
SCOTTISH STATUTORY INSTRUMENTS

2023 No. 366

PRISONS

**The Prisons and Young Offenders Institutions
(Scotland) Amendment Rules 2023**

Made - - - - 30th November 2023
*Laid before the Scottish
Parliament* - - - - 5th December 2023
Coming into force - - 26th February 2024

The Scottish Ministers make the following Rules in exercise of the powers conferred by section 39 of the Prisons (Scotland) Act 1989⁽¹⁾ 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 (Scotland) Amendment Rules 2023 and come into force on 26 February 2024.

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

2.—(1) The Prisons and Young Offenders Institutions (Scotland) Rules 2011⁽²⁾ are amended in accordance with paragraphs (2) to (7).

(2) In rule 92 (searching of prisoners)—

(a) in paragraph (3)—

(i) for “Where” substitute “Subject to paragraph (3A), where”,

(ii) in sub-paragraph (b), after “gender” in the second place it occurs insert “as the officer carrying out the search”,

(iii) in sub-paragraph (c), for “as the prisoner” substitute “as the officer carrying out the search”.

(b) after paragraph (3) insert—

(1) 1989 c. 45; section 39 was amended by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9), 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), 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 55(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.

(2) S.S.I. 2011/331; as relevantly amended by S.S.I. 2016/131.

“(3A) Where a search is conducted under paragraph (2)(a), (c) or (d), the Governor may require that the officer carrying out the search must be of a different gender to the prisoner where the Governor considers that it is necessary to do so for the purpose of protecting the health, welfare or safety of any person, or the security or good order of the prison.”.

(3) In rule 93(8)(b) (compulsory testing for controlled drugs) after “gender” insert “unless the Governor considers that it is necessary to do so for the purpose of protecting the health, welfare or safety of any person, or the security or good order of the prison”.

(4) In rule 94(8)(b) (compulsory testing for alcohol) after “gender” insert “unless the Governor considers that it is necessary to do so for the purpose of protecting the health, welfare or safety of any person or the security or good order of the prison”.

(5) In rule 106 (searching of visitors)—

(a) in paragraph (3) for “Where” substitute “Subject to paragraph (3A), where”,

(b) after paragraph (3) insert—

“(3A) Where a search is conducted under paragraph (1)(a) or (b), the Governor may require that the officer conducting the search must be of a different gender to the visitor where the Governor considers that it is necessary to do so for the purpose of protecting the health, welfare or safety of any person, or the security or good order of the prison.”,

(c) in paragraph (8)—

(i) for “Where” substitute “Subject to paragraph (8A), where”,

(ii) in sub-paragraph (a), after “gender” in the second place it occurs insert “as the officer conducting the search”,

(d) after paragraph (8) insert—

“(8A) Where a visitor is searched by an officer under section 41(2A) of the Act, the Governor may require that an officer of a different gender to the visitor must conduct the search where the Governor considers that it is necessary to do so for the purpose of protecting the health, welfare or safety of any person or the security or good order of the prison.”.

(6) In rule 108 (searching of specified persons)—

(a) in paragraph (3) for “Where” substitute “Subject to paragraph (3A), where”,

(b) after paragraph (3) insert—

“(3A) The Governor may require in the case of a search mentioned in paragraph (2) (a) or (b), that the officer conducting the search must be of a different gender to the specified person where the Governor considers that it is necessary to do so for the purpose of protecting the health, welfare or safety of any person or the security or good order of the prison.”,

(c) in paragraph (8)—

(i) for “Where” substitute “Subject to paragraph (8A), where”,

(ii) in sub-paragraph (a), after “gender” in the second place it occurs insert “as the officer conducting the search”,

(d) after paragraph (8) insert—

“(8A) Where a specified person is searched by an officer under section 41(2A) of the Act, the Governor may require that an officer of a different gender to the specified person must conduct the search where the Governor considers that it is necessary to do so for the purpose of protecting the health, welfare or safety of any person or the security or good order of the prison.”.

- (7) In rule 142 (searching of officers and employees)—
- (a) in paragraph (2) for “Where” substitute “Subject to paragraph (2A), where”,
 - (b) after paragraph (2) insert—

“(2A) The Governor may require in the case of a search mentioned in paragraph (1)(a) or (b), that the officer conducting the search must be of a different gender to the person being searched where the Governor considers that it is necessary to do so for the purpose of protecting the health, welfare or safety of any person, or the security or good order of the prison.”,
 - (c) in paragraph (7)—
 - (i) for “Where” substitute “Subject to paragraph (7A), where”,
 - (ii) in paragraph (a), after “gender” in the second place it occurs insert “as the officer conducting the search”,
 - (d) after paragraph (7) insert—

“(7A) Where an officer or employee is searched by an officer under section 41(2A) of the Act, the Governor may require that an officer of a different gender to the person being searched must conduct the search where the Governor considers that it is necessary to do so for the purpose of protecting the health, welfare or safety of any person or the security or good order of the prison.”.

St Andrew’s House,
Edinburgh
30th November 2023

ANGELA CONSTANCE
A member of the Scottish Government

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Prisons and Young Offenders Institutions (Scotland) Rules 2011 (“the principal Rules”).

Rule 2(2) amends rule 92 of the principal Rules to expressly provide the Governor of a prison a discretion to allow a prisoner to be searched by a prison officer of a different gender to them. This discretion may only be exercised where the Governor considers it necessary for the purposes of protecting the health, welfare or safety of any person, or for protecting the security or good order of the prison. Rule 2(2) also ensures that any prison officer observing a search will be the same gender as the officer carrying out that search.

Rules 2(3) and 2(4) amend rules 93 and 94 of the principal Rules respectively to expressly provide the Governor of a prison a discretion to require a prisoner providing a sample of urine for the purposes of ascertaining whether the prisoner has any controlled drug or alcohol in their body to provide that sample in the sight of a person of a different gender to them. This discretion may only be exercised where the Governor considers it necessary for the purposes of protecting the health, welfare or safety of any person, or for protecting the security or good order of the prison.

Rule 2(5) amends rule 106 of the principal Rules to expressly provide the Governor of a prison a discretion to allow a visitor to be searched by a prison officer of a different gender to them. This discretion may only be exercised where the Governor considers it necessary for the purposes of protecting the health, welfare or safety of any person, or for protecting the security or good order of the prison.

Rule 2(6) amends rule 108 of the principal Rules to expressly provide the Governor of a prison a discretion to allow a person providing contracted out services to the prison or a healthcare professional working at the prison to be searched by a prison officer of a different gender to them. This discretion may only be exercised where the Governor considers it necessary for the purposes of protecting the health, welfare or safety of any person, or for protecting the security or good order of the prison.

Rule 2(7) amends rule 142 of the principal Rules to expressly provide the Governor of a prison a discretion to allow a prison officer or employee to be searched by a prison officer of a different gender to them. This discretion may only be exercised where the Governor considers it necessary for the purposes of protecting the health, welfare or safety of any person, or for protecting the security or good order of the prison.

No business and regulatory impact assessment has been prepared for these Rules as no impact on business, charities or voluntary bodies is foreseen.