

## SCOTTISH STATUTORY INSTRUMENTS

# 2011 No. 331

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

### 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;

[<sup>F1</sup>(b) an independent prison monitor;]

(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.

[<sup>F2</sup>(3) A prisoner may write to an independent prison monitor and for that purpose the Governor must ensure that—

(a) the prisoner is supplied with paper; and

(b) the letter is posted, or otherwise delivered, to an independent prison monitor 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.

**F1** Rule 120(1)(b) substituted (31.8.2015) by [The Public Services Reform \(Inspection and Monitoring of Prisons\) \(Scotland\) Order 2015 \(S.S.I. 2015/39\)](#), arts. 1, **4(3)(a)** (with art. 5)

**F2** Rule 120(3) substituted (31.8.2015) by [The Public Services Reform \(Inspection and Monitoring of Prisons\) \(Scotland\) Order 2015 \(S.S.I. 2015/39\)](#), arts. 1, **4(3)(b)** (with art. 5)

##### 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>M1</sup>;

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- (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>M2</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

- M1** 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**.
- M2** 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,<sup>F3</sup>... 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.

[<sup>F4</sup>(2A) Where a prisoner makes a request to an independent prison monitor for assistance in making an oral or written complaint under paragraph (2), the independent prison monitor may provide such assistance to the prisoner as the independent prison monitor considers appropriate.]

(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).

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- (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.

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| <p><b>F3</b> Figure in rule 122(1)(a) deleted (31.8.2015) by <a href="#">The Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2015 (S.S.I. 2015/39)</a>, arts. 1, <b>4(4)(a)</b> (with art. 5)</p> <p><b>F4</b> Rule 122(2A) inserted (31.8.2015) by <a href="#">The Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2015 (S.S.I. 2015/39)</a>, arts. 1, <b>4(4)(b)</b> (with art. 5)</p> |
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### 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.

[<sup>F5</sup>(2A) Where a prisoner makes a request to an independent prison monitor for assistance in making a written referral to the ICC under paragraph (1), the independent prison monitor may provide such assistance to the prisoner as the independent prison monitor considers appropriate.]

- (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.
- (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, [<sup>F6</sup>an independent prison monitor], 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,

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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.

- F5** Rule 123(2A) inserted (31.8.2015) by [The Public Services Reform \(Inspection and Monitoring of Prisons\) \(Scotland\) Order 2015 \(S.S.I. 2015/39\)](#), arts. 1, **4(5)(a)** (with art. 5)
- F6** Words in rule 123(5)(b)(i) substituted (31.8.2015) by [The Public Services Reform \(Inspection and Monitoring of Prisons\) \(Scotland\) Order 2015 \(S.S.I. 2015/39\)](#), arts. 1, **4(5)(b)** (with art. 5)

### 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.

[<sup>F7</sup>(2A) Where a prisoner makes a request to an independent prison monitor for assistance in making a complaint to the Governor under paragraph (2), the independent prison monitor may provide such assistance to the prisoner as the independent prison monitor considers appropriate.]

(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.

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(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.

**F7** Rule 124(2A) inserted (31.8.2015) by [The Public Services Reform \(Inspection and Monitoring of Prisons\) \(Scotland\) Order 2015 \(S.S.I. 2015/39\)](#), arts. 1, **4(6)** (with art. 5)

### **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>F8</sup>Scottish Public Services Ombudsman] under rule 123(10) or 124(6).

**F8** 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)**

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