

**2023 No. 321**

**PRISONS, ENGLAND AND WALES**

**YOUNG OFFENDER INSTITUTIONS, ENGLAND AND WALES**

**The Prison and Young Offender Institution (Adjudication)  
(Amendment) Rules 2023**

<i>Made</i> - - - -	<i>13th March 2023</i>
<i>Laid before Parliament</i>	<i>14th March 2023</i>
<i>Coming into force</i> - -	<i>4th April 2023</i>

The Secretary of State makes the following Rules in exercise of the powers conferred by section 47(1) and (2) of the Prison Act 1952(a).

**Citation, commencement and extent**

**1.**—(1) These Rules may be cited as the Prison and Young Offender Institution (Adjudication) (Amendment) Rules 2023 and come into force on the 4th April 2023.

(2) These Rules extend to England and Wales.

**Amendments to the Prison Rules 1999**

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

(2) For rule 53A substitute—

**“Determination of mode of inquiry**

**53A.**—(1) Before inquiring into a charge the governor must assess whether—

- (a) the charge is so serious that additional days could be awarded for the offence if the prisoner is found guilty, or
- (b) it is necessary or expedient for some other reason for the charge to be inquired into by the adjudicator.

(2) Where the governor determines that—

- (a) sub-paragraph (a) or (b) of paragraph (1) applies, the governor must—
  - (i) refer the charge to the adjudicator immediately;

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(a) 1952 c. 52. Section 47(1) was amended by section 6(2) of the Criminal Justice and Public Order Act 1994 (c. 33) and paragraph 3(2) of Schedule 9 to the Criminal Justice and Courts Act 2015 (c. 2).

(b) S.I. 1999/728. Rule 53A was inserted by S.I. 2002/2116 and amended by S.I. 2011/1663 and 2020/508. There are other amending instruments, but none is relevant.

- (ii) refer any other charge arising out of the same incident (“an associated charge”) to the adjudicator, and
  - (iii) inform the prisoner who has been charged that the charge has been referred to the adjudicator;
- (b) neither sub-paragraph (a) nor sub-paragraph (b) of paragraph (1) applies, the governor must inquire into the charge.

(3) If—

- (a) at any time during an inquiry into a charge by the governor, or
- (b) following such an inquiry, after the governor has found the prisoner guilty of an offence but before the governor has imposed a punishment for that offence,

it appears to the governor either that the charge is so serious that additional days could be awarded for the offence or that it is necessary or expedient for some other reason for the charge to be inquired into by the adjudicator, the governor must act in accordance with paragraph (2)(a)(i) to (iii).

(4) Unless there are exceptional circumstances, the adjudicator must inquire into any charge referred in accordance with paragraph (3) no later than 28 days after the referral.

(5) Following a referral under paragraph (2), before inquiring into the charge the adjudicator must consider whether—

- (a) the charge is so serious that additional days could be awarded for the offence if the prisoner is found guilty, or
- (b) it is necessary or expedient for some other reason for the charge to be inquired into by the adjudicator.

(6) Where the adjudicator considers that neither sub-paragraph (a) nor sub-paragraph (b) of paragraph (5) applies, the adjudicator must—

- (a) refer the charge and any associated charge back to the governor for the governor to inquire into, and
- (b) inform the prisoner who has been charged that the charge has been referred back to the governor for inquiry.

(7) Where the adjudicator considers that alternative action should be taken by the governor, the adjudicator must—

- (a) refer the charge and any associated charge back to the governor for review, and
- (b) inform the prisoner who has been charged that the charge has been referred back to the governor for review.

(8) If neither paragraph (6) nor (7) applies the adjudicator must inquire into the charge.

(9) A charge inquired into by the governor following referral under paragraph (6) may not be referred back to the adjudicator.

(10) If—

- (a) at any time during an inquiry into a charge by the adjudicator, or
- (b) following such an inquiry, after the adjudicator has found the prisoner guilty of an offence, but before the adjudicator has imposed a punishment for that offence,

it appears to the adjudicator that alternative action should be taken; the adjudicator must refer the charge in accordance with paragraph (7).

(11) Where the adjudicator has referred a charge to the governor in accordance with paragraph (7), the governor must review the charge and may—

- (a) take such action as the governor considers appropriate;
- (b) refer the charge back to the adjudicator.

(12) Where the governor refers a charge back to the adjudicator under paragraph (11)(b)—

- (a) the governor must inform the prisoner that the matter has been referred back to the adjudicator;
  - (b) the adjudicator may not refer the charge back to the governor, and
  - (c) the adjudicator must either inquire into the charge, or if the prisoner has already been found guilty, impose a punishment.”
- (3) After Rule 54(3) insert—
- “(4) The right to legal representation is rescinded if the charge is referred back to the governor by the adjudicator and inquired into by the governor.”.

**Amendments to the Young Offender Institution Rules 2000**

- 3.—(1) The Young Offender Institution Rules 2000(a) are amended as follows.
- (2) For rule 58A substitute—

**“Determination of mode of inquiry**

**58A.**—(1) Before inquiring into a charge the governor must assess whether—

- (a) the charge is so serious that additional days could be awarded for the offence if the inmate is found guilty, or
- (b) it is necessary or expedient for some other reason for the charge to be inquired into by the adjudicator.

(2) Where the governor determines that—

- (a) sub-paragraph (a) or (b) of paragraph (1) applies, the governor must—
  - (i) refer the charge to the adjudicator immediately;
  - (ii) refer any other charge arising out of the same incident (“an associated charge”) to the adjudicator, and
  - (iii) inform the inmate who has been charged that the charge has been referred to the adjudicator;
- (b) neither sub-paragraph (a) nor sub-paragraph (b) of paragraph (1) applies, the governor must inquire into the charge.

(3) If—

- (a) at any time during an inquiry into a charge by the governor, or
- (b) following such an inquiry, after the governor has found the inmate guilty of an offence but before the governor has imposed a punishment for that offence,

it appears to the governor either that the charge is so serious that additional days could be awarded for the offence or that it is necessary or expedient for some other reason for the charge to be inquired into by the adjudicator, the governor must act in accordance with paragraph (2)(a)(i) to (iii).

(4) Unless there are exceptional circumstances, the adjudicator must inquire into any charge referred in accordance with paragraph (3) no later than 28 days after the referral.

(5) Following a referral under paragraph (2), before inquiring into the charge the adjudicator must consider whether—

- (a) the charge is so serious that additional days could be awarded for the offence if the inmate is found guilty, or
- (b) it is necessary or expedient for some other reason for the charge to be inquired into by the adjudicator.

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(a) S.I. 2000/3371. Rule 58A was inserted by S.I. 2002/2117 and amended by S.I. 2011/1663 and 2020/508. There are other amending instruments, but none is relevant.

(6) Where the adjudicator considers that neither sub-paragraph (a) nor sub-paragraph (b) of paragraph (5) applies, the adjudicator must—

- (a) refer the charge and any associated charge back to the governor for the governor to inquire into, and
- (b) inform the inmate who has been charged that the charge has been referred back to the governor for inquiry.

(7) Where the adjudicator considers that alternative action should be taken by the governor, the adjudicator must—

- (a) refer the charge and any associated charge back to the governor for review, and
- (b) inform the inmate who has been charged that the charge has been referred back to the governor for review.

(8) If neither paragraph (6) nor (7) applies, the adjudicator must inquire into the charge.

(9) A charge inquired into by the governor following referral under paragraph (6) may not be referred back to the adjudicator.

(10) If—

- (a) at any time during an inquiry into a charge by the adjudicator, or
- (b) following such an inquiry, after the adjudicator has found the inmate guilty of an offence, but before the adjudicator has imposed a punishment for that offence,

it appears to the adjudicator that alternative action should be taken, the adjudicator must refer the charge in accordance with paragraph (7).

(11) Where the adjudicator has referred a charge to the governor in accordance with paragraph (7), the governor must review the charge and may—

- (a) take such action as the governor considers appropriate;
- (b) refer the charge back to the adjudicator.

(12) Where the governor refers a charge back to the adjudicator under paragraph (11)(b)—

- (a) the governor must inform the inmate that the matter has been referred back to the adjudicator;
- (b) the adjudicator may not refer the charge back to the governor, and
- (c) the adjudicator must either inquire into the charge or, if the inmate has already been found guilty, impose a punishment.”.

(3) After Rule 59(3) insert—

“(4) The right to legal representation is rescinded if the charge is referred back to the governor by the adjudicator and inquired into by the governor.”.

*Damian Hinds*  
Minister of State  
Ministry of Justice

13th March 2023

### **EXPLANATORY NOTE**

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

These Rules amend the Prison Rules 1999 (S.I. 1999/728) (“the 1999 Rules”) and the Young Offender Institution Rules 2000 (S.I. 2000/3371) (“the 2000 Rules”).

The amendments provide that, when a charge has been referred to an adjudicator, the adjudicator may determine that it is not suitable for an adjudicator to inquire into, and the governor may review or inquire into that charge. The prisoner or inmate will be kept informed of how the charge is being managed.

Where the charge is sent back to the governor to be inquired into, the charge is to be treated as a charge inquired into by a governor and cannot be subject to adjudicator's punishments in rule 55A (the 1999 Rules) or rule 60A (the 2000 Rules), nor may it be referred back to the adjudicator at any point.

The adjudicator may identify that the offence may attract a criminal penalty or punishment beyond those available to the adjudicator and in those circumstances will refer the charge to the governor for review. Following such a review and any associated investigation, the charge may be returned by the governor to the adjudicator if necessary and may not be referred back to the governor again for any reason.

Offences which are suitable for an inquiry by the adjudicator automatically attract the right to legal representation for the prisoner or inmate. This right will be revoked if the charge is referred back to the governor to inquire into.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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