

**2000 No. 2641**

**PRISONS**

**The Prison (Amendment) (No. 2) Rules 2000**

*Made - - - - - 23rd September 2000*

*Laid before Parliament 3rd October 2000*

*Coming into force 24th October 2000*

The Secretary of State, in exercise of the powers conferred on him by section 47 of the Prison Act 1952(a), hereby makes the following Rules:

**Citation and commencement**

1. These Rules may be cited as the Prison (Amendment) (No. 2) Rules 2000 and shall come into force on 24th October 2000.

**Amendment of Rules**

2. The Prison Rules 1999(b) are amended as follows.

3. In rule 2(1) the following definitions shall be added:

“communication” includes any written or drawn communication from a prisoner to any other person, whether intended to be transmitted by means of a postal service or not, and any communication from a prisoner to any other person transmitted by means of a telecommunications system;

“intercepted material” means the contents of any communication intercepted pursuant to these Rules;

“telecommunications system” means any system (including the apparatus comprised in it) which exists for the purpose of facilitating the transmission of communications by any means involving the use of electrical or electro-magnetic energy.”.

4. For rule 34 there shall be substituted the following rule:

“34.—(1) Without prejudice to sections 6 and 19 of the Prison Act 1952 and except as provided by these Rules, a prisoner shall not be permitted to communicate with any person outside the prison, or such person with him, except with the leave of the Secretary of State or as a privilege under rule 8.

(2) Notwithstanding paragraph (1) above, and except as otherwise provided in these Rules, the Secretary of State may impose any restriction or condition, either generally or in a

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(a) 1952 c. 52: section 47 was affected by an amendment to section 52(2) of that Act by section 66(4) of the Criminal Justice Act 1967 (c. 80) and was extended by section 85(2) and (4) of the Criminal Justice Act 1991 (c. 53).

(b) S.I. 1999/728.

particular case, upon the communications to be permitted between a prisoner and other persons if he considers that the restriction or condition to be imposed—

- (a) does not interfere with the convention rights of any person; or
  - (b)
    - (i) is necessary on grounds specified in paragraph (3) below;
    - (ii) reliance on the grounds is compatible with the convention right to be interfered with; and
    - (iii) the restriction or condition is proportionate to what is sought to be achieved.
- (3) The grounds referred to in paragraph (2) above are—
- (a) the interests of national security;
  - (b) the prevention, detection, investigation or prosecution of crime;
  - (c) the interests of public safety;
  - (d) securing or maintaining prison security or good order and discipline in prison;
  - (e) the protection of health or morals;
  - (f) the protection of the reputation of others;
  - (g) maintaining the authority and impartiality of the judiciary; or
  - (h) the protection of the rights and freedoms of any person.
- (4) Subject to paragraph (2) above, the Secretary of State may require that any visit, or class of visits, shall be held in facilities which include special features restricting or preventing physical contact between a prisoner and a visitor.
- (5) Every visit to a prisoner shall take place within the sight of an officer or employee of the prison authorised for the purposes of this rule by the governor (in this rule referred to as an “authorised employee”), unless the Secretary of State otherwise directs, and for the purposes of this paragraph a visit to a prisoner shall be taken to take place within the sight of an officer or authorised employee if it can be seen by an officer or authorised employee by means of an overt closed circuit television system.
- (6) Subject to rule 38, every visit to a prisoner shall take place within the hearing of an officer or authorised employee, unless the Secretary of State otherwise directs.
- (7) The Secretary of State may give directions, either generally or in relation to any visit or class of visits, concerning the day and times when prisoners may be visited.
- (8) In this rule—
- (a) references to communications include references to communications during visits;
  - (b) references to restrictions and conditions upon communications include references to restrictions and conditions in relation to the length, duration and frequency of communications; and
  - (c) references to convention rights are to the convention rights within the meaning of the Human Rights Act 1998(a).”.

5. After rule 35 there shall be inserted the following rules:

**“Interception of communications**

**35A.—**(1) The Secretary of State may give directions to any governor concerning the interception in a prison of any communication by any prisoner or class of prisoners if the Secretary of State considers that the directions are—

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(a) 1998 c. 42.

- (a) necessary on grounds specified in paragraph (4) below; and
- (b) proportionate to what is sought to be achieved.

(2) Subject to any directions given by the Secretary of State, the governor may make arrangements for any communication by a prisoner or class of prisoners to be intercepted in a prison by an officer or an employee of the prison authorised by the governor for the purposes of this rule (referred to in this rule as an “authorised employee”) if he considers that the arrangements are—

- (a) necessary on grounds specified in paragraph (4) below; and
- (b) proportionate to what is sought to be achieved.

(3) Any communication by a prisoner may, during the course of its transmission in a prison, be terminated by an officer or an authorised employee if he considers that to terminate the communication is—

- (a) necessary on grounds specified in paragraph (4) below; and
- (b) proportionate to what is sought to be achieved by the termination.

(4) The grounds referred to in paragraphs (1)(a), (2)(a) and (3)(a) above are—

- (a) the interests of national security;
- (b) the prevention, detection, investigation or prosecution of crime;
- (c) the interests of public safety;
- (d) securing or maintaining prison security or good order and discipline in prison;
- (e) the protection of health or morals; or
- (f) the protection of the rights and freedoms of any person.

(5) Any reference to the grounds specified in paragraph (4) above in relation to the interception of a communication by means of a telecommunications system in a prison, or the disclosure or retention of intercepted material from such a communication, shall be taken to be a reference to those grounds with the omission of sub-paragraph (f).

(6) For the purposes of this rule “interception”—

- (a) in relation to a communication by means of a telecommunications system, means any action taken in relation to the system or its operation so as to make some or all of the contents of the communications available, while being transmitted, to a person other than the sender or intended recipient of the communication; and the contents of a communication are to be taken to be made available to a person while being transmitted where the contents of the communication, while being transmitted, are diverted or recorded so as to be available to a person subsequently; and
- (b) in relation to any written or drawn communication, includes opening, reading, examining and copying the communication.

### **Permanent log of communications**

**35B.**—(1) The governor may arrange for a permanent log to be kept of all communications by or to a prisoner.

(2) The log referred to in paragraph (1) above may include, in relation to a communication by means of a telecommunications system in a prison, a record of the destination, duration and cost of the communication and, in relation to any written or drawn communication, a record of the sender and addressee of the communication.

### **Disclosure of material**

**35C.** The governor may not disclose to any person who is not an officer of a prison or of the Secretary of State or an employee of the prison authorised by the governor for the

purposes of this rule any intercepted material, information retained pursuant to rule 35B or material obtained by means of an overt closed circuit television system used during a visit unless—

- (a) he considers that such disclosure is—
  - (i) necessary on grounds specified in rule 35A(4); and
  - (ii) proportionate to what is sought to be achieved by the disclosure; or
- (b)
  - (i) in the case of intercepted material or material obtained by means of an overt closed circuit television system used during a visit, all parties to the communication or visit consent to the disclosure; or
  - (ii) in the case of information retained pursuant to rule 35B, the prisoner to whose communication the information relates, consents to the disclosure.

### **Retention of material**

**35D.**—(1) The governor shall not retain any intercepted material or material obtained by means of an overt closed circuit television system used during a visit for a period longer than 3 months beginning with the day on which the material was intercepted or obtained unless he is satisfied that continued retention of it is—

- (a) necessary on grounds specified in rule 35A(4); and
- (b) proportionate to what is sought to be achieved by the continued retention.

(2) Where such material is retained for longer than 3 months pursuant to paragraph (1) above the governor shall review its continued retention at periodic intervals until such time as it is no longer held by the governor.

(3) The first review referred to in paragraph (2) above shall take place not more than 3 months after the decision to retain the material taken pursuant to paragraph (1) above, and subsequent reviews shall take place not more than 3 months apart thereafter.

(4) If the governor, on a review conducted pursuant to paragraph (2) above or at any other time, is not satisfied that the continued retention of the material satisfies the requirements set out in paragraph (1) above, he shall arrange for the material to be destroyed.”.

6. After rule 50 there shall be inserted the following rule:

### **“Observation of prisoners by means of an overt closed circuit television system**

**50A.**—(1) Without prejudice to his other powers to supervise the prison, prisoners and other persons in the prison, whether by use of an overt closed circuit television system or otherwise, the governor may make arrangements for any prisoner to be placed under constant observation by means of an overt closed circuit television system while the prisoner is in a cell or other place in the prison if he considers that—

- (a) such supervision is necessary for—
  - (i) the health and safety of the prisoner or any other person;
  - (ii) the prevention, detection, investigation or prosecution of crime; or
  - (iii) securing or maintaining prison security or good order and discipline in the prison; and
- (b) it is proportionate to what is sought to be achieved.

(2) If an overt closed circuit television system is used for the purposes of this rule, the provisions of rules 35C and 35D shall apply to any material obtained.”.

7. For paragraph (1) of rule 73 there shall be substituted the following paragraph:

“(1) Without prejudice to any other powers to prohibit or restrict entry to prisons, or his powers under rules 34 and 35, the Secretary of State may prohibit visits by a person to a

prison or to a prisoner in a prison for such periods of time as he considers necessary if the Secretary of State considers that such a prohibition is—

- (a) necessary on grounds specified in rule 35A(4); and
- (b) is proportionate to what is sought to be achieved by the prohibition.”.

*Jack Straw*

One of Her Majesty’s Principal Secretaries of State

Home Office  
23rd September 2000

## EXPLANATORY NOTE

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

These Rules amend the Prison Rules 1999.

Rule 4 substitutes a new rule for the existing rule 34. In substance it re-enacts the provisions of rule 34. However, it makes it clear that restrictions and conditions may only be placed on communications if they are not incompatible with the convention rights of any person (Rule 34(2)).

New rule 35A makes provision for the interception of prisoners' communications (rule 5). This rule and new rules 35C and 35D implement, in relation to telecommunications in prisons, article 5 of Council Directive 97/66/EC concerning the processing of personal data and the protection of privacy in the telecommunications sector(a).

The amendments also provide that a log of all communications by or to a prisoner may be kept (new rule 35B).

They also make provision for the disclosure of any intercepted material, information relating to the communications or material obtained by means of an overt closed circuit television system used during a visit (new rule 35C).

New rule 35D provides for the retention of intercepted material and material obtained by means of an overt closed circuit television system used during a visit.

New rule 50A provides that a governor may place a prisoner under constant supervision by means of an overt closed circuit television system if he considers it is necessary on specified grounds and is proportionate to that end (rule 6).

Amendments are made to rule 73 (the power to prohibit a person visiting a prisoner or prison) to clarify the grounds on which prohibitions may be imposed (rule 7).

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(a) OJ No. L 024, 30.01.98, p.1.

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