
SCOTTISH STATUTORY INSTRUMENTS

2000 No. 187

**PRISONS
YOUNG OFFENDERS INSTITUTIONS**

The Prisons and Young Offenders Institutions
(Scotland) Amendment Rules 2000

Made - - - - 14th June 2000
*Laid before the Scottish
Parliament* - - - - 16th June 2000
Coming into force in accordance with rule 1(2)

The Scottish Ministers, in exercise of the powers conferred upon them by section 39 of the Prisons (Scotland) Act 1989(1) and of all other powers enabling them in that behalf, hereby make the following Rules:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2000.

(2) These Rules shall come into force on 7th July 2000 except for rule 22(2) which shall come into force on 28th July 2000.

(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, by the Criminal Justice and Public Order Act 1994 (c. 33) (“the 1994 Act”), sections 116(4) and 130(4) and by the Crime and Disorder Act 1998 (c. 37), Schedule 8, paragraph 71; 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Act Schedule 5, paragraph 6(3)), 19(3) and (4) (as amended by the 1993 Act, Schedule 5, paragraph 6(4)), 24 (which was repealed by the 1993 Act, Schedule 7 but was saved by Schedule 6 to that Act in relation to any “existing prisoner” within the meaning specified in paragraph 1 of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 is also to be read with sections 107(4), 110(7) and 114(3) of the 1994 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). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).
- (2) S.I. 1994/1931, amended by S.I. 1996/32, 1997/2007, 1998/1589, 1998/2504 and 1999/374.

Amendment of rule 3 of the principal Rules

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

(2) In paragraph (1), in the definition of “appellant”—

(a) in paragraph (b), for the words “section 263(1) of the Criminal Procedure (Scotland) Act 1975 or section 124(3) of the said Act of 1995” there are substituted the words “section 124(3) of the Criminal Procedure (Scotland) Act 1995(4) or by the Scottish Criminal Cases Review Commission pursuant to section 194B(1) of the Criminal Procedure (Scotland) Act 1995(5);” and

(b) in sub-paragraph (iii) after the words “Secretary of State” there are inserted the words “or, as the case may be, the Scottish Criminal Cases Review Commission”.

(3) In paragraph (1), in the definition of “Governor” in sub-paragraph (b) after the words “13 to 16” there are inserted the words “and, unless otherwise expressly provided for, in directions made under rules 51(3)(b), 52(2), 54(2), 63(3) and 74”.

Amendment of rule 18 of the principal Rules

3.—(1) Rule 18 of the principal Rules (entitlement of a prisoner to wear his own clothing)(6) is amended in accordance with the following paragraphs of this rule.

(2) In the heading, for the words “a prisoner”, there are substituted the words “an untried prisoner”.

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

“(1) Subject to paragraph (2), every untried prisoner may wear his own clothing in prison and on those occasions when he is required or permitted to be outside the prison.”.

(4) In paragraph (2), for the words “Paragraph (1) does not apply to a prisoner where-” there are substituted the words “Paragraph (1) does not apply to an untried prisoner where-”.

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

“(3) Where the Scottish Ministers consider, in relation to any prison to which these Rules apply, that it is not appropriate to permit untried prisoners, or particular categories of untried prisoner, to wear their own clothing in that prison, they may specify in a direction that paragraph (1) shall not apply in relation to any untried prisoner, or any category of untried prisoner, in that prison.”.

Insertion of new rule 18A into the principal Rules

4. After rule 18 of the principal Rules (entitlement of an untried prisoner to wear his own clothing) there is inserted the following rule:—

“Circumstances in which a prisoner other than an untried prisoner may wear his own clothing

18A.—(1) The Governor may permit a prisoner other than an untried prisoner to wear his own clothing in prison and on those occasions when he is required or permitted to be outside the prison.

(3) Rule 3 was amended by S.I. 1996/32, rule 2, S.I. 1998/1589, rule 3 and S.I. 1999/374, rule 3.

(4) Section 124(3) was repealed by the Crime and Punishment (Scotland) Act 1997 (c. 48), Schedule 3.

(5) Section 194B was inserted by the Crime and Punishment (Scotland) Act 1997, section 25.

(6) Rule 18 was amended by S.I. 1999/374, rule 11(2).

(2) In considering whether or not to exercise his discretion in accordance with paragraph (1) above, the Governor shall take into account the matters set out in subparagraphs (a) to (d) of rule 18(2) as well as any other matters that appear to him to be relevant.

(3) A permission given by the Governor may be withdrawn at any time if the Governor considers it appropriate.”.

Amendment of rule 19 of the principal Rules

5.—(1) Rule 19 of the principal Rules (provision of clothing to prisoners)(7) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (1), after the words “rule 18”, there are inserted the words “or rule 18A”.

Amendment of rule 49 of the principal Rules

6.—(1) Rule 49 of the principal Rules (opening and reading of correspondence from and to courts)(8) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (7), for the word “and”, there are substituted the words “, the Scottish Criminal Cases Review Commission and”.

Amendment of rule 62A of the principal Rules

7.—(1) Rule 62A of the principal Rules (visits by Members of Parliament)(9) is amended in accordance with the following paragraphs of this rule.

(2) In the heading there are inserted at the end the words “, members of the Scottish Parliament, and representatives of the European Parliament”.

(3) In paragraphs (1), (2) and (3), after the words “a member of Parliament”, there are inserted the words “, a member of the Scottish Parliament”.

(4) In paragraph (2)(b), after the words “the member of Parliament,” there are inserted the words “member of the Scottish Parliament,”.

Insertion of new rule 62DD into the principal Rules

8. After rule 62D of the principal Rules (visits by members of the Parole Board for Scotland)(10) there is inserted the following rule:—

“Visits by members or employees of the Scottish Criminal Cases Review Commission

62DD.—(1) A prisoner may receive a visit from one or two members or employees of the Scottish Criminal Cases Review Commission for the purpose of assisting the Commission in the exercise of any of its functions.

(2) Where a prisoner receives a visit in terms of this rule —

(a) the visit shall take place within the sight of an officer; but

(b) shall take place outwith the hearing of any officer unless the member or employee of the Commission or the prisoner otherwise requests.”.

(7) Rule 19 was amended by S.I. 1999/374, rule 10(2).

(8) Rule 49 was amended by S.I. 1999/374, rule 15(2).

(9) Rule 62A was inserted by S.I. 1998/1589, rule 28.

(10) Rule 62D was inserted by S.I. 1998/1589, rule 28.

Amendment of rule 70 of the principal Rules

9.—(1) Rule 70 of the principal Rules (work opportunities) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (2)—

(a) the word “and” at the end of sub-paragraph (a) is omitted; and

(b) after paragraph (b) there are inserted the words
“; and

(c) voluntary work outside the prison.”.

Amendment of rule 80 of the principal Rules

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

(2) In paragraph (5) for the words “without the written authority of the Secretary of State”, there are substituted the words “, except where the Scottish Ministers have granted written authority on the application of the Governor, prior to the expiry of the said period of 72 hours”.

(3) For paragraph (6) there is substituted the following paragraph:—

“(6) An authority granted by the Scottish Ministers under paragraph (5) shall have effect for a period of one month commencing from the expiry of the period of 72 hours mentioned in paragraph (5) but the Scottish Ministers may, on any subsequent application of the Governor, renew the authority for further periods of one month commencing from the expiry of the previous authority.”.

(4) After paragraph (8) there is inserted the following paragraph:—

“(8A) The Governor may allow a prisoner who has been removed from association under this rule to associate with other prisoners who have been removed from association under this rule, for the purpose of engaging or taking part in a prescribed activity.”.

Amendment of rule 85A of the principal rules

11.—(1) Rule 85A of the principal Rules (temporary confinement to cell)(**11**) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (2), for the words “half an” there is substituted the word “one”.

Amendment of rule 91 of the principal Rules

12.—(1) Rule 91 of the principal Rules (special escorted leave)(**12**) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (3)(c)(ii) the words “a life prisoner” are omitted.

Amendment of rule 95 of the principal rules

13.—(1) Rule 95 of the principal Rules (reports of breaches of discipline and removal from association)(**13**) is amended in accordance with the following paragraphs of this rule.

(11) Rule 85A was inserted by S.I. [1998/1589](#), rule 37.

(12) Rule 91 was amended by S.I. [1996/32](#), rule 21.

(13) Rule 95 was amended by S.I. [1996/32](#), rule 23(a) and 23(b).

(2) In paragraph (3), for the words “the written authority of the Scottish Ministers”, there are substituted the words “, on the application of the Governor, the written authority of the Scottish Ministers has been obtained prior to the expiry of the 72 hour period”.

(3) In paragraph (4), for sub-paragraph (a), there is substituted the following sub-paragraph:—

“(a) have effect for a period of one month commencing from the expiry of the said period of 72 hours but the Scottish Ministers may, on any subsequent application of the Governor, renew the authority for further periods of one month commencing from the expiry of the previous authority.”.

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

“(5) 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 100 of the principal Rules

14.—(1) Rule 100 of the principal Rules (Governor’s punishments)(**14**) is amended in accordance with paragraph (2) of this rule.

(2) In rule 100(1)(g), for the words “a prisoner”, there are substituted the words “an untried prisoner”.

Amendment of rule 100A of the principal Rules

15.—(1) Rule 100A of the principal Rules (awards of additional days)(**15**) is amended in accordance with the following paragraphs of this rule.

(2) In paragraph (6), after the words “total awarded”, there are inserted the words “at the inquiry”.

(3) After paragraph (8) there is inserted the following paragraph:—

“(9) Where an award or awards of additional days have effect by virtue of paragraph (8) and the award or the aggregate of the awards exceeds one-sixth of the prisoner’s sentence, the award or the aggregate shall be deemed to be one-sixth of the prisoner’s sentence.”.

Amendment of rule 120 of the principal Rules

16.—(1) Rule 120 of the principal Rules (short home leave and Christmas and summer leave)(**16**) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (3)(a), after the words “particular hall”, there are inserted the words “or part”.

Amendment of rule 120A of the principal Rules

17.—(1) Rule 120A of the principal Rules (local leave)(**17**) is amended in accordance with paragraph (2) of this Rule.

(2) In paragraph (3)(a), after the words “particular hall”, there are inserted the words “or part”.

(14) Rule 100 was substituted by S.I. 1998/2504, rule 3.

(15) Rule 100A was inserted by S.I. 1998/2504, rule 3.

(16) Rule 120 was substituted by S.I. 1998/1589, rule 49.

(17) Rule 120A was inserted by S.I. 1996/32, rule 41.

Amendment of rule 121 of the principal Rules

18.—(1) Rule 121 of the principal Rules (long home leave)(**18**) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (3)(a), after the words “particular hall”, there are inserted the words “or part”.

Amendment of rule 123A of the principal Rules

19.—(1) Rule 123A of the principal Rules (temporary release for work or educational placements or attendance at medical facilities)(**19**) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (1)—

(a) the word “or” at the end of sub-paragraph (b) is omitted; and

(b) after sub-paragraph (b) there is inserted the following sub-paragraph:—

“(bb) to undertake unescorted voluntary work outside the prison in terms of rule 70; or”.

Amendment of rule 126 of the principal Rules

20.—(1) Rule 126 of the principal rules (direction with respect to temporary release)(**20**) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (a), after the words “halls within”, there are inserted the words “or parts of”.

Amendment of rule 141 of the principal Rules

21.—(1) Rule 141 of the principal Rules (remission of sentence or period of detention)(**21**) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (1)(f)(ii), for the word “with”, there is substituted the word “within”.

Amendment of Schedule 4 to the principal Rules

22.—(1) Schedule 4 to the principal Rules(**22**) (constitution of visiting committees) is amended in accordance with the following paragraphs of this rule.

(2) The entry relating to Dungavel is omitted.

(3) For the entry relating to Perth there is substituted the following entry:—

“PERTH	Perth and Kinross Council	10	4
	Dundee City Council	5	2”.

(4) The entries relating to Friarton, Longriggend and Penninghame are omitted.

Savings and transitional provisions

23.—(1) In this rule—

(18) Rule 121 was amended by S.I. 1996/32, rule 42.

(19) Rule 123A was inserted by S.I. 1996/32, rule 44.

(20) Rule 126 was amended by S.I. 1996/32, rule 46.

(21) Rule 141 was amended by S.I. 1998/1589, rule 55.

(22) Schedule 4 was substituted by S.I. 1996/32, rule 55, Schedule 2

“existing visiting committees” means the visiting committees for Longriggend, Penninghame and Dungavel prisons;

“the discontinuance date” means 7th July 2000 in the cases of Longriggend and Penninghame prisons and 28th July 2000 in the case of Dungavel prison; and

“the relevant date” means 9th October 2000 in the case of Longriggend and Penninghame prisons and 30th October 2000 in the case of Dungavel prison.

(2) Notwithstanding the amendments made by rule 22 above, the provisions of rule 133(1) to (4) of, and Schedule 4 to, the principal Rules, as in force immediately before the discontinuance date, shall continue to have effect until the relevant date in relation to the existing visiting committees for the purposes set out in paragraphs (4) and (5) below and accordingly until the relevant date—

- (a) the existing visiting committees shall continue to exist;
- (b) each of the members of the existing visiting committees shall (unless he otherwise ceases to hold office) remain in office;
- (c) the chairman and deputy chairman of, and the clerk to, each of the existing visiting committees shall (unless he otherwise ceases to hold his appointment) continue to hold his appointment; and
- (d) so far as relating to any of the existing visiting committees and to a member thereof, references in Part 16 of the principal Rules to a visiting committee or a member of a visiting committee shall be construed as references to an existing visiting committee or a member thereof.

(3) Where before the discontinuance date—

- (a) any of the existing visiting committees has undertaken any inquiry in terms of rule 135(2) (a) of the principal Rules in relation to the condition of any prisoner and has not concluded that inquiry and made a report in relation to it by the discontinuance date;
- (b) any of the existing visiting committees has received a complaint by a prisoner in terms of rule 136(1) of the principal Rules and has not concluded its hearing and investigation of the complaint by the discontinuance date; or
- (c) a member of any of the existing visiting committees has received a complaint by a prisoner in terms of rule 136(1) of the principal Rules and has not concluded his hearing and investigation of the complaint by the discontinuance date,

the visiting committee for the prison that the prisoner is detained in on the discontinuance date shall deal with the inquiry, hearing or investigation, as the case may be, as if that committee had been asked to make the inquiry and report or had received the complaint from the prisoner and shall conclude that inquiry, hearing or investigation whether or not the prisoner is subsequently transferred to another prison.

(4) The minute book and any other documents held by or on behalf of any of the existing visiting committees shall transfer to the Scottish Ministers on the discontinuance date and the chairman of the existing visiting committees shall make such arrangements as are necessary to ensure that the minute book and any such documents are delivered to the Scottish Ministers before the relevant date.

(5) Before the relevant date, each of the existing visiting committees shall—

- (a) so far as reasonably practicable, make, or conclude the making of the annual report for the relevant prison in respect of the period of 12 months ending on 31st March 2000 and shall deliver that report to the Scottish Ministers; and
- (b) in the case of the existing visiting committees for Longriggend and Dungavel, make a report to the Scottish Ministers on the matters specified in rule 139(1) and any other matters that appear to it to be relevant in respect of the period from 1st April 2000 until the date of discontinuance, and deliver that report to the Scottish Ministers.

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St Andrew's House,
Edinburgh
14th June 2000

ANGUS MACKAY
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules further amend the Prisons and Young Offenders Institutions (Scotland) Rules 1994 (S.I.1994/1931) (“the principal Rules”).

In addition to minor and drafting amendments the Rules make the following substantive changes.

Amendments are made to the definition of appellant and the provisions in the principal Rules about prisoners' correspondence and visits to prisoners (rules 2, 5 and 8). The amendments take account of the establishment of the Scottish Criminal Cases Review Commission.

The definition of “Governor” is amended to clarify the definition applicable under directions made under particular rules (rule 2).

An amendment is made to rule 18 of the principal Rules (prisoners' own clothing) which has the effect that only untried prisoners are entitled to wear their own clothing (rule 3). New provision is made in relation to other prisoners, by inserting new rule 18A which provides that, for those prisoners, it is for the Governor to decide if the prisoner should be permitted to wear his own clothing (rule 4). There are consequential amendments to rules 19 and 100 (rules 5 and 14).

Rule 62A of the principal Rules is amended to make provision for visits to prisoners by members of the Scottish Parliament (rule 7).

An amendment is made to rule 70 of the principal Rules (work opportunities) extending the range of work the Governor may provide to include voluntary work outside the prison (rule 9). A similar amendment is made to rule 123A of the principal rules (temporary release for work or educational placements or attendance at medical facilities) extending the purposes for which the Governor may grant temporary release to include unescorted voluntary work outside the prison (rule 19).

Amendments are made to rule 80 of the principal Rules (rule 10). The amendments provide that the period of time that a prisoner may continue to be removed from association under the first and any subsequent authorities granted by the Scottish Ministers is one month. New provision is also made, by inserting new paragraph 8A giving the Governor a discretion to allow prisoners who have been removed from association under rule 80(1) to associate with each other for the purpose of engaging or taking part in a prescribed activity.

An amendment is made to rule 85A of the principal Rules to extend the maximum period in which a prisoner may be temporarily confined to his cell or room from half an hour to one hour (rule 11).

Rule 95 of the principal Rules is amended (rule 13). The amendments provide that the period of time that a prisoner may continue to be removed from association under the first and subsequent authorities granted by the Scottish Ministers following a suspected breach of discipline is one month. The amendments also require a medical officer to visit the prisoner as soon as practicable and thereafter at least once in every seven days.

An amendment is made to rule 100A of the principal Rules to deal with the situation in which an untried prisoner who has been found guilty of a breach of discipline and received an award of additional days is subsequently sentenced to imprisonment or sentenced to detention under section 208 of the Criminal Procedure (Scotland) Act 1995. At present, rule 100A(8) allows the punishment to have effect but under rule 100A(5) an award of additional days cannot exceed one-sixth of the prisoner's sentence. Accordingly, the award of additional days falls if it exceeds one-sixth of the prisoner's sentence. The amendment provides that in those circumstances, the award

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will be deemed to be one-sixth of the prisoner's sentence thereby enabling the punishment to have effect (rule 15).

An amendment is made to Schedule 4 to the principal Rules to increase the membership of the visiting committee of Perth and omit the reference to the visiting committee of Friarton to reflect the merger of Friarton Prison with Perth Prison on 13th December 1999. An amendment is also made to omit the references to the visiting committees of Dungavel, Longriggend and Penninghame to reflect the discontinuance of these prisons on 7th July 2000 (Longriggend and Penninghame) and 28th July 2000 (Dungavel) under the Discontinuance of Prisons (Scotland) Order 2000 (rule 22). Rule 23 makes saving and transitional provisions in relation to the visiting committees for the prisons that are to discontinue.

Minor drafting amendments are made to rules 91, 120, 120A, 121, 126 and 141 of the principal Rules (rules 12, 16 to 18, 20 and 21 respectively).