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## SCOTTISH STATUTORY INSTRUMENTS

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# 2011 No. 331

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

### 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;

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- (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 subparagraph (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.

### **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>M1</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

**M1** 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>M2</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.

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(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

**M2** 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
- (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>F1</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

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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

- F1** 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.

(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.

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(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.

(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
- (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;
- (d) the conditions which may be imposed in relation to any grant of special escorted leave; and
- (e) the timing and duration of special escorted leave and the frequency with which it may be granted to an eligible prisoner.



### 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

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- (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.

### **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—

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- (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 [F2 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) The Governor must ensure that a notice is displayed in a prominent position in the entrance and visiting areas of the prison explaining 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—
- (a) an officer or employee;
  - (b) a healthcare professional; or
  - (c) a person providing contracted out services to the prison.

#### Textual Amendments

**F2** 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)**

#### 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>M3</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;

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- (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>M4</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

- M3** 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).
- M4** 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—
    - (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 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 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;

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- (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.

(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.



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