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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules amend the Prisons and Young Offenders Institutions (Scotland) Rules 2011 (“the Prison Rules”) to provide for the possession and use of mobile phones which have been authorised under section 41ZB(8) of the Prisons (Scotland) Act 1989 (“the 1989 Act”). These Rules also make provision for the use of communal and in-cell telephones and for the use of virtual visits – a form of video call between a prisoner and the prisoner’s family or friends.

Rule 2(2) of these Rules amends rule 2(1) of the Prison Rules to provide new defined terms: “authorised personal communication device”, “communal telephone” and “in-cell telephone”. Rule 2(2) of these Rules also makes consequential changes to the definitions of “Governor” and “prohibited article” in rule 2(1) of the Prison Rules.

Rule 2(3) of these Rules substitutes a new rule 7 into the Prison Rules so as to oblige the Governor to make an authorisation made under section 41ZB(8) of the 1989 Act available to prisoners and officers in the prison.

Rule 2(4) of these Rules amends rule 46 of the Prison Rules to clarify that a prisoner’s “personal property” does not include an authorised personal communication device (“APCD”). This clarifies that any APCD provided to a prisoner does not belong to the prisoner and ensures that the APCD can be removed from the prisoner if it is misused.

Rule 2(5) of these Rules substitutes a new rule 60 into the Prison Rules to provide that the Governor’s power to restrict communication between a prisoner and an individual following a request from that individual includes a power to restrict communication via an APCD and an in-cell telephone. The new rule 60 also enables provision to be made about the operation of rule 60 in the direction-making powers in new rules 62 and 62A as inserted by these Rules.

Rule 2(6) of these Rules substitutes a new rule 62 into the Prison Rules and also inserts new rule 62A. The new rule 62 makes provision for the use of communal telephones and in-cell telephones by a prisoner. The entitlement of a prisoner to use communal telephones and in-cell telephones is stated in rule 62(1) to be subject to the provisions of rules 60 and 62 and the provisions of a direction made under rule 62(10). Rule 62(2) provides a general entitlement for prisoners to use communal telephones while rule 62(3) provides a more restricted entitlement to use in-cell telephones where the Scottish Ministers have authorised the use of in-cell telephones in the prison via a direction under rule 62(10) and an in-cell telephone has been installed in the prisoner’s cell or room.

Rule 62(4) enables the Governor to impose restrictions on the times at which communal and in-cell telephones can be used and, under rule 62(5), the Governor may impose different restrictions for different purposes. Rule 62(6) provides that a prisoner’s entitlement to use a communal or in-cell telephone may be restricted or removed in accordance with rule 60 or a direction made under rule 62(10). Under rule 62(7), the Governor must place a notice in a communal area informing prisoners of any restriction on the permitted calling periods made under rule 62(4). Rule 62(8) provides that the Governor must inform a prisoner in writing of any restriction on the prisoner’s entitlement to use a communal or in-cell telephone made under rule 62(6).

Rule 62(9) prohibits a prisoner from tampering with, damaging or destroying a communal or in-cell telephone. Rule 62(10) provides a direction making power whereby the Scottish Ministers may make provision about the use of communal or in-cell telephones. Rule 62(11) enables the Scottish Ministers to make arrangements for prisoners to pay for calls made from a communal or in-cell telephone.

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The new rule 62A makes provision for the possession and use of an APCD. Rule 62A(1) states that a prisoner's entitlement to possess and use an APCD is regulated by the terms of the underlying authorisation, rules 60 and 62A and any APCD direction made under rule 62A(11).

Rule 62A(2) provides a restricted entitlement to possess and use an APCD where the Scottish Ministers have authorised the possession and use of APCDs in the prison under section 41ZB(8) of the 1989 Act and the Governor has provided the prisoner with an APCD. Rule 62A(3) enables a Governor to impose restrictions as to the parts of the prison in which an APCD can be possessed and used by a prisoner and the time of day during which an APCD can be used by a prisoner. Rule 62A(4) clarifies that the power to impose these restrictions can be used by the Governor for different purposes.

Rule 62A(5) enables the Governor, in certain circumstances, to restrict or remove a prisoner's entitlement to possess and use an APCD. Under rule 62A(6), the Governor must place a notice in a communal area informing prisoners of any restrictions imposed under rule 62A(3). Rule 62A(7) provides that the Governor must inform a prisoner in writing of any restriction on the prisoner's entitlement to possess and use an APCD imposed under rule 62A(5).

Rule 62A(8) prohibits the possession or use by a prisoner of an APCD which has not been provided by the Governor to that prisoner for use by that prisoner. Rule 62A(9) prohibits a prisoner from tampering with, damaging or destroying an APCD. Rule 62A(10) obliges a prisoner to return an APCD to an officer following an order to do so.

Rule 62A(11) provides a direction making power whereby the Scottish Ministers may make provision about the possession and use of APCDs. Rule 62A(12) enables the Scottish Ministers to make arrangements for prisoners to pay for calls made from an APCD. Rule 62A(13) and (14) clarify that a breach of the authorisation made under section 41ZB(8) of the Prisons (Scotland) Act, rule 62A or the direction made under rule 62A(11) may result in disciplinary proceedings or the matter being reported to the police.

Rule 2(7) of these Rules inserts new rule 78A into the Prison Rules which makes provision for virtual visits. Rule 78A(1) provides that a prisoner's entitlement to receive virtual visits is subject to the provisions of rule 78A and any direction made under rule 78A(10). Under rule 78A(2), a prisoner has an entitlement to receive virtual visits where the Scottish Ministers have authorised the use of virtual visits in the prison via a direction under rule 78A(10) and facilities for virtual visits have been provided in the prison. Rule 78A(3) enables a Governor to impose restrictions as to the time of day during which, and the frequency with which, a prisoner may receive virtual visits. Rule 78A(4) clarifies that the power to impose these restrictions can be used by the Governor for different purposes.

Rule 78A(5) enables the Governor, in certain circumstances, to restrict or remove a prisoner's entitlement to receive virtual visits. Under rule 78A(6), the Governor must place a notice in a communal area informing prisoners of any restriction imposed under rule 78A(3). Rule 78A(7) provides that the Governor must inform a prisoner in writing of any restriction on the prisoner's entitlement to receive virtual visits imposed under rule 78A(5).

Rule 78A(8) provides for the physical monitoring of virtual visits by a prison officer. Rule 78A(9) enables the Governor to prohibit virtual visits from a specified person or terminate an ongoing virtual visit in the interests of security, good order and crime prevention.

Rule 78A(10) provides a direction making power whereby the Scottish Ministers may make provision about the arrangements for virtual visits. Rule 78A(11) enables the Scottish Ministers to make arrangements for prisoners to pay for virtual visits. Rule 78A(12) defines virtual visits while rule 78A(13) clarifies that rules 63 to 78 do not apply to virtual visits.

Rule 2(8) of these Rules adds a number of new disciplinary offences to Schedule 1 of the Prison Rules relating to the possession and use of APCDs by prisoners. Personal communication devices which have not been authorised under section 41ZB(8) of the 1989 Act are prohibited articles as

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defined in rule 2 of the Prison Rules – the possession of a prohibited article is already a breach of discipline under paragraph 22 of Schedule 1 of the Prison Rules.