visit to a prisoner by a member of the chaplaincy team must be held outwith the sight and hearing of an officer except where—
- (a) the member or prisoner concerned requests otherwise; or
  - (b) the Governor considers it would be prejudicial to the interests of security or safety for an officer not to be present.

## PART 7

### PRIVILEGES AND PRISONERS' PERSONAL PROPERTY

#### Privileges

- 45.**—(1) The Governor must establish, a system of privileges for the prisoners detained in the prison.
- (2) The system of privileges may contain different provision for—
- (a) different categories of prisoners; and
  - (b) prisoners detained in specific parts of the prison.
- (3) A system of privileges established under paragraph (1) may include provision in relation to—
- (a) the items of property which the Governor may, in terms of rule 47, allow a prisoner to have in the prisoner's cell or room;
  - (b) the arrangements whereby a prisoner may purchase items within, or outwith, the prison;
  - (c) the use of recreational and library facilities, or the participation in recreational activities organised by virtue of rule 88;
  - (d) the arrangements whereby a prisoner may have tobacco in his or her possession;
  - (e) the circumstances in which privileges may be withdrawn from a prisoner other than as a punishment imposed under rule 114(1)(b) for a breach of discipline; and

- (f) any other matter as may be specified in a direction made by the Scottish Ministers under this rule.
- (4) A system of privileges established under paragraph (1) cannot—
  - (a) prejudice or derogate from any entitlement or right of a prisoner which is specified in any provision of these Rules, or in any direction made under these Rules,
  - (b) provide that any entitlement or right of a prisoner under these Rules or under a direction made under these Rules, is to be regarded as a privilege granted by virtue of this rule; or
  - (c) provide that any entitlement or right of a prisoner under these Rules or under a direction made under these Rules, is capable of being forfeited under rule 114(1)(b).
- (5) The Governor must ensure that every prisoner is provided with information, in a manner which enables the prisoner to understand it, in relation to—
  - (a) the application to the prisoner of the system of privileges established under this rule; and
  - (b) the circumstances in which privileges may be withdrawn.
- (6) The Governor must give reasons to a prisoner where the Governor takes a decision to—
  - (a) withdraw any privilege enjoyed by the prisoner; or
  - (b) refuse to grant to the prisoner a privilege which is enjoyed by any other prisoner.

### **Prisoners' personal property**

- 46.**—(1) For the purposes of this rule and rules 47 to 49, a prisoner's "personal property" comprises all items of property which are not prohibited articles or unauthorised property and which—
- (a) belong to the prisoner and are brought to the prison by the prisoner;
  - (b) are sent to the prisoner at the prison;
  - (c) are brought to the prisoner at the prison by a visitor; or
  - (d) are purchased by the prisoner within prison.
- (2) The prisoner's personal property must be—
- (a) stored in the prisoner's cell or room in accordance with rule 47;
  - (b) stored in the prison storage facilities in accordance with rule 48; or
  - (c) disposed of by the Governor or the prisoner in accordance with rule 49.
- (3) An officer must make a written note in the prisoner's record of all of the prisoner's personal property other than—
- (a) property purchased by the prisoner within the prison;
  - (b) letters or other written communications sent to the prisoner; and
  - (c) any property which is perishable or edible.
- (4) Where a record is prepared in terms of paragraph (3), the prisoner concerned must—
- (a) be given the opportunity to check its accuracy; and
  - (b) thereafter, be required to sign it.

### **Storage of prisoners' personal property in cells or rooms**

- 47.**—(1) Every prisoner is entitled to keep in their cell or room such items of the prisoner's personal property as may be specified in a direction by the Scottish Ministers.

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(2) Without prejudice to paragraph (1), the Governor may refuse to allow a prisoner to have in their possession or to keep in their cell or room any items which the Governor considers to be—

- (a) prejudicial to the security or good order of the prison;
- (b) prejudicial to the health and safety of any person within the prison; or
- (c) incompatible with the size or furnishings of the prisoner's cell or room.

(3) Where the Governor refuses to allow a prisoner to store any item of the prisoner's personal property in their cell or room under paragraph (2)—

- (a) the Governor must notify the prisoner; and
- (b) the property must either—
  - (i) be stored in the prison storage facilities in accordance with rule 48; or
  - (ii) where the Governor is entitled, under rule 48(2), to refuse to store the property in the prison storage facilities, be disposed of by the Governor or the prisoner in accordance with rule 49.

(4) The Governor may, where practicable, provide secure lockers within a prisoner's cell or room to enable the prisoner to store medication and personal property.

#### **Storage of prisoners' personal property in prison storage facilities**

**48.**—(1) The Governor must make arrangements for the safe storage of the prisoner's personal property within the prison storage facilities, except for—

- (a) items which a prisoner is allowed to keep in his or her cell or room;
- (b) items which a prisoner is allowed to keep on his or her person; and
- (c) items specified in paragraph (2).

(2) The Governor may refuse to store in the prison storage facilities any items which the Governor considers to be—

- (a) prejudicial to the security or good order of the prison;
- (b) prejudicial to the health and safety of any person within the prison;
- (c) incompatible with the size of the storage facilities; or
- (d) in excess of the share of the prison storage facilities that should reasonably be allocated to the prisoner.

(3) Where the Governor refuses to store any items of a prisoner's personal property under paragraph (2)—

- (a) the Governor must notify the prisoner; and
- (b) the property must be disposed of by the Governor or the prisoner in accordance with rule 49.

#### **Disposal of prisoner's personal property**

**49.**—(1) This rule applies to any items of a prisoner's personal property which the Governor has refused—

- (a) to allow a prisoner to store in his or her cell or room under rule 47(2); or
- (b) to store in the prison storage facilities under rule 48(2).

(2) The prisoner must arrange for the disposal of any item to which this rule applies, his or her own expense, within 2 months of receiving notification from the Governor under rule 47(3) or 48(3).



(3) Where the prisoner fails to make arrangements for the disposal of any item under paragraph (2), the Governor may—

- (a) arrange for the disposal or destruction of the item in accordance with the prisoner's wishes;
- (b) where the Governor has a return address for the item, return the item to the person who sent it to the prisoner; or
- (c) store the item in the prison storage facilities until alternative arrangements can be made for the disposal of the item.

### **Unclaimed property**

**50.** Any items of a prisoner's personal property may be disposed of by the Governor in any manner the Governor deems appropriate where the items—

- (a) are held in the prison storage facilities; and
- (b) remain unclaimed by the prisoner for a period of more than 12 months after the prisoner is released from prison other than on temporary release.

### **Prisoners' money**

**51.—**(1) The Governor may specify in relation to any prisoner or any category of prisoner, whether the prisoner or any prisoner in that category—

- (a) may have cash in his or her possession; and
- (b) if so, the maximum amount of, or the denominations of, cash which the prisoner may possess.

(2) Any other money belonging to a prisoner which—

- (a) represents earnings paid by virtue of rule 86; or
- (b) has been received in the prison and which does not exceed any restrictions as to the amount of money which a prisoner may receive as may be prescribed in a direction made under rule 55(5),

must be paid into an account under the control of the Governor.

(3) Subject to paragraph (4), a prisoner may withdraw money held in an account under paragraph (2) by authorising the Governor to deduct such sums as are required for the purpose of—

- (a) making specific payments to persons outwith the prison; or
- (b) purchasing any article in prison or arranging for any article to be delivered to the prison.

(4) The Governor may specify in relation to any prisoner, or any category of prisoner, the maximum amount which may be withdrawn by that prisoner or that category of prisoners—

- (a) during any specified period; and
- (b) for the purposes of purchasing any article in prison or any article to be delivered to prison.

(5) The Governor must, in respect of each prisoner—

- (a) keep a record of all money deposited in an account controlled by the Governor under paragraph (2);
- (b) keep a record of all money withdrawn in an account controlled by the Governor under paragraph (2); and
- (c) make such arrangements as the Governor considers appropriate for all monies held in an account controlled by the Governor under paragraph (2) to be paid to the prisoner on release from prison other than on temporary release.

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(6) Nothing in this rule is to be interpreted as preventing a prisoner from opening or maintaining an account with a bank or a building society but the use of such an account will be subject to the other provisions of these Rules.

### **Supplies of books, newspapers, etc to prisoners**

**52.** Subject to rules 46 to 50, a prisoner is entitled to arrange, at his or her own expense, or at the expense of a person outwith the prison, the delivery to the prison of such books, newspapers, writing materials and other means of occupation as the prisoner may wish to use.

## **PART 8**

### **COMMUNICATIONS**

#### **PRISONERS' CORRESPONDENCE AND OTHER COMMUNICATIONS**

#### **Current affairs**

**53.**—(1) Subject to paragraph (2), every prisoner may keep informed of current affairs by means of—

- (a) books, newspapers, periodicals or a radio; and
- (b) any other medium the Governor may allow.

(2) The Governor may restrict, or impose conditions as to, the exercise of the entitlement referred to in paragraph (1) where the Governor considers it is necessary in order to—

- (a) protect the prisoner from self-injury; or
- (b) prevent the prisoner from injuring others.

#### **Prisoners' correspondence**

**54.**—(1) Subject to rules 55 to 60, a prisoner may send and receive letters and packages by means of the postal service, or otherwise.

(2) Nothing in these Rules gives a prisoner any right to send or receive electronic communications.

#### **Restrictions on other correspondence to and from the prisoner**

**55.**—(1) This rule applies to any letter or package, other than one to which rules 56, 57, 58 or 59 apply, which a prisoner wishes to send or which is addressed to the prisoner.

[<sup>F20</sup>(2) A letter or package to which this rule applies may be opened by an officer or employee.

(2A) The contents of a letter or package to which this rule applies may only be read by an officer or employee—

- (a) in the circumstances specified in a direction by the Scottish Ministers made under paragraph (5); and
- (b) in accordance with any conditions specified in a direction by the Scottish Ministers made under paragraph (5).]

(3) Where a letter or package to which this rule applies is, or is found to contain anything, in contravention of the restrictions specified in a direction by the Scottish Ministers made under paragraph (5), an officer or employee may—

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- (a) prevent the letter or package, or anything contained in it, from being sent or from being received by the prisoner; and
  - (b) deal with the letter or package, or anything contained in it, in accordance with such arrangements as may be specified in a direction by the Scottish Ministers made under paragraph (5).
- (4) Where a letter or package to which this rule applies is found to contain a prohibited article or any unauthorised property, the Governor must deal with the item in terms of rule 104.

(5) The Scottish Ministers may specify in a direction any of the following matters in relation to letters and packages to which this rule applies—

- <sup>F21</sup>(a) .....
- <sup>F22</sup>(b) .....
- (c) the circumstances in, and the conditions under, which such a letter or package may be read;
- (d) the officers or employees who may be authorised to read such a letter or package;
- (e) any restrictions as to the number of such letters and packages which a prisoner may send;
- (f) any restrictions as to the amount of money (whether in the form of cash, cheques, bankers' drafts or otherwise) which a prisoner may send or receive;
- (g) the times and frequency at which prisoners may send or receive money (whether in the form of cash, cheques, bankers' drafts or otherwise);
- (h) the persons, authorities and organisations to whom a prisoner is prohibited from sending any such letters and packages;
- (i) any restrictions or conditions which will apply where a prisoner wishes to send such letters and packages to specified persons, authorities and organisations whom the prisoner is not otherwise prohibited from corresponding with;
- (j) any restrictions as to the nature and description of such letters and packages in general which a prisoner may not send or receive; and
- (k) the arrangements by which a letter or package referred to in paragraph (3) may be disposed of.

**Textual Amendments**

- F20** Rule 55(2)(2A) substituted for rule 55(2) (19.3.2012) by The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2012 (S.S.I. 2012/26), rules 1, **2(8)(a)**
- F21** Rule 55(5)(a) revoked (19.3.2012) by The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2012 (S.S.I. 2012/26), rules 1, **2(8)(b)**
- F22** Rule 55(5)(b) revoked (19.3.2012) by The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2012 (S.S.I. 2012/26), rules 1, **2(8)(c)**

**Opening and reading of correspondence from and to courts**

- 56.—(1) This rule applies only to letters and packages which—
- (a) are addressed to a court and which a prisoner gives to an officer or employee for the purpose of sending to that court; or
  - (b) are sent to a prisoner at the prison by a court.

(2) A prisoner who wishes to send a letter or package to a court must mark prominently on the outer face of the envelope or packaging the words “Court Correspondence” as well as the prisoner’s own name.

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(3) A letter or package to which this rule applies must not be opened by an officer or employee unless—

- (a) the officer or employee has cause to believe that it contains a prohibited article or unauthorised property;
- (b) the officer or employee has explained to the prisoner concerned the reason for that belief; and
- (c) the prisoner concerned is present.

(4) The contents of a letter or package to which this rule applies must not be read by an officer or employee.

(5) Where a letter or package to which this rule applies is found to contain a prohibited article or any unauthorised property, the Governor must deal with the item in terms of rule 104.

(6) For the purposes of this rule, “court” includes, but is not limited to: the European Court of Justice, the European Court of Human Rights, the International Criminal Court, the Supreme Court, the First-tier Tribunal (Immigration and Asylum Chamber), the Upper Tribunal (Immigration and Asylum Chamber), the Scottish Criminal Cases Review Commission and the Parole Board for Scotland.

### **Opening and reading of correspondence from and to legal advisers**

**57.—**(1) This rule applies only to letters and packages which—

- (a) are addressed to a legal adviser and which a prisoner gives to an officer or employee for the purpose of sending to that legal adviser; or
- (b) are sent to a prisoner at the prison by a legal adviser.

(2) A prisoner who wishes to send a letter or package to a legal adviser must mark prominently on the outer face of the envelope or packaging the words “Legal Correspondence” as well as the prisoner's own name.

(3) Subject to paragraph (5), a letter or package to which this rule applies must not be opened by an officer or employee unless—

- (a) the officer or employee has cause to believe that it contains a prohibited article or unauthorised property;
- (b) the officer or employee has explained to the prisoner concerned the reason for that belief; and
- (c) the prisoner concerned is present.

(4) The contents of a letter or package to which this rule applies must not be read by an officer or employee except where paragraph (5) applies.

(5) A letter or package to which this rule applies may be opened and, once opened, the contents of the letter or package may be read by the Governor, or by an officer or employee authorised by the Governor, where the Governor has reasonable cause to believe that the contents of the letter or package may—

- (a) endanger the security of the prison;
- (b) endanger the safety of any person; or
- (c) relate to a criminal activity.

(6) Where the Governor decides that the contents of a letter or package to which this rule applies may be read in terms of paragraph (5), the Governor must, prior to the contents of the letter or package being read, inform the prisoner of that decision and the reasons for that decision.

(7) Where a letter or package to which this rule applies is found to contain a prohibited article or any unauthorised property, the Governor must deal with the item in terms of rule 104.

### **Opening and reading of correspondence from and to medical practitioners**

**58.**—(1) This rule applies only to letters and packages which contain personal health information about a prisoner to whom paragraph (2) applies, and—

- (a) are addressed to a registered medical practitioner and are given to an officer or employee by the prisoner for the purpose of sending to that registered medical practitioner; or
- (b) are sent to the prisoner at the prison by a registered medical practitioner.

(2) This paragraph applies to prisoners who—

- (a) are certified as having a life-threatening illness by the registered medical practitioner from whom they are receiving treatment for that illness; and
- (b) who have obtained the Governor's prior consent to communicate with that registered medical practitioner in confidence.

(3) Subject to paragraph (5), a letter or package to which this rule applies must not be opened by an officer or employee unless—

- (a) the officer or employee has cause to believe that it contains a prohibited article or unauthorised property;
- (b) the officer or employee has explained to the prisoner concerned the reason for that belief; and
- (c) the prisoner concerned is present.

(4) The contents of a letter or package to which this rule applies must not be read by an officer or employee except where paragraph (5) applies.

(5) A letter or package to which this rule applies may be opened and, once opened, the contents of the letter or package may be read by the Governor, or by an officer or employee authorised by the Governor, where the Governor has reasonable cause to believe that the contents of the letter or package may—

- (a) endanger the security of the prison;
- (b) endanger the safety of any person; or
- (c) relate to a criminal activity.

(6) Where the Governor decides that the contents of a letter or package to which this rule applies may be read in terms of paragraph (5), the Governor must, prior to the contents of the letter or package being read, inform the prisoner of that decision and the reasons for that decision.

(7) Where a letter or package to which this rule applies is found to contain a prohibited article or any unauthorised property, the Governor must deal with the item in terms of rule 104.

### **Privileged correspondence**

**59.**—(1) This rule applies only to letters and packages which—

- (a) are sent to a prisoner from a person, authority or organisation specified in a direction made by the Scottish Ministers in terms of paragraph (2);
- (b) are sent by a prisoner to a person, authority or organisation specified in a direction made by the Scottish Ministers in terms of paragraph (2).

(2) The Scottish Ministers may specify in a direction the persons, authorities and organisations with whom a prisoner may correspond subject to the conditions specified in paragraphs (3) and (4).

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(3) Subject to paragraph (5), a letter or package to which this rule applies must not be opened by an officer or employee unless—

- (a) the officer or employee has cause to believe that it contains a prohibited article;
- (b) the officer or employee has explained to the prisoner concerned the reason for that belief; and
- (c) the prisoner concerned is present.

(4) The contents of a letter or package to which this rule applies must not be read by an officer or employee except where paragraph (5) applies.

(5) A letter or package to which this rule applies may be opened and, once opened, the contents of the letter or package may be read by the Governor, or by an officer or employee specially authorised by the Governor, where the Governor has reasonable cause to believe that the contents of the letter or package may—

- (a) endanger the security of the prison;
- (b) endanger the safety of any person; or
- (c) relate to a criminal activity.

(6) Where the Governor decides that the contents of a letter or package to which this rule applies may be read in terms of paragraph (5), the Governor must, prior to the contents of the letter or package being read, inform the prisoner of that decision and the reasons for that decision

(7) Where a letter or package to which this rule applies is found to contain a prohibited article or any unauthorised property, the Governor must deal with the item in terms of rule 104.

### **Requests to prevent communication from a prisoner**

[<sup>F23</sup>**60.**—(1) Any person who does not want to receive any communication from a prisoner may make a request to the Governor to prevent or restrict that prisoner from communicating with that person.

(2) Where the Governor receives a request under paragraph (1), the Governor may take such reasonable steps as the Governor considers appropriate to prevent or restrict communication from that prisoner to that person.

(3) The Scottish Ministers may make provision in a direction made under rule 55(5) in relation to the operation of this Rule.

(4) For the purposes of this rule “communication” includes written correspondence and telephone calls.]

#### **Textual Amendments**

**F23** Rule 60 substituted (1.11.2011) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2011 \(S.S.I. 2011/356\)](#), rules 1, **2(7)**

### **Provision of writing materials and payment of postage**

**61.**—(1) Subject to paragraphs (2) and (3) every prisoner must be allowed to send one letter every week, the postage for which must be paid for by the Scottish Ministers, and the Governor must provide the prisoner with the necessary writing materials for this purpose.

(2) The writing materials which must be provided by the Governor under paragraph (1) are as follows—

- (a) a ballpoint pen;

(b) one sheet of writing paper and a reasonable number of further sheets if the prisoner so requires; and

(c) an envelope.

(3) The Governor may allow the prisoner to send more than one letter every week at the expense of the Scottish Ministers if it appears to the Governor that this is justified in the prisoner's circumstances.

### **Communication by telephone**

**62.**—(1) A prisoner is entitled to the use of a telephone, subject to the provisions of paragraphs (2) and (3).

(2) A prisoner's use of a telephone is subject to the provisions of any direction which the Scottish Ministers may make in relation to—

(a) the groups or categories of prisoners who may have the use of a telephone;

(b) the times of day and circumstances in which a telephone may be available for use;

(c) the conditions applicable to the use of such a telephone;

(d) the logging, monitoring and recording by any means by any person authorised by the Governor of telephone calls made by a prisoner.

(3) An officer may refuse to allow a prisoner to have the use of a telephone or restrict a prisoner's use of a telephone—

(a) by virtue of the provisions of any direction as mentioned in paragraph (2); or

(b) in accordance with rule 60.

(4) Where an officer refuses or restricts a prisoner's use of a telephone in terms of paragraph (3), the officer must inform the prisoner of the reasons for that decision and, where a request is made by the prisoner, such reasons must be given in writing.

## **PRISON VISITS**

### **Visits by persons of a prisoner's choice**

**63.**—(1) This rule applies to visits to a prisoner (other than an untried prisoner or a civil prisoner) by any person with whom the prisoner wishes to communicate.

(2) Subject to paragraph (3) and rules 77 and 78, the Governor must allow a prisoner, at such times as the Governor considers reasonable, either—

(a) not less than 30 minutes in any period of 7 consecutive days; or

(b) not less than 2 hours in any period of 28 consecutive days,

for the purposes of receiving visits in terms of this rule.

(3) Any prisoner who does not use the full allowance of visits calculated in accordance with paragraph (2) within any period of 28 consecutive days shall lose the right to receive the visits that have not been used within that period unless that prisoner has obtained the permission of the Governor to accumulate visits under rule 65.

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

(5) Where a prisoner receives a visit in terms of this rule the visit must take place—

(a) within the sight of an officer; and

(b) within the hearing of an officer unless the Governor has otherwise authorised.

(6) Where the Scottish Ministers consider that it is not practicable to allow prisoners the minimum periods for visits specified in paragraph (2) due to the circumstances pertaining in, or the facilities

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available at, any prison, they may by direction provide that paragraph (2) will apply in relation to prisoners of that prison subject to such reduced minimum periods as may be specified in the direction.

(7) A direction made by the Scottish Ministers in terms of paragraph (6) will only have effect for a period of one month, at the end of which period the circumstances pertaining in, and the facilities available at, the prison in question must be reconsidered by the Scottish Ministers before any further direction is made under paragraph (6).

(8) A prisoner is entitled to receive a visit from a person who is—

- (a) a prisoner detained at, or on temporary release from, another prison; or
- (b) a prisoner on temporary release from the same prison,

only in exceptional circumstances and where the Governor of the prison, or the Governors of the prisons involved give consent and, in the event that any Governor refuses consent, the prisoners concerned must be informed of the reasons for the refusal.

(9) This rule does not apply to visits which a prisoner may receive from a member of the chaplaincy team or by virtue of rules 66 to 76, and the entitlement of a prisoner to receive visits in terms of this rule is separate from any entitlement under those rules.

#### **Visits to untried and civil prisoners by persons of a prisoner's choice**

**64.—**(1) This rule applies to visits to an untried prisoner or a civil prisoner by any person with whom the prisoner wishes to communicate.

(2) An untried prisoner or a civil prisoner is entitled to receive—

- (a) a visit of at least 30 minutes' duration in terms of this rule on any day of the week other than—
  - (i) a Saturday or Sunday; or
  - (ii) 1st January or 25th December in any year; and
- (b) where the prisoner has not received a visit on every day of the preceding Monday to Friday, a visit of at least 30 minutes' duration on a Saturday or Sunday.

(3) An untried prisoner or a civil prisoner may, at the discretion of the Governor, receive a visit of such duration as the Governor thinks fit on a Saturday or Sunday or on 1st January or 25th December in any year.

(4) For the purposes of this rule—

- (a) a visit under paragraphs (2) or (3) may take place during such hours and, subject to the other provisions of this rule, under such conditions as the Governor may specify; and
- (b) the number of persons who may be allowed to visit a prisoner at any time is at the discretion of the Governor.

(5) Where an untried prisoner or a civil prisoner receives a visit in terms of this rule the visit must take place—

- (a) within the sight of an officer, and
- (b) within the hearing of an officer unless the Governor has otherwise authorised.

(6) Where the Scottish Ministers consider that it is not practicable to allow untried prisoners or civil prisoners the minimum period for visits specified in paragraph (2) due to circumstances pertaining in, or the facilities available at, any prison they may by direction provide that paragraph (2) will apply in relation to untried prisoners or civil prisoners in that prison subject to such reduced minimum periods as may be specified in the direction.

(7) A direction made by the Scottish Ministers in terms of paragraph (6) will only have effect for a period of one month, at the end of which period the circumstances pertaining in and the facilities



available at the prison in question must be reconsidered by the Scottish Ministers before any further direction is made under paragraph (6).

(8) This rule does not apply to visits which a prisoner may receive from a member of the chaplaincy team or by virtue of rules 66 to 76, and the entitlement of a prisoner to receive visits in terms of this rule is separate from any entitlement under those rules.

### **Accumulated visits**

**65.**—(1) This rule applies to a prisoner who—

- (a) is a life prisoner; or
- (b) is serving a sentence of imprisonment for a term of more than 14 months and has served at least 6 months of that sentence.

(2) A prisoner to whom this rule applies may apply to the Governor for permission to accumulate visits under paragraph (4) for the purpose of receiving those visits at another prison but may only apply for such permission twice in a period of 12 months.

(3) An application made to the Governor under paragraph (2) must specify—

- (a) when the prisoner wishes to start accumulating visits; and
- (b) the prison to which the prisoner wishes to transfer for the purpose of receiving those accumulated visits.

(4) A prisoner to whom this rule applies who has obtained the Governor's permission under paragraph (2) may only accumulate visits by receiving none of the visits that the prisoner would otherwise be entitled to receive under rule 63 over a period of six months.

(5) Following approval by the Governor of an application made under paragraph (2), the Governor must contact the Governor of the prison to which the prisoner wishes to be transferred and both Governors must make arrangements for the transfer of the prisoner to that prison at the end of the period of six months specified in paragraph (4).

(6) A prisoner may only be transferred under paragraph (5) to another prison for such period of time as the Governors of the two prisons concerned may agree subject to a maximum period of two months, during which time the prisoner is entitled to receive all of the visits accumulated under paragraph (4).

(7) A prisoner may only be transferred under this rule to a prison which can provide an appropriate regime for the prisoner.

### **Visits by legal advisers**

**66.**—(1) A prisoner is entitled to receive a visit from his or her legal adviser, at any reasonable time, for the purposes of consulting about any legal matter in which the prisoner is or may be directly interested.

(2) Where a prisoner receives a visit by a legal adviser in terms of this rule, the visit—

- (a) may take place within the sight of an officer; and
- (b) must take place outwith the hearing of any officer.

(3) A legal adviser may use sound recording equipment to record the discussions with the prisoner during a visit in terms of this rule, subject to such conditions as the Governor may specify.

### **Visits by procurators fiscal**

**67.**—(1) A procurator fiscal or any person authorised by the procurator fiscal may, for the purpose of discharging his or her public duties, visit and examine a prisoner at any reasonable time.

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(2) A visit to a prisoner by a procurator fiscal or any person authorised by the procurator fiscal may take place in such area of the prison and under such conditions as the Governor may specify except that such a visit must take place—

- (a) within the sight of an officer; and
- (b) outwith the hearing of any officer unless the prisoner or the visitor requests otherwise.

### Visits by police constables

**68.**—(1) Subject to paragraph (2), a police constable <sup>F24</sup>... may visit or see a prisoner for one or more of the following purposes—

- (a) to interview the prisoner, provided the prisoner is willing to be interviewed;
- (b) to identify the prisoner;
- (c) to charge the prisoner with an offence.

[<sup>F25</sup>(2) A police constable may only visit or see a prisoner under paragraph (1) on production of the written authority of a procurator fiscal or the chief constable of the Police Service of Scotland.]

(3) A visit to a prisoner in terms of paragraph (1)(a) may take place in such area of the prison and under such conditions as the Governor may specify except that such a visit must take place—

- (a) within the sight of an officer; and
- (b) outwith the hearing of an officer unless the prisoner or the visitor requests otherwise.

#### Textual Amendments

**F24** Words in [rule 68\(1\)](#) omitted (1.4.2013) by virtue of [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Modifications and Savings\) Order 2013 \(S.S.I. 2013/119\)](#), art. 1, [sch. 1 para. 39\(a\)](#)

**F25** [Rule 68\(2\)](#) substituted (1.4.2013) by [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Modifications and Savings\) Order 2013 \(S.S.I. 2013/119\)](#), art. 1, [sch. 1 para. 39\(b\)](#)

### Visits by representatives of diplomatic services and national or international authorities or organisations

**69.**—(1) A prisoner who is a foreign national is entitled to communicate with and, if the representative so wishes, receive a visit at any reasonable time from a diplomatic representative of the prisoner's choice.

(2) A prisoner who is a refugee or stateless person is entitled to communicate with and, if the representative so wishes, receive a visit at any reasonable time from—

- (a) a diplomatic representative of a state which the prisoner considers may look after his or her interests; or
- (b) subject to such limit as to numbers of authorities or organisations as the Governor may reasonably impose, an authorised representative of national or international authorities or organisations whose principal purpose is to serve the interests of refugees or stateless persons or to protect the civil rights of such persons.

(3) Where a prisoner receives a visit in terms of this rule the visit must take place—

- (a) within the sight of an officer; and
- (b) outwith the hearing of an officer unless either the prisoner or the visitor requests otherwise.

## Special visits to certain prisoners in connection with further proceedings

70.—(1) This rule applies to any prisoner who—

- (a) is an untried prisoner;
- (b) is a civil prisoner;
- (c) is an appellant;
- (d) has been remanded in custody following conviction to await sentence or further inquiry;
- (e) is serving a sentence of imprisonment and who is subject to a further charge but only for so long as the proceedings in respect of the further charge are pending against him or her; or
- (f) is serving a sentence of imprisonment and who is the respondent in an appeal by the Lord Advocate or the prosecutor under section 108<sup>M62</sup> or 175(3)<sup>M63</sup> of the 1995 Act, but only for so long as the proceedings in respect of the appeal are pending against him or her.

(2) A prisoner to whom this rule applies is allowed a visit at any reasonable time to consult a registered medical practitioner or any other person, where the Governor considers it is in the interests of justice, for the purposes of—

- (a) in the case of an untried prisoner, the proceedings in respect of which he or she is remanded in custody or complying with a condition of bail which requires the deposit of a sum of money pursuant to section 24(6) of the 1995 Act<sup>M64</sup>;
- (b) in the case of a civil prisoner, the proceedings in respect of which he or she is committed to prison;
- (c) in the case of an appellant, the appeal or, as the case may be, the reference;
- (d) in the case of a prisoner mentioned in paragraph (1)(d), preparing representations to the court which will pass sentence or otherwise dispose of his or her case; or
- (e) in the case of a prisoner mentioned in paragraph (1)(e) or (f), the proceedings in respect of the further charge or, as the case may be, the appeal.

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

(4) Where a prisoner receives a visit in terms of this rule other than a visit by a registered medical practitioner the visit must take place—

- (a) within the sight of an officer; and
- (b) outwith the hearing of an officer except where the Governor otherwise directs.

(5) Where a prisoner receives a visit by a registered medical practitioner in terms of this rule the visit must take place—

- (a) outwith the sight of an officer unless the medical practitioner requests otherwise; and
- (b) outwith the hearing of an officer.

### Marginal Citations

**M62** 1995 c.46; section 108 was substituted by the [Crime and Punishment \(Scotland\) Act 1997 \(c.48\)](#), [section 21](#) and was amended by the [Crime and Disorder Act 1998 \(c.37\)](#) section 94 and Schedule 6, paragraph 6, and also by the [Proceeds of Crime Act 2002 \(c.29\)](#) Part 3, section 115; [section 108A](#) was added by the [Crime and Punishment \(Scotland\) Act 1997 \(c.48\)](#), [section 18](#) and was amended by the [Crime and Disorder Act 1998 \(c.37\)](#) section 119 and Schedule 8, paragraph 120.

**M63** [Section 175](#) was amended by [Crime and Punishment \(Scotland\) Act 1997 \(c.48\)](#), [section 17](#), [section 21](#), [section 23](#), by the [Crime and Disorder Act 1998 \(c.37\)](#) section 119 and paragraph 123 of

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Schedule 8, by the [Proceeds of Crime Act 2002 \(c.29\)](#) Part 3, section 115, and also by the [Protection of Children \(Scotland\) Act 2003 \(asp 5\)](#), **section 16**.

**M64** [Section 24\(6\)](#) was amended by the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#) Schedule 1, paragraph 5.

### **Visits by Members of Parliament, members of the Scottish Parliament and representatives of the European Parliament**

**71.**—(1) A prisoner is entitled to receive a visit from a member of Parliament, a member of the Scottish Parliament or a representative of the European Parliament.

(2) A visit to a prisoner by a member of Parliament, a member of the Scottish Parliament or a representative of the European Parliament may take place in such area of the prison and under such conditions as the Governor may specify except that such a visit must take place—

- (a) within the sight of an officer; and
- (b) outwith the hearing of any officer unless the visitor requests otherwise or the Governor requires otherwise for reasons of security.

(3) A member of Parliament, a member of the Scottish Parliament or a representative of the European Parliament may, with the prisoner's consent, use sound recording equipment to record any interview held with the prisoner.

### **Visits by the Parliamentary Commissioner for Administration, the Scottish Public Services Ombudsman or Officers on their behalf**

**72.**—(1) The following persons may, for the purpose of discharging their public duties, visit a prisoner at any reasonable time with that prisoner's consent—

- (a) the Parliamentary Commissioner for Administration or any person authorised to act on his or her behalf; and
- (b) the Scottish Public Services Ombudsman, or any person authorised to act on his or her behalf.

(2) A visit to a prisoner by any of the persons mentioned in paragraph (1), may only take place in such area of the prison and under such conditions as the Governor may specify except that such a visit must take place—

- (a) within the sight of an officer; and
- (b) outwith the hearing of any officer unless the visitor requests otherwise or the Governor requires otherwise for reasons of security.

(3) The persons mentioned in paragraph (1), may, with the prisoner's consent, use sound recording equipment to record any interview held with the prisoner.

### **Visits by media representatives**

**73.**—(1) This rule applies to a person who visits, or seeks to visit, a prisoner—

- (a) as a media representative in a professional or vocational capacity; or
- (b) in circumstances where the person's visit is wholly or partially connected with the purposes of journalism, broadcasting or publishing.

(2) A Governor may permit visits to prisoners by persons to whom this rule applies only in exceptional circumstances and where satisfied that it is appropriate to permit such a visit.

(3) If the Governor intends to permit a visit to a prisoner for the purposes mentioned in paragraph (1) the Governor must require the visitor, before being admitted to the prison, to give a written undertaking to the effect that the visitor shall not—

- (a) begin any interview, take any photographs or conduct any filming or sound recording, except with the express prior consent of both the prisoner and the Governor;
- (b) conduct any such interview, take photographs or conduct filming or recording except in accordance with such other conditions as the Governor may specify;
- (c) make any payment or gratuity to the prisoner or any other person in relation to the holding of the interview or any material obtained at it;
- (d) use any material obtained at the interview, or any photographs, films or recordings so taken, for professional or vocational purposes and in particular for broadcast or use on, or transmission by, any form of electronic medium by the person or anyone else except in accordance with the prior written consent of the Governor and subject to and in accordance with such conditions as the Governor may impose; or
- (e) use any material obtained at the interview, or any photographs, films or recordings so taken, for professional or vocational purposes and in particular for publication or use in any form of written medium by the person or anyone else except in accordance with the prior written consent of the Governor and subject to and in accordance with such conditions as the Governor may impose.

(4) A visit to a prisoner in terms of this rule may only take place in such area of the prison as the Governor may specify and must take place—

- (a) within the sight of an officer; and
- (b) within the hearing of an officer.

### **Visits by members of the Parole Board for Scotland**

74.—(1) A prisoner may receive a visit from members of the Parole Board for Scotland where the purpose of that visit is to interview the prisoner in terms of rule 15(3) of the Parole Board (Scotland) Rules 2001 <sup>M65</sup>.

- (2) Where a prisoner receives a visit in terms of this rule the visit—
- (a) may take place within the sight of an officer; and
  - (b) must take place outwith the hearing of any officer unless the prisoner or the visitor otherwise requests.

#### **Marginal Citations**

**M65** [S.S.I. 2001/315](#).

### **Visits by members or employees of the Scottish Criminal Cases Review Commission**

75.—(1) A prisoner may receive a visit from one or two members or employees of the Scottish Criminal Cases Review Commission, or persons authorised by the Commission, for the purpose of assisting the Commission in the exercise of any of its functions.

(2) The persons mentioned in paragraph (1) may, with the consent of the prisoner, use sound recording equipment to record any interview held with the prisoner at the prison.

- (3) Where a prisoner receives a visit in terms of this rule the visit must take place—
- (a) within the sight of an officer; and

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- (b) outwith the hearing of an officer unless the prisoner or the visitor otherwise requests.

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

**76.**—(1) This rule applies to visits to a prisoner by a person where—

- (a) the prisoner has been charged with a breach of discipline;
- (b) the prisoner wishes to call, or is considering whether to call, that person as a witness at the inquiry into the charge; and
- (c) the Governor holding the inquiry has agreed that the prisoner should have the opportunity to discuss with that person whether he or she could give evidence which would be relevant to the defence to the charge.

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

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

(4) Where a prisoner receives a visit in terms of this rule, it must take place—

- (a) within the sight of an officer;
- (b) outwith the hearing of an officer except where the Governor otherwise directs or the visitor or prisoner otherwise requests; and
- (c) under such conditions as the Governor may specify.

### **Restrictions and conditions applicable to visits under Part 8**

**77.**—(1) Where the Governor considers that it is necessary to do so in the interests of security, good order or the prevention of crime, he or she may—

- (a) prohibit a prisoner from receiving a visit from any person in particular in terms of this Part; or
- (b) terminate a visit to a prisoner which is taking place in terms of this Part.

(2) If, in the case of any visit taking place in terms of rule 73, the Governor considers that the terms of an undertaking given by the visitor under rule 73(3) have been breached or that there has been a contravention of any restrictions or conditions specified in a direction made by virtue of paragraph (3), the Governor may terminate the visit.

(3) The entitlement of a prisoner to receive visits in terms of this Part is subject to such restrictions and conditions as may be specified in a direction by the Scottish Ministers for the following purposes—

- (a) to allow the use of video cameras and sound recording equipment for the monitoring of the visits area during visits to prisoners;
- (b) to impose a prohibition on, or restrictions in relation to, the possession and use by prisoners and their visitors of photographic equipment, sound recording equipment and writing materials;
- (c) to impose restrictions as to the introduction of, or possession or consumption of, food and drink by prisoners and their visitors during such visits; and
- (d) to prescribe the terms of any written undertaking which may be required to be given pursuant to rule 73(3).

### **Closed visiting facilities**

**78.**—(1) The Governor may, for any reason specified in paragraph (2), order that any visits which a prisoner receives from a member of the chaplaincy team or for the purpose of rules 63 to 76 must be held in closed visiting facilities.

- (2) The Governor may make an order under paragraph (1) for any of the following reasons—
- (a) there are reasonable grounds for suspecting that the prisoner has previously obtained or is likely in the future to attempt to obtain, from any visitor, any prohibited article or any unauthorised property;
  - (b) the prisoner's behaviour makes it necessary for the purposes of security and control for any visit to be received in closed visiting facilities;
  - (c) any previous visit to the prisoner has been terminated in terms of rule 77(1) due to the conduct of the visitor;
  - (d) the visitor has previously been refused access to the prison; or
  - (e) the Governor is of the opinion that it is necessary to ensure, in relation to a visit for the purposes of rule 70, that the visit is required for any purpose specified in rule 70(2).

(3) The Governor may make an order under paragraph (1) in relation to any particular visit received in terms of any rule mentioned in paragraph (1) or in relation to every visit received in terms of any of those rules, but any order made in relation to every such visit must be reviewed by the Governor not less than once in every 3 months and may be revoked by the Governor at any time.

(4) No order under paragraph (1) may be made as a punishment in respect of a breach of discipline within the meaning of Part 11.

(5) For the purposes of this rule, “closed visiting facilities” means visiting facilities with special security features including physical barriers between prisoner and visitor.

### **Arrangements for securing release of prisoners committed to prison in default of payments**

- 79.**—(1) This rule applies to any prisoner who is committed to prison—
- (a) in default of payment of any sum which requires to be paid by virtue of any order of a court; and
  - (b) in circumstances where the prisoner may be released on payment of any sum.

(2) A prisoner to whom this rule applies is entitled to communicate at any reasonable time with any person for the purpose of arranging payment of the sum which would secure his or her release.

## **PART 9**

### **WORK, EDUCATION, EARNINGS AND RECREATION**

#### **Application of Part 9**

**80.** Subject to rule 85, rules 81 to 84 do not apply to untried and civil prisoners.

#### **Arrangements for work, education and counselling**

**81.**—(1) The Governor must obtain reports about a prisoner's particular needs and wishes concerning work and education as soon as practicable after that prisoner is received into prison.

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(2) The Governor must, following receipt of the reports referred to in paragraph (1), and in consultation with the prisoner, determine a programme of work, educational activities and counselling for the prisoner with the objectives of improving—

- (a) the prospects for the prisoner's successful resettlement in the community; and
- (b) the prisoner's morale, attitude and self respect.

### Prisoners' work

**82.**—(1) Subject to the following provisions of this Part, every prisoner is required to work in prison.

(2) No prisoner may be required to work, or to do work which is of a particular class, [<sup>F26</sup>during any period] when they are—

- (a) excused from working, or from doing any particular class of work by the Governor, acting on the advice of a healthcare professional, on health grounds;
- (b) excused from working, or from doing any particular class of work by the Governor on any other ground;
- (c) undertaking an educational class arranged in terms of rule 84; <sup>F27</sup>...
- (d) undertaking counselling provided in terms of rule 84;
- [<sup>F28</sup>(e) undertaking a rehabilitative programme arranged in terms of rule 84; or
- (f) undertaking vocational training arranged in terms of rule 84.]

(3) A prisoner may only work in the service of another prisoner or of an officer where the Governor has given his or her express authority for such work to be done.

#### Textual Amendments

- F26** Words in rule 82(2) substituted (19.3.2012) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2012 \(S.S.I. 2012/26\)](#), rules 1, **2(9)(a)**
- F27** Word in rule 82(2)(c) omitted (19.3.2012) by virtue of [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2012 \(S.S.I. 2012/26\)](#), rules 1, **2(9)(b)**
- F28** Rule 82(2)(e)(f) inserted (19.3.2012) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2012 \(S.S.I. 2012/26\)](#), rules 1, **2(9)(c)**

### Conditions of work

**83.**—(1) No prisoner is required to work, or take part in an educational class arranged in terms of rule 84 in lieu of work, for more than 40 hours a week (excluding meal breaks).

(2) Every prisoner is entitled to a minimum of one day each week as a rest day on which he or she will not be required to work or take part in an educational class in lieu of work.

(3) A prisoner who has declared himself or herself to belong to a particular religion or religious denomination is entitled, as far as reasonably practicable—

- (a) to take the weekly rest day specified in paragraph (2) on any recognised weekly day of religious observance; and
- (b) to be excused from work or from undertaking an educational class or counselling, arranged in terms of rule 84, on such other days in a year as are recognised days of religious observance and are specified in a direction made by the Scottish Ministers.

(4) A prisoner is entitled to work in association with other prisoners except where—



- (a) an order has been made under rule 95 removing him or her from association with other prisoners either generally or during any period the prisoner is undertaking work;
- (b) the prisoner is subject to cellular confinement imposed under rule 114(1)(d).

### **Purposeful activities**

**84.**—(1) The Governor must provide a range of purposeful activities for prisoners which, so far as reasonably practicable, takes into account—

- (a) the interests and need of prisoners to obtain skills and experience which will be of use to them after their release; and
- (b) the requirements of the operation and maintenance of the prison.

(2) “Purposeful activities” include—

- (a) work;
- (b) education of any kind, including physical education;
- (c) counselling and other rehabilitative programmes;
- (d) vocational training; and
- (e) work placements outside the prison.

(3) The Scottish Ministers may, in relation to work placements outside the prison provided under paragraph (2)(e), specify in a direction—

- (a) the groups or categories of prisoners who may be allowed to undertake such placements;
- (b) the circumstances in which, and the conditions subject to which, such placements may be provided to prisoners; and
- (c) the conditions which will apply to any prisoner or group or category of prisoners undertaking such placements.

(4) In carrying out the duty under paragraph (1) the Governor—

- (a) must arrange, so far as reasonably practicable, a programme of educational classes to provide prisoners with an opportunity to pursue their interests and needs; and
- (b) may arrange the provision of counselling (including group work activity) which is appropriate to the needs of prisoners.

### **Work undertaken by untried and civil prisoners**

**85.**—(1) An untried prisoner or a civil prisoner is not required to work in prison but may, if the prisoner so chooses and with the agreement of the Governor, undertake work or an educational class [<sup>F29</sup>or counselling] arranged in terms of rule 84.

<sup>F30</sup>(2) .....

(3) An untried prisoner or a civil prisoner may only work in the service of another prisoner or of an officer where—

- (a) the prisoner consents to do such work; and
- (b) the Governor has given his or her express authority for such work to be done.

#### **Textual Amendments**

**F29** Words in rule 85(1) inserted (1.11.2011) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2011 \(S.S.I. 2011/356\)](#), rules 1, **2(8)(a)**

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**F30** Rule 85(2) revoked (19.3.2012) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2012 \(S.S.I. 2012/26\)](#), rules 1, **2(10)**

## Earnings

**[<sup>F31</sup>86.**—(1) Subject to the terms of any direction made by the Scottish Ministers under paragraph (4), a prisoner is entitled to be paid earnings where the prisoner undertakes—

- (a) work in terms of rules 82 or 85;
- (b) work carried out while on temporary release for work under Part 15 of these Rules;
- (c) an educational class, including physical education, arranged in terms of rule 84 or 85 which is in lieu of work;
- (d) counselling arranged in terms of rule 84 or 85 which is in lieu of work;
- (e) a rehabilitative programme arranged in terms of rule 84 which is in lieu of work; and
- (f) vocational training arranged in terms of rule 84 which is in lieu of work.

(2) A prisoner who undertakes any of the activities specified in paragraphs (1)(c), (d), (e) or (f) which is not in lieu of work is not entitled to be paid earnings for that activity.

(3) Subject to the terms of any direction made by the Scottish Ministers under paragraph (4), a prisoner who is excused from working under rule 82(2)(a) or (b) is entitled to be paid an allowance in lieu of earnings.

(4) The Scottish Ministers may specify in a direction—

- (a) the conditions under which earnings may be paid to a prisoner under paragraph (1); and
- (b) the conditions under which an allowance may be paid to a prisoner under paragraph (3).]

## Textual Amendments

**F31** Rule 86 substituted (19.3.2012) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2012 \(S.S.I. 2012/26\)](#), rules 1, **2(11)**

## Exercise and time in the open air

**87.**—(1) Subject to paragraphs (3) to (8), every prisoner must be given the opportunity to take exercise or, where the weather permits, to spend time in the open air for not less than one hour every day.

(2) Subject to paragraphs (3) to (8), every young offender must, where the weather permits, be given the opportunity on a regular basis to participate in physical recreation, activities and pursuits which are consistent with maintaining good health and physical wellbeing.

(3) Where the Governor receives advice from a healthcare professional that a prisoner or young offender is not fit to participate in any of the activities mentioned in paragraph (1) or (2), the Governor may order that the prisoner or young offender must not participate in the relevant activities.

(4) Where a prisoner or young offender wishes to participate in any of the activities mentioned in paragraphs (1) or (2), he or she must be allowed to do so in association with other prisoners or, as the case may be young offenders, except where—

- (a) an order has been made under rule 95 removing him or her from association with other prisoners or, as the case may be young offenders, either generally or during any period he or she is participating in any of the activities mentioned in paragraphs (1) or (2); or
- (b) he or she is subject to cellular confinement imposed under rule 114(1)(d).

(5) The Governor may order that the activities specified in paragraphs (1) and (2) be ceased or restricted in any way where the Governor considers it necessary to do so due to exceptional circumstances pertaining in the prison or young offenders institution, or in any other prison or young offenders institution.

(6) An order made by the Governor in terms of paragraph (5) must not take effect for a period longer than 48 hours unless the Scottish Ministers specify in a direction made before the expiry of that period that the order will continue to have effect.

(7) The Scottish Ministers may—

- (a) on the application of the Governor made prior to the expiry of any direction made under paragraph (6) or this paragraph; and
- (b) where they are satisfied that it is necessary to do so due to exceptional circumstances pertaining in that prison or young offenders institution, or in any other prison or young offenders institution

make any number of further directions continuing the effect of an order made by the Governor under paragraph (5) for successive periods of no more than one month.

(8) A direction made by the Scottish Ministers under paragraphs (6) or (7) may be revoked at any time, following a request by the Governor, by a further direction made by the Scottish Ministers.

(9) An order made in terms of paragraph (5)—

- (a) may be directed at all prisoners or young offenders in the prison or young offenders institution or at such groups or categories of prisoners or young offenders as the Governor deems appropriate; and
- (b) must specify the reasons why the Governor is making the order and record the date and time it is made.

(10) After making an order under paragraph (5) the Governor must—

- (a) take such steps as are practicable to notify prisoners or, as the case may be young offenders who are subject to the order of the effect of the order; and
- (b) provide a copy of the order to the Scottish Ministers.

(11) Any direction made by the Scottish Ministers under paragraph (6) or (7) must specify—

- (a) the reasons why the Scottish Ministers are making the direction;
- (b) the date and time when the direction is made; and
- (c) the date and time when the direction expires.

(12) After the Scottish Ministers have made any direction under paragraph (6) or (7), the Governor must take such steps as are practicable to notify prisoners or, as the case may be, young offenders who are subject to the order of the effect of the direction.

## **Recreation**

**88.**—(1) The Governor must provide reasonable facilities and opportunities to enable prisoners to participate in recreational activities outwith normal working hours.

(2) The Governor must make arrangements for lending library services for the use of prisoners which take into account, so far as reasonably practicable, the prisoner's educational, informational and recreational interests.

(3) The extent to which any prisoner or group or category of prisoners may at any time be permitted to use facilities provided, or to participate in recreational activities organised, by virtue of this rule must be determined in accordance with the system of privileges established under rule 45.

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### **Prohibition on prisoners carrying on any trade, profession or vocation from prison**

- 89.**—(1) Subject to paragraph (2), no prisoner is permitted to—
- (a) carry on any trade, profession or vocation from the prison; or
  - (b) retain any monies generated from the sale of any items produced by the prisoner either in the course of the prisoner's work in the prison or in the prisoner's spare time.
- (2) Nothing in paragraph (1) is to be construed as preventing a prisoner from—
- (a) taking such steps as are necessary to protect the value of any interest the prisoner has in any property or business but any such steps must be compatible with these Rules or any direction made under these Rules and the prison regime in general; or
  - (b) writing articles or books in a professional or vocational capacity which are intended for publication but any such activity must be compatible with these Rules or any direction made under these Rules and the prison regime in general.

## **PART 10**

### **SECURITY**

#### **SUPERVISION AND CONTROL OF PRISONERS**

#### **Supervision of the prison and control of prisoners**

- 90.**—(1) Subject to the provisions of these Rules, the Governor is responsible for—
- (a) the supervision of the whole prison; and
  - (b) the control of prisoners confined in the prison.
- (2) The Governor must, as far as practicable, visit and inspect on a daily basis those parts of the prison where prisoners are employed or accommodated.

#### **Control of prisoners**

- 91.**—(1) In the control of prisoners, an officer must seek—
- (a) to influence behaviour by example and leadership; and
  - (b) to enlist the willing co-operation of prisoners.
- (2) An officer may only use force against a prisoner when it is necessary to do so taking into account all of the circumstances of the situation and the force used must be—
- (a) proportionate to the risk posed by the prisoner in that situation; and
  - (b) no more than necessary for the purposes of that situation.
- (3) Where an officer uses force against a prisoner that officer must keep a written record of that use of force.
- (4) An officer must not deliberately provoke a prisoner.

#### **Searching of prisoners**

- 92.**—(1) Every prisoner and his or her property and accommodation may be searched in accordance with this rule.
- (2) An officer may conduct a search of a prisoner at any time and this search may involve any number of the following processes—

- (a) a search of the prisoner's person including the prisoner's clothing prior to removal of the clothing under sub-paragraph (c);
  - (b) a search of the prisoner's clothing after removal of the clothing under sub-paragraph (c);
  - (c) the removal of the prisoner's clothing;
  - (d) a visual examination of the external parts of the prisoner's body after the removal of the prisoner's clothing;
  - (e) a visual examination of the prisoner's open mouth but no equipment or force may be used;
  - (f) a search of any items of property in the prisoner's possession;
  - (g) a search of the prisoner's cell or room including any items of property found in the cell or room.
- (3) Where a search is conducted under paragraph (2)—
- (a) in the case of a search under paragraph (2)(a), the officer carrying out the search must be of the same gender as the prisoner;
  - (b) in the case of a search under paragraph (2)(c) or (d), the officer carrying out the search must be of the same gender as the prisoner and at least one other officer of the same gender must be present during the search;
  - (c) in the case of a search under paragraph (2)(c) or (d), the search must be conducted outwith the sight of any other person who is not an officer of the same gender as the prisoner;
  - (d) except in the case of a search under paragraph (2)(e), the use of force is permitted where it is necessary and such force must be reasonable and proportionate to the threat or resistance posed by the prisoner; and
  - (e) the search must be carried out as quickly and decently as possible.
- (4) A search conducted under paragraph (2), other than a search carried out under paragraph (2)(d) or (e), may be carried out by hand.
- (5) A search conducted under paragraph (2), other than a search carried out under paragraph (2)(c), (d) or (e), may be carried out by—
- (a) the use of equipment involving the application of a suction device or a swab on or to the prisoner's clothing, any items of property mentioned in paragraph (2)(f) or (g) or any part of the prisoner's cell in order to collect substances from their surface;
  - (b) the use of equipment involving the analysis of substances collected under sub-paragraph (a) for the purpose of ascertaining whether any of them consists of a controlled drug or an explosive substance;
  - (c) the use of equipment designed to detect the existence of metal objects or any prohibited article; or
  - (d) the use of trained sniffer dogs under the control of a trained officer.
- (6) Where a search conducted under paragraph (2) involves the use of equipment under paragraph (5)(a), (b) or (c), that equipment must be used in accordance with the manufacturer's instructions.
- (7) Where an officer finds any prohibited article in the course of a search conducted under this rule, he or she may seize that article and deal with it in accordance with rule 104.
- (8) Nothing in this rule permits the physical examination of the prisoner's body orifices.
- (9) For the purposes of this rule, any power to search includes the power to examine.

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### Compulsory testing for controlled drugs

**93.**—(1) This rule applies where an officer, acting under the powers conferred by section 41B of the Act (testing prisoners for drugs) <sup>M66</sup>, requires a prisoner to provide a sample for the purpose of ascertaining whether he or she has any controlled drug in his or her body.

(2) In this rule “sample” means a sample of urine, saliva or any other description of sample specified in the authorisation by the Governor for the purposes of section 41B of the Act.

(3) When requiring a prisoner to provide a sample, an officer must, so far as is reasonably practicable, inform the prisoner—

- (a) that he or she is being required to provide a sample in accordance with section 41B of the Act; and
- (b) that a refusal to provide a sample may lead to disciplinary proceedings being brought against the prisoner under Part 11.

(4) A prisoner who is required to produce a sample under this rule must provide a fresh sample, free from any alteration or falsification.

(5) An officer requiring a sample must make such arrangements and give the prisoner such instructions for the provision of a sample as may be reasonably necessary in order to prevent or detect any alteration or falsification of the sample.

(6) Subject to paragraph (7), a prisoner who is required to provide a sample under this rule may be kept apart from other prisoners for a period not exceeding one hour to enable arrangements to be made for the provision of the sample.

(7) A prisoner who is unable to provide a sample of urine when required to do so under this rule may be kept apart from other prisoners until he or she has provided the required sample, but not for a period in excess of 5 hours.

(8) When providing a sample of urine—

- (a) the prisoner must be afforded such degree of privacy for the purposes of providing the sample as may be compatible with the need to prevent or detect any alteration or falsification of the sample; and
- (b) the prisoner must not be required to provide such a sample in the sight of a person of the opposite gender.

#### Marginal Citations

**M66** 1989 c.45; section 41B was added by the [Criminal Justice and Public Order Act 1994 \(c.33\)](#), [section 151\(2\)](#) and was amended by the [Management of Offenders etc. \(Scotland\) Act 2005 \(asp 14\)](#), [section 16](#).

### Compulsory testing for alcohol

**94.**—(1) This rule applies where an officer, acting under the powers conferred by section 41C of the Act (testing of prisoners for alcohol) <sup>M67</sup>, requires a prisoner to provide a sample for the purpose of ascertaining whether a prisoner has any alcohol in his or her body.

(2) In this rule “sample” means a sample of breath or any other description of sample specified in the authorisation by the Governor for the purposes of section 41C of the Act.

(3) When requiring a prisoner to provide a sample, an officer must, so far as is reasonably practicable, inform the prisoner—

- (a) of the requirement to provide a sample in accordance with section 41C of the Act; and

- (b) that a refusal to provide a sample may lead to disciplinary proceedings being brought against the prisoner under Part 11.
- (4) A prisoner who is required to produce a sample under this rule must provide a fresh sample, free from any alteration or falsification.
- (5) An officer requiring a sample must make such arrangements and give the prisoner such instructions for the provision of a sample as may be reasonably necessary in order to prevent or detect any alteration or falsification of the sample.
- (6) Subject to paragraph (7), a prisoner who is required to provide a sample under this rule may be kept apart from other prisoners for a period not exceeding one hour to enable arrangements to be made for the provision of the sample.
- (7) A prisoner who is unable to provide a sample of urine when required to do so under this rule may be kept apart from other prisoners until the required sample has been provided, but not for a period in excess of 5 hours.
- (8) When providing a sample of urine—
  - (a) the prisoner must be afforded such degree of privacy for the purposes of providing the sample as may be compatible with the need to prevent or detect any alteration or falsification of the sample; and
  - (b) the prisoner must not be required to provide such a sample in the sight of a person of the opposite gender.

#### Marginal Citations

**M67** 1989 c.45; [Section 41C](#) was added by the [Crime and Punishment \(Scotland\) Act 1997 \(c.48\)](#), [section 42](#).

## CONFINEMENT AND CUSTODY OF PRISONERS

### Removal from association

**95.**—(1) Subject to paragraph (2), the Governor may order in writing that a prisoner must be removed from association with other prisoners, either generally or to prevent participation in a prescribed activity or activities.

(2) An order under paragraph (1) may only be made where the Governor is satisfied that removal from association is appropriate for one of the following purposes—

- (a) maintaining good order or discipline;
- (b) protecting the interests of any prisoner;
- (c) ensuring the safety of other persons.

(3) Where the Governor makes an order under paragraph (1) to remove a prisoner from association in order to prevent participation in a prescribed activity, the Governor may list any number of prescribed activities in the order from which a prisoner is to be prevented from taking part.

(4) The Governor must detail in an order under paragraph (1) the following matters—

- (a) whether the removal from association is—
  - (i) in general, or
  - (ii) in relation to a prescribed activity or activities;
- (b) if the removal is in relation to a prescribed activity, the activity to which the order relates or, if the removal is in relation to more than one prescribed activity, the activities to which the order relates; and

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- (c) the reasons why the order is being made.
- (5) An order under paragraph (1) cannot last for more than 72 hours from the time it is made unless an extension has been authorised by the Scottish Ministers in writing in accordance with paragraphs (11) and (12).
- (6) Where the Governor considers it appropriate to do so, the Governor may—
- (a) revoke the order;
  - (b) amend the scope of the order from general removal to removal from a prescribed activity or activities;
  - (c) add further prescribed activities to those listed in the order;
  - (d) remove a prescribed activity from those listed in the order if more than one prescribed activity is listed in the order; or
  - (e) apply to the Scottish Ministers before the expiry of the order, to extend the order in accordance with paragraphs (11) or (12).
- (7) The Governor must revoke an order made under paragraph (1) where the Governor is advised by a registered medical practitioner that it is appropriate to do so on health or welfare grounds.
- (8) Where an order is made under paragraph (1), the Governor must explain to the prisoner the reasons why the order has been made, if that is practicable, and provide the prisoner with a copy of the written order.
- (9) A prisoner is entitled to make representations to the Governor—
- (a) where the Governor is of the opinion that it is practicable to do so, prior to an order being made under paragraph (1);
  - (b) at any time after an order is made under paragraph (1) but before the Governor applies to the Scottish Ministers for an extension to the order under paragraph (11); and
  - (c) as part of the Governor's application to the Scottish Ministers under paragraphs (11) or (12) to extend an order made under paragraph (1).
- (10) Representations made by the prisoner under paragraph (9) must be—
- (a) made in writing by the prisoner or
  - (b) transcribed by an officer<sup>F32</sup>, employee or any other person who ordinarily works at the prison but is not employed by the Scottish Ministers] on the prisoner's behalf,
- and the representations must be taken into account by the Governor.
- (11) The Scottish Ministers may—
- (a) on the application of the Governor prior to the expiry of an order made under paragraph (1); and
  - (b) where they are satisfied that it is necessary for one of the purposes in paragraph (2),
- grant an extension to an order made under paragraph (1), in writing, for a period of no more than one month, to be calculated in accordance with paragraph (13).
- (12) The Scottish Ministers may—
- (a) on the application of the Governor made prior to the expiry of any extension granted under paragraph (4) or this paragraph; and
  - (b) where they are satisfied that it is necessary for one of the purposes in paragraph (2),
- grant any number of further extensions to an order made under paragraph (1), in writing, for successive periods of no more than one month, to be calculated in accordance with paragraph (13).



(13) Where an order made by the Governor under paragraph (1) has been extended by the Scottish Ministers under paragraphs (11) or (12), the period of the extension shall run until no later than 2359 hours on the day falling one month from the expiry of—

- (a) the period of 72 hours stated in paragraph (5); or
- (b) as the case may be, the previous extension granted by the Scottish Ministers under paragraphs (11) or (12).

(14) Where an order made by the Governor under paragraph (1) has been extended by the Scottish Ministers under paragraph (11) or (12), the Governor must inform the prisoner in writing that the order has been so extended and must, where it is practicable to do so, explain to the prisoner the reasons why the order has been extended.

(15) The Governor may allow a prisoner who has been removed from association in general under this rule, to associate with other prisoners for the purpose of engaging or taking part in any number of prescribed activities.

(16) Where a prisoner is moved to any other prison, any order made under paragraph (1) in relation to the prisoner by the Governor of the prison from which the prisoner is being moved ceases to have effect but that is without prejudice to the power of the Governor of the prison to which the prisoner is being moved to make a new order under paragraph (1).

(17) In this rule, “prescribed activity” means—

- (a) work required to be undertaken in terms of rule 82;
- (b) educational classes undertaken in terms of rule 84;
- (c) counselling provided in terms of rule 84;
- (d) taking exercise or spending time in the open air in terms of rule 87;
- (e) recreational activities; or
- (f) attendance at any religious service or meeting arranged by the chaplaincy team which the prisoner would otherwise have been entitled to attend in terms of rule 44.

#### Textual Amendments

**F32** Words in [rule 95\(10\)](#) substituted (1.11.2011) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2011 \(S.S.I. 2011/356\)](#), rules 1, **2(10)**

#### The use of restraints

**96.**—(1) In this rule, “restraint” means a body belt.

(2) The Governor may order that a prisoner be placed under a restraint where it appears to the Governor that it is necessary to do so in order to restrain a prisoner who—

- (a) threatens to injure, or is in the course of injuring, himself or herself or other persons;
- (b) threatens to damage, or is in the course of damaging, property; or
- (c) threatens to create, or is in the course of creating, a disturbance.

(3) The Governor must consult with, and take into consideration the views of a registered medical practitioner—

- (a) where it is practicable to do so, prior to making an order under paragraph (2); or
- (b) where it is not practicable to do so prior to making an order under paragraph (2), as soon as reasonably practicable after the order is made.

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(4) Where a registered medical practitioner recommends to the Governor that a prisoner should be placed under a restraint in order to prevent self-harm, the Governor must make an order under paragraph (2) that the prisoner be placed under a restraint.

(5) Where a registered medical practitioner recommends to the Governor that—

- (a) the prisoner should not be placed under a restraint; or
- (b) where the prisoner has been placed under a restraint, the prisoner should be released from the restraint,

the Governor must refrain from making an order under paragraph (2) or, as the case may be, order that the prisoner be released from the restraint immediately.

(6) The following conditions apply to all restraint orders and the enforcement of such orders:—

- (a) only persons trained to use a body belt may do so;
- (b) the Governor must keep a written record of the particulars of each order made under paragraph (2) including the reasons for making the order;
- (c) an order under paragraph (2) must not be used as a punishment;
- (d) an officer must monitor the prisoner continuously during the period that the prisoner is placed under a restraint;
- (e) a prisoner must not be placed under a restraint for any longer than is necessary;
- (f) a prisoner cannot be placed under a restraint for more than 12 hours by virtue of an order under paragraph (2) without the Scottish Ministers' authority;
- (g) a restraint must be removed temporarily when it is reasonably necessary to allow the prisoner to use toilet facilities or to consume food or drink;
- (h) the Governor must advise a registered medical practitioner as soon as reasonably practicable of any matters relevant to the prisoner's health that come to the Governor's attention during the period that the prisoner is placed under a restraint.

#### **Temporary confinement in a special cell**

**97.**—(1) The Governor may order the temporary confinement in a special cell of any prisoner who is behaving in a threatening, abusive or violent manner.

(2) The following conditions apply to all orders made under paragraph (1) and the enforcement of such orders—

- (a) the Governor must keep a written record of the particulars of each order made under paragraph (1) including the reasons for making the order;
- (b) the Governor must inform a healthcare professional as soon as possible after making an order under paragraph (1) and consider any recommendations made by the healthcare professional;
- (c) an order under paragraph (1) must not be used as a punishment;
- (d) an officer must visit the prisoner at least once in every 15 minutes during the period that the prisoner is confined in a special cell; and
- (e) a prisoner must not be confined in a special cell for any longer than is necessary and, in any event, for no longer than a continuous period of 24 hours.

#### **Temporary confinement in a cell or room**

**98.**—(1) Subject to paragraph (2) an officer may order a prisoner to be temporarily confined in a cell or room, other than a special cell, at a time when other prisoners detained in the same part of the prison, or, as the case may be, prisoners at the prison in general, are permitted to be in association.

- (2) An officer may only make an order under paragraph (1) if the officer is of the opinion that—
- (a) the prisoner is acting in a disobedient or disorderly manner and that temporary confinement—
    - (i) is appropriate for the purpose of controlling such behaviour; and
    - (ii) is in the prisoner's best interests; or
  - (b) by reason of the prisoner's emotional state, it is in the interests of the prisoner, or any other prisoner, that the prisoner is temporarily confined to a cell or room.
- (3) A prisoner must not be confined to a cell or room by virtue of paragraph (1) for longer than one hour on any occasion.
- (4) As soon as reasonably practicable after making an order under paragraph (1), an officer must inform a supervising officer of that fact in writing.
- (5) If the officer concerned is of the opinion that a prisoner who has been confined to a cell or room by virtue of paragraph (1) is acting in a disobedient or disorderly manner at the expiry of the period permitted by paragraph (3), the officer must, as soon as reasonably practicable, report any suspected breach of discipline in accordance with rule 111.

### **Custody outside prison**

- 99.**—(1) Where a prisoner is taken in legal custody to any place outside a prison, the prisoner—
- (a) must be kept in the custody and under the control of an officer or constable;
  - (b) must not be exposed to public view so far as it is reasonably practicable; and
  - (c) must be protected so far as reasonably practicable from insult, curiosity and publicity in any form.
- (2) A prisoner must wear his or her own clothing or ordinary civilian clothing provided by the Governor when required to attend court and may wear such clothing at other times outside the prison unless otherwise ordered by the Governor.

### **Special escorted leave**

- 100.**—(1) In this rule, “special escorted leave” means a leave of absence from the prison of an eligible prisoner for the purpose of being escorted to his or her home or other approved place for a period not exceeding 2 hours, excluding travelling time.
- (2) On the application of an eligible prisoner and subject to any direction made by the Scottish Ministers under paragraph (5), the Governor may grant special escorted leave to an eligible prisoner if he or she is of the opinion that it is appropriate to do so.
- (3) In considering whether it is appropriate to grant special escorted leave to an eligible prisoner under this rule, the Governor must assess the risk that the prisoner may escape or pose a danger to the public.
- [<sup>F33</sup>(3A) On any grant of special escorted leave, the Governor may impose—
- (a) such conditions as the Governor considers appropriate from the conditions specified in a direction made under paragraph (5); and
  - (b) such further conditions as the Governor considers appropriate having regard to the individual circumstances of the prisoner.]

(4) For the purposes of this rule, “eligible prisoner” means a prisoner who—

    - (a) is either a life prisoner or a long-term prisoner;
    - (b) is confined in a prison, or a category of prison, or a particular part of a prison, to which this rule applies; and

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- (c) is and has been for at least 3 months assigned low supervision level.
- (5) For the purposes of special escorted leave the Scottish Ministers may specify in a direction—
  - (a) the prisons, categories of prisons, or parts of prisons to which this rule applies;
  - (b) the manner in which the Governor must consider an application for special escorted leave;
  - (c) the criteria about which the Governor must be satisfied before he or she may grant special escorted leave;
  - [<sup>F34</sup>(d) the conditions or types of conditions which may be imposed by the Governor on any grant of special escorted leave;]
  - (e) the timing and duration of special escorted leave and the frequency with which it may be granted to an eligible prisoner.

#### Textual Amendments

- F33** Rule 100(3A) inserted (19.3.2012) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2012 \(S.S.I. 2012/26\)](#), rules 1, **2(12)(a)**
- F34** Rule 100(5)(d) substituted (19.3.2012) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2012 \(S.S.I. 2012/26\)](#), rules 1, **2(12)(b)**

#### Escorted day absence

**101.**—(1) In this rule, “escorted day absence” means a leave of absence granted to a prisoner, under escort from the prison, for a period not exceeding 1 day, to enable the prisoner—

- (a) to visit a near relative who it appears to the Governor is dangerously ill;
- (b) to attend the funeral of a near relative; or
- (c) to attend at any place for any other reason where the Governor is of the view there are exceptional circumstances.

(2) On the written application of a prisoner and subject to any direction made by the Scottish Ministers under paragraph (4), the Governor may grant escorted day absence to the prisoner if satisfied that the purpose of the application is genuine and appropriate.

(3) Where the Governor grants escorted day absence, the prisoner concerned must be escorted by an officer or officers throughout the period of absence from the prison.

- (4) For the purposes of escorted day absence the Scottish Ministers may specify in a direction—
  - (a) the criteria about which the Governor must be satisfied before granting escorted day absence;
  - (b) the persons who are to be treated as near relatives of the prisoner; and
  - (c) the proceedings, services or ceremonies which a prisoner may attend for the purpose specified in paragraph (1)(b).

#### SEIZURE AND CONTROL OF PROPERTY

#### Prohibited articles

- 102.**—(1) A prisoner must not—
- (a) possess a prohibited article;
  - (b) conceal or deposit a prohibited article anywhere within a prison.
- (2) Subject to paragraph (3), it is prohibited for any person to—

- (a) convey a prohibited article to a prisoner whether inside or outside a prison;
  - (b) throw or otherwise convey a prohibited article into a prison;
  - (c) conceal or deposit a prohibited article in any place (whether inside or outside a prison) intending it to come into the possession of a prisoner.
- (3) A prisoner may be allowed to receive controlled drugs which are prescribed to him or her by written order of a healthcare professional in the course of his or her professional duties and where the written order specifies—
- (a) the name of the prisoner for whose use the drugs are intended; and
  - (b) the quantity and description of the drugs.
- (4) Any conduct which is in breach of this rule may—
- (a) where the conduct has been committed by a prisoner, lead to disciplinary proceedings being brought against the prisoner under Part 11; and
  - (b) where the conduct has been committed by a visitor, lead to that person being removed from the prison under rule 107.

### **Unauthorised property**

- 103.**—(1) A prisoner must not—
- (a) possess; or
  - (b) conceal or deposit anywhere within a prison,
- any unauthorised property.
- (2) A prisoner may only possess tobacco within the prison where he or she has been authorised to possess tobacco as a privilege granted by virtue of rule 45.
- (3) Subject to paragraph (4), it is prohibited for any person to—
- (a) convey any item to a prisoner either inside or outside the prison;
  - (b) convey or throw any item into a prison;
  - (c) conceal or deposit any item in a prison; or
  - (d) conceal or deposit any item in any place intending it to come into the possession of a prisoner.
- (4) Paragraph (3) does not apply to any item which—
- (a) consists of a letter or package addressed to a prisoner and sent to the prison by means of the postal service or otherwise; or
  - (b) the Governor has granted permission for a person to—
    - (i) give to the prisoner either inside or outside the prison,
    - (ii) bring or convey into the prison, or
    - (iii) deposit in the prison.
- (5) Any conduct which is in breach of this rule may—
- (a) where the conduct has been committed by a prisoner, lead to disciplinary proceedings being brought against the prisoner under Part 11; and
  - (b) where the conduct has been committed by a visitor, lead to that person being removed from the prison under rule 107.

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## **Seizure and treatment of prohibited articles and unauthorised property**

**104.**—(1) Any item found—

- (a) in the possession of a prisoner or any other person in the prison; or
- (b) anywhere else in the prison,

may be seized by the Governor where the Governor has reasonable cause to believe that the item is a prohibited article or unauthorised property.

(2) Subject to the following paragraphs any item that is seized under paragraph (1) may be retained by the Governor for no longer than is necessary to establish whether the item is a prohibited article or unauthorised property.

(3) Where the Governor is satisfied that an item seized under paragraph (1) is not a prohibited article or unauthorised property, the Governor must—

- (a) return the item to its owner;
- (b) where nobody claims ownership of the item upon reasonable enquiries being made by the Governor, return the item to the person from whom it was seized; or
- (c) where nobody claims ownership of the item and the item was not found in the possession of any person in the prison, dispose of or destroy the item by any appropriate means.

(4) Where the Governor is satisfied that an item seized under paragraph (1) is a prohibited article the Governor may deal with the item as appropriate subject to—

- (a) any powers of seizure exercisable by the police; and
- (b) paragraph (5).

(5) Where the Governor is satisfied that an item seized under paragraph (1) is a personal communication device, the Governor may deal with that personal communication device as follows:

—

- (a) where the personal communication device is seized from a prisoner it may be retained in order to be returned to the prisoner upon his or her release;
- (b) where the personal communication device is seized from any other person in the prison it may be retained in order to be returned to that person upon his or her departure from the prison;
- (c) where the personal communication device is seized and nobody claims ownership of it, upon reasonable enquiries being made by the Governor, it may be disposed of or destroyed by any appropriate means.

(6) Where the Governor is satisfied that an item seized under paragraph (1) comprises unauthorised property the Governor may deal with the item in any of the following ways—

- (a) where the item is seized from a prisoner it may be retained in order to be returned to the prisoner upon his or her release;
- (b) where the item is seized from any other person in the prison it may be retained in order to be returned to that person upon his or her departure from the prison;
- (c) in any other circumstances the Governor may dispose of or destroy the item by any appropriate means.

## **SUPERVISION AND CONTROL OF VISITORS**

### **Admission of visitors**

**105.**—(1) Any person seeking access to the prison as a visitor for any purpose must, on the request of an officer—

- (a) state his or her name and address and the purpose of his or her visit;
  - (b) produce a valid form of identification if so required by an officer;
  - (c) deposit for the duration of the visit any article in the visitor's possession which the officer considers may be prejudicial to the security and good order of the prison or to the safety of any person.
- (2) Where a person seeks access to the prison as a visitor for any purpose, an officer may request the visitor's consent—
- (a) to have the visitor's photo taken; and
  - (b) to have that photo retained on a database under the control of the Governor.
- (3) Where a visitor consents to have their photo taken and retained in accordance with paragraph (2), that photo shall be retained by the Governor—
- (a) only for the purposes of prison order and security, the prevention and detection of crime and the safety of any person within the prison;
  - (b) in accordance with such conditions as may be prescribed in a direction by the Scottish Ministers;
  - (c) where the visitor is visiting a prisoner, until the prisoner whom the visitor is seeking to visit has been released from prison whereupon it must be destroyed; and
  - (d) where the visitor is not visiting a prisoner, for a maximum period of six months, upon the expiry of which it must be destroyed.
- (4) An officer may refuse access to the prison to any person seeking access as a visitor where the officer is satisfied that—
- (a) the person has failed to comply with paragraph (1);
  - (b) the person does not satisfy the officer as to his or her identity;
  - (c) the person refuses to consent to have his or her photo taken and retained under paragraph (2);
  - (d) the person refuses to consent to a search for the purposes of rule 106 or is obstructive in the course of such a search;
  - (e) the person has possession of a prohibited article or any unauthorised property relative to the prisoner being visited;
  - (f) the officer has reasonable grounds for suspecting that the person may attempt to breach rule 102 or 103; or
  - (g) it is necessary to refuse the person access to the prison in the interests of the security and order of the prison or the safety of any person within the prison.
- (5) Where an officer refuses access to the prison to any person under [<sup>F35</sup>paragraph (4)], the officer must keep a written record of the particulars of that decision including the reasons for taking the decision.
- (6) A person to whom rule 73 applies who seeks to enter the prison for the purposes of a visit as mentioned in that rule must, immediately on arrival, inform an officer of that fact.
- (7) [<sup>F36</sup>The Governor must ensure that visitors are made aware of the effect of]—
- (a) this rule and rules 106 and 107;
  - (b) section 41 of the Act; and
  - (c) any direction made under rule 77.
- (8) A visitor must not smoke on any part of the prison premises.
- (9) In this rule, and in rules 106 and 107, “ visitor” does not include—

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- (a) an officer or employee;
- (b) a healthcare professional; or
- (c) a person providing contracted out services to the prison.

#### Textual Amendments

- F35** Words in rule 105(5) substituted (1.11.2011) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2011 \(S.S.I. 2011/356\)](#), rules 1, **2(11)**
- F36** Words in rule 105(7) substituted (19.3.2012) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2012 \(S.S.I. 2012/26\)](#), rules 1, **2(13)**

#### Searching of visitors

**106.**—(1) An officer may request a visitor to consent to a search which may involve any number of the following processes—

- (a) a search of the visitor's person;
- (b) a search of the visitor's clothing;
- (c) a visual examination of the visitor's open mouth but no equipment or force may be used;
- (d) a search of any items of property in the visitor's possession;
- (e) where the visitor is in charge of any vehicle which they intend to take into any restricted area of the prison, a search of that vehicle and any items of property found in that vehicle.

(2) Where the visitor has given his or her consent to be searched following a request made under paragraph (1), the officer may conduct a search of the visitor—

- (a) prior to the visitor's admission to the prison;
- (b) at any time whilst the visitor is in the prison where the Governor considers that—
  - (i) the visitor has failed to comply with rule 105(6);
  - (ii) in the case of any visit taking place in terms of rule 73, the terms of an undertaking given for the purposes of rule 73(3), have been breached;
  - (iii) there has been a contravention of any restrictions or conditions specified in a direction made under rule 77(3); or
  - (iv) the visitor may have in his or her possession a prohibited article or any unauthorised property in relation to the prisoner being visited; and
- (c) in the case of a search of any vehicle in accordance with paragraph (1)(e)—
  - (i) prior to the vehicle entering any restricted area of the prison; and
  - (ii) prior to the vehicle leaving any restricted area of the prison.

(3) Where a search is conducted under this rule—

- (a) in the case of a search mentioned in paragraph (1)(a) or (b) the officer conducting the search must be of the same gender as the visitor;
- (b) the search must be conducted as quickly and decently as possible; and
- (c) the use of force by the officer conducting the search is not permitted.

(4) A visitor who is being searched under this rule cannot be required to remove, and a search under this rule must not involve the removal of, any clothing other than an outer coat, jacket, headgear, gloves and footwear.



- (5) A search conducted under paragraph (1), other than a search carried out under paragraph (1)(c), may be carried out by—
- (a) hand;
  - (b) the use of equipment involving the application of a suction device or a swab on or to the visitor's clothing, any items of property mentioned in paragraph (1)(d) or (e), or any vehicle mentioned in paragraph (1)(e) in order to collect substances from their surface;
  - (c) the use of equipment involving the analysis of substances collected under sub-paragraph (b) for the purpose of ascertaining whether any of them consists of a controlled drug or an explosive substance;
  - (d) the use of equipment designed to detect the existence of metal objects or prohibited articles; and
  - (e) the use of trained sniffer dogs under the control of a trained officer.
- (6) Where a search conducted under this rule involves the use of equipment under paragraph (5)(b), (c) or (d), that equipment must be used in accordance with the manufacturers instructions.
- (7) Where an officer finds any prohibited article in the course of a search conducted under this rule, he or she may seize that article and deal with it in accordance with rule 104.
- (8) Where a visitor is searched by an officer under section 41(2A) of the Act <sup>M68</sup>—
- (a) an officer of the same gender as the visitor must conduct the search and another officer of the same gender must be present during the search;
  - (b) subject to sub-paragraph (c), the search must be conducted outwith the sight of any person who is not an officer;
  - (c) where the visitor is under 16 years of age, the search must be conducted in the presence of an accompanying adult;
  - (d) the search must be conducted as quickly and decently as possible; and
  - (e) if it is necessary to use reasonable force under section 41(2B)(d) of the Act <sup>M69</sup>, the force used must be proportionate to the threat or resistance posed by the visitor.
- (9) For the purposes of this rule—
- (a) any power to search includes the power to examine; and
  - (b) a “restricted area of the prison” means any area of the prison to which access is controlled but does not include car parks provided for the use of visitors, persons providing contracted out services, healthcare professionals, officers or employees.

#### Marginal Citations

**M68** 1989 c.45; section 41(2A) was added by the [Criminal Justice and Public Order Act 1994 \(c.33\)](#), [section 153\(3\)](#) and was amended by the [Criminal Justice and Licensing \(Scotland\) Act 2010 asp 13](#), section 34(1).

**M69** 1989 c.45; section 41(2B) was added by the [Criminal Justice and Public Order Act 1994 \(c.33\)](#), [section 153\(3\)](#) and was amended by the [Criminal Justice and Licensing \(Scotland\) Act 2010 asp 13](#), section 34(1).

#### Removal of visitors

- 107.**—(1) An officer may terminate a visit and remove a visitor from the prison where—
- (a) the officer has reasonable grounds for suspecting that the visitor—

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- (i) has in his or her possession any prohibited article or unauthorised property relative to the prisoner being visited;
  - (ii) is taking out or attempting to take out any unauthorised property or prohibited article;
  - (iii) has failed to comply with rule 105(6); or
- (b) the officer considers that—
- (i) the conduct of any visitor is prejudicial to the security and order of the prison or the safety of any person within the prison;
  - (ii) it is necessary to terminate the visit and remove the visitor in the interests of the security and order of the prison or the safety of any person within the prison;
  - (iii) it is necessary to terminate the visit and remove the visitor for the prevention of crime;
  - (iv) in the case of any visit taking place in terms of rule 73, the terms of any undertaking given for the purposes of rule 73(3) have been breached;
  - (v) there has been a contravention of any restrictions or conditions specified in a direction made by virtue of rule 77(3); or
  - (vi) the visitor has breached rule 105(8).
- (2) Where an officer terminates a visit and removes a visitor under paragraph (1) the officer must record this decision and the reasons for taking it in writing.

### **Searching of specified persons**

**108.**—(1) This rule applies to—

- (a) persons providing contracted out services to the prison; and
- (b) healthcare professionals.

(2) The Governor may authorise the search, at any time, of a person to whom this rule applies and this search may involve any number of the following processes—

- (a) a search of their person;
- (b) a search of their clothing;
- (c) a visual examination of their open mouth but no equipment or force may be used;
- (d) a search of any items of property in their possession including any items of property kept by them in a locker or any other place within the prison;
- (e) a search of any equipment, plant, machinery or laptop or desktop computers used or installed by them within the prison;
- (f) where they are in charge of any vehicle which they intend to take into any restricted area of the prison, a search of that vehicle and any items of property found in that vehicle.

(3) Where a search is conducted under this rule—

- (a) in the case of a search mentioned in paragraph (2)(a) or (b) the officer conducting the search must be of the same gender as the person being searched;
- (b) the search must be conducted as quickly and decently as possible;
- (c) except in the case of a search under paragraph (2)(c), the use of reasonable force is permitted where it is necessary and such force must be reasonable and proportionate to the threat or resistance posed by the person being searched.

(4) A person who is being searched under this rule cannot be required to remove, and a search under this rule must not involve the removal of, any clothing other than an outer coat, jacket, headgear, gloves and footwear.

(5) A search conducted under paragraph (2), other than a search carried out under paragraph (2)(c), may be carried out by—

- (a) hand;
- (b) the use of equipment involving the application of a suction device or a swab on or to the person's clothing, any items of property mentioned in paragraph (2)(d) or (f), any item mentioned in paragraph (2)(e) or any vehicle mentioned in paragraph (2)(f) in order to collect substances from their surface;
- (c) the use of equipment involving the analysis of substances collected under subparagraph (b) for the purpose of ascertaining whether any of them consists of a controlled drug or an explosive substance;
- (d) the use of equipment designed to detect the existence of metal objects or prohibited articles; and
- (e) the use of trained sniffer dogs under the control of a trained officer.

(6) Where a search conducted under this rule involves the use of equipment under paragraph (5)(b), (c) or (d), that equipment must be used in accordance with the manufacturers instructions.

(7) Where an officer finds any prohibited article in the course of a search conducted under this rule, he or she may seize that article and deal with it in accordance with rule 104.

(8) Where a person to whom this rule applies is searched by an officer under section 41(2A) of the Act—

- (a) an officer of the same gender as the person being searched must conduct the search and another officer of the same gender must be present during the search;
- (b) the search must be conducted outwith the sight of any person who is not an officer;
- (c) the search must be conducted as quickly and decently as possible; and
- (d) if it is necessary to use reasonable force under section 41(2B)(d) of the 1989 Act, the force used must be proportionate to the threat or resistance posed by the person being searched.

(9) For the purposes of this rule—

- (a) any power to search includes the power to examine; and
- (b) a “restricted area of the prison” means any area of the prison to which access is controlled but does not include car parks provided for the use of visitors, persons providing contracted out services, healthcare professionals, officers or employees.

## Viewing of prisons

**109.**—(1) A person may only view a prison if that person is authorised to do so—

- (a) under any enactment;
- (b) under the EU treaties or any EU instrument;
- (c) under any international treaties to which the United Kingdom is party; or
- (d) by the Governor or the Scottish Ministers.

(2) Any person who is authorised to view the prison must not—

- (a) take photographs, images, drawings or sketches;
- (b) make any live or recorded broadcast;
- (c) make any film or sound recording; or
- (d) interview or communicate by any means with a prisoner,

unless authorised to do so by any enactment or treaty or by the Governor or the Scottish Ministers.

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(3) Without prejudice to paragraph (2), a person who is authorised by the Governor or the Scottish Ministers to view the prison must not take photographs or make any film or sound recording of a prisoner or an officer without the prior consent of the prisoner or officer.

## PART 11

### DISCIPLINE

#### **Breach of discipline**

**110.** In this Part “breach of discipline” is to be interpreted in accordance with Schedule 1 to these Rules.

#### **Reporting breaches of discipline**

- 111.** An officer must inform the Governor in writing immediately where he or she—
- (a) becomes aware, or suspects, that a prisoner has committed a breach of discipline; and
  - (b) decides to charge the prisoner under rule 112.

#### **Charging breaches of discipline**

- 112.—**(1) A prisoner may be charged with a breach of discipline by an officer where—
- (a) the officer becomes aware, or suspects, that the prisoner has committed a breach of discipline; and
  - (b) the officer has complied with rule 111.
- (2) Where an officer decides to charge a prisoner with a breach of discipline—
- (a) the charge must be brought by the officer serving a written notice of the charge on the prisoner;
  - (b) the charge must be brought within 48 hours of the discovery of the act or omission giving rise to the charge but, where this is not possible because of any delay in notifying the Governor under rule 111 due to exceptional circumstances, the charge must be brought within 48 hours after the Governor has been notified; and
  - (c) written notice of the charge must be served on the prisoner at least 2 hours before the Governor commences a disciplinary hearing under rule 113.
- (3) Where an untried prisoner is reported by an officer under rule 111 at any time between the day before the start of the prisoner's trial and the conclusion of the trial—
- (a) the officer may delay bringing a charge under paragraph (1) until the relevant criminal proceedings are concluded; and
  - (b) where the officer delays bringing the charge and the prisoner is subsequently sentenced to imprisonment, the officer may only bring the charge if it is brought no later than 48 hours after the prisoner returns to custody at any prison.
- (4) A charge under paragraph (1) may be brought against a prisoner for an alleged breach of discipline committed in another prison but only in accordance with rule 116.

#### **Disciplinary hearings**

**113.—**(1) Where a charge has been brought against a prisoner under rule 112, the Governor must hold a hearing into the alleged breach of discipline no later than—

- (a) the next day after the charge has been brought; or
- (b) where the next day is a Sunday or a public holiday, the day after that Sunday or public holiday,

unless in exceptional circumstances, the Governor considers that a later hearing is necessary.

(2) A hearing into an alleged breach of discipline under paragraph (1) is to be known as a disciplinary hearing.

(3) The Governor must be satisfied that the prisoner has had sufficient time to prepare his or her case before commencing the disciplinary hearing.

(4) The Governor must adjourn the disciplinary hearing for such period of time as may be reasonably necessary, where the Governor is satisfied —

- (a) that the prisoner requires further time to prepare his or her case; or
- (b) there are other reasonable grounds for an adjournment.

(5) Where an adjournment is granted under paragraph (4)—

- (a) the disciplinary hearing may continue before any Governor provided no submissions have been made by the prisoner; but
- (b) the disciplinary hearing must only be continued by the Governor who granted the adjournment where submissions have been made by the prisoner.

(6) Where the Governor who granted the adjournment is not able to continue the disciplinary hearing under paragraph (5)(b) within a reasonable period of time after the adjournment then—

- (a) the disciplinary hearing must be abandoned; and
- (b) the charge may only be brought again if it is brought within 48 hours of the abandonment of the disciplinary hearing.

(7) At the disciplinary hearing, the Governor must—

- (a) inform the prisoner of the breach of discipline alleged;
- (b) allow the prisoner the opportunity to present his or her case;
- (c) allow the prisoner the opportunity to call witnesses where permitted to do so under paragraph (8); and
- (d) subject to paragraph (12), allow the prisoner to cross-examine any other witnesses.

(8) At the disciplinary hearing, the prisoner may request that a witness be called and this request must be granted by the Governor where the Governor is reasonably satisfied that the evidence the witness is likely to give will be relevant to the determination of the charge.

(9) The Governor may, on the application of a prisoner, permit the prisoner to be represented at the hearing by a legal adviser where in exceptional circumstances the Governor considers such representation is necessary or desirable.

(10) Subject to paragraphs (11) and (12), the Governor may, at the disciplinary hearing, take into account any relevant evidence in any form, including—

- (a) oral evidence from any person;
- (b) written evidence from any person;
- (c) documents and records;
- (d) film and photographs;
- (e) sound recordings; and
- (f) other physical evidence.

(11) For the purposes of paragraph (10)—

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- (a) where any evidence in paragraph (10)(c) to (e) is to be considered at the disciplinary hearing, the prisoner must be given an opportunity to look at and consider that evidence before presenting his or her case to the disciplinary hearing; and
  - (b) evidence listed in paragraph (10)(b) to (f) may only be considered at the disciplinary hearing without associated oral evidence if the prisoner agrees or if paragraph (12) applies.
- (12) The Governor may take into account written evidence relating to the analysis of a sample provided in accordance with rule 93 or 94, written by the person who carried out that analysis, without requiring the person's attendance at the disciplinary hearing if—
- (a) the person is not an officer or employee;
  - (b) the prisoner has been afforded the opportunity to make representations about why the person should give oral evidence; and
  - (c) the Governor is satisfied, having considered any representations from the prisoner, that it is appropriate to admit the evidence and that there is no sufficient reason why the person needs to give oral evidence.
- (13) The Governor must consider all the relevant evidence before making a finding and, for a prisoner to be found guilty of a breach of discipline, the Governor must be satisfied beyond reasonable doubt.
- (14) The Governor must inform the prisoner whether the prisoner has been found guilty or not guilty of the breach of discipline alleged and of the reasons for that decision.
- (15) Where the Governor finds that the prisoner is guilty of the breach of discipline alleged, but before determining whether a punishment under rule 114 is appropriate, the Governor must—
- (a) consider whether the breach of discipline is aggravated by virtue of containing an element of discrimination as described in rule 6 and, if so, inform the prisoner of the aggravation; and
  - (b) give the prisoner an opportunity to raise any relevant matters in mitigation.
- (16) Where the Governor finds that the prisoner is guilty of the breach of discipline charged and that a punishment under rule 114 is appropriate, the Governor must inform the prisoner of—
- (a) the punishment to be imposed on the prisoner under rule 114 including whether the punishment is to be suspended under rule 115; and
  - (b) the reasons for the Governor's decision to impose the punishment.

## **Punishment**

**114.**—(1) A Governor may impose on a prisoner one or more of the following punishments where a prisoner is found guilty of a breach of discipline—

- (a) a caution;
- (b) forfeiture of any privileges granted under the system of privileges applicable to a prisoner for a period not exceeding 14 days;
- (c) stoppage of or deduction from earnings for a period not exceeding 56 days and of an amount not exceeding one half of the prisoner's earnings in any week (or part thereof) falling within the period specified;
- (d) cellular confinement for a period not exceeding 3 days;
- (e) in the case of an untried prisoner found guilty of escaping or attempting to escape, forfeiture of the entitlement to wear his or her own clothing under rule 32 for any period as may be specified;
- (f) in the case of an untried prisoner or a civil prisoner, forfeiture of any or all of the entitlements referred to in rules 45 and 52 for any period as may be specified; and

- (g) forfeiture of the entitlement to withdraw money in terms of rule 51(3) for a period not exceeding 14 days.
- (2) In setting the level of punishment, the Governor must consider whether the breach of discipline was aggravated in terms of rule 113(15)(a).
- (3) If a prisoner is found guilty of more than one breach of discipline arising out of an incident, the punishments that may be imposed under this rule (except for cellular confinement under paragraph (1)(d)) may be ordered to run consecutively.
- (4) Where cellular confinement is imposed on a prisoner under paragraph (1)(d)—
  - (a) the Governor must inform a healthcare professional as soon as possible;
  - (b) any entitlement of the prisoner under these Rules will not be affected by the imposition of cellular confinement, except insofar as expressly provided in a direction under subparagraph (c); and
  - (c) the prisoner must serve the period of confinement in accordance with the provisions of, and subject to any conditions imposed by, a direction made by the Scottish Ministers.

### **Suspended punishments**

**115.**—(1) The Governor may order that a punishment imposed under rule 114(1), other than a caution, is to be suspended for a period of up to six months from the date of the Governor's decision under rule 113(16).

(2) Where a prisoner is found guilty of a further breach of discipline committed during the period of suspension ordered by the Governor under paragraph (1), the Governor dealing with that breach of discipline may direct—

- (a) that the suspended punishment is to take effect;
- (b) that the suspended punishment and the further punishment (except for cellular confinement under rule 114(1)(d)) are to be served consecutively;
- (c) that the period or amount of the suspended punishment is to be reduced and will take effect as so reduced;
- (d) that the suspended punishment is to be suspended again for a period of up to six months from the date of the Governor's direction;
- (e) that the further punishment is to be suspended for a period of up to six months from the date of the Governor's direction; or
- (f) that both the suspended punishment and the further punishment are to be suspended for a period of up to six months from the date of the Governor's direction.

(3) In this rule “suspended punishment” means a punishment suspended in accordance with paragraph (1) and “further punishment” means a punishment imposed for a further breach of discipline committed during the period of suspension referred to in paragraph (1).

### **Breaches of discipline committed in another prison or during transfer**

**116.**—(1) This rule applies where a prisoner has been transferred from one prison (“the transferring prison”) to another (“the receiving prison”).

(2) The prisoner may be charged with a breach of discipline alleged to have taken place prior to the prisoner's reception at the receiving prison only if—

- (a) an officer of the transferring prison reports the alleged breach to the Governor of the receiving prison within 3 days of the prisoner's reception at the receiving prison (excluding Sundays and public holidays); and

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- (b) no charge in respect of the breach of discipline has been brought at the transferring prison.

### **Breaches of discipline involving the use of controlled drugs**

**117.**—(1) If a prisoner is charged with a breach of discipline by contravening paragraph 27 of Schedule 1 in circumstances where—

- (a) the prisoner has been transferred to the prison (“the receiving prison”) from another prison;
- (b) the controlled drug specified in the relevant charge may have been administered to the prisoner before reception in the receiving prison; but
- (c) the prisoner was detained in a prison throughout the period during which the drug might have been administered,

the Governor of the receiving prison may deal with that matter as if the breach of discipline occurred within the receiving prison.

(2) Where an untried prisoner—

- (a) provides a sample in accordance with rule 93;
- (b) is alleged to have committed a breach of discipline by contravening paragraph 27 of Schedule 1;
- (c) has been detained in a prison throughout the period during which the drug might have been administered; and
- (d) is convicted and sentenced to imprisonment following the provision of the sample,

the Governor of the prison to which the prisoner is committed following conviction may deal with that matter as if the breach of discipline occurred within that prison.

(3) It is a defence for a prisoner charged with a breach of discipline by contravening paragraph 27 of Schedule 1 to show that—

- (a) the controlled drug had been, prior to its administration, lawfully in the prisoner's possession for the prisoner's use or was administered to the prisoner in the course of a lawful supply of the drug to the prisoner by another person;
- (b) the controlled drug was administered by or to the prisoner in circumstances in which the prisoner did not know and had no reason to suspect that such a drug was being administered; or
- (c) the controlled drug was administered by or to the prisoner under duress or to the prisoner without consent in circumstances where it was not reasonable for the prisoner to have resisted.

### **Disciplinary appeals**

**118.**—(1) A prisoner who is found guilty of any breach of discipline, in accordance with rule 113, may appeal the decision in accordance with this rule not later than 14 days after the date of the decision.

(2) An appeal brought under this rule must be in writing and is to be known as a disciplinary appeal.

(3) A disciplinary appeal may be against—

- (a) both the finding of guilt and any punishment imposed under rule 114; or
- (b) only the punishment imposed under rule 114,

but the appeal does not suspend that punishment.

(4) A disciplinary appeal may only be made where the disciplinary hearing—



- (a) was chaired by any officer other than the Governor in Charge, to the internal complaints committee;
  - (b) was chaired by the Governor in Charge, to the Scottish Ministers;
  - (c) took place in a contracted out prison, to the Scottish Ministers.
- (5) An appeal under paragraph (4)(a) must be dealt with as if it were a complaint to the internal complaints committee made under rule 123 but the Governor must, if recommended to do so by the internal complaints committee—
- (a) quash any finding of guilt; or
  - (b) remit or mitigate any punishment (other than a punishment imposed under rule 114 where the period for which the punishment was imposed has expired by the date of the decision of the appeal).
- (6) Where an appeal is made under paragraph (4)(b) or (c) the Scottish Ministers must—
- (a) investigate any relevant matters raised in the appeal; and
  - (b) provide a written decision to the prisoner within 20 days of the appeal being made.
- (7) The Scottish Ministers may, either in the course of a disciplinary appeal brought under paragraph (4)(b) or (c) or of their own volition, in relation to a prisoner who has been found guilty of any breach of discipline—
- (a) quash any finding of guilt;
  - (b) remit or mitigate any punishment (other than a punishment imposed under rule 114 where the period for which the punishment was imposed has expired by the date of the decision of the appeal);
  - (c) substitute another punishment which is, in the Scottish Ministers' opinion, less severe; or
  - (d) in the case of a disciplinary appeal, refuse the appeal.
- (8) If the Governor quashes any finding of guilt under paragraph (5)(a), or Scottish Ministers quash any finding of guilt under paragraph (7)(a), the Governor must destroy any record in the prisoner's file which relates to the alleged breach of discipline except where the record, or a part of it, relates to any other finding of breach of discipline which continues to form part of the prisoner's record.
- (9) Following the conclusion of the appeals procedure in relation to any appeal brought under this rule, a prisoner is not entitled to make any further appeal or complaint under these Rules in relation to the same matter to which the breach of discipline in question related.

### **Direction with respect to the disciplinary appeals procedure**

- 119.**—(1) The Scottish Ministers may provide in a direction such conditions as they consider appropriate with respect to the form and manner in which—
- (a) a disciplinary appeal may be made; and
  - (b) any decision in relation to a disciplinary appeal may be given.
- (2) The Governor must ensure that the following are provided for prisoners—
- (a) supplies of any form specified in a direction made under paragraph (1);
  - (b) assistance in the completion of any such form; and
  - (c) assistance in writing a disciplinary appeal under rule 118.

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## PART 12

### REQUESTS AND COMPLAINTS

#### Requests to speak to certain persons

- 120.**—(1) A prisoner may make a request to an officer to speak to—
- (a) a member of staff of the Scottish Administration;
  - (b) a member of the visiting committee; or
  - (c) a sheriff or a justice of the peace visiting the prison in terms of section 15 of the Act.
- (2) Where a prisoner makes a request under paragraph (1), the officer must, without delay—
- (a) record the request in writing; and
  - (b) arrange for the request to be brought to the attention of the person with whom the prisoner wishes to speak.
- (3) A prisoner may make a written request or complaint to the visiting committee and for that purpose the Governor must ensure that—
- (a) the prisoner is supplied with paper; and
  - (b) the request or complaint is posted to the visiting committee without delay.
- (4) A prisoner who requests to speak to a member of staff of the Scottish Administration under paragraph (1)(a) in order to make a complaint, must first exhaust all remedies available to the prisoner through the complaints procedure detailed in this Part.

#### Representations and complaints to the Scottish Ministers in relation to certain matters

- 121.**—(1) A prisoner who wishes to make any representations or complaint in relation to any matter mentioned in paragraph (2) may do so in writing directly to the Scottish Ministers.
- (2) This rule applies to the following matters—
- (a) representations relating to a transfer out of the United Kingdom under the Repatriation of Prisoners Act 1984 <sup>M70</sup>;
  - (b) a request to be transferred to another part of the United Kingdom or to any of the Channel Islands or the Isle of Man under Schedule 1 to the Crime (Sentences) Act 1997 <sup>M71</sup>;
  - (c) complaints relating to any allegation against the Governor; and
  - (d) representations relating to any matter concerning a prisoner's release on licence under the Act or Part I of the 1993 Act, or his or her return to prison or detention by virtue of the Act or Part I of the 1993 Act.

#### Marginal Citations

**M70** 1984 c.47, which has been relevantly amended as follows: section 1 was amended by S.I. 1999/1820, [article 4](#) and paragraph 75 of Schedule 2; [section 3](#) was amended by Schedule 5 to the [Prisoners and Criminal Proceedings \(Scotland\) Act 1993 \(c.9\)](#), by section 62 and paragraph 10 of Schedule 1 of the [Crime and Punishment \(Scotland\) Act 1997 \(c.48\)](#); [section 119](#) of the [Crime and Disorder Act 1998 \(c.37\)](#), by S.I. 1999/1820, [article 4](#) and paragraph 75 of Schedule 2, and also by the [Criminal Justice \(Scotland\) Act 2003 asp 7](#); [section 3](#) was repealed in part by the [Crime and Punishment \(Scotland\) Act, section 62, paragraph 10 of Schedule 1 and Schedule 3](#), and also by the [Criminal Justice Act 2003 \(c.44\)](#), [Schedule 37, Part 8](#); [section 4](#) was amended by S.I. 1999/1820 [article 4](#) and paragraph 75 of Schedule 2; [section 5](#) was amended by the [Merchant Shipping Act 1995 \(c.21\)](#), [Schedule 13](#)

and also by S.I. 1999/1820, **article 4** and paragraph 75 of Schedule 2; **paragraph 2** of the Schedule was substituted by the **Criminal Justice Scotland Act 2003 (asp 7)**, **section 33** and amended by S.I. 1998/2327, **article 5**.

**M71** 1997 c.43; **Schedule 1, paragraph 1** was relevantly amended by S.I. 1997/1775, **article 2** and paragraph 1 of the Schedule, and also by S.I. 1999/1820, **article 4** and Schedule 2, paragraph 130.

### Complaints to the residential first line manager

**122.**—(1) This rule applies to complaints made by a prisoner concerning any matter, other than—

- (a) a matter to which rules 118, 120, 121 and 124 relate; or
- (b) a matter concerning any aspect of the healthcare provided to the prisoner by a healthcare professional either within or outwith the prison.

(2) A prisoner who wishes to make a complaint to which this rule applies must make that complaint to the residential first line manager (“the RFLM”) either orally or in writing but, where the complaint raises any allegations against an officer or employee, the complaint must be made in writing.

(3) The RFLM must, within 48 hours of receiving a complaint under paragraph (2), allow the prisoner the opportunity to discuss the complaint with him or her with a view to resolving the complaint.

(4) Where the complaint cannot be resolved by discussion under paragraph (3), the RFLM must—

- (a) instruct an officer to conduct an investigation into the complaint and report back to the RFLM, either orally or in writing, as soon as practicable having regard to the time limit contained in sub-paragraph (b); and
- (b) subject to paragraph (5), provide a written response to the prisoner, including a copy of any written report which may have been prepared under sub-paragraph (a), within 5 days of receiving the complaint under paragraph (2).

(5) If, in exceptional circumstances, the RFLM is unable to respond within the period specified in paragraph (4)(b), he or she must—

- (a) inform the prisoner accordingly within the period specified in paragraph (4)(b); and
- (b) provide a written response to the prisoner no later than 5 days after informing the prisoner under sub-paragraph (a).

(6) The RFLM, upon issuing a response to the prisoner, must advise the prisoner—

- (a) that the prisoner may refer the complaint to the internal complaints committee if the prisoner is not satisfied with the response; and
- (b) that a referral to the internal complaints committee may be made no later than 2 weeks after the RFLM's response is issued to the prisoner.

### Referral of complaints to the Internal Complaints Committee

**123.**—(1) A prisoner who has made a complaint to the RFLM under rule 122 and is not satisfied with the response issued by the RFLM may refer the complaint to the internal complaints committee (“the ICC”).

(2) A referral to the ICC under paragraph (1) must be made in writing no later than 2 weeks after the RFLM response is provided to the prisoner.

(3) The Governor must appoint—

- (a) at least 3 members to the ICC and at least 2 of them must be officers or employees; and
- (b) a chair of the ICC who must be one of the officer or employee members.

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(4) The ICC must, having regard to the time-limit contained in paragraph (9), hold a hearing into the complaint as soon as practicable following receipt of the referral from the prisoner.

(5) The prisoner making the referral under paragraph (1) may—

- (a) attend the hearing and make representations to the ICC;
- (b) be assisted at the hearing by—
  - (i) an officer or an employee, a member of the visiting committee, or any person who ordinarily works at the prison but who is not employed by the Scottish Ministers; or
  - (ii) where the chair of the ICC is satisfied that there are exceptional circumstances, another prisoner at the prison concerned;
- (c) subject to paragraphs (6) and (7), call witnesses to give evidence in support of the complaint; and
- (d) ask questions of any person giving evidence at the inquiry.

(6) If a prisoner making a referral under paragraph (1) intends—

- (a) to be assisted by any person as mentioned in paragraph (5)(b); or
- (b) to call witnesses to give evidence in support of the complaint,

the prisoner must, prior to the hearing, give written notice to the ICC of that intention and the reasons why the prisoner considers it necessary to do so.

(7) The chair of the ICC may refuse to allow a prisoner to call a particular witness if, having discussed the matter with the prisoner, the chair is reasonably satisfied that the evidence which the witness is likely to give will be of no relevance or value in considering the complaint and, in that event, the chair must inform the prisoner concerned prior to the hearing.

(8) As soon as practicable following the hearing, but having regard to the time-limit contained in paragraph (9), the ICC must—

- (a) consider and decide upon such recommendations as it sees fit in relation to the complaint; and
- (b) confirm its decision in writing to the Governor.

(9) Within 20 days of a complaint being referred to the ICC under paragraph (1), the Governor must inform the prisoner—

- (a) of the ICC's decision as confirmed to the Governor under paragraph (8)(b) including the reasons for the decision and any recommendations made by the ICC;
- (b) whether the ICC's decision is endorsed or rejected by the Governor; and
- (c) where the Governor decides to reject the ICC's decision—
  - (i) of the reasons why the ICC's decision has been rejected; and
  - (ii) where the Governor decides to reject the ICC's decision, of any further action that is proposed in light of the Governor's decision to reject the ICC's decision.

(10) The Governor, upon issuing a decision to the prisoner under paragraph (9), must inform the prisoner of the process by which the complaint may be referred to the Scottish Public Services Ombudsman.

### **Complaints to the Governor in relation to confidential matters**

**124.**—(1) This rule applies to complaints made by a prisoner to the Governor concerning any confidential matter.

(2) A complaint to which this rule applies must be—

- (a) made in writing;

- (b) placed in a sealed envelope; and
  - (c) given to the residential officer, who must convey the complaint to the Governor without delay.
- (3) Where the Governor is of the opinion that a complaint made under paragraph (2) is not about a confidential matter and is therefore not a complaint to which this rule applies, the Governor must—
- (a) inform the prisoner as soon as reasonably practicable that the complaint is one which should be made in accordance with rule 122; and
  - (b) return the written complaint to the prisoner in a sealed envelope.
- (4) Subject to paragraph (5), the Governor must consider any complaint to which this rule applies and inform the prisoner in writing and in a sealed envelope of his or her decision within 7 days of the complaint being made and of the reasons for that decision.
- (5) If, in exceptional circumstances, the Governor is unable to give a decision within the period specified in paragraph (4), he or she must—
- (a) inform the prisoner of the reasons for the delay;
  - (b) advise the prisoner of the timescale within which the decision will be given; and
  - (c) inform the prisoner in writing and in a sealed envelope of the decision and of the reasons for the decision as soon as practicable.
- (6) The Governor, upon issuing a decision to the prisoner under paragraphs (4) or (5), must inform the prisoner of the process by which the complaint may be referred to the Scottish Public Services Ombudsman.
- (7) For the purposes of this rule—
- (a) a “confidential matter” is any matter which, in the opinion of the Governor, is of an exceptionally sensitive or serious nature; and
  - (b) “residential officer” means an officer who is required by the Governor to supervise areas of living accommodation for prisoners under the management of the residential first line manager.

### **Direction with respect to complaints procedures**

- 125.**—(1) The Scottish Ministers may provide in a direction such conditions as they consider appropriate with respect to the form and manner in which—
- (a) any complaint as mentioned in rules 122 to 124 may be made or referred; and
  - (b) any reply or decision in relation to such a complaint may be given.
- (2) The Governor must ensure that the following are provided for prisoners—
- (a) supplies of any form specified in a direction made under paragraph (1);
  - (b) assistance in the completion of any such form;
  - (c) assistance in making a written complaint under rules 122 to 124; and
  - (d) assistance in referring a complaint to the [<sup>F37</sup>Scottish Public Services Ombudsman] under rule 123(10) or 124(6).

#### **Textual Amendments**

- F37** Words in [rule 125\(2\)\(d\)](#) substituted (1.11.2011) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2011 \(S.S.I. 2011/356\)](#), rules 1, **2(12)**

## PART 13

### FEMALE PRISONERS

#### Separation of male and female prisoners

**126.**—(1) Female prisoners must not share the same accommodation as male prisoners.

(2) The respective accommodation for male and female prisoners must, as far as reasonably practicable, be in separate parts of the prison.

#### Pregnancy and confinement

**127.**—(1) Where the Governor receives notification from a healthcare professional or prison officer that a prisoner is pregnant the Governor must where possible, ask the prisoner if any relative, friend or other person should be informed.

(2) Where the Governor receives notification from a healthcare professional or prison officer that a prisoner is likely to give birth prior to the expiration of her sentence or period of committal the Governor must, where possible, ask the prisoner if any relative or friend, or any other person, should be informed.

(3) Subject to paragraphs (4) and (5), where the prisoner wishes any relative, friend or other person to be informed of the prisoner's pregnancy the Governor must inform any such person accordingly.

(4) The Governor is not required to inform more than 2 persons.

(5) The Governor must not inform any friend or relative of the prisoner without her consent.

(6) A prisoner who is pregnant is required to undertake work throughout her pregnancy but may only undertake work which the Governor has deemed to be suitable for a pregnant woman to undertake.

(7) A prisoner who is pregnant must be provided with food and drink which take into account any dietary requirements during pregnancy.

(8) Where a prisoner who is pregnant requires to be contained in specified conditions in accordance with rule 41(1), as a result of her pregnancy or otherwise, she must be kept under supervision to such extent as is reasonably practicable or be required to share accommodation in a cell or room with a suitable prisoner where the Governor, on the advice of a healthcare professional, considers it appropriate.

(9) The Governor must arrange for the transfer of the prisoner to a hospital outwith the prison for the purposes of giving birth upon receiving the advice of a healthcare professional on this matter.

#### Accommodation of female prisoners' babies

**128.**—(1) Subject to paragraphs (2), (3) and (4), the Governor may permit a female prisoner to have her baby with her in prison.

(2) Where a female prisoner is permitted to have her baby with her in prison—

(a) the prisoner is responsible for the care of the baby; and

(b) the Governor must provide any material items necessary for the baby's care.

(3) Subject to any direction made by the Scottish Ministers under this rule, the Governor may, in granting permission under paragraph (1), impose such conditions as the Governor thinks fit.

(4) A female prisoner who is permitted to have her baby with her in prison may, with the permission of the Governor, arrange, at her expense or at the expense of some other person, for the provision of additional articles or food for the baby.

(5) In granting permission under paragraphs (1) or (4), and in imposing conditions under paragraph (3), the Governor must take into consideration—

- (a) the best interests of the baby; and
- (b) the ability of the prisoner to care for her baby.

## **PART 14**

### **TRANSFER AND RELEASE OF PRISONERS**

#### **Interpretation of Part 14**

**129.** For the purposes of this Part “release” does not include temporary release.

#### **Pre-release preparation**

**130.** At an appropriate time before a prisoner is released from prison the Governor shall discuss, or arrange with some other person to discuss, with that prisoner the immediate needs or welfare issues of that prisoner upon release.

#### **Healthcare assessment prior to transfer**

**131.** Where the Governor proposes to transfer a prisoner to another prison and the Governor is aware that the prisoner is receiving medical supervision from a healthcare professional, the Governor must—

- (a) seek advice from a healthcare professional as to the prisoner's fitness to travel; and
- (b) take into account any advice received from a healthcare professional as to the prisoner's fitness to travel,

prior to ordering the transfer of that prisoner.

#### **Provision of clothing and return of property**

**132.** At the time of a prisoner's release, the Governor must—

- (a) if the prisoner has insufficient clothing to meet his or her immediate needs following release, provide suitable clothing to meet the prisoner's immediate needs; and
- (b) subject to Part 7, return to the prisoner all property belonging to the prisoner that was accepted into or purchased within prison and which has not been disposed of or destroyed in pursuance of any rule or direction.

#### **Release of fine defaulters after payment**

**133.—(1)** This rule applies to a prisoner who is committed to prison or otherwise detained in a prison for failure to pay a fine imposed by a court.

(2) A prisoner to whom this rule applies may be treated for the purposes of section 220 of the 1995 Act <sup>M72</sup> as having paid to the Governor any sum in part satisfaction of the fine provided the prisoner makes payment to the Governor using one of the approved methods of payment specified in a direction by the Scottish Ministers.

(3) The Scottish Ministers may also specify in a direction made under paragraph (2) the forms of identification which may be required for the purposes of certain methods of payment.

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#### **Marginal Citations**

**M72** 1995 c.46; section 220 was amended by the Criminal Justice (Scotland) Act 2003, Schedule 4, paragraph 3.

## **PART 15**

### **TEMPORARY RELEASE**

#### **Eligibility of prisoners for temporary release**

**134.**—(1) In this Part “temporary release” means any of the forms of temporary release defined in rule 136.

(2) In this Part “eligible prisoner” means a prisoner who—

- (a) is assigned low supervision level; and
- (b) is not disqualified from obtaining temporary release for any reason specified in paragraph (3) or (4).

(3) A prisoner is disqualified from obtaining temporary release if, for the time being, the prisoner is—

- (a) subject to proceedings under the Extradition Act 2003;
- (b) in the written opinion of a healthcare professional, not fit enough to be granted temporary release.

(4) Subject to paragraph (5), a life prisoner is disqualified from obtaining temporary release unless the Governor has obtained the prior consent of the Scottish Ministers.

(5) Any consent granted by the Scottish Ministers under paragraph (4)—

- (a) will apply to the first grant of temporary release and any further grants of temporary release; but
- (b) will cease to have effect if the prisoner is subsequently assigned a supervision level other than low supervision level.

#### **Applications for, and grant of, temporary release**

**135.**—(1) This rule applies in relation to all forms of temporary release except where otherwise expressly indicated.

(2) Where a prisoner seeks to make an application for unescorted day release or unescorted day release for compassionate reasons, both as defined in rule 136, that application must be made in writing by the prisoner to the Governor.

(3) Subject to any direction made by the Scottish Ministers under rule 138, the Governor may grant temporary release to an eligible prisoner if the Governor is of the opinion that it is appropriate to do so.

(4) In considering whether it is appropriate to grant temporary release to an eligible prisoner under this Part, the Governor must assess the risk that the prisoner may—

- (a) abscond; or
- (b) pose a danger, or cause harm, to the public.

[<sup>F38</sup>(4A) On any grant of temporary release the Governor may impose—



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- (a) such conditions as the Governor considers appropriate from the conditions specified in a direction made under rule 138; and
  - (b) such further conditions as the Governor considers appropriate having regard to the individual circumstances of the prisoner.]
- (5) Where the Governor refuses to grant temporary release, the Governor must inform the prisoner in writing of the decision and the reasons for the decision.
- [<sup>F39</sup>(5A) The Governor may arrange for an allowance to be paid to prisoners on temporary release to cover travelling expenses and the prisoner's general subsistence while on temporary release.]
- (6) The Governor may make such arrangements as the Governor considers appropriate for the transport to and from prison of prisoners who have been granted temporary release.

#### Textual Amendments

- F38** Rule 135(4A) inserted (19.3.2012) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2012 \(S.S.I. 2012/26\)](#), rules 1, **2(14)(a)**
- F39** Rule 135(5A) inserted (19.3.2012) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2012 \(S.S.I. 2012/26\)](#), rules 1, **2(14)(b)**

#### Forms of temporary release

**136.** For the purposes of this Part—

“home leave” means the unescorted temporary release from prison of an eligible prisoner for the purpose of enabling the prisoner to visit his or her home or other approved place for a period not exceeding 7 nights excluding travelling time;

“unescorted day release” means the unescorted temporary release from prison of an eligible prisoner for a period not exceeding one day, including travelling time, for the purposes of enabling the prisoner, in preparation for eventual release—

- (a) to develop further, or to re-establish, links with his or her family or community; or
- (b) to develop educational or employment opportunities;

“unescorted day release for compassionate reasons” means the unescorted temporary release from prison of an eligible prisoner for a period not exceeding one day, excluding travelling time, for the purposes of enabling the prisoner—

- (a) to visit any relative who it appears to the Governor is dangerously ill;
- (b) to attend the funeral of a near relative;
- (c) to visit a parent who is either too old or too ill to travel to the prison;
- (d) to visit the prisoner's spouse, civil partner or co-habiting partner who, for whatever reason, is unable to travel to the prison;
- (e) to visit a child for whom they have parental responsibility and who, for whatever reason, is unable to travel to the prison; or
- (f) to attend at any place for any other reason where the Governor is of the opinion that the circumstances warrant it;

“temporary release for work” means the unescorted temporary release from prison of an eligible prisoner for a period not exceeding one day, excluding travelling time, for the purposes of enabling the prisoner—

- (a) to undertake a work placement outside prison in terms of rule 84; [<sup>F40</sup>or]

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- (b) to attend a college, university or other educational establishment in order to participate in vocational training or an educational [<sup>F41</sup>class;]
  - (c) <sup>F42</sup>...
- “unescorted day release for health reasons” means the unescorted temporary release from prison of an eligible prisoner for a period not exceeding one day, excluding travelling time, for the purposes of enabling the prisoner—
- (a) to attend for treatment at a medical facility outwith the prison; or
  - (b) to attend counselling outwith the prison.

#### Textual Amendments

- F40** Word in rule 136 inserted (1.11.2011) by The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2011 (S.S.I. 2011/356), rules 1, **2(13)(a)**
- F41** Word in rule 136 substituted (1.11.2011) by The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2011 (S.S.I. 2011/356), rules 1, **2(13)(b)**
- F42** Words in rule 136 omitted (1.11.2011) by virtue of The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2011 (S.S.I. 2011/356), rules 1, **2(13)(e)**

#### Recall of prisoners granted temporary release

**137.**—(1) The Governor may recall to prison any prisoner who has been granted temporary release, whether or not the conditions upon which the prisoner has been granted such release have been broken.

(2) Where the Governor recalls to prison a prisoner who has been granted temporary release, the Governor must inform the prisoner in writing of the reasons for that decision.

#### Direction with respect to temporary release

**138.**—(1) For the purposes of temporary release, the Scottish Ministers may specify in a direction—

- (a) the forms of temporary release available to prisoners accommodated in particular prisons, halls or parts of prisons;
- (b) the manner in which the Governor must consider an application for any form of temporary release;
- (c) the manner in which the Governor must assess the risk that the prisoner may abscond or pose a danger to the public;
- (d) the relevant criteria about which the Governor must be satisfied before granting any form of temporary release;
- [<sup>F43</sup>(e) the conditions or types of conditions which may be imposed by the Governor on any grant of temporary release;]
- (f) the timing and duration of any form of temporary release and the frequency with which it may be granted to an eligible prisoner; and
- (g) the persons who are to be treated as a near relative of the prisoner.

(2) Directions under this rule may make different provision for different forms of temporary release.

### Textual Amendments

- F43** [Rule 138\(1\)\(e\)](#) substituted (19.3.2012) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2012 \(S.S.I. 2012/26\)](#), rules 1, **2(15)**

## PART 16

### OFFICERS AND EMPLOYEES

#### General duty of officers and employees

- 139.** Every officer and employee must—
- (a) act in conformity with these Rules;
  - (b) obey any lawful instructions of the Governor and of the Scottish Ministers; and
  - (c) inform the Governor promptly of any breach of these Rules and any abuse or impropriety.

#### Transactions with prisoners or in connection with the prison

**140.**—(1) Officers and employees must not take part in any business or pecuniary transaction with, or on behalf of, a prisoner, except with the authority of the Scottish Ministers.

- (2) Officers or employees must not—
- (a) bring in or take out, or attempt to bring in or take out, or knowingly allow to be brought in or taken out, to or for any prisoner; or
  - (b) deposit in any place with intent that it shall come into the possession of any prisoner, any item whatsoever, except with the authority of the Governor.

#### Fees and gratuities

- 141.** Officers and employees must not—
- (a) receive any unauthorised fee, gratuity or other consideration in connection with his or her duties;
  - (b) directly or indirectly, have any interest in any contract in connection with the prison or any other prison;
  - (c) receive any fee, gratuity or other consideration from or on behalf of any contractor at, or any person tendering for a contract in connection with, a prison.

#### Searching of officers and employees

**142.**—(1) Without prejudice to any power of search referred to in the Act, the Governor may order the search, at any time, of any officer or employee and this search may involve any number of the following processes—

- (a) a search of the officer's or employee's person;
- (b) a search of the officer's or employee's clothing;
- (c) a visual examination of the officer's or employee's open mouth but no equipment or force may be used;

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- (d) a search of any items of property in the officer's or employee's possession whilst in the prison, including any items of property which are kept by the officer or employee in his or her locker or any other place within the prison;
  - (e) where the officer or employee is in charge of any vehicle which they intend to take into any restricted area of the prison, a search of that vehicle and any items of property found in that vehicle.
- (2) Where a search is conducted under this rule—
- (a) in the case of a search mentioned in paragraph (1)(a) or (b) the officer conducting the search must be of the same gender as the person being searched;
  - (b) the search must be conducted as quickly and decently as possible;
  - (c) except in the case of a search under paragraph (1)(c), the use of reasonable force is permitted where it is necessary and such force must be reasonable and proportionate to the threat or resistance posed by the person being searched.
- (3) An officer or employee who is being searched under this rule cannot be required to remove, and a search under this rule must not involve the removal of, any clothing other than an outer coat, jacket, headgear, footwear and gloves.
- (4) A search conducted under paragraph (1), other than a search carried out under paragraph (1)(c), may be carried out by—
- (a) hand;
  - (b) the use of equipment involving the application of a suction device or a swab on or to the officer's or employee's clothing, any items of property mentioned in paragraphs (1)(d) or (e) or any vehicle mentioned in paragraph (1)(e) in order to collect substances from their surface;
  - (c) the use of equipment involving the analysis of substances collected under subparagraph (b) for the purpose of ascertaining whether any of them consists of a controlled drug or an explosive substance;
  - (d) the use of equipment designed to detect the existence of metal objects; and
  - (e) the use of trained sniffer dogs under the control of a trained officer.
- (5) Where a search conducted under this rule involves the use of equipment under paragraph (4)(b), (c) or (d), that equipment must be used in accordance with the manufacturer's instructions.
- (6) Where an officer finds any prohibited article in the course of a search carried out under this rule, he or she may seize that article and deal with it in accordance with rule 104.
- (7) Where an officer or employee is searched by an officer under section 41(2A) of the Act—
- (a) an officer of the same gender as the person being searched must conduct the search and another officer of the same gender must be present during the search;
  - (b) the search must be conducted outwith the sight of any person who is not an officer;
  - (c) the search must be conducted as quickly and decently as possible; and
  - (d) if it is necessary to use reasonable force under section 41(2B)(d) of the 1989 Act, the force used must be proportionate to the threat or resistance posed by the person being searched.
- (8) For the purposes of this rule—
- (a) any power to search includes the power to examine; and
  - (b) “restricted area of the prison” means any area of the prison to which access is controlled but does not include car parks provided for the use of visitors, persons providing contracted out services, healthcare professionals, officers or employees.

### **Communications with the media etc.**

**143.**—(1) Officers or employees must not make any unauthorised communication, either directly or indirectly, to a media representative or any other person concerning matters which have become known to the officer or employee in the course of his or her duties.

(2) Subject to paragraph (3), officers and employees must not, without the authority of the Governor—

- (a) publish any matter; or
- (b) make any public pronouncement,

relating to the administration of any prison or any prisoner.

(3) The Scottish Ministers may specify in a direction circumstances in which—

- (a) officers and employees must not do any of the acts specified in paragraph (2); and
- (b) the Governor cannot authorise any of the acts specified in paragraph (2).

### **Code of conduct**

**144.**—(1) The Scottish Ministers may approve a code regulating the conduct and discipline of officers and employees, or such categories of officers and employees as may be specified in the code.

(2) Any code approved by the Scottish Ministers in terms of paragraph (1) may include provision regulating—

- (a) the procedures which may be invoked where it is suspected that the acts or omissions of an officer or employee may constitute misconduct;
- (b) the disciplinary action which may be taken against an officer or employee where it is found that the acts or omissions of an officer or employee constitute misconduct; and
- (c) the rights of appeal of any such officer or employee.

## **PART 17**

### **VISITING COMMITTEES**

#### **Application of Part 17**

**145.**—(1) Subject to paragraphs (2), (3) and (4), this Part applies to visiting committees for prisons and young offenders institutions.

(2) Rules 147 and 155 and Schedule 3 do not apply to visiting committees for prisons.

(3) In the application of this Part to young offenders institutions and visiting committees for such institutions—

- (a) rule 146 and Schedule 2 do not apply;
- (b) in rule 148—
  - (i) paragraph (4) does not apply; and
  - (ii) in paragraph (7), the words “required to be” are to be omitted;
- (c) rule 155 and Schedule 3 do not apply; and
- (d) without prejudice to rule 2(4), any reference to a visiting committee for a prison in this Part shall be construed as including a visiting committee for a young offenders institution.

(4) Rule 155 and Schedule 3 apply to visiting committees for legalised police cells.

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## Constitution of visiting committees for prisons

**146.**—(1) A visiting committee must be constituted, in accordance with this rule, for each prison specified in column 1 of Schedule 2.

(2) In relation to each such visiting committee—

- (a) the members of the visiting committee must be appointed by the council or councils specified in column 2 of Schedule 2 opposite to the name of the prison specified in column 1 of that Schedule;
- (b) the number of members that each council must appoint to the visiting committee is specified in column 3 of that Schedule; and
- (c) the number of members who must be appointed by each council but who must not be members of that council is specified in column 4 of that Schedule .

(3) Any person with a direct financial interest in any contract for the supply of goods or services to any prison is not eligible for appointment to a visiting committee in terms of this rule.

(4) The member or members of a visiting committee to be appointed by a council in terms of paragraph (2) must be appointed—

- (a) subject to the following sub-paragraphs, at a meeting of that council held no later than 2 months after the date of the ordinary election of the council;
- (b) if for any reason the requisite number of members of a visiting committee is not appointed at the proper time in terms of sub-paragraph (a), at a meeting of the council held as soon as possible after that time;
- (c) if a member of the visiting committee ceases to hold office by virtue of paragraph (7), at a meeting of the council held as soon as possible after that member ceases to hold office; and
- (d) if for any other reason a vacancy occurs in a visiting committee, at a meeting of the council held as soon as possible after the vacancy occurs.

(5) A member of a visiting committee appointed by a council under—

- (a) paragraph (4)(a), will take office on the day which falls 2 months after the date of the ordinary election of the council;
- (b) paragraph (4)(b), (c) or (d), will take office on the day following the appointment.

(6) A member of a visiting committee appointed by a council under paragraph (4) holds office until—

- (a) he or she ceases to hold office by virtue of paragraph (7); or
- (b) until the day prior to the day which falls 2 months after the date of the next ordinary election of the council.

(7) A member of a visiting committee ceases to hold office if—

- (a) he or she resigns;
- (b) the council who appointed the member terminates the member's appointment on being satisfied that—
  - (i) the member has failed satisfactorily to perform his or her duties;
  - (ii) the member is for any other reason incapable of carrying out his or her duties;
  - (iii) subsequent to his or her appointment, the member has been convicted of such a criminal offence, or the member's conduct has been such, that it is not fitting that he or she should remain a member; or
  - (iv) the member has a direct financial interest contrary to the terms of rule 154; or

(c) having been appointed a member whilst also a member of a relevant council under Schedule 2, that council terminates his or her appointment by reason of having ceased to be a member of the council.

(8) The chair of a visiting committee must report any circumstances which he or she considers might reasonably give cause for termination, in terms of paragraph (7), of the appointment of a member of the visiting committee to the council responsible for appointing the member of the visiting committee.

(9) In this rule, “the ordinary election of the council” means the first ordinary election of councillors of the council under section 5 of the Local Government Etc. (Scotland) Act 1994<sup>M73</sup>.

#### Marginal Citations

**M73** 1994 c.39; section 5 was amended by the [Local Governance \(Scotland\) Act 2004 \(asp 9\)](#), [section 5\(2\)](#); the [Scottish Local Government \(Elections\) Act 2002 \(asp 1\)](#), [section 4\(2\)](#); and the [Scottish Local Government \(Elections\) Act 2009 \(asp 10\)](#), [section 1\(1\)](#) and Schedule 1, paragraph 2.

### Constitution of visiting committees for young offenders institutions

**147.** Of the total membership of the visiting committee for each young offenders institution appointed by the Scottish Ministers under section 19(3) of the Act, not fewer than one third, with a minimum of two, must be women.

### Proceedings of visiting committees

**148.—(1)** At the first meeting of a visiting committee, the members must—

- (a) elect from the membership, a chair and a deputy chair each for a period of 4 years; and
- (b) appoint a person (not being a member of staff of the Scottish Administration) to act as a clerk to the Committee.

(2) A person elected to be a chair or a deputy chair of the visiting committee may resign the office at any time and must do so if that person, for whatever reason, ceases to hold office as a member of the committee.

(3) In the event of any vacancy in the office of chair or deputy chair of a visiting committee, the members must, as soon as practicable, elect another member to fill the vacancy and to hold office for the remaining part of the period of 4 years.

(4) The chair of the visiting committee for a prison must report to the Scottish Ministers the names and addresses of the members of the committee immediately after the first meeting and, thereafter, whenever a change in these details or in the membership occurs.

(5) The visiting committee for a prison must meet at the prison at least once in every period of 3 months.

(6) A visiting committee may appoint sub-committees from its membership and may delegate specific duties to any such sub-committee for the purpose of carrying out its functions.

(7) A visiting committee must fix a quorum of not less than one-third of the total number of members required to be appointed to that committee for the purpose of its proceedings, and for the proceedings of any sub-committee appointed under paragraph (6).

(8) The proceedings of a visiting committee are not invalidated by any vacancy in the membership or any defect in the appointment of a member.

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(9) A visiting committee must keep minutes of its proceedings and must send a copy of such minutes to the Governor of the relevant prison and to the Scottish Ministers as soon as reasonably practicable after the relevant proceedings.

### **General duties of visiting committees and members of committees**

**149.**—(1) A visiting committee must co-operate with the Scottish Ministers and the Governor of the relevant prison in promoting the efficiency of the prison and must inquire into and report upon any matter at the request of the Scottish Ministers.

(2) The visiting committee must—

- (a) immediately bring to the notice of the Governor any circumstances relating to the administration of the prison or the condition of any prisoner which appear to it to be expedient to report for the Governor's consideration; and
- (b) bring such circumstances to the notice of the Scottish Ministers if it appears to the committee that the Governor has not remedied any matter which the Committee has notified to the Governor in terms of sub-paragraph (a) within such period as appears to the committee to be reasonable.

(3) The visiting committee must from time to time inquire into the state of the prison premises and must—

- (a) inspect, in particular, the food and drink provided to prisoners; and
- (b) in relation to any such inquiry—
  - (i) record particulars of every visit made, together with any deficiencies found during such visits, in the committee's minute book; and
  - (ii) promptly send a copy of such particulars to the Scottish Ministers and to the Governor.

(4) The visiting committee must also discharge such other duties as the Scottish Ministers may from time to time assign to it.

(5) A person who is or has been a member of a visiting committee must not disclose any information mentioned in paragraph (6) which the person holds or has held as a member.

(6) The information referred to in paragraph (5) is any information obtained—

- (a) by any member of a visiting committee which relates to the prison, any officer of the prison or any prisoner; and
- (b) on terms or in circumstances requiring it to be held in confidence.

(7) Paragraph (5) does not apply to any disclosure of information mentioned in paragraph (6) made to any person, or for any purpose, permitted by the provisions of this Part.

### **Investigation of complaints**

**150.**—(1) The visiting committee or any member of the committee must hear and investigate any complaint which a prisoner makes to the committee or to the member.

(2) Where a member of the visiting committee wishes to see any prisoner in connection with a complaint, the Governor must make arrangements for the member to do so, whether in the prisoner's cell or room or in some other part of the prison, but in any case outwith the sight and hearing of an officer unless either party requests otherwise.

(3) The visiting committee must—

- (a) record particulars of its findings in relation to its investigation of a prisoner's complaint in its minute book;



- (b) promptly send a copy of such findings to the Scottish Ministers and to the Governor of the relevant prison; and
- (c) inform the prisoner concerned of its findings.

### **Visits to prisons by members of visiting committees**

**151.**—(1) At least two members of the visiting committee for a prison must visit the prison at least fortnightly.

(2) In complying with paragraph (1), visiting committees must ensure that, in every fortnight, at least—

- (a) one member visits the prison weekly, or
- (b) two members visit the prison together in that fortnight.

(3) For the purposes of this rule, the visiting committee must arrange a rota of visits to the prison.

### **Inspection of prison records**

**152.**—(1) The visiting committee for a prison, or any member of the visiting committee, may inspect prison records other than—

- (a) personnel records;
- (b) prisoners' records; and
- (c) security manuals or other papers which have implications for security.

(2) The visiting committee must record particulars of any inspection of prison records in its minute book.

### **Annual report**

**153.**—(1) The visiting committee for a prison must make an annual report for the period of twelve months ending on 31st March each year to the Scottish Ministers concerning the state of the prison and its administration and may include in the report any advice and suggestions it considers appropriate.

(2) The visiting committee's annual report must be delivered to the Scottish Ministers as soon as possible after 31st March in each year.

### **Conflicts of interest**

**154.** A member of the visiting committee for a prison must not have any direct financial interest in any contract for the supply of goods or services to a prison.

### **Visiting committees for legalised police cells**

**155.**—(1) A visiting committee must be constituted in accordance with this rule for the legalised police cells specified in column 1 of Schedule 3 and in relation to each of these visiting committees—

- (a) the members of the visiting committee must be appointed by the council or councils specified in column 2 of Schedule 3 opposite to the name of the legalised police cell specified in column 1 of that Schedule; and
- (b) the number of members that each council must appoint to the relevant visiting committee is specified in column 3 of that Schedule.

(2) A member of a visiting committee must visit the legalised police cells on at least one occasion in any month if any prisoners have been detained in the cells within the preceding month.

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(3) In relation to the legalised police cells specified in Schedule 3 and to the visiting committees constituted in accordance with this rule and to the members and officers of any such committees, the following provisions of these Rules apply subject to the modifications specified in paragraphs (4) to (6)—

- (a) in rule 146, paragraphs (3) to (9);
  - (b) in rule 148, paragraphs (1) to (5), (8) & (9);
  - (c) rule 149;
  - (d) rule 150;
  - (e) rule 152;
  - (f) rule 153; and
  - (g) rule 154.
- (4) The provisions specified in sub-paragraphs (a) to (g) of paragraph (3) apply as if—
- (a) any reference to “prison” were a reference to the relevant legalised police cells;
  - (b) any reference to “Governor” were a reference to the constable who is in charge of the cells.
- (5) Rule 148(9) applies as if the words “the Governor of the relevant prison and to” were omitted.
- (6) Rule 152 applies as if—
- (a) in paragraph (1), for the words after “inspect” there are substituted “records relating to the legalised police cells and any record kept at the cells which relates to a prisoner who is or has been detained in them.”; and
  - (b) in paragraph (2), for the words “prison records”, there are substituted “any such records as are mentioned in paragraph (1)”.

## PART 18

### SUPPLEMENTARY

#### Directions

**156.** Where any provision of these Rules provides that the Scottish Ministers may give a direction, unless the contrary intention appears, the Scottish Ministers may make provision in the direction—

- (a) in relation to all cases in respect of which the direction may be given, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or classes of case;
- (b) in relation to all prisons or in relation to specified parts of prisons or in relation to specified prisons;
- (c) in relation to all prisoners or in relation to specified classes of prisoners;
- (d) as respects the cases in relation to which it is given, that the direction applies either unconditionally, or subject to any specified condition; or
- (e) which is incidental or supplementary to the purpose in respect of which the direction may be given.

#### Revocations

**157.** Subject to rule 158, the Rules specified in Schedule 4 are revoked.

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## **Savings and transitional provisions**

**158.** The savings and transitional provisions specified in Schedule 5 have effect.

St Andrew's House,  
Edinburgh

*KENNY MACASKILL*  
A member of the Scottish Executive

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## SCHEDULE 1

Rule 110

### BREACHES OF DISCIPLINE

A prisoner is guilty of a breach of discipline if he or she—

1. commits any assault;
2. fights with any person;
3. uses threatening words or behaviour;
4. uses abusive or insulting words or behaviour;
5. commits any indecent or obscene act;
6. intentionally endangers the health or personal safety of others;
7. recklessly endangers the health or personal safety of others.
8. fails, without reasonable excuse, to open his or her mouth for the purpose of enabling a visual examination in terms of rule 92(2)(e);
9. is absent from a place where he or she is required to be or is present in a place he or she is not authorised to be;
10. is disrespectful to any person, other than a prisoner, who is at the prison;
11. intentionally fails to work properly or, on being required to work, refuses to do so;
12. disobeys any lawful order;
13. disobeys or fails to comply with any rule, direction or regulation applying to a prisoner;
14. intentionally obstructs any person, other than a prisoner, in the performance of that person's work at the prison;
15. detains any person against his or her will;
16. denies access to any part of the prison to any person other than a prisoner;
17. destroys or damages any part of a prison or any other property, other than his or her own;
18. intentionally or recklessly sets fire to any part of a prison or any other property, whether or not that property belongs to him or her;
19. takes improperly any article belonging to another person or to the prison;
20. has in his or her possession, or concealed about his or her body or in any body orifice, any article or substance which he or she is not authorised to have or a greater quantity of any article or substance than he or she is authorised to have;
21. has in his or her possession whilst in a particular part of the prison, any article or substance which he or she is not authorised to have when in that part of the prison;
22. has in his or her possession, or concealed about his or her body or in any body orifice, any prohibited article;
23. sells or delivers to any person any article which he or she is not authorised to have;
24. sells or, without permission, delivers to any person any article which he or she is allowed to have only for his or her own use;

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25. consumes, takes, injects, ingests, conceals inside a body orifice, inhales or inhales the fumes of any substance which is—
- (a) a prohibited article;
  - (b) unauthorised property; or
  - (c) an article which he or she has been authorised to keep or possess but which he or she has not been specifically authorised to inhale or inhale the fumes thereof;
26. smokes in an area of a prison where smoking is not permitted by virtue of rule 36;
27. administers a controlled drug to himself or herself or fails to prevent the administration of a controlled drug to himself or herself by another person but subject to rule 117;
28. escapes or absconds from prison or from legal custody;
29. fails to return to prison when he or she should return after being temporarily released under Part 15;
30. fails to comply with any condition upon which he or she is temporarily released under Part 15; or
31. attempts to commit, incites another prisoner to commit, or assists another prisoner to commit or attempt to commit, any of the foregoing breaches.

## SCHEDULE 2

Rule 146

### CONSTITUTION OF VISITING COMMITTEES

(1)Name of Prison	(2)Name of Appointing Authorities	(3)Number of Members to be appointed	(4)Number of Members who are non-members of Appointing Authority
ABERDEEN	Aberdeen City Council	4	2
	Aberdeenshire Council	2	2
ADDIEWELL	West Lothian Council	5	2
	South Lanarkshire Council	5	2
	North Lanarkshire Council	5	2
BARLINNIE	West Dunbartonshire Council	2	1
	East Ayrshire Council	1	
	Glasgow City Council	10	4
	Inverclyde Council	1	
	North Ayrshire Council	2	1
	North Lanarkshire Council	4	2
	Renfrewshire Council	1	

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	South Lanarkshire Council	4	2
	Dundee City Council	3	1
CORNTON VALE	Clackmannanshire Council	2	1
	Stirling Council	7	3
	Falkirk Council	6	2
DUMFRIES	Dumfries and Galloway Council	11	4
EDINBURGH	City of Edinburgh Council	10	4
	East Lothian Council	2	1
	West Lothian Council	2	1
	Midlothian Council	3	1
GLENOCHIL	Clackmannanshire Council	5	2
	Stirling Council	4	2
	Fife Council	5	2
GREENOCK	Inverclyde Council	5	2
	North Ayrshire Council	2	
	Argyle and Bute Council	1	
INVERNESS	Highland Council	10	4
[ <sup>F44</sup> LOW MOSS	Argyll & Bute Council	1	0
	Renfrewshire Council	2	1
	East Renfrewshire Council	1	0
	East Dunbartonshire Council	4	1
	West Dunbartonshire Council	4	2
	Inverclyde Council	3	1]
KILMARNOCK	East Ayrshire Council	4	2
	South Ayrshire Council	4	2
	North Ayrshire Council	4	2

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	East Renfrewshire Council	2	1
	South Lanarkshire Council	1	
	North Lanarkshire Council	3	1
	East Dunbartonshire Council	4	2
	Dundee City Council	3	1
[ <sup>F45</sup> OPEN ESTATE	Angus Council	2	1
	Dundee City Council	3	1
	Perth and Kinross Council	5	2]
PERTH	Perth & Kinross Council	10	4
	Dundee City Council	9	3
PETERHEAD	Aberdeenshire Council	5	2
	Aberdeen City Council	3	1
SHOTTS	North Lanarkshire Council	9	3
	South Lanarkshire Council	8	3

#### Textual Amendments

- F44** Words in [sch. 2](#) table inserted (19.3.2012) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2012 \(S.S.I. 2012/26\)](#), rules 1, **2(16)(a)**
- F45** Words in [sch. 2](#) table substituted (19.3.2012) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2012 \(S.S.I. 2012/26\)](#), rules 1, **2(16)(b)**

### SCHEDULE 3

Rule 155

#### CONSTITUTION OF VISITING COMMITTEES FOR LEGALISED POLICE CELLS

(1)Legalised Police Cells	(2)Names of Appointing Authorities	(3)Number of Members to be appointed
CAMPBELTOWN	Argyll and Bute Council	3
DUNOON	Inverclyde Council	1
	Argyll and Bute Council	2

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HAWICK	Scottish Borders Council	3
KIRKWALL	Orkney Islands Council	3
LERWICK	Shetland Islands Council	3
LOCHMADDY	Comhairle nan Eilean Sair	3
OBAN	Argyll and Bute Council	3
STORNOWAY	Comhairle nan Eilean Sair	3
THURSO	Highland Council	3

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#### SCHEDULE 4

Rule 157

#### REVOCATIONS

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Revocations	S.S.I. Number
The Prisons and Young Offenders Institutions (Scotland) Rules 2006	S.S.I. 2006/94
The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2007	S.S.I. 2007/190
The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2008	S.S.I. 2008/377

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#### SCHEDULE 5

Rule 158

#### SAVINGS AND TRANSITIONAL PROVISIONS

1. Where, immediately prior to 1st November 2011, any of the matters listed in paragraph 2 remain extant, in force, pending or outstanding under any provision of the 2006 Rules that matter must be treated in accordance with paragraphs 3 to 13.
2. The matters referred to in paragraph 1 are—
  - (a) any privilege or certificate which has been granted;
  - (b) any authority, direction, order or permission which has been given; or
  - (c) any record or minute which has been made in respect of any matter.



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3. Subject to paragraphs 4 to 13, insofar as any matter listed in paragraph 2 could be granted, given or made under a corresponding provision of these Rules, that matter is to be treated as if it had been granted, given or made under the corresponding provision of these Rules.

4. Where, immediately prior to 1st November 2011—

- (a) a prisoner had an entitlement to carry forward an accumulated period of unused allowance under rule 65(2) of the 2006 Rules; and
- (b) some or all of that allowance had not been used,

the prisoner shall be deemed to have permission to accumulate visits under rule 65(2) of these Rules and the unused allowance under rule 65(2) of the 2006 Rules shall be treated as accumulated visits under rule 65 of these Rules.

5. Where, immediately prior to 1st November 2011, an order under rule 94(1) of the 2006 Rules is in force, that order shall be deemed to have been made under rule 95(1) of these Rules.

6. Where the Scottish Ministers have granted an authority under rule 94(5) of the 2006 Rules and that authority is in force immediately prior to 1st November 2011, that authority shall be deemed to constitute an extension granted under rule 95(11) of these Rules.

7. Where the Scottish Ministers have, under rule 94(6) of the 2006 Rules, renewed a previous authority granted by them under rule 94(5) of the 2006 Rules and that renewed authority is in force immediately prior to 1st November 2011, that renewed authority shall be deemed to constitute an extension granted under rule 95(12) of these Rules.

8. Where a report of a breach of discipline which was made in terms of rule 114 of the 2006 Rules, but in relation to which a charge has not been brought against the prisoner under rule 115 of the 2006 Rules before 1st November 2011, the report shall be deemed not to have been made, but without prejudice to the right of an officer, if appropriate, to make a report in terms of rule 111 of these Rules.

9. Part 11 and rules 130 and 131 of the 2006 Rules continue to apply as they did immediately prior to 1st November 2011 in respect of any breach of discipline, or alleged breach of discipline, in relation to which a charge was brought against a prisoner under rule 115 of the 2006 Rules before that date.

10. For the purposes of rule 120 of the 2006 Rules, references to a “breach of discipline” include a breach of discipline under these Rules.

11. Rules 123 to 128 of the 2006 Rules shall remain in force in relation to any complaint made by a prisoner under those Rules prior to the coming into force of these Rules.

12. Part 15 of the 2006 Rules shall remain in force in relation to any grant of temporary release to a prisoner under that Part which is in effect immediately prior to 1st November 2011 until the period of temporary release expires or the Governor recalls the prisoner under rule 146 of the 2006 Rules (whichever is the earlier).

13. The Scottish Prison Service Employee Code of Conduct and Standards of Conduct implemented on 1st August 1998 and revised on 1st September 2000 shall continue to apply as if it had been approved under rule 144.

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## EXPLANATORY NOTE

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

These Rules replace the Prisons and Young Offenders Institutions (Scotland) Rules 2006 as amended. While some of the changes from the 2006 Rules have been to modernise the language of the Rules there are many changes to the substance of the Rules as well. The main substantive changes from the 2006 Rules are as follows:

Section 110 of the Criminal Justice and Licensing (Scotland) Act 2010 will remove the duty on the Scottish Ministers in section 3A of the Act to secure the provision of appropriate medical services in prisons. This duty will then fall on Health Boards under the National Health Service (Scotland) Act 1978. As a result all rules imposing obligations on medical officers have been removed from these Rules.

A new rule has been added (rule 41) which allows a Governor to order that a prisoner be accommodated in specified conditions following advice from a healthcare professional. This allows certain measures to be taken to protect the health or welfare of the prisoner or other prisoner and the measures include accommodating a prisoner in a specified part of the prison or separately from other prisoners.

The rules on storage of a prisoner's property (rules 46 to 48) have been expanded to clarify what property can be stored in a prisoner's cell and what must be stored in prison storage facilities. New rules have been added (rules 49 and 50) which set out Governors' powers to dispose of a prisoner's property in certain situations.

The rules in Part 8 relating to privileged correspondence (rules 56 to 59) have been expanded to make clear when such correspondence can be opened and, if opened, read by a prison officer. A new rule has been added (rule 60) which enables a person to request that the Governor takes steps to prevent correspondence from a prisoner.

The concept of "purposeful activities" has been introduced in Part 9 of the Rules which encompasses work, education and counselling. The Governor is now under an obligation in terms of rule 84 to provide a range of purposeful activities for prisoners.

The powers of prison officers to search prisoners (rule 92), visitors (rule 106), person providing contracted out services to the prison (rule 108), healthcare professionals (rule 108) and officers and employees (rule 142) have been amended so as that, as far as possible, they contain the same powers and restrictions on those powers.

A new rule has been added to Part 10 (rule 104) setting out the Governor's powers to seize prohibited articles and unauthorised property and what steps the Governor can take to deal with these items once seized.

The rule relating to the admission of visitors (rule 105) has been extended to allow officers to request that a visitor has their photo taken and retained on a database for the purposes of prison order and security, the prevention and detection of crime and the safety of any person within the prison.

The rule relating to disciplinary appeals has been moved into Part 11 and has been expanded to clarify to whom such an appeal should be made in certain circumstances.

The complaints procedure in Part 12 has been streamlined into a two stage process – firstly, a complaint to the residential first line manager and, secondly, a complaint to the internal complaints committee which is ultimately ruled on by the Governor. Following the transfer of prisoner complaints from the Scottish Prison Complaints Commission to the Scottish Public Services Ombudsman by the Scottish Parliamentary Commissions and Commissioners etc. Act 2010, the Governor is now under an obligation in rules 123(10) and 124(6) to inform the prisoner of the prisoner's right to refer the complaint to the SPSO and of the processes involved in such a referral.

The various forms of temporary release have been amended so that there are now five separate forms of temporary release in Part 15. These are: Home leave; Unescorted day release; Unescorted day release for compassionate reasons; Temporary release for work; and Unescorted day release for health reasons.

These Rules are drafted in gender neutral terms and the numbering of each Part reflects the numbering of the Parts of the 2006 Rules in order to ensure ease of reference for those who have worked closely with the 2006 Rules. Each Part of these Rules can be summarised as follows: Part 1 of the Rules (rules 1 to 7) makes provision for citation, commencement, interpretation and application. It also provides for certain duties of the Governor in relation to elimination of discrimination (rule 6) and the making available of a copy of the Rules and of any directions to officers and prisoners (rule 7). Rule 3 provides that the Rules apply to young offenders institutions and to young offenders as they apply to prisons and prisoners. Rule 4 makes provision for the application of the rules to contracted out prisons.

Part 2 (rules 8 to 16) deals with matters relating to reception of prisoners, prisoner records, classification of prisoners and the location of prisoners within prisons. In relation to reception, there are provisions as to the manner in which a prisoner is to be dealt with including the information the prisoner must be given (rules 9 to 11). Rules 12 and 13 deals with registration and records of prisoners while rule 14 relates to the classification of prisoners. Rule 15 deals with the allocation of prisoners within prisons and rule 16 with the separation of different categories of prisoners.

Part 3 (rules 17 to 27) relates to procedures for assigning supervision levels to prisoners and for imposing special security measures on prisoners. Rule 17 sets out what supervision levels are for while rules 18 to 21 set out how a supervision level is to be assigned and subsequently reviewed. The imposition of special security measures is dealt with in rules 23 and 24 while the requirement to conduct a review of these measures is set out in rule 25.

Part 4 (rules 28 to 35) regulates matters affecting the physical and personal environment in which prisoners are confined. Rules 28 to 30 specify conditions relating to prisoners' cellular accommodation. Rules 31 to 33 make provision for requirements in relation to prisoners' clothing. Rules 34 and 35 set out requirements in relation to, respectively, prisoners' hygiene and the provision of food for prisoners.

Part 5 (rules 36 to 43) makes provision in relation to the health and welfare of prisoners. This Part of the rules has been reduced significantly by the omission of all obligations on medical officers due to the transfer of prison healthcare to Health Boards. The rule on smoking (rule 36) has been amended so as to provide that prisons are non-smoking but smoking is permitted in a prisoner's cell unless that cell has been designated as non-smoking by the Governor. A new rule has (rule 37) been added to oblige the Scottish Ministers to provide accommodation for the provision of healthcare services by healthcare professionals in prison. The requirement on the Governor to notify a healthcare professional of any concerns relating to a prisoner's health (rule 38) remains as does the obligation to make arrangements for a prisoner to be treated by a medical practitioner or at a medical facility outwith the prison (rule 39). The Governor remains under an obligation to give effect to the recommendations of healthcare professionals (rule 40). The new rule on accommodation in specified conditions (rule 41) is discussed above.

Part 6 (rule 44) has been restricted to setting out the rights of prisoners to practise their religion in prison and the duties and powers of the Governor to ensure or restrict the exercise of those rights.

Part 7 (rules 45 to 52) makes provision for the system of privileges that must operate within a prison and for the regulation of prisoners' property within the prison. Rule 45 requires governors to establish a system of privileges in the prison and the direction making power has been clarified so that provision can be made in a direction for the withdrawal of privileges. The storage and disposal of prisoners' property (rules 46 to 50) is discussed above. The provisions relating a prisoner's money and the supply of reading and writing material to prisoners are found in rules 51 and 52 respectively.

Part 8 (rules 53 to 79) deals with various matters relating to arrangements enabling prisoners to communicate with persons outwith the prison. Correspondence is dealt with in rules 54 to 62.

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Special provisions relating to certain privileged correspondence are contained in rules 56 to 59. The entitlement of prisoners to make telephone calls from the prison is regulated by rule 62 and any direction which may be made for the purposes of that rule. Visits to prisoners are provided for in rules 63 to 78. Rule 63 specifies the minimum entitlement to visits for prisoners (rule 64 making similar provision for untried and civil prisoners). Rule 65 enables certain prisoners to carry forward their unused visiting allowance to use that allowance at another prison. Rules 66 to 76 make special provision in relation to visits by legal advisers, procurators fiscal, police constables, representatives of diplomatic services and national or international authorities or organisations, persons in connection with legal proceedings, Members of Parliament, members of the Scottish Parliament, representatives to the European Parliament, the Parliamentary Commissioner for Administration, the Parole Board for Scotland, media representatives and persons in connection with disciplinary proceedings. Rule 77 enables the Governor to terminate visits in certain circumstances and enables the Scottish Ministers to impose such conditions as may be specified in a direction on the entitlement of a prisoner to receive visits. Rule 78 provides for the use of closed visiting facilities in certain circumstances. Special arrangements for prisoners committed to prison in default of payments are set out in rule 79 to enable them to communicate with any person to arrange payment of money in order to secure their release.

Part 9 (rules 80 to 89) makes provision in relation to work, education, earnings and recreation. Other than untried and civil prisoners, all prisoners are required to work subject to certain exceptions (rule 82). Prisoners who work are entitled to receive earnings for that work in terms of rule 86. The rule on purposeful activity (rule 84), which includes the provision of work, education and counselling, is discussed above. Rules 87 and 88 make provision in relation to exercise and recreation. Prisoners are not permitted to carry on any trade, profession or vocation from the prison but are not prevented from writing articles or books (rule 89).

Part 10 (rules 90 to 109) makes provision in relation to security matters and the control of prisoners. This part is broken down into four smaller sections – supervision and control of prisoners; confinement and custody of prisoners; seizure and control of property; and supervision and control of visitors. The general duties of the Governor and prison officers are dealt with in rules 90 and 91. The power of officers to search a prisoner is set out in rule 92 while powers to test a prisoner for controlled drugs and alcohol are set out in rules 93 and 94. The rules on confinement and custody of prisoners are set out in rules 95 to 101. The power to remove a prisoner from association is set out in rule 95 and this rule now clarifies how an extension to such an order granted by Scottish Ministers should be calculated. Rule 95 also provides for representations to be made by the prisoner at certain stages of the process. The seizure and control of property is addressed in rules 102 to 104 and the new power to dispose of these items (rule 104) is discussed above. Rules 105 to 109 deal with the supervision and control of prisoners including an officer's power to refuse access to a visitor who, amongst other things, refuses to consent to being searched or who does not satisfy the officer as to their identity. Visitors can be removed from the prison under rule 107 where, amongst other things, their conduct is prejudicial to the security and order of the prison. The powers to search visitors (rule 108), those providing contracted out services and healthcare professionals (both rule 108) coincide with the power to search officers and employees albeit that the power to search prisoners, by necessity, is more extensive.

Part 11 (rules 110 to 119) makes provision in relation to the disciplinary process. The acts or omissions constituting a breach of discipline are specified in Schedule 1. Rules 111 to 113 relate to the reporting and charging of breaches of discipline and specify the procedure to be followed at disciplinary hearings. Rules 114 and 115 regulate the imposition of punishments in relation to breaches of discipline. Rules 116 and 117 make specific provision for breaches of discipline committed in another prison or involving the use of controlled drugs. The rule on disciplinary appeals (rule 118) which was contained in Part 12 of the 2006 Rules has been moved to Part 11.

Part 12 (rules 120 to 125) makes provision in relation to requests and complaints by prisoners. The main internal complaints procedures are set out in rules 122 to 124. The process involves an initial complaint to the residential first line manager which can be made orally or in writing (unless allegations are made against an officer or employee) and a second stage process

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where the complaint is referred to the internal complaints committee. The committee make a recommendation to the Governor who must then decide whether to endorse or reject that recommendation and provide reasons to the prisoner.

Part 13 (rules 126 to 128) makes provision in relation to female prisoners, particularly pregnant prisoners or prisoners who have babies and who are permitted to have them in prison. The Governor must take account of the interests of the baby and the ability of the prisoner to care for her baby in deciding whether to permit the prisoner to have her baby with her in prison.

Part 14 (rules 129 to 133) makes provision in relation to arrangements for prisoners who are being transferred or released; and for part payment of fines by fine defaulters.

Part 15 (rules 134 to 138) regulates the temporary release of prisoners. The eligibility criteria for temporary release are set out in rule 134 and the procedure by which temporary release can be granted is set out in rule 135. The five different forms of temporary release are defined in rule 136 and the provision by which Governors can recall prisoners to prison from temporary release is set out in rule 137.

Part 16 (rules 139 to 144) makes provision in relation to officers and employees. It prescribes general duties and obligations (rules 139 to 141) and provides power to the Governor to order the search of officers and employees in certain circumstances (rule 142). Officers or employees must not make unauthorised representations to a member of the press in terms of rule 143.

Part 17 (rules 145 to 155) makes provision in relation to visiting committees. Rule 146 sets out the requirements for the constitution of visiting committees for prisons. Rule 147 requires at least one third of the members of each visiting committee for young offenders institutions to be women.

Rules 148 to 154 regulate the proceedings of the visiting committees and the duties of members.

Rule 155 sets out the application of Part 17 to visiting committees for legalised police cells.

Schedules 2 and 3 set out which local authorities can appoint members of visiting committees and how those appointments should be made.

Part 18 (rules 156 to 158) contains supplementary provisions in relation to various matters.

Rule 156 contains supplementary provision as to the making of directions under any of the direction making powers in the Rules. Rules 157 and 158, and Schedules 4 and 5, provide for the revocation of various rules and make various savings and transitional provisions.

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