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STATUTORY INSTRUMENTS

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**1998 No. 1589 (S.82)**

**PRISONS  
YOUNG OFFENDERS  
INSTITUTIONS, SCOTLAND**

The Prisons and Young Offenders Institutions  
(Scotland) Amendment Rules 1998

<i>Made</i>	- - - -	<i>30th June 1998</i>
<i>Laid before Parliament</i>		<i>10th July 1998</i>
<i>Coming into force</i>	- -	<i>31st July 1998</i>

The Secretary of State, in exercise of the powers conferred on him by section 39 of the Prisons (Scotland) Act 1989(1) and of all other powers enabling him in that behalf, hereby makes the following Rules:

**Citation, commencement and interpretation**

1.—(1) These Rules may be cited as the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 1998.

(2) These Rules shall come into force on 31st July 1998.

(3) In these Rules, a reference to “the principal Rules” is a reference to the Prisons and Young Offenders Institutions (Scotland) Rules 1994(2).

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- (1) 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) and Schedule 7 and by the Criminal Justice and Public Order Act 1994 (c. 33) (“the 1994 Act”), sections 116(4) and 130(4); section 39 is to be read with sections 3A(5), (6) and (7) (which was inserted by the Crime and Punishment (Scotland) Act 1997 (c. 48) (“the 1997 Act”), section 43(2)), 8(1) and (2), 11(1), 12 (as amended by the 1993 Act, Schedule 5, paragraph 6(2)), 14(1) (as amended by the 1993 Act, Schedule 5, paragraph 6(3)), 19(3) and (4) (as amended by the 1993 Act, Schedule 5, paragraph 6(4)), 24 (which was repealed by the 1993 Act, Schedule 7 but was saved by Schedule 6 to that Act in relation to any “existing prisoner” within the meaning specified in paragraph 1 of Schedule 6), 33A (which was inserted by the 1994 Act, section 116(3)), 41(2B) (which was inserted by the 1994 Act, section 153(3)), 41B(1) (which was inserted by the 1994 Act, section 151(2)) and 41C(1) (which was inserted by the 1997 Act, section 42) of the 1989 Act; section 39 was extended by the Courts-Martial (Appeals) Act 1968 (c. 20), section 52 (as amended by the 1989 Act, Schedule 2, paragraph 10).
- (2) S.I. 1994/1931, amended by S.I. 1996/32 and 1997/2007.

### **Amendment of rule 2 of the principal rules**

**2.—**(1) Rule 2 of the principal Rules (application to young offenders institutions and young offenders) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (2), for the words “the exceptions and modifications set out in Schedule 1” there are substituted the words “any exception or modification specified in any provision of these Rules”.

### **Amendment of rule 3 of the principal Rules**

**3.—**(1) Rule 3 of the principal Rules (interpretation) is amended in accordance with the following paragraphs of this rule.

(2) In paragraph (1), for the definition of “appellant”, there is substituted the following definition:—

““appellant” means a prisoner—

- (a) who appeals under section 106 or 175 of the Criminal Procedure (Scotland) Act 1995<sup>(3)</sup> against his conviction and sentence, or against his sentence only;
- (b) whose case has been referred to the High Court of Justiciary by the Secretary of State pursuant to section 263(1) of the Criminal Procedure (Scotland) Act 1975<sup>(4)</sup> or section 124(3) of the said Act of 1995;
- (c) who appeals by way of bill of suspension against his conviction or sentence, or both conviction and sentence, in summary proceedings;
- (d) who appeals under section 8 of the Courts-Martial (Appeals) Act 1968<sup>(5)</sup> against his conviction or sentence, or both conviction or sentence, or who appeals under section 39(1) of that Act from any decision of the Courts-Martial Appeal Court on an appeal under section 8 of that Act; or
- (e) who is returned to prison under section 18(2) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 and who appeals under section 19 of that Act,

and, for the purposes of this definition, a prisoner shall be deemed to be an appellant from the time—

- (i) in the case of an appeal as mentioned in sub-paragraph (a) above in solemn proceedings, he lodges an intimation of intention to appeal in terms of section 109(1) of the said Act of 1995 or, in the case of an appeal against sentence only, a note of appeal in terms of section 110(1) of that Act;
- (ii) in the case of an appeal as mentioned in sub-paragraph (a) above in summary proceedings, he lodges an application for a stated case under section 176(1) of the said Act of 1995 or, in the case of an appeal against sentence only, a note of appeal under section 186(1) of that Act;
- (iii) in the case of a reference as referred to in sub-paragraph (b) above, the Secretary of State refers the case to the High Court of Justiciary;
- (iv) in the case of an appeal as referred to in sub-paragraph (c) above, he lodges the bill of suspension;
- (v) in the case of an appeal as referred to in sub-paragraph (d) above, he presents a petition in terms of section 8(2) of the Courts-Martial (Appeals) Act 1968<sup>(6)</sup>; or

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(3) 1995 c. 46.

(4) 1975 c. 21.

(5) 1968 c. 20; section 8 was amended by the Armed Forces Act 1971 (c. 33), section 73(2) and Schedule 2, paragraph 1(2), by the Armed Forces Act 1976 (c. 52), section 22(5) and Schedule 9, paragraph 16 and by the Armed Forces Act 1991 (c. 62), Schedule 3.

(6) 1968 c. 20; section 8(2) was amended by the Armed Forces Act 1971 (c. 33), Schedule 2, paragraph 1(2).

- (vi) in the case of an appeal as referred to in sub-paragraph (e) above, he lodges a note of appeal,  
until the appeal, or, as the case may be, the reference is finally disposed of or abandoned in its entirety;”.
- (3) In paragraph (1), in the definition of “Governor”–
- (a) for paragraph (a) of that definition, there is substituted the following paragraph:–
- “(a) in this rule, rules 68(4), 78, 88A and 88B and in any rule in Part 11 (other than rule 103), the Governor-in-Charge;”; and
- (b) in paragraph (b) of that definition, for the words “rule 88A” there are substituted the words “rules 88A and 88B”.
- (4) In paragraph (1), after the definition of “long-term prisoner” there is inserted the following definition:–
- ““media representative” means a photographer, cameraman or a researcher or producer for or of any television, radio or other programme intended for broadcast or transmission by any form of electronic medium;”.
- (5) In paragraph (1), for the definition of “medical officer”, there is substituted the following definition:–
- ““medical officer” means a registered medical practitioner who is–
- (a) appointed as a medical officer by virtue of an appointment made under section 3(1) of the Act prior to its amendment by section 43(1) of the Crime and Punishment (Scotland) Act 1997(7);
- (b) appointed to be a medical officer for the prison under section 3A(2)(a) of the Act; or
- (c) providing, or supervising the provision of, appropriate medical services within the meaning of section 3A(3) of the Act, in accordance with an arrangement made under section 3A(2)(b) of the Act,
- and, except where the context otherwise requires, any reference to a medical officer includes such an officer who is for the time being liable to be required to attend at the prison;”.
- (6) In paragraph (1), in the definition of “security category” for the words “category assigned in accordance with rule 12” there are substituted the words–
- “security category which may be assigned in accordance with Part 2A of these Rules”.

#### **Amendment of rule 8 of the principal Rules**

4. For paragraph (2) of rule 8 of the principal Rules (interview and medical examination of prisoners on reception) there is substituted the following paragraph:–

- “(2) Every prisoner shall be examined by a medical officer, or such other person as such an officer may instruct–
- (a) in the case of his reception on his removal from court or any other place, other than on a transfer from any prison, remand centre or young offenders institution, within 24 hours of that reception; or
- (b) in the case of his reception on his transfer from any other prison, remand centre or young offenders institution–
- (i) where some cause for concern is apparent to an officer on his reception, as soon as reasonably practicable and no later than 24 hours after reception; or

(ii) in any other case, within 72 hours of that reception.”.

#### **Amendment of rule 10 of the principal Rules**

5.—(1) Rule 10 of the principal Rules (registration and records of prisoners) is amended in accordance with paragraph (2) of this rule.

(2) After paragraph (6) there is inserted the following paragraph:—

“(6A) Where fingerprints are taken in accordance with paragraph (4) or (5), an officer shall require the prisoner to sign a fingerprint form relating to his prints at that time.”.

#### **Omission of rule 12 of the principal Rules**

6. Rule 12 of the principal Rules (security categories of prisoners) is omitted.

#### **Insertion of new Part 2A of the principal Rules**

7. After rule 14 of the principal Rules (separation of different categories of prisoners), there is inserted the following Part:—

### “PART 2A

### SECURITY CATEGORIES

#### **Security categories**

14A. The security categories which may be assigned to prisoners in accordance with this Part of these Rules are specified in column 1 of the Table set out below and the criteria which determine the application of each category are set out opposite that category in column 2 of the Table:—

<i>Column 1</i> <i>Security Category</i>	<i>Column 2</i> <i>Criteria</i>
A	A prisoner who would place national security at risk, or be highly dangerous to the public or to prison staff and their families or to the police in the event of an escape and who must be kept in conditions of maximum security
B	A prisoner who is considered likely to be a danger to the public and who must be kept in secure conditions to prevent his escape
C	A prisoner who is considered unlikely to be a danger to the public and who can be given the opportunity to serve his sentence with the minimum of restrictions
Limited Category D	A life prisoner who may participate in activities approved by the Secretary of State for the purposes of testing his

<i>Column 1</i> <i>Security Category</i>	<i>Column 2</i> <i>Criteria</i>
D	suitability to be assigned security category D  A prisoner who is considered not to be a danger to the public and who can be given the opportunity to serve his sentence in open conditions

### **Assignment of security categories**

**14B.**—(1) Every prisoner shall be assigned a security category in accordance with the provisions of this Part of these Rules.

(2) Subject to the following paragraphs of this rule, a prisoner shall be assigned the appropriate security category having regard to the criteria specified in relation to security categories in rule 14A.

(3) The Governor shall assign a security category to each prisoner as soon as possible after his reception.

(4) An untried prisoner shall be assigned no lower a security category than category B.

(5) On reception, a prisoner who is transferred to the prison under paragraph 1 of Schedule 1 to the Crime (Sentences) Act 1997<sup>(8)</sup> or in pursuance of a warrant issued under the Repatriation of Prisoners Act 1984<sup>(9)</sup> shall be assigned no lower a security category than security category B, but the Governor shall—

(a) review the prisoner's security category within 4 weeks beginning with the date of the prisoner's reception; and

(b) where as a result of that review the prisoner's security category is not lowered, carry out a further review within 6 months beginning with the date on which that review was concluded.

(6) On reception, a prisoner who is—

(a) transferred under paragraph 1 of Schedule 1 to the Crime (Sentences) Act 1997 where the transfer is—

(i) a restricted transfer within the meaning of paragraph 6(1) of that Schedule; and

(ii) has been made for a temporary purpose; or

(b) transferred under paragraph 2 or 3 of Schedule 1 to the said Act of 1997,

shall be assigned for the period of his detention a security category which, in the opinion of the Governor, is the nearest equivalent of the security category which he had in the prison or place in the part of the United Kingdom, the Channel Islands or the Isle of Man in which he was detained immediately before his transfer.

(7) The Governor shall keep under review, and shall formally review at least once in every period of 12 months, the security category assigned to each prisoner (other than a prisoner who is for the time being assigned security category A) and may, if appropriate, assign another category to the prisoner.

(8) The Governor shall require the prior approval of the Secretary of State before a life prisoner may be assigned security category D or Limited Category D.

<sup>(8)</sup> 1997 c. 43.

<sup>(9)</sup> 1984 c. 47.

### **Information regarding assignment of a security category**

**14C.**—(1) This rule does not apply in relation to the assignment of security category A to a prisoner, or to the review of the security category of a prisoner who is already assigned security category A, where that prisoner is entitled to receive a notice in terms of rule 14D(4) or 14E(3).

(2) Following the assignment of a security category, or the review of a security category, in accordance with this Part of these Rules, the Governor shall if asked to do so by the prisoner concerned—

- (a) inform the prisoner in writing—
  - (i) in the case of the assignment of a security category (whether following reception or a review) of the reasons why the category assigned is appropriate; or
  - (ii) in the case of a review which has resulted in no change of category, of the reasons why a lower category is not appropriate;
- (b) subject to paragraph (3), provide him with—
  - (i) a copy of any document to which the Governor has had regard; and
  - (ii) a summary of any other information of which the Governor was aware of and to which he has had regard,in reaching the relevant decision.

(3) If the Governor is of the opinion that any document or any other information of which he was aware and to which he had regard in reaching the relevant decision would, if disclosed to the prisoner, be likely to be damaging on one or more of the following grounds, namely:—

- (a) that it would be likely adversely to affect the health, welfare or safety of the prisoner or any other person;
- (b) that it would be likely to result in the commission of an offence;
- (c) that it would be likely to facilitate an escape from legal custody or the doing of any act prejudicial to the safe keeping of persons in legal custody;
- (d) that it would be likely to impede the prevention or detection of offences or the apprehension or prosecution of suspected offenders; or
- (e) that it would be likely otherwise to damage the public interest,

he shall inform the prisoner, but only insofar as is practicable without prejudicing the purposes for which that document or other information is not disclosed, of the gist of that document or information.

### **Assignment of security category A**

**14D.**—(1) If the Governor assigns security category A to any prisoner, he shall forthwith notify the Secretary of State.

(2) Where the Governor assigns security category A to any prisoner, the Secretary of State shall, as soon as reasonably practicable following receipt of the notice referred to in paragraph (1), decide whether the prisoner should continue to have that category assigned to him and shall notify the Governor of his decision.

(3) If the Secretary of State notifies the Governor in terms of paragraph (2) that the prisoner should not continue to have security category A assigned to him, the Governor shall, as soon as reasonably practicable following receipt of that notification, assign another security category in accordance with rule 14B.

(4) Where the Governor is minded to assign security category A to a prisoner (other than an untried prisoner) who is for the time being assigned any security category other than security category A, he shall provide him with—

- (a) a written notice informing him—
  - (i) that he is minded to do so;
  - (ii) of the reasons why he is so minded; and
  - (iii) of the procedure by which the prisoner may make written representations in relation to the proposed assignment of security category A; and
- (b) subject to paragraph (5)—
  - (i) a copy of any document to which he has had regard; and
  - (ii) a summary of any other information of which he was aware of and to which he has had regard,in considering the matter.

(5) If the Governor is of the opinion that any document or any other information of which he was aware and to which he had regard in considering the matter would, if disclosed to the prisoner, be likely to be damaging on any ground mentioned in rule 14C(3), he shall inform the prisoner in the notice under paragraph (4), but only insofar as is practicable without prejudicing the purposes for which that document or other information is not disclosed, of the gist of that document or information.

- (6) In a case to which paragraph (4) applies, the Governor shall—
  - (a) consider any representations made by the prisoner by virtue of that paragraph before reaching a decision in relation to the assignment of a security category; and
  - (b) if he assigns security category A, provide the prisoner with a written statement of reasons for his decision.

#### **Review of assignment of security category A**

**14E.**—(1) Subject to paragraph (3), the Secretary of State shall, on the basis of information provided by the Governor, keep under review, and shall formally review at least once in every period of 12 months, the security category of every prisoner who is for the time being assigned security category A and shall notify the Governor of the outcome of the review.

(2) Where, following a review carried out in terms of paragraph (1), the Secretary of State decides that a prisoner should no longer be assigned security category A—

- (a) he shall notify the Governor of that decision; and
- (b) the Governor shall, as soon as reasonably practicable following receipt of that notification, assign another security category in accordance with rule 14B.

(3) Where, in the course of reviewing a security category in terms of paragraph (1), the Secretary of State is minded to conclude that there should be no change in the security category, he shall provide the prisoner with—

- (a) a written notice informing him—
  - (i) that he is minded to make no change;
  - (ii) of the reasons why he is so minded; and
  - (iii) of the procedure by which the prisoner may make written representations in relation to the proposed retention of security category A; and
- (b) subject to paragraph (4)—

- (i) a copy of any document to which he has had regard; and
- (ii) a summary of any other information of which he was aware of and to which he has had regard,

in considering the matter.

(4) If the Secretary of State is of the opinion that any document or any other information of which he was aware and to which he had regard in considering the matter would, if disclosed to the prisoner, be likely to be damaging on any ground mentioned in rule 14C(3), he shall inform the prisoner in the notice under paragraph (3), but only insofar as is practicable without prejudicing the purposes for which that document or other information is not disclosed, of the gist of that document or information.

(5) In a case to which paragraph (3) applies, the Secretary of State shall—

- (a) consider any representations made by the prisoner by virtue of that paragraph before concluding the review; and
- (b) if he concludes that the prisoner should remain security category A, provide the prisoner with a written statement of the reasons for his decision.

(6) The Secretary of State may make a direction for the purposes of prescribing—

- (a) the procedure in terms of which notices may be sent to a prisoner, and representations may be made, under rule 14D or this rule;
- (b) the time limits within which the procedure mentioned in rule 14D or this rule may be carried out; and
- (c) the form in which any such notice or representations may be given.”.

#### **Amendment of rule 17 of the principal Rules**

**8.**—(1) Rule 17 of the principal Rules (provision of bedding) is amended in accordance with paragraph (2) of this rule.

(2) After paragraph (1), there is inserted the following paragraph:—

“(1A) Notwithstanding paragraph (1), the Governor may, at the request of a prisoner, provide him with a mattress only instead of a bed.”.

#### **Amendment of rule 21 of the principal Rules**

**9.**—(1) Rule 21 of the principal Rules (prisoners' food) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (3)(c), after the word “served”, there are inserted the words “(or re-heated prior to serving)”.

#### **Amendment of rule 22 of the principal Rules**

**10.**—(1) Rule 22 of the principal Rules (personal hygiene) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (3), for the words “the medical officer”, there are substituted the words “a medical officer”.

#### **Omission of rule 23 of the principal Rules**

**11.** Rule 23 of the principal Rules (the medical officer) is omitted.



### **Substitution of rule 24 of the principal Rules**

12. For rule 24 of the principal Rules (provision of medical services and facilities) there is substituted the following rule:—

#### **“Provision of medical and other services and facilities**

24.—(1) The Secretary of State shall make arrangements for the provision at every prison to such extent as he considers necessary of appropriate medical services and facilities for the maintenance of good health, the prevention of illness, the care of prisoners suffering from illness or the aftercare of such prisoners.

(2) For the purposes of this rule, “medical services and facilities” includes any form of service or facility for the care of a person’s health.”.

### **Substitution of rule 25 of the principal Rules**

13. For rule 25 of the principal Rules (general duty of the medical officer to attend prisoners) there is substituted the following rule:—

#### **“General duty of medical officers to attend prisoners**

25. A medical officer shall attend prisoners who complain of illness at such times, and with such frequency, as he judges necessary in the circumstances.”.

### **Substitution of rule 26 of the principal rules**

14. For rule 26 of the principal Rules (notification to the medical officer of prisoners requiring attention) there is substituted the following rule:—

#### **“Notification to a medical officer of prisoners requiring attention**

26. The Governor shall, without delay, bring to the attention of a medical officer any prisoner whose physical or mental condition appears to require his attention.”.

### **Amendment of rule 27 of the principal Rules**

15.—(1) Rule 27 of the principal Rules (arrangements for medical care by other medical practitioners or at outside facilities) is amended in accordance with the following paragraphs of this rule.

(2) For the heading, there is substituted “Arrangements for care by other medical practitioners or other persons providing professional services or at outside facilities”.

(3) In paragraph (1), for the words “the medical officer”, there are substituted the words “a medical officer”.

(4) Paragraph (2) is omitted.

(5) In paragraph (3), for the words “the medical officer”, there are substituted the words “a medical officer”.

(6) After paragraph (3) there is inserted the following paragraph:—

“(4) In this rule, “medical facility” includes any hospital and any other premises at which any form of services for the care of a person’s health is provided.”.

### **Substitution of rule 28 of the principal Rules**

16.—(1) For rule 28 of the principal Rules (duty of medical officer to visit prisoners subject to cellular confinement) there is substituted the following rule:—

#### **“Duty of medical officer to visit prisoners subject to cellular confinement**

28. Where cellular confinement is imposed on a prisoner in terms of rule 100(1)(d), a medical officer shall visit the prisoner as soon as practicable and no later than 24 hours after the imposition of that confinement and thereafter as he considers is necessary.”

### **Amendment of rule 29 of the principal Rules**

17.—(1) Rule 29 of the principal Rules (duty of medical officer to notify certain matters) is amended in accordance with the following paragraphs of this rule.

(2) In paragraph (1), for the words “the medical officer”, where they first occur, there are substituted the words “a medical officer”.

(3) In paragraph (2), for the words “The medical officer”, there are substituted the words “A medical officer”.

(4) In paragraph (3), for the words “the medical officer”, there are substituted the words “a medical officer”.

(5) In paragraph (4), for the words “The medical officer”, there are substituted the words “A medical officer”.

### **Amendment of rule 31 of the principal Rules**

18.—(1) Rule 31 of the principal Rules (transfer to hospital for treatment for mental disorder) is amended in accordance with paragraph (2) of this rule.

(2) In paragraphs (1) and (2), for the words “the medical officer”, where they occur in each of those paragraphs, there are substituted the words “a medical officer”.

### **Amendment of rule 32 of the principal Rules**

19.—(1) Rule 32 of the principal Rules (records of medical treatment) is amended in accordance with the following paragraphs of this rule.

(2) In paragraph (1), for the words “the medical officer”, there are substituted the words “a medical officer”.

(3) For paragraph (2) there is substituted the following paragraph:—

“(2) Where—

- (a) a prisoner is moved from any prison to any other prison; or
- (b) a young offender is moved from any young offenders institution to any other institution or to a prison in terms of section 20A or 21 of the Act<sup>(10)</sup>,

a medical officer of the prison or young offenders institution from which the person is moved shall send his medical record to a medical officer of the prison or young offenders institution to which he is moved.”

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<sup>(10)</sup> 1989 c. 45; section 20A was inserted by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9), section 23; section 21 was amended by the said Act of 1993, Schedule 5, paragraph 6(5) and Schedule 7 and by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40), Schedule 4, paragraph 75(3).

### **Amendment of rule 38 of the principal Rules**

**20.**—(1) Rule 38 of the principal rules (religious services and visits) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (1), for the words “Subject to paragraph (2)” there are substituted the following words:—

“Subject to rule 80(1) and to paragraph (2) below”.

### **Amendment of rule 45 of the Principal Rules**

**21.**—(1) Rule 45 of the principal Rules (prisoners' money) is amended in accordance with paragraph (2) of this rule.

(2) For paragraph (2) there is substituted the following paragraph:—

“(2) The Governor shall hold on behalf of a prisoner any other money belonging to him which—

- (a) represents earnings paid by virtue of rule 74; or
- (b) has been received in the prison and which does not exceed any restrictions as to the amount of money which a prisoner may receive as may be prescribed in a direction made for the purposes mentioned in rule 52(2).”.

### **Amendment of rule 51 of the principal Rules**

**22.**—(1) Rule 51 of the principal Rules (opening and reading of other correspondence) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (3), after the words “such restrictions,” there are inserted the words “or which the prisoner may not be permitted to receive by virtue of those restrictions,”.

### **Amendment of rule 52 of the principal Rules**

**23.**—(1) Rule 52 of the principal Rules (restrictions on prisoners' correspondence) is amended in accordance with paragraph (2) of this rule.

(2) After paragraph (2)(b) there is inserted the following subparagraph:—

“(bb) to prescribe in relation to money (whether in the form of cash, cheques, bankers' drafts or otherwise) restrictions as to—

- (i) the amount of any money which a prisoner may send or receive; and
- (ii) the times and frequency at which prisoners may send or receive money;”.

### **Amendment of rule 55 of the principal Rules**

**24.**—(1) Rule 55 of the principal Rules (visits by persons of a prisoner's choice) is amended in accordance with the following paragraphs of this rule.

(2) For paragraph (1) there is substituted the following paragraph:—

“(1) This rule applies to visits to a prisoner (other than an untried prisoner or a civil prisoner) by any person with whom the prisoner wishes to communicate.”.

(3) In paragraph (5), for sub-paragraph (b), there is substituted the following sub-paragraph:—

“(b) except where the Governor otherwise authorises and subject to the provisions of any direction made for the purposes of rule 63(3)(a), no officer shall listen to any conversation between the prisoner and his visitor.”.

(4) After paragraph (7) there is inserted the following paragraph:—

“(7A) A Governor shall only permit a visit in terms of this rule by a friend or relative of a prisoner who is, or has previously carried on the profession or vocation of, a journalist, author or media representative if—

- (a) the person is visiting on a personal basis and not for professional or vocational purposes; and
- (b) before being admitted to the prison he gives a written undertaking to the effect that any material obtained during the visit—
  - (i) will not be used by him for professional or vocational purposes and in particular for publication or broadcast or use on, or transmission by, any form of electronic medium; and
  - (ii) will not be disclosed by him to any other person for use by that person or anyone else for the purposes of journalism, broadcasting or publishing.”.

(5) In paragraph (8), for the words “58 to 62” there are substituted the words “58 to 62D”.

#### **Amendment of rule 56 of the principal Rules**

**25.**—(1) Rule 56 of principal Rules (visits to untried and civil prisoners by persons of a prisoner’s choice) is amended in accordance with the following paragraphs of this rule.

(2) In paragraph (1), for the words “Subject to paragraph (5), this” there is substituted the word “This”.

(3) After paragraph (5) there is inserted the following paragraph:—

“(5A) Paragraph (7A) of rule 55 shall apply to visits to an untried prisoner or a civil prisoner in terms of this rule as it applies to other prisoners.”.

(4) In paragraph (6), for the words “58 to 62” there are substituted the words “58 to 62D”.

#### **Amendment of rule 57 of the principal Rules**

**26.** In rule 57 of the principal Rules (entitlement to accumulated visits), after paragraph (3), there is inserted the following paragraph:—

“(4) In the application of this rule to a young offender any reference to a prison shall be construed as a reference to a young offenders institution or a prison.”.

#### **Amendment of rule 58 of the principal Rules**

**27.**—(1) Rule 58 of the principal Rules (visits by legal advisers) is amended in accordance with paragraph (2) of this rule.

(2) After paragraph (2) there shall be inserted the following paragraph:—

“(3) A legal adviser may use sound recording equipment to record his discussions with the prisoner during a visit in terms of this rule subject to such conditions as the Governor may specify.”.

#### **Insertion of new rules 62A, 62B, 62C and 62D into the principal Rules**

**28.** After rule 62 there shall be inserted the following new rules:—

##### **“Visits by Members of Parliament**

**62A.**—(1) A prisoner shall be entitled to receive a visit from a member of Parliament or a representative of the European Parliament.

(2) A visit to a prisoner by a member of Parliament or a representative of the European Parliament may take place in such area of the prison and under such conditions as the Governor may specify except that such a visit shall take place—

- (a) within the sight of an officer; but
- (b) outwith the hearing of any officer unless the member of Parliament, representative of the European Parliament or prisoner requests otherwise or the Governor so requires for reasons of security.

(3) A member of Parliament or a representative of the European Parliament with the prisoner's consent may use sound recording equipment to record any interview held with the prisoner.

#### **Visits by the Parliamentary Commissioner for Administration or Officers on his behalf**

**62B.**—(1) The Parliamentary Commissioner for Administration or any person authorised by him may, for the purpose of discharging his public duties, visit a prisoner at any reasonable time with that prisoner's consent.

(2) A visit to a prisoner by the Parliamentary Commissioner for Administration or any person authorised by him shall take place in such area of the prison and under such conditions as the Governor may specify except that such a visit shall take place—

- (a) within the sight of an officer; but
- (b) outwith the hearing of any officer unless the Commissioner or his representative requests otherwise or the Governor otherwise requires for reasons of security.

#### **Visits by journalists, authors or media representatives**

**62C.**—(1) This rule applies to a person who visits, or seeks to visit, a prisoner

- (a) as a journalist, author or media representative in a professional or vocational capacity; or
- (b) in circumstances where the person's visit is wholly or partially connected with the purposes of journalism, broadcasting or publishing.

(2) A Governor shall permit visits to prisoners by persons to whom this rule applies only in exceptional circumstances and where he is satisfied that it is appropriate to permit such a visit.

(3) If the Governor intends to permit a visit to a prisoner for the purposes mentioned in paragraph (1) he shall require the person, before being admitted to the prison, to give a written undertaking to the effect that—

- (a) no interview shall begin, nor shall any photographs, filming or sound recording be taken or conducted, except with the express prior consent of both the prisoner and the Governor;
- (b) any such interview, photography, filming or recording shall be conducted or taken in accordance with such other conditions as the Governor considers necessary;
- (c) he shall not make any payment or gratuity to the prisoner or any other person in relation to the holding of the interview or any material obtained at it; and
- (d) any material obtained at the interview, or any photographs, films or recordings so taken, will not be used for professional or vocational purposes and in particular for publication or broadcast or use on, or transmission by, any form of electronic medium by the person or anyone else except in accordance with the prior written

consent of the Governor and subject to and in accordance with such conditions as he may impose.

- (4) A visit to a prisoner in terms of this rule shall take place in such area of the prison as the Governor may specify and—
- (a) shall take place within the sight of an officer; and
  - (b) within the hearing of an officer.

#### **Visits by members of the Parole Board for Scotland**

**62D.**—(1) A prisoner may receive a visit from one or two members of the Parole Board for Scotland where the purpose of that visit is to interview him in terms of rule 15(3) of the Parole Board (Scotland) Rules 1993(**11**) or rule 14(3) of the Parole Board (Scotland) Rules 1995(**12**).

- (2) Where a prisoner receives a visit in terms of this rule—
- (a) the visit may take place within the sight of an officer; but
  - (b) shall take place outwith the hearing of any officer unless a member of the Board or the prisoner otherwise requests.”.

#### **Amendment of rule 63 of the principal Rules**

**29.** For rule 63 of the principal Rules (general conditions applicable to visits under Part 7) there is substituted the following rule:—

##### **“Restrictions and conditions applicable to visits under Part 7**

**63.**—(1) The Governor may prohibit a prisoner from receiving a visit from any person in particular in terms of this Part of these Rules where he considers that it is necessary to do so in the interests of security, discipline or the prevention of disorder or crime.

(2) If in the case of any visit taking place in terms of rule 55(7A), 56(5A) or 62C the Governor considers that the terms of any undertaking mentioned in any of those provisions have been breached or that there has been a contravention of any restrictions or conditions specified in a direction made by virtue of paragraph (3), he may terminate the visit.

(3) The entitlement of a prisoner to receive visits in terms of this Part of these Rules shall be subject to such restrictions and conditions as may be specified in a direction by the Secretary of State for the following purposes:—

- (a) to allow the use of video cameras and sound recording equipment for the monitoring of the visits area during visits to prisoners;
- (b) to impose a prohibition on, or restrictions in relation to, the possession and use by prisoners and their visitors of photographic equipment, sound recording equipment and writing materials;
- (c) to impose restrictions as to the introduction of, or possession or consumption of, food and drink by prisoners and their visitors during such visits;
- (d) to provide for the issuing of visitors' permits; and
- (e) to prescribe the terms of any written undertaking which may be required to be given pursuant to rule 55(7A), 56(5A) or 62C(3).”.

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(11) S.I. 1995/2225, amended by S.I. 1997/2317.

(12) S.I. 1995/1273.

### **Amendment of rule 68 of the principal Rules**

**30.**—(1) Rule 68 of the principal Rules (prisoners' work) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (2), for the words “the medical officer”, there are substituted the words “a medical officer”.

### **Amendment of rule 75 of the principal Rules**

**31.**—(1) Rule 75 of the principal Rules (exercise and time in the open air) is amended in accordance with the following paragraphs of this rule.

(2) For paragraph (1) there is substituted the following paragraph:—

“(1) Subject to the following provisions of this rule—

(a) every prisoner shall be given the opportunity—

(i) to take exercise for not less than one hour every day except where a medical officer has not passed him as fit on admission; and

(ii) to spend time in the open air at least once every day; and

(b) every young offender shall be given the opportunity—

(i) on a regular basis to participate in physical recreation, activities and pursuits which are consistent with maintaining good health and physical wellbeing; and

(ii) to spend time in the open air at least once every day.”.

(3) In paragraph (2)—

(a) for the words “A prisoner shall be entitled to take exercise and spend time in the open air in terms of paragraph (1) in association with other prisoners” there are substituted the words “A prisoner or young offender shall be allowed to participate in any activity mentioned in paragraph (1)(a)(i) and (b)(i) and spend time in the open air in association with other prisoners or, as the case may be, young offenders”; and

(b) for sub-paragraph (a) there is substituted the following sub-paragraph:—

“(a) an order has been made under rule 80 removing him from association with other prisoners or, as the case may be, young offenders either generally or during any period he is participating in any activity mentioned in paragraph (1)(a)(i) or (b)(i) or spending time in the open air.”.

(4) In paragraph (3)—

(a) after the word “prisoners” in each place where it occurs there are inserted the words “or young offenders”;

(b) for the words “take exercise” there are substituted the words “participate in any activity mentioned in paragraph (1)(a)(i) or (b)(i)”;

(c) after the word “prison” in each place where it occurs there are inserted the words “or young offenders institution”; and

(d) for the words “the opportunity to do either or both of the activities mentioned in paragraph (1)” there are substituted the words “either or both of the opportunities mentioned in sub-paragraph (a) or, as the case may be, sub-paragraph (b) of paragraph (1)”.

(5) In paragraph (5)(c), after the word “prisoners”, there are inserted the words “or, as the case may be, young offenders”.

### **Amendment of rule 80 of the principal Rules**

**32.**—(1) Rule 80 of the principal Rules (removal from association) is amended in accordance with the following paragraphs of this rule.

(2) In paragraph (3)—

(a) for sub-paragraph (d) there is substituted the following sub-paragraph:—

“(d) participating in any activity mentioned in rule 75(1)(a)(i) or (b)(i) or spending time in the open air in accordance with rule 75(1)(a)(ii) or (b)(ii);”;

(b) at the end of sub-paragraph (e) there is inserted the word “;or”; and

(c) after sub paragraph (e), there is inserted the following sub-paragraph:—

“(f) attendance at any religious service or meeting which he would otherwise have been entitled to attend in terms of rule 38(1).”.

(3) In paragraph (5), after the words “removed from association generally” there are inserted the words “or during any period he is engaged in or taking part in a prescribed activity”.

(4) Paragraph (7) is omitted.

(5) For paragraph (8) there is substituted the following paragraph:—

“(8) The Governor—

(a) may—

(i) cancel an order under paragraph (1) at any time if he considers it appropriate to do so;

(ii) vary an order made under paragraph (1) in terms of which the prisoner has been removed from association generally in order to restrict the effect of that order to removal from association during any period the prisoner is engaged in or taking part in any one or more prescribed activities as he may specify in the variation order;

(iii) if appropriate, further vary an order under paragraph (1) which has previously been varied under sub-paragraph (ii) above by further restricting the number of prescribed activities to which removal from association applies; or

(b) shall cancel any order under paragraph (1) if a medical officer advises on medical grounds that he should do so.”.

(6) After paragraph (9), there is inserted the following paragraph:—

“(10) Where a prisoner has been removed from association under this rule, a medical officer shall visit that prisoner as soon as practicable and thereafter as often as is necessary but at least once in every 7 days.”.

### **Amendment of rule 81 of the principal Rules**

**33.**—(1) Rule 81 of the principal Rules (prohibited articles) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (2), for the words “the medical officer”, there are substituted the words “a medical officer”.

### **Amendment of rule 83 of the principal Rules**

**34.**—(1) Rule 83 of the principal Rules (orders as to the use of restraints) is amended in accordance with the following paragraphs of this rule.



(2) In paragraph (3), for the words “the medical officer”, there are substituted the words “a medical officer”.

(3) In paragraph (5), for the words “The medical officer”, there are substituted the words “A medical officer”.

(4) In paragraph (6), for the words “the medical officer”, there are substituted the words “a medical officer”.

#### **Amendment of rule 84 of the principal Rules**

**35.**—(1) Rule 84 of the principal Rules (conditions of use of restraints) is amended in accordance with the following paragraphs of this rule.

(2) In paragraph (2)(b), for the words “the medical officer” there are substituted the words “a medical officer”.

(3) In paragraph (5), for the words “The medical officer”, there are substituted the words “A medical officer”.

#### **Amendment of rule 85 of the principal Rules**

**36.**—(1) Rule 85 of the principal Rules (temporary confinement) is amended in accordance with the following paragraphs of this rule.

(2) In the heading, after the word “confinement”, there are inserted the words “in a special cell”.

(3) In paragraph (3)(a), for the words “the medical officer”, there are substituted the words “a medical officer”.

(4) In paragraph (4)(a), for the words “the medical officer”, there are substituted the words “a medical officer”.

#### **Insertion of new rule 85A into the principal Rules**

**37.** After rule 85 of the principal Rules (temporary confinement) there is inserted the following rule:—

##### **“Temporary confinement to cell**

**85A.**—(1) An officer may cause a prisoner to be temporarily confined in his cell or room at a time when other prisoners detained in the same part of the prison or, as the case may be, prisoners at the prison in general are permitted to be in association if he is of the opinion that—

(a) the prisoner is acting in a disobedient or disorderly manner and that temporary confinement is both appropriate for the purpose of controlling his behaviour and is in his best interests; or

(b) by reason of the prisoner’s emotional state, it is desirable in his interests that he be temporarily confined to his cell or room.

(2) A prisoner shall not be confined to his cell or room by virtue of paragraph (1) for longer than half an hour on any occasion.

(3) Where an officer exercises the power conferred by paragraph (1) he shall inform his supervising officer of that fact orally and as soon as is reasonably practicable.

(4) If the officer concerned is of the opinion that a prisoner who has been confined to his cell or room by virtue of paragraph (1) is acting in a disobedient or disorderly manner at

the expiry of the period permitted by paragraph (2), he shall forthwith report any suspected breach of discipline in accordance with rule 95.”.

### **Substitution of rule 86 of the principal Rules**

**38.—**(1) For rule 86 of the principal Rules (admission and searching of visitors) there are substituted the following rules:—

#### **“Admission of visitors**

**86.—**(1) Where any person seeks to enter a prison as a visitor, an officer may ask the visitor—

- (a) to state his name and address and the purpose of his visit; and
- (b) to deposit for the duration of the visit any article in his possession which the officer considers may be prejudicial to security, good order or safety.

(2) A person to whom rule 62C applies who seeks to enter a prison as a visitor for the purposes of a visit as mentioned in that rule shall, immediately on arrival, inform an officer that he wishes to visit the prison in accordance with that rule.

(3) A person who is, or has previously carried on the profession or vocation of, a journalist, an author or a media representative and who seeks to enter a prison for the purpose of visiting a prisoner who is a friend or relative of his on a personal basis, and not for professional or vocational purposes, shall, immediately on arrival, inform an officer of that fact.

(4) Without prejudice to the powers conferred by section 41 of the Act, an officer may refuse to admit a visitor where—

- (a) a visitor refuses to comply with a request made in terms of paragraph (1); or
- (b) the visitor refuses to give consent for the purposes of rule 86A(1) or(3) or, having given consent, is obstructive in the course of the relevant search.

(5) Where an officer refuses admission to a visitor in terms of this rule, he shall record particulars of the matters, including his reasons.

(6) In this rule, and in rules 86A and 86B, “visitor” includes any person (other than an officer or employee) visiting the premises comprising the prison (or any part thereof).

(7) the Governor shall ensure that a notice explaining the effect of the provisions of this rule, of rules 86A and 86B, of section 41 of the Act and of any direction made for any purpose specified in rule 63(3) shall be displayed prominently in the visits area of the prison.

#### **Searching of visitors**

**86A.—**(1) Without prejudice to any power of search referred to in the Act, an officer may ask the visitor to consent to a search or searches in accordance with the provisions of this rule of—

- (a) his person and any of his personal possessions;
- (b) his open mouth, but without the use of force or any instruments; and
- (c) where the visitor is in charge of any vehicle which he intends to take into any area forming part of the premises of the prison, that vehicle.

(2) Where the visitor has given consent to a search or searches in accordance with paragraph (1), a search thereunder may take place—

- (a) prior to his admission to the part of the prison where the visit is to take place; and
- (b) where the Governor considers that—
  - (i) the visitor has failed to comply with rule 86(2) or (3) or;

- (ii) in the case of any visit taking place in terms of rule 55(7A), 56(5A) or 62C, the terms of any undertaking mentioned in any of those provisions have been breached or that there has been a contravention of any restrictions or conditions specified in the direction by virtue of rule 63(3),

in addition to a search on admission, at any time whilst the visitor is in the prison.

(3) Where the visitor has given consent to a search or searches in accordance with paragraph (1)(c), the search of the vehicle may also be made prior to the visitor's leaving the prison.

(4) Where a visitor is searched with his consent in terms of paragraph (1)–

- (a) the officer carrying out the search shall be of the same sex as the visitor; and
- (b) the search shall be carried out as expeditiously and decently as possible.

(5) A visitor shall not be asked in terms of paragraph (1) to remove, nor shall a search thereunder involve the removal of, any of his clothing other than outer coat, jacket, headgear, gloves and footwear.

(6) A search of a visitor's personal possessions (including any item of clothing which he may be asked to remove in terms of paragraph (5)) or of any vehicle under paragraph (1) may, in addition to being carried out by hand but subject to paragraphs (5) and (8), be carried out–

- (a) by the use of equipment involving–
  - (i) the application of a suction device or a swab on or to such possessions or such a vehicle (or anything in it) in order to collect particles from their surface; and
  - (ii) the analysis of such particles for the purpose of ascertaining whether any consists of a controlled drug or an explosive substance;
- (b) by the use of equipment designed to detect the existence of metal objects; and
- (c) in accordance with such procedures and conditions as may be specified in a direction by the Secretary of State.

(7) Where in the course of a search undertaken in accordance with paragraph (1) an officer finds any prohibited article, he may seize and detain that article.

(8) Where a visitor is searched by an officer under section 41(2A) of the Act–

- (a) the officer carrying out the search shall be of the same sex as the visitor;
- (b) the search shall be undertaken outwith the sight of any prisoner, any other visitor or officers who are not of the same sex as the visitor; and
- (c) the search shall be carried out as expeditiously and recently as possible.

### **Removal of visitors**

**86B.**—(1) Without prejudice to section 41(3) of the Act, an officer may terminate a visit and remove the visitor from the prison where the officer–

- (a) has reasonable grounds for suspecting that the visitor has in his possession or is taking out, or attempting to take out, any article which the Governor has not authorised the visitor to convey into the prison or any article which may be prejudicial to security, good order or discipline;
- (b) considers that the visitor's conduct is prejudicial to the security, good order or safety or that it is otherwise necessary to terminate the visit in the interests of security, discipline or the prevention of disorder or crime;
- (c) has reasonable grounds for suspecting that the visitor has failed to comply with rule 86(2) or (3); or

- (d) in the case of any visit taking place in terms of rule 55(7A), 56(5A) or 62C, considers that the terms of any undertaking mentioned in any of those provisions have been breached or that there has been contravention of any restrictions or conditions specified in a direction made by virtue of rule 63(3).
- (2) Where an officer terminates a visit of this rule, he shall record particulars of the matter, including his reasons.”.

### **Insertion of new rule 88B into the principal Rules**

**39.** After rule 88A of the principal Rules (compulsory testing for controlled drugs) there is inserted the following rule:–

#### **“Compulsory testing for alcoholic liquor**

**88B.**—(1) This rule applies where an officer, acting under the powers conferred by section 41C of the Act (testing of prisoners for alcohol), requires a prisoner to provide a sample for the purpose of ascertaining whether he has any alcoholic liquor in his body.

(2) In this rule “sample” means a sample of breath or any other description of sample specified in the authorisation by the Governor for the purposes of section 41C.

(3) When requiring a prisoner to provide a sample, an officer shall, so far as is reasonably practicable, inform the prisoner–

- (a) that he is being required to provide a sample in accordance with section 41C of the Act; and
- (b) that a refusal to provide a sample may lead to disciplinary proceedings being brought against him.

(4) An officer shall require a prisoner to provide a fresh sample, free from any adulteration.

(5) An officer requiring a sample shall make such arrangements and give the prisoner such instructions for its provision as may be reasonably necessary in order to prevent or detect its adulteration or falsification.

(6) A prisoner who is required to provide a sample may be kept apart from other prisoners for a period not exceeding 1 hour to enable arrangements to be made for provision of the sample.

(7) A prisoner who is unable to provide a sample of urine (if by virtue of an authorisation an officer is empowered to require such a sample) when required to do so may be kept apart from other prisoners until he has provided the required sample, save that a prisoner may not be kept apart under this paragraph for a period of more than 5 hours.

(8) A prisoner required to provide a sample of urine shall be afforded such degree of privacy for the purposes of providing the sample as may be compatible with the need to prevent or detect any adulteration or falsification of the sample; in particular a prisoner shall not be required to provide such a sample in the sight of a person of the opposite sex.”.

### **Substitution of rule 92 of the principal Rules**

**40.** For rule 92 of the principal Rules (escorted exceptional day absence) there is substituted the following rule:–

### **“Escorted day absence**

**92.**—(1) In this rule, “escorted day absence” means leave of absence under escort from the prison, for a period not exceeding 1 day, of a prisoner for the purpose of enabling him—

- (a) to visit a near relative who it appears to the Governor is dangerously ill;
- (b) to attend the funeral of a near relative; or
- (c) to attend at any place for any reason where the Governor is of the view that there are exceptional circumstances.

(2) On the written application of a prisoner, the Governor may grant, subject to and in accordance with the provisions of this rule and any operational requirements, escorted day absence to the prisoner if he is satisfied that the purpose of the application is genuine and appropriate.

(3) If the prisoner concerned is for the time being assigned security category A, the Governor shall obtain the prior written consent of the Secretary of State to the granting of escorted day absence.

(4) Where the Governor grants escorted day absence, the prisoner concerned shall be escorted by an officer or officers throughout the period of his absence from the prison.

(5) For the purposes of escorted day absence in terms of this rule, the Secretary of State may specify in a direction—

- (a) the criteria about which the Governor must be satisfied before granting leave of absence for the purpose specified in paragraph (1)(a);
- (b) the persons who are to be treated as near relatives of the prisoner; and
- (c) the proceedings, services or ceremonies which a prisoner may attend for the purpose specified in paragraph (1)(b).”.

### **Amendment of rule 97 of the principal Rules**

**41.**—(1) Rule 97 of the principal Rules (inquiry into disciplinary charges) is amended in accordance with paragraph (2).

(2) After paragraph (7), there are inserted the following paragraphs:—

“(8) Where, following an adjournment under paragraph (3), the person who made the adjournment is unable to proceed at the time fixed for the inquiry to recommence, another person (being, as the case may be, the Governor-in-charge, the Deputy Governor, an authorised unit manager or, if none of those is present for the time being in the prison, the most senior officer who is present in the prison at that time) may continue to inquire into the matter.

(9) Paragraph (8) does not apply in any inquiry where, at the time of the adjournment under paragraph (3), evidence had been led, in which case another person as mentioned in paragraph (8) may desert the charge but authorise any officer to bring a new charge in relation to the same suspected breach of discipline.”.

### **Amendment of rule 98 of the principal Rules**

**42.**—(1) Rule 98 of the principal Rules (adjudication of charges) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (2A)—

- (a) for the words “paragraph (x)”, there are substituted the words “paragraph (v) or (x)”;
- (b) for the words “rule 88A”, there are substituted the words “rule 88A or 88B”.

### **Amendment of rule 99 of the principal Rules**

**43.**—(1) Rule 99 of the principal Rules (breaches of discipline occurring immediately before or during transfer) is amended in accordance with the following paragraphs of this rule.

(2) In the heading to the rule, for the words “immediately before or during transfer”, there are substituted the words “before reception into prison”.

(3) After paragraph (2) there are inserted the following paragraphs:—

“(3) If, following a prisoner’s reception on a transfer from another prison, he is charged with a breach of discipline contrary to paragraph (x) of Schedule 3 in circumstances where—

- (a) the controlled drug specified in the relevant charge may have been administered to him before his reception in the prison; but
- (b) the prisoner was detained in a prison throughout the period during which the drug might have been administered,

the Governor may deal with that matter in accordance with this Part of these Rules as if the controlled drug, which it is alleged was administered, had been administered whilst the prisoner was in the prison to which he has been transferred.

(4) Where—

- (a) a prisoner who provided a sample in accordance with rule 88A was at that time an untried prisoner;
- (b) the prisoner was detained in a prison throughout the period during which the drug might have been administered;
- (c) following an analysis of the sample there are grounds for believing that he was guilty of a breach of discipline contrary to paragraph (x) of Schedule 3; and
- (d) following the provision of the sample he is convicted and sentenced to imprisonment,

the Governor of the prison to which he is committed following conviction may deal with the charge in accordance with this Part of these Rules irrespective of whether the controlled drug, which it is alleged was administered, had been administered whilst the prisoner was in the prison to which he has been committed.”.

### **Amendment of rule 100 of the principal Rules**

**44.**—(1) Rule 100 of the principal Rules (governor’s punishments) is amended in accordance with the following paragraphs of this rule.

(2) For sub-paragraph (c) of paragraph (1) there is substituted the following sub-paragraph:—

“(c) stoppage of or deduction from earnings for a period not exceeding 56 days and of an amount not exceeding one half of the prisoner’s earnings in any week (or part thereof) falling within the period specified;”.

(3) In paragraph (1)(e), for the words “section 206 of the Criminal Procedure (Scotland) Act 1975”, there are substituted the words “section 208 of the Criminal Procedure (Scotland) Act 1995”.

(4) For paragraph (2) there is substituted—

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

(a) paragraph (1)(e) shall apply in the case of such a prisoner as if it read—

“(e) in the case of an untried prisoner who is committed to prison for examination or trial on any criminal charge, but subject to paragraphs (2) (b) and (3) to (5), an award of additional days not exceeding 14 days;” but

- (b) any such award shall have effect only if such a prisoner subsequently becomes a short-term or long-term prisoner whose sentence commences by virtue of section 210(1) of the Criminal Procedure (Scotland) Act 1995, on a date earlier than the date on which the sentence is passed.”.
- (5) For paragraph (5) there is substituted the following paragraph:–
- “(5) Notwithstanding paragraph (1)(e), where a short-term or long-term prisoner or a person sentenced to be detained under section 208 of the Criminal Procedure (Scotland) Act 1995 (the detention not being without limit of time) is found guilty of a breach of discipline–
- (a) an award of additional days under paragraph (1)(e) shall not exceed one-sixth of his sentence, either–
- (i) in respect of that breach; or
- (ii) when aggregated with the total of any award or awards of additional days which the prisoner or person so detained under section 208 of the said Act of 1995 may have been or is awarded under paragraph (1)(e) or (4);
- (b) no award may be made under paragraph (1)(e) if–
- (i) the breach of discipline was committed before the date on which he was so sentenced; and
- (ii) his sentence did not commence, by virtue of section 210(1) of the said Act of 1995, on or before the date on which the breach was committed.”.
- (6) In paragraph (6), for the words “the medical officer”, there are substituted the words “a medical officer”.
- (7) In paragraph (7)–
- (a) the word “and” where it occurs at the end of head (i) of sub-paragraph (c) is omitted; and
- (b) at the end of head (ii) of sub-paragraph (c) there is inserted–
- “; and
- (iii) sub-paragraph (b) were omitted.”.

#### **Amendment of rule 108A of the principal Rules**

**45.**—(1) Rule 108A of the principal Rules(**13**) (complaints concerning medical treatment) is amended in accordance with the following paragraphs of this rule.

- (2) In paragraph (1)–
- (a) for the words “the medical officer”, there are substituted the words “a medical officer”; and
- (b) for the words “any medical officer”, there are substituted the words “that medical officer”.
- (3) For paragraph (2), there is substituted the following paragraph:–
- “(2) The prisoner shall make the complaint in writing by–
- (a) enclosing the written complaint in a sealed envelope addressed to the medical officer to whom he wishes to complain; and
- (b) giving that sealed envelope to the residential officer, who shall convey the complaint without delay to the medical officer to whom it is addressed.”.
- (4) For paragraph (3), there shall be substituted the following paragraph:–
- “(3) As soon as reasonably practicable after receiving a complaint in terms of paragraph (2), the medical officer to whom it is made shall inform the Governor in writing

that a complaint has been received and thereafter confirm whether the complaint has been satisfactorily resolved.”.

(5) In paragraph (5), for the words “The medical officer”, there are substituted the words “A medical officer who receives a complaint in accordance with this rule”.

(6) In paragraph (7), for the figure “14”, there is substituted “28”.

#### **Amendment of rule 115 of the principal Rules**

**46.**—(1) Rule 115 of the principal Rules (pregnancy and confinement) is amended in accordance with the following paragraphs of this rule.

(2) In paragraph (3)(c), for the words “and the medical officer consider”, there are substituted the words “, on the advice of a medical officer, considers”.

(3) In paragraph (4), for the words “The medical officer”, there are substituted the words “A medical officer”.

#### **Substitution of rule 118 of the principal Rules**

**47.** For rule 118 of the principal Rules (medical examination prior to transfer or release) there is substituted the following rule:—

##### **“Medical assessment prior to transfer or release**

**118.**—(1) A medical officer shall assess every prisoner within a period of 7 days before the time when he is due to be released from prison.

(2) The form of an assessment shall be a matter for the judgment of the medical officer and may include any physical examination as he considers appropriate.

(3) Without prejudice to paragraph (1), a medical officer shall—

(a) examine the medical records of any prisoner who is receiving medical treatment or is for the time being under his supervision; and

(b) where he considers it necessary, or where a request for medical assistance has been made by a prisoner, examine the prisoner,

before that prisoner is taken from prison to any place or released from prison.

(4) No prisoner as mentioned in paragraph (3) shall be taken from prison to any place (other than a hospital in an emergency) unless a medical officer has certified that he is fit to travel.

(5) Subject to paragraph (6), no prisoner as mentioned in paragraph (3) who is due to be released shall be discharged from prison unless a medical officer has certified that he is fit to travel.

(6) Paragraph (5) shall not apply where the prisoner does not consent to remain in prison after the time he is due to be released.”.

#### **Insertion of new rule 119A into the principal Rules**

**48.** After rule 119 of the principal Rules (provision of clothing and return of property on release of prisoner) there is inserted the following rule:—

##### **“Part payment of fines by fine defaulters**

**119A.**—(1) This rule applies to a prisoner who is committed to prison or otherwise detained in a prison for failure to pay a fine imposed by a court.



(2) A prisoner to whom this rule applies may be treated for the purposes of section 220 of the Criminal Procedure (Scotland) Act 1995 as having paid to the Governor any sum in part satisfaction of the fine if the conditions specified in paragraph (3) or, as the case may be, paragraph (4) are fulfilled.

(3) The conditions specified are—

- (a) the sum is in cash and is deposited with the Governor; or
- (b) the sum is paid by means of a cheque and the Governor is satisfied that the further conditions in paragraph (4) are fulfilled.

(4) If the prisoner offers to pay the Governor by means of a cheque, the further conditions are—

- (a) except where a cheque is drawn on an account in the name of a firm of solicitors, the sum does not exceed £50; and
- (b) the cheque is drawn and signed and supported by such other form of identity or guarantee as may be specified in a direction made by the Secretary of State.”.

### **Substitution of rule 120 of the principal Rules**

**49.** For rule 120 of the principal Rules (short home leave, Christmas and summer leave and pre-Training for Freedom leave) there is substituted the following rule:—

#### **“Short Home Leave and Christmas and Summer Leave**

**120.**—(1) In this rule—

- (a) “short home leave” means temporary release from a prison of a prisoner for the purpose of enabling him to visit his home or other approved place for a period not exceeding 48 hours, excluding travelling time; and
- (b) “Christmas and summer leave” means temporary release from a prison of a prisoner for the purpose of enabling him to visit his home or other approved place for a period of up to 5 days, excluding travelling time, at Christmas or during the summer.

(2) On the application of an eligible prisoner and subject to rule 126, the Governor may grant the prisoner short home leave or Christmas and summer leave if he is of the opinion that, having regard to the relevant criteria applicable to the grant of such leave, it is appropriate to do so.

(3) For the purposes of this rule, a prisoner is an eligible prisoner only if at the time of his application he—

- (a) is confined at a prison or in a particular hall of a prison to which this rule applies;
- (b) is either—
  - (i) a life prisoner; or
  - (ii) a prisoner serving a sentence for a term of more than one year and who has served not less than 6 months or one-third of the term of the sentence, whichever expires the later;
- (c) is assigned security category D and has been assigned that category for at least 6 weeks prior to his application; and
- (d) is not disqualified from consideration for any reason specified in rule 124.”.

### **Amendment of rule 123A of the principal Rules**

**50.**—(1) Rule 123A of the principal Rules<sup>(14)</sup> (temporary release for work or educational placements) is amended in accordance with the following paragraphs of this rule.

- (2) For the heading, there are inserted at the end the words “or attendance at medical facilities”.
- (3) In paragraph (1)—
  - (a) at the end of sub-paragraph (a) the word “or” is omitted; and
  - (b) at the end of sub-paragraph (b) the full stop is omitted and the following words inserted:—
    - “; or
    - (c) to attend for treatment at a medical facility outwith the prison.”

### **Amendment of rule 130 of the principal Rules**

**51.**—(1) Rule 130 of the principal Rules (searches of officers and employees) is amended in accordance with the following paragraphs of this rule.

- (2) After paragraph (1) there is inserted the following paragraph:—
  - “(1A) A search under paragraph (1) of any clothing or other article of property belonging to an officer or employee which is being worn or, as the case may be, otherwise in his possession whilst he is in the prison, or which is kept by him in his locker or any other place within the prison, may, in addition to being carried out by hand but subject to paragraphs (2) and (3), be carried out—
    - (a) by the use of equipment involving—
      - (i) the application of a suction device or a swab on or to such possessions in order to collect particles from their surface; and
      - (ii) the analysis of such particles for the purpose of ascertaining whether any consists of a controlled drug or an explosive substance;
    - (b) by the use of equipment designed to detect the existence of metal objects; and
    - (c) in accordance with any such procedures and conditions as may be specified in a direction by the Secretary of State.”
- (3) In paragraph (2)(a), after the word “headgear”, there is inserted the word “footwear”.

### **Substitution of rule 132 of the principal Rules**

**52.** For rule 132 of the principal Rules (code of discipline), there is substituted the following rule:—

#### **“Code of conduct**

**132.**—(1) The Secretary of State may approve a code regulating the conduct and discipline of officers and employees, or such categories of officers and employees as may be specified in the code.

- (2) Any such code may include provision regulating—
  - (a) the procedures which may be invoked where it is suspected that the acts or omissions of an officer or employee may constitute misconduct;
  - (b) the disciplinary action which may be taken against an officer or employee who is found to have misconducted himself; and

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<sup>(14)</sup> Rule 123A was inserted by S.I. 1996/32.

(c) the rights of appeal of any such officer or employee.”.

#### **Insertion of new rule 132A into the principal Rules**

**53.** In Part 16 of the principal Rules (visiting committees) there is inserted before rule 133 (constitution of visiting committees) the following rule:–

##### **“Application of Part 16**

**132A.**—(1) Except as mentioned in the following provisions of this rule, this Part shall apply to visiting committees for prisons and young offenders institutions.

(2) Rule 133A does not apply to visiting committees for prisons.

(3) In the application of this part to young offenders institutions and visiting committees for such institutions–

(a) in rule 134–

(i) paragraph (2) shall not apply; and

(ii) in paragraph (5), the words “required to be” shall be omitted; and

(b) rules 133 and 140A and Schedule 4 and 4A shall not apply.”.

#### **Insertion of new rule 133A into the principal Rules**

**54.** After rule 133 of the principal Rules (constitution of visiting committees) there is inserted the following rule:–

##### **“Minimum number of women members of visiting committees for young offenders institutions**

**133A.** Of the total membership of the visiting committee for each young offenders institution appointed by the Secretary of State under section 19(3) of the Act, not fewer than one third, with a minimum of two, shall be women.”.

#### **Amendment of rule 141 of the principal Rules**

**55.**—(1) Rule 141 of the principal Rules is amended in accordance with the following paragraphs of this rule.

(2) For paragraph (1) there is substituted–

“(1) This rule applies to a person–

(a) who was, at 1st October 1993, serving a sentence of imprisonment for a term of more than 5 days which was imposed before that date or was liable to be detained in pursuance of such a sentence (whether or not he was then absent with or without authority or by reason of admission to bail or otherwise);

(b) who was, at 1st October 1993, serving a sentence of detention in a young offenders institution for a term of more than 5 days which was imposed before that date or was liable to be detained in pursuance of such a sentence (whether or not he was then absent with or without authority or by reason of admission to bail or otherwise);

(c) who was, at 1st October 1993, detained in prison on committal for a term of more than 5 days for contempt of court where the committal was made before that date;

(d) who was transferred to Scotland before 25th October 1996 in pursuance of a warrant issued under the Repatriation of Prisoners Act 1984 and who–

- (i) was still serving a sentence, which was imposed before 1st October 1993 in the country or territory from which he was transferred, on 25th October 1996; and
- (ii) continues to serve that sentence;
- (e) who was transferred to Scotland on or after 25th October 1996 in pursuance of a warrant issued under the said Act of 1984 and who is serving a sentence which was imposed before 1st October 1993 in the country or territory from which he was transferred; or
- (f) who is serving a sentence of imprisonment or of detention in a young offenders institution for a term of more than 5 days which was imposed in another part of the United Kingdom, in any of the Channel Islands or in the Isle of Man before 1st October 1993 and who has been transferred to Scotland by virtue of—
  - (i) an order made under section 26 of the Criminal Justice Act 1961 before 1st October 1997; or
  - (ii) an order made under paragraph 1 of Schedule 1 to the Crime (Sentences) Act 1997 on or after 1st October 1997 in terms of which the transfer is an unrestricted transfer with the meaning of that Schedule.”.
- (3) After paragraph (4) there is inserted the following paragraph:—
 

“(4A) For the purposes of the application of this rule to a person mentioned in paragraph (1)(d) or (e), the reference in paragraph (4) to the person’s sentence shall be construed as a reference to the term included in a warrant under the said Act of 1984 which is equivalent to a sentence.”.

#### **Omission of Schedule 1 to the principal Rules**

56. Schedule 1 to the principal Rules (modification of the Rules in their application to young offenders institutions and young offenders) is omitted.

#### **Omission of Schedule 2 to the principal Rules**

57. Schedule 2 to the principal Rules (security categories) is omitted.

#### **Amendment of Schedule 3 to the principal Rules**

58.—(1) Schedule 3 to the principal Rules (breaches of discipline) is amended in accordance with the following paragraphs of this rule.

(2) For paragraph (i) there is substituted the following paragraph:—

- “(i) has—
  - (i) in his possession, or concealed about his body or in any body orifice, any article or substance which he is not authorised to have or a greater quantity of any article or substance than he is authorised to have; or
  - (ii) in his possession whilst in a particular part of the prison any article or substance which he is not authorised to have when in that part of the prison;”.

(3) In paragraph (v), for the words “or ingests” there are substituted the words “, ingests or conceals inside a body orifice”.

#### **Amendment of Schedule 4 to the principal Rules**

**59.**—(1) Schedule 4 to the principal Rules (Constitution of Visiting Committees) is amended in accordance with the following paragraphs of this rule.

(2) For the entry in relation to Barlinnie, for the words “City of Glasgow”, there are substituted the words “Glasgow City”.

(3) For the entry in relation to Castle Huntly, for the words “Perthshire” substitute the word “Perth”.

(4) For the entry in relation to Friarton, for the word “Perthshire” substitute the word “Perth”.

(5) For the entry in relation to Perth, for the word “Perthshire” substitute the word “Perth”.

#### **Amendment of Schedule 4A to the principal Rules**

**60.**—(1) Schedule 4A to the principal Rules(**15**) (constitution of visiting committees for legalised police cells) is amended in accordance with the following paragraphs of this rule.

(2) For the entry in relation to Campbeltown there is substituted the following entry:—

“CAMPBELTOWN	Argyll and Bute Council	3”.
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(3) For the entry in relation to Oban there is substituted the following entry:—

“OBAN	Argyll and Bute Council	3”.
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(4) For the entry in relation to Lochmaddy there is substituted the following entry:—

“LOCHMADDY	Comhairle nan Eilean Sair	3”.
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(5) For the entry in relation to Stornoway there is substituted the following entry:—

“STORNOWAY	Comhairle nan Eilean Sair	3”.
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#### **Transitional Provision**

**61.** Notwithstanding rule 6 of these Rules, a prisoner whose security category was assigned under rule 12 of the principal Rules before 31st July 1998 shall, on or after that date, be treated as if his security category had been assigned in accordance with Part 2A of the principal Rules as inserted by rule 7 of these Rules.

St Andrew’s House,  
Edinburgh  
30th June 1998

*Henry B McLeish*  
Minister of State, Scottish Office

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

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## EXPLANATORY NOTE

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

These Rules further amend the Prisons and Young Offenders Institutions (Scotland) Rules 1994 (“the principal Rules”).

In addition to minor and drafting amendments the Rules make the following substantive changes. Provisions of the principal Rules regarding medical examination are revised both in relation to the time of admission and of release or transfer (rules 4 and 47). On reception, an examination may take place by a medical officer or someone authorised by him. The examination should take place within 72 hours except where there is any reason to hold it sooner.

New provision is made with respect to the procedures for assigning security categories (rules 6, 7 and 57). The main changes, apart from drafting changes, are to make separate provision for category A cases and new provision regarding prisoners who are transferred from prisons outwith Scotland. In relation to category A cases, the prisoners must be given advance disclosure of the proposal to assign or retain that category and the opportunity to make representations.

Revised provision is made with respect to Part 4 of the principal Rules which reflects the possibility of arrangements for the provision of medical services and medical officers in terms of arrangements made under section 3A of the Prisons (Scotland) Act 1989 (“the 1989 Act”) (which was inserted by section 43(2) of the Crime and Punishment (Scotland) Act 1997 (rules 11 to 19)).

Various provisions of the principal Rules are amended to enable new provision to be made in directions (which are authorised by section 39(8) of the 1989 Act) with regard to money sent to prisoners (rules 21, 22 and 23).

New provision is made with regard to visits to prisoners (rules 24 to 29). The purpose is to make express provision with regard to visits by Members of Parliament, representatives of the European Parliament, the Parliamentary Commissioner for Administration or officers on his behalf and journalists, authors or media representatives. Visits by these persons are therefore to be regulated separately from visits under rule 55 of the principal Rules (visits by persons of a prisoner’s choice) and the entitlement to receive visits in terms of rule 55 is unaffected by visits by the categories of person mentioned above. Provision is also made to extend the matters which a direction under rule 63 of the principal Rules may deal with for the purpose of imposing restrictions and conditions affecting visits taking place in terms of Part 7 of the principal Rules.

The provisions of Schedule 1 to the principal Rules (which set out modifications applicable to young offenders under the Rules as applying to young offenders institutions) have been incorporated into the main text of the principal Rules at the appropriate point with the result that Schedule 1 has been omitted (rules 2, 26, 31, 32, 53, 54 and 56).

Minor amendments are made to rule 80 of the principal Rules (removal from association) (rule 32). This is principally to enable a Governor to permit staged resumption of the entitlement freely to associate with other prisoners.

New provision is made to enable temporary confinement to cell where a prisoner’s behaviour is such that it is appropriate for a short period (not exceeding 30 minutes) to require him to remain in his cell until his behaviour has improved (rule 37).

The provisions of rule 86 of the principal Rules concerning admission and searching of visitors are revised in order to make separate provision regarding admission, searching and removal (rule 38). The provisions incorporate new provision concerning notices by journalists, authors and

media representatives; the use of special equipment for carrying out searches; and removal where undertakings by journalists, authors or media representatives have, or appear to have, been breached.

As a result of the new section 41C of the 1989 Act (which was inserted by section 42 of the Crime and Punishment (Scotland) Act 1997) provision is made for the purposes of section 41C and the testing of prisoners for alcohol (rule 39).

Revised provision is made in regard to escorted leave of absence and temporary release (rules 40, 49 and 50).

Various provisions of Part 10 concerning discipline are amended (rules 41 to 44). There is new provision regarding the jurisdiction of the Governor to deal with cases where the prisoner may have been detained elsewhere when the breach was committed. There is minor revisal of the provisions relating to punishment. There are further minor changes to the categories of breach of discipline in Schedule 3 to the principal Rules (rule 58).

New provision is made to specify the conditions to be fulfilled so as to enable fine defaulters to be treated for the purposes of section 220 of the Criminal Procedure (Scotland) Act 1995 as having made partial satisfaction of the fine (rule 48).

The powers to search officers and employees are revised (rule 51) and revised provision is made with respect to codes regulating the conduct and discipline of officers and employees (rule 52).

The provisions of rule 141 of the principal Rules concerning remission are amended to reflect the provisions of Schedules 1 and 2 to the Crime (Sentences) Act 1997 (rule 55).

Rule 61 makes a transitional provision in relation to security categories.