

2020 No. 175

PRISONS

**The Prisons and Young Offenders Institutions (Coronavirus)
(Scotland) Amendment Rules 2020**

Made - - - - at 2.00 p.m. on 15th June 2020

Laid before the Scottish Parliament at 4.30 p.m. on 15th June 2020

Coming into force in accordance with rule 1

The Scottish Ministers make the following Rules in exercise of the powers conferred by section 39 of the Prisons (Scotland) Act 1989(a) and all other powers enabling them to do so.

Citation and commencement

1. These Rules may be cited as the Prisons and Young Offenders Institutions (Coronavirus) (Scotland) Amendment Rules 2020 and come into force immediately after they are made.

Amendment of the Prisons and Young Offenders Institutions (Scotland) Rules 2011

2.—(1) The Prisons and Young Offenders Institutions (Scotland) Rules 2011(b) are amended as follows.

(2) In rule 2(1) (interpretation)—

(a) after the definition of “appropriate member” insert—

““authorised personal communication device” means a personal communication device the possession and use of which have been authorised under section 41ZB(8) of the Act;”,

(b) after the definition of “clothing” insert—

““communal telephone” means a landline telephone provided in a communal area of the prison for use by any prisoner and does not include an authorised personal communication device;”,

(c) in paragraph (b) of the definition of “Governor”—

(i) for “62(2)” substitute “62(10), 62A(11)”, and

(ii) after “77(3)” insert “, 78A(10)”,

(a) 1989 c.45; section 39 was amended by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9) (“the 1993 Act”), sections 24 and 25, schedule 5, paragraph 6(6)(b) and schedule 7, paragraph 1; the Criminal Justice and Public Order Act 1994 (c.33) (“the 1994 Act”), section 116(4); the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), schedule 4, paragraph 75(4)(a); the Crime and Disorder Act 1998 (c.37), schedule 8, paragraph 71 and schedule 10, paragraph 1; and the Management of Offenders (Scotland) Act 2019 (asp 14), section 52(2). The functions of the Secretary of State, insofar as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (c.46), section 53.

(b) S.S.I. 2011/331, amended by S.S.I. 2011/356, S.S.I. 2012/26, S.S.I. 2013/119, S.S.I. 2014/26, S.S.I. 2015/39, S.S.I. 2016/131, S.S.I. 2017/393, S.S.I. 2018/293 and S.S.I. 2020/122.

- (d) after the definition of “healthcare professional” insert—
““in-cell telephone” means a landline telephone provided in a prisoner’s cell or room for the use of any prisoner for the time being accommodated in that cell or room, and does not include an authorised personal communication device;”,
- (e) in paragraph (f) of the definition of “prohibited article”, after “device” insert—
“other than an authorised personal communication device.”.

(3) For rule 7, substitute—

“Availability of Rules, directions etc.

7. The Governor must ensure that a copy of each of the following items is made available for inspection by officers and prisoners in each accommodation block and in the prison library—

- (a) these Rules;
- (b) any direction made under these Rules; and
- (c) any authorisation made under section 41ZB(8) of the Act.”.

(4) In rule 46, for paragraph (1) substitute—

“(1) Subject to paragraph (1A), for the purposes of this rule and rules 47 to 50, a prisoner’s “personal property” comprises all items of property 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 the prison.

(1A) For the purposes of this rule and rules 47 to 50, “personal property” does not include—

- (a) unauthorised property;
- (b) prohibited articles; or
- (c) an authorised personal communication device.”.

(5) For rule 60, substitute—

“Restriction on communications

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 rules 55(7), 62(10) or 62A(11) in relation to the operation of this Rule.

(4) For the purposes of this Rule, “communication” means—

- (a) written correspondence;
- (b) calls made from a communal telephone or an in-cell telephone; or
- (c) calls made from an authorised personal communication device.”.

(6) For rule 62 substitute—

“Communication by communal telephone or in-cell telephone

62.—(1) The entitlement of a prisoner to use a communal telephone or an in-cell telephone under this rule is subject to—

- (a) the provisions of rule 60 and this rule; and
- (b) the provisions of any direction made under paragraph (10).

(2) A prisoner is entitled to use a communal telephone.

(3) A prisoner is entitled to use an in-cell telephone where—

- (a) the Scottish Ministers have authorised the use of in-cell telephones in the prison in a direction made under paragraph (10); and
- (b) an in-cell telephone has been installed in the prisoner’s cell or room.

(4) The Governor may impose restrictions as to the times of day during which a prisoner may use a communal telephone or an in-cell telephone.

(5) The Governor may impose different restrictions under paragraph (4) for different purposes including different restrictions for—

- (a) different classes of prisoners;
- (b) different parts of the prison; and
- (c) different types of telephone.

(6) The Governor may restrict or remove a prisoner’s entitlement to use a communal telephone or an in-cell telephone—

- (a) in accordance with rule 60; or
- (b) in accordance with any direction made under paragraph (10).

(7) The Governor must place a notice in a communal area of the prison informing prisoners of any restrictions imposed by the Governor under paragraph (4).

(8) The Governor must inform a prisoner in writing of any decision under paragraph (6) to restrict or remove the prisoner’s entitlement to use a communal telephone or an in-cell telephone.

(9) A prisoner must not—

- (a) tamper with a communal telephone or an in-cell telephone or cause someone else to tamper with the telephone; or
- (b) intentionally damage or destroy a communal telephone or an in-cell telephone or cause someone else so to damage or destroy the telephone.

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

- (a) the prisons in which a prisoner may use an in-cell telephone;
- (b) the conditions applicable to the use of a communal telephone or an in-cell telephone by a prisoner;
- (c) the circumstances in which, and the grounds on which, a prisoner’s entitlement to use a communal telephone or an in-cell telephone can be restricted or removed by the Governor;
- (d) the numbers which a prisoner may, or may not, call on a communal telephone or an in-cell telephone;
- (e) the circumstances in which, and the means by which, calls made by a prisoner from a communal telephone or an in-cell telephone are to be logged, monitored and recorded.

(11) The Scottish Ministers may make arrangements whereby prisoners may be required to pay for the cost of calls made from a communal telephone or in-cell telephone.

Communication by authorised personal communication device

62A.—(1) The entitlement of a prisoner to possess and use an authorised personal communication device under this rule is subject to—

- (a) the terms of any authorisation made under section 41ZB(8) of the Act;
- (b) the provisions of rule 60 and this rule; and
- (c) the provisions of any direction made under paragraph (11).

(2) A prisoner is entitled to possess and use an authorised personal communication device where—

- (a) the Scottish Ministers have authorised the possession and use of authorised personal communication devices in the prison under section 41ZB(8) of the Act; and
- (b) the Governor has provided an authorised personal communication device to the prisoner.

(3) The Governor may impose restrictions as to—

- (a) the parts of a prison in which a prisoner may possess or use an authorised personal communication device;
- (b) the times of day during which a prisoner may use an authorised personal communication device.

(4) The Governor may impose different restrictions under paragraph (3) for different purposes including different restrictions for—

- (a) different classes of prisoners;
- (b) different parts of the prison; and
- (c) different types of authorised personal communication device.

(5) The Governor may restrict or remove a prisoner's entitlement to possess and use an authorised personal communication device—

- (a) in accordance with rule 60; or
- (b) in accordance with any direction made under paragraph (11).

(6) The Governor must place a notice in a communal area of the prison informing prisoners of any restrictions imposed by the Governor under paragraph (3).

(7) The Governor must inform a prisoner in writing of any decision under paragraph (5) to restrict or remove the prisoner's entitlement to possess and use an authorised personal communication device.

(8) A prisoner must not possess, or use, an authorised personal communication device which was not provided to the prisoner by the Governor for use by that prisoner.

(9) A prisoner must not—

- (a) tamper with any authorised personal communication device or cause someone else to tamper with the device; or
- (b) intentionally damage or destroy any authorised personal communication device or cause someone else so to damage or destroy the device.

(10) A prisoner must return any authorised personal communication device in the prisoner's possession to an officer where the officer orders the prisoner to do so.

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

- (a) the conditions applicable to the possession and use of an authorised personal communication device by a prisoner;

- (b) the circumstances in which, and the grounds on which, a prisoner's entitlement to possess and use an authorised personal communication device can be restricted or removed by the Governor;
- (c) the numbers which a prisoner may, or may not, call on an authorised personal communication device;
- (d) the circumstances in which, and the means by which, calls made by a prisoner from an authorised personal communication device are to be logged, monitored and recorded.

(12) The Scottish Ministers may make arrangements whereby prisoners may be required to pay for the cost of calls made from an authorised personal communication device.

(13) Paragraph (14) applies where a prisoner possesses or uses an authorised personal communication device in breach of—

- (a) the terms of any authorisation made under section 41ZB(8) of the Act;
- (b) the provisions of this rule; or
- (c) the provisions of any direction made under paragraph (11) of this rule.

(14) Where this paragraph applies—

- (a) the prisoner may be charged with a breach of discipline under Part 11; and
- (b) the Governor may report the matter to the police where the Governor considers that an offence may have been committed under sections 41 or 41ZA of the Act.”.

(7) After rule 78 insert—

“Virtual visits

78A.—(1) The entitlement of a prisoner to receive virtual visits under this rule is subject to—

- (a) the provisions of this rule; and
- (b) the provisions of any direction made under paragraph (10).

(2) A prisoner is entitled to receive virtual visits where—

- (a) the Scottish Ministers have authorised the use of virtual visits in the prison in a direction made under paragraph (10); and
- (b) facilities for virtual visits have been provided in the prison.

(3) The Governor may impose restrictions as to—

- (a) the times of day during which a prisoner may receive a virtual visit; and
- (b) the frequency of virtual visits that a prisoner may receive in any specified period.

(4) The Governor may impose different restrictions under paragraph (3) for different purposes including different restrictions for—

- (a) different classes of prisoners; and
- (b) different parts of the prison.

(5) The Governor may restrict or remove a prisoner's entitlement to receive virtual visits in accordance with any direction made under paragraph (10).

(6) The Governor must place a notice in a communal area of the prison informing prisoners of any restrictions imposed by the Governor under paragraph (3).

(7) The Governor must inform a prisoner in writing, of any decision under paragraph (5) to restrict or remove the prisoner's entitlement to receive virtual visits.

(8) Where a prisoner receives a virtual visit in terms of this rule, the virtual 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.

(9) Where the Governor considers that it is necessary to do so in the interests of security, good order or the prevention of crime, the Governor may—

- (a) prohibit a prisoner from receiving a virtual visit from any specified person; or
- (b) terminate a virtual visit which is taking place.

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

- (a) the prisons in which a prisoner may receive a virtual visit;
- (b) the conditions applicable to the use of the facilities provided for receiving a virtual visit;
- (c) the circumstances in which, and the grounds on which, a prisoner's entitlement to receive virtual visits can be restricted or removed by the Governor; and
- (d) the circumstances in which, and the means by which, virtual visits received by a prisoner are to be logged, monitored and recorded.

(11) The Scottish Ministers may make arrangements whereby prisoners may be required to pay for the cost of virtual visits.

(12) For the purposes of this rule, "virtual visit" means a visit which takes place—

- (a) via a video-link;
- (b) between a prisoner and either a relative or friend of the prisoner; and
- (c) in such part of the prison as the Governor deems suitable.

(13) For the purposes of rules 63 to 78, "visit" does not include a virtual visit."

(8) In Schedule 1, after paragraph 27 insert—

27A. has in his or her possession, or uses, an authorised personal communication device which was not provided to the prisoner by the Governor for use by that prisoner;

27B. has in his or her possession an authorised personal communication device in breach of the restrictions imposed by the Governor under rule 62A(3)(a);

27C. breaches the requirements of rule 62A(9) without reasonable excuse;

27D. fails without reasonable excuse to return an authorised personal communication device to an officer as ordered in accordance with rule 62A(10);

27E. uses an authorised personal communication device in breach of the requirements of any direction made by the Scottish Ministers under rule 62A(11);".

H YOUSAF

A member of the Scottish Government

St Andrew's House,
Edinburgh
At 2.00 p.m. on 15th June 2020

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.

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.

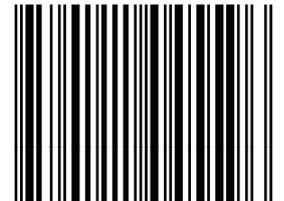
Rule 2(8) of these Rules adds a number of new disciplinary offences to Schedule 1 of the Prison Rules relating to the possession and use of APCDs by prisoners. Personal communication devices which have not been authorised under section 41ZB(8) of the 1989 Act are prohibited articles as defined in rule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

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