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STATUTORY INSTRUMENTS

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**1994 No. 1931**

**The Prisons and Young Offenders  
Institutions (Scotland) Rules 1994**

**PART 10**

**DISCIPLINE**

**Conduct constituting a breach of discipline**

**94.** In this part, “breach of discipline” shall be interpreted in accordance with Schedule 3 to these Rules.

**Reports of breaches of discipline and removal from association**

**95.**—(1) Every suspected breach of discipline shall be reported forthwith in writing to the Governor by the officer to whose notice it has come.

(2) Subject to paragraphs (3) and (4), when the Governor receives a report in terms of paragraph (1), he may order in writing that the prisoner be removed from association with other prisoners in general pending adjudication of the charge of breach of discipline.

(3) A prisoner shall not be subject to such removal for a period in excess of 72 hours from the time of the order except where there are exceptional circumstances and the written authority of the Secretary of State has been obtained.

(4) An authority granted by the Secretary of State under paragraph (3) shall—

- (a) have effect for a period not exceeding one month but may, on the application of the Governor, be renewed from month to month by the Secretary of State; and
- (b) in any case cease to have effect when the charge has been adjudicated.

**Disciplinary charges**

**96.**—(1) Where a prisoner is to be charged with a breach of discipline, the charge shall be brought as soon as possible and in any event, save in exceptional circumstances, within 48 hours of the discovery of the act or omission giving rise to the charge.

(2) Every charge offi a breach of discipline shall be brought by serving a written notice of the charge on the prisoner and any such notice shall be served no later than 2 hours before the time when it is to be inquired into by the Governor.

**Inquiry into disciplinary charges**

**97.**—(1) Subject to paragraph (4), every charge of breach of discipline shall be inquired into by the Governor not later, save in exceptional circumstances, than the next day after it is brought or, where the next day is a Sunday or a public holiday, the day after that Sunday or public holiday.

(2) The Governor shall satisfy himself before commencing an inquiry into any charge that the prisoner concerned has had sufficient time to prepare his case.

(3) The Governor shall adjourn an inquiry, for such period of time as may be reasonably necessary, where he is satisfied that the prisoner requires further time to prepare his case or that there exist other reasonable grounds for an adjournment.

(4) Every prisoner against whom a charge is brought shall be given a full opportunity of—

- (a) hearing what is alleged against him;
- (b) presenting his own case and, subject to paragraph (5), calling witnesses on his own behalf; and
- (c) cross-examining any other witnesses.

(5) The Governor may refuse to allow a prisoner to call any witness if, having discussed the matter with the prisoner, he is reasonably satisfied that the evidence which the witness is likely to give will be of no relevance or value in determining whether the charge is proven.

(6) A prisoner may, as he wishes, be seated or may stand during the inquiry.

(7) The Governor may, on the application of a prisoner, permit him to be represented at the inquiry by a person who is entitled to practise in any part of the United Kingdom as a solicitor, an advocate or a barrister where in exceptional circumstances he considers such representation is necessary or desirable.

#### **Adjudication of charges**

**98.**—(1) Subject to paragraph (2), the Governor shall be entitled to take into account any evidence, in whatever form, at the inquiry into any charge of breach of discipline.

(2) The Governor may only take into account the evidence of any person who has not given oral evidence at the inquiry if the prisoner concerned agrees.

(3) At the conclusion of an inquiry into any such charge, the Governor shall consider whether the charge has been proven beyond any reasonable doubt.

(4) If the Governor finds a prisoner guilty of a breach of discipline, he shall afford the prisoner an opportunity to make a plea in mitigation before considering whether to impose a punishment in terms of rule 100.

#### **Breaches of discipline occurring immediately before or during transfer**

**99.**—(1) If a report is made under rule 95(1) by an officer in relation to a person liable to be detained in a young offenders institution who is moved from that institution to any prison, or a person detained in any prison who is moved to any other prison, and the suspected breach comes to the reporting officer's notice within 3 days (or 4 days if that period would include a Sunday or a public holiday) of the day on which the person is moved from the institution or prison concerned, the Governor of the prison to which the person is moved may, if there was insufficient time to investigate and adjudicate the matter at the institution or prison concerned, receive the report and deal with the matter as if it had occurred after reception of the person in that prison.

(2) If a report is made under rule 95(1) by an officer in relation to a person detained in a young offenders institution who is moved to a prison, or a person detained in any prison who is moved to any other prison, and the suspected breach related to a period during which the person was in the course of being moved, the Governor of the prison to which the person is moved shall receive the report and deal with the matter as if it had occurred after reception of the person in that prison.

## **Governor's punishments**

**100.**—(1) If he finds a prisoner guilty of a breach of discipline, the Governor may impose one or more of the following punishments:—

- (a) a caution;
- (b) forfeiture of any privileges granted under the system of privileges applicable to a prisoner for a period not exceeding 14 days;
- (c) stoppage of or deduction from earnings for a period not exceeding 56 days and of an amount not exceeding 28 days' earnings;
- (d) except in the case of a young prisoner, cellular confinement for a period not exceeding 3 days;
- (e) in the case of a short-term or long-term prisoner whose sentence or period of detention was imposed on or after 1st October 1993, but subject to paragraphs (3) to (5), an award of additional days not exceeding 14 days;
- (f) in the case of a prisoner who is an existing prisoner within the meaning of paragraph 1 of Schedule 6 to the 1993 Act who is serving a sentence of imprisonment for a term of more than 5 days, forfeiture of remission of sentence for a period not exceeding 14 days;
- (g) in the case of a prisoner guilty of escaping or attempting to escape, forfeiture of the entitlement to wear his own clothing under rule 18 for any period as may be specified;
- (h) in the case of an untried prisoner or a civil prisoner, forfeiture of either or both of the entitlements referred to in rules 41 and 46 for any period as may be specified; or
- (i) forfeiture of the entitlement to withdraw money in terms of rule 45(3) for any period not exceeding 14 days.

(2) If an untried prisoner who is committed to prison for examination or trial on any criminal charge is found guilty of a breach of discipline—

- (a) the Governor may make an award of additional days under paragraph (1)(e) notwithstanding that the prisoner has not (or had not at the time of the breach being committed) been sentenced; but
- (b) any such award shall have effect only if the prisoner subsequently becomes a short-term or long-term prisoner whose sentence commences, by virtue of section 218(1) or 431(1) of the Criminal Procedure (Scotland) Act 1975(1), on a date earlier than the date on which the sentence is passed.

(3) Subject to paragraphs (4) and (5), if a prisoner is found guilty of more than one breach of discipline arising out of an incident, punishments under this rule (except for cellular confinement imposed under paragraph (1)(d)) may be ordered to run consecutively.

(4) Subject to paragraph (5), if a prisoner is found guilty of more than one breach of discipline arising out of an incident, awards of additional days under paragraph (1)(e) may be ordered to run consecutively but the total awarded shall not exceed 28 days.

(5) Notwithstanding paragraph (1)(e), in the case of a short-term or long-term prisoner who is found guilty of a breach of discipline, an award of additional days shall not exceed one-sixth of his sentence, either—

- (a) in respect of that breach; or
- (b) when aggregated with the total of any award or awards of additional days which the prisoner may have been or is awarded under paragraph (1)(e) or (4).

(6) Where cellular confinement is imposed on a prisoner under paragraph (1)(d)—

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(1) 1975 c. 21; sections 218 and 431 were amended by the Criminal Justice (Scotland) Act 1980 (c. 62), Schedule 7, paragraphs 40 and 70 respectively and Schedule 8 and by the 1993 Act, section 41.

- (a) the Governor shall inform the medical officer as soon as possible;
  - (b) any entitlement of the prisoner in terms of these Rules shall not, by reason only of the imposition of such confinement, be affected except insofar as expressly provided in a direction made for the purposes of sub-paragraph (c); and
  - (c) the prisoner shall serve the period of confinement in accordance with the provisions of, and subject to any conditions imposed by, a direction made by the Secretary of State.
- (7) In the case of a civil prisoner who is a prisoner committed to prison for contempt of court or for non-payment of a fine imposed for contempt of court—
- (a) paragraph (1)(e) shall apply as if it read—
    - “(e) in the case of a prisoner who is committed to prison on or after 1st October 1993 for contempt of court or for non-payment of a fine imposed for contempt of court, but subject to paragraphs (4) and (5), an award of additional days not exceeding 14 days;”;
  - (b) paragraph (1)(f) shall apply as if it read—
    - “(f) in the case of a prisoner who is committed to prison before 1st October 1993 for a period of more than 5 days for contempt of court or for non-payment of a fine imposed for contempt of court, forfeiture of remission of the period of committal for a period not exceeding 14 days;”;
  - (c) paragraph (5) shall apply as if—
    - (i) the words “short-term or long-term prisoner” read “prisoner who is committed to prison for contempt of court or for non-payment of a fine imposed for contempt of court”; and
    - (ii) the words “his sentence” read “his period of committal”.
- (8) Except as indicated in paragraph (7), paragraphs (1)(e) and (f), (4) and (5) shall not apply to civil prisoners.

### **Suspended punishments**

**101.**—(1) The power of the Governor to impose a punishment under rule 100(1) (other than a caution) includes power to direct that the punishment shall not take effect unless, during such period of the prisoner’s sentence as shall be specified in the direction (not being more than 6 months (or 3 months in the case of an untried prisoner) from the date of the direction), the prisoner commits another breach of discipline and a direction is given under paragraph (2).

(2) Where a prisoner is found guilty of a breach of discipline committed during the period specified in a direction by the Governor under paragraph (1) then the Governor dealing with that breach may—

- (a) direct that the suspended punishment shall take effect;
- (b) reduce the period or the amount of the suspended punishment and direct that it shall take effect as so reduced;
- (c) vary the original direction by substituting for the period specified a period expiring not later than six months from the date of variation; or
- (d) give no direction with respect to the suspended punishment.