

SCOTTISH STATUTORY INSTRUMENTS

2011 No. 331

The Prisons and Young Offenders Institutions (Scotland) Rules 2011

PART 5

HEALTH AND WELFARE

[^{F1}Use of nicotine vapour products

36.—(1) Subject to paragraph (3), prisoners may only use a nicotine vapour product 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 use a nicotine vapour product in a cell or room which—

- (a) accommodates two or more prisoners; and
- (b) has been designated by the Governor, in accordance with any direction given by the Scottish Ministers, as a cell in which nicotine vapour products are not to be used.

(3) Before commencing a check of a cell or a room the Governor may instruct a prisoner that, for a period starting 30 minutes before the check is to proceed and ending when the check is complete, the prisoner must—

- (a) not use a nicotine vapour product in the cell or room; and
- (b) open any windows or vents in the cell or room.

(4) No person may use a nicotine vapour product in the facilities provided in a prison for mothers and babies.

(5) In this rule, and in paragraph 26 of schedule 1, to “use a nicotine vapour product” means to inhale the vapour from a nicotine vapour product.]

Textual Amendments

- F1** Rule 36 substituted (30.11.2018) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2018 \(S.S.I. 2018/293\)](#), rules 1, **2(3)**

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.

Status: Point in time view as at 29/09/2021.

Changes to legislation: There are outstanding changes not yet made by the [legislation.gov.uk](https://www.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)

(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.

[^{F2}Arrangements for care 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 comply with paragraph (2) or paragraph (3).

(2) The Governor must grant the prisoner a period of unescorted release for health reasons where—

- (a) the prisoner is an eligible prisoner for the purposes of rule 134(2); and
- (b) the Governor considers that it is appropriate to grant temporary release to the prisoner under rule 135.

(3) The Governor must arrange for the escorted release of the prisoner to the medical practitioner, specialist or medical facility outwith the prison where—

- (a) the prisoner is not an eligible prisoner for the purposes of rule 134(2); or
- (b) the Governor considers that it is not appropriate to grant temporary release to the prisoner under rule 135.

(4) In this rule “unescorted release for health reasons” has the same meaning as in rule 136.]

Textual Amendments

F2 Rule 39 substituted (24.3.2016) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2016 \(S.S.I. 2016/131\)](#), rules 1, **2(5)**

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.

[^{F3}Recommendations by healthcare professionals – coronavirus

40A.—(1) For the duration of a coronavirus outbreak, paragraph (2) applies where the Governor receives, a recommendation from a healthcare professional that, in response to the effects coronavirus is having, or is likely to have on or in relation to the prison, all prisoners in the prison, prisoners in a specified part of the prison or specified prisoners—

(a) should be confined to their cell until further notice, or for specified periods until further notice; or

(b) should not participate in specified activities until further notice, or for specified periods until further notice.

(2) Where this paragraph applies, the Governor must—

(a) give effect to the recommendation from the healthcare professional without delay; and

(b) notify the Scottish Ministers of the recommendation and the action being taken under sub-paragraph (a).

(3) Subject to paragraphs (5), (6), and (7) a recommendation made under paragraph (1) ceases to apply on the earlier of—

(a) the expiry of the period of 14 days after the recommendation was received by the Governor, or

(a) that date that the recommendation is withdrawn by the healthcare professional.

(4) On the expiry or withdrawal of a recommendation under paragraph (1), the Governor must cease the action taken under paragraph (2)(a) without delay.

(5) Prior to the expiry of a recommendation made under paragraph (1), the Governor may, on the advice of the healthcare professional that it is necessary in response to the effects coronavirus is having, or is likely to have on or in relation to the prison, make an application to the Scottish Ministers to extend the period specified in paragraph (3)(a) for a further period of no more than 14 days.

(6) The Scottish Ministers may, following receipt of an application made under paragraph (5), where they are satisfied that it is necessary in response to the effects coronavirus is having, or is likely to have on or in relation to the prison, extend the period specified in paragraph (3)(a) for a period of no more than 14 days.

(7) Where the period specified in sub-paragraph (3)(a) has been extended by the Scottish Ministers under paragraph (6), the period of extension is to be taken as the period specified under paragraph (3) and may be further extended by the Scottish Ministers for periods of no more than 14 days at a time on receipt of a further application by the Governor under paragraph (5).]

Textual Amendments

F3 Rule 40A inserted (7.4.2020 at 2.15 p.m.) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2020 \(S.S.I. 2020/122\)](#), rules 1, **2(9)**

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.

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- (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—
- (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.

[^{F4}Accommodation in specified conditions – coronavirus

41A.—(1) For the duration of a coronavirus outbreak, rule 41 has effect subject to the following modifications.

- (2) In sub-paragraph (3)(c), for “72 hours” substitute “14 days”.
- (3) In sub-paragraph (12)(a), for “72 hours” substitute “14 days”.]

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Textual Amendments

F4 Rule 41A inserted (7.4.2020 at 2.15 p.m.) by [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2020 \(S.S.I. 2020/122\)](#), rules 1, **2(10)**

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.

Prisoners' welfare - coronavirus

^{F5}**43A.**

Textual Amendments

F5 Rule 43A omitted (29.9.2021) by virtue of [The Prisons and Young Offenders Institutions \(Coronavirus\) \(Scotland\) Amendment \(No. 2\) Rules 2021 \(S.S.I. 2021/289\)](#), rules 1, **4(d)**

Status:

Point in time view as at 29/09/2021.

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