

EXECUTIVE NOTE
THE PRISONS AND YOUNG OFFENDERS INSTITUTIONS (SCOTLAND) RULES 2011

SSI 2011/331

The Prisons and Young Offenders Institutions (Scotland) Rules 2011 (“the Rules”) were made in exercise of the powers conferred by section 39 of the Prisons (Scotland) Act 1989 and various other powers. The Rules replace The Prisons and Young Offenders Institutions (Scotland) Rules 2006 (“the 2006 Rules”) and they are subject to negative procedure.

Policy Objectives

The Rules set out provisions relating to the management and regulation of prisons and young offenders institutions and various matters concerning those who are required to be detained in these institutions (such as their treatment, discipline and categorisation). The Rules have been drafted following a fundamental review of the 2006 Rules which aimed to ensure that the Rules comply with the law; reflect current Scottish Prison Service (SPS) policy and practice and are clearly written.

While the structure of the Rules reflects the 2006 Rules, the language of the Rules has been modernised and a number of significant changes have been made from the terms of the 2006 Rules. A summary of the key changes being made from the 2006 Rules is attached at Annex 1. The most significant changes relate to the Health and Welfare and Requests and Complaints parts of the Rules.

Health and Welfare

Responsibility for the provision of prisoners’ healthcare will transfer from Scottish Ministers to Health Boards on 1 November 2011. This means that it will no longer be appropriate that healthcare provisions feature in the same level of detail in the Rules as they did previously in the 2006 Rules. The approach taken in the Rules in relation to prison healthcare is to remove all duties on healthcare staff as they will no longer be employed directly by the Scottish Ministers. These provisions will be covered in a direction and guidance made under health legislation. The main policy objective behind the health and welfare provisions of the Rules is to ensure that Governors can take action based on the advice of healthcare professionals in order to safeguard the wellbeing of prisoners.

Requests and Complaints

The prisoner complaints system has been redesigned to take account of the Scottish Public Ombudsman (SPSO) best practice model. The SPSO took over responsibility for prisoner complaints in October 2010 and SPS has worked with them and with Governors to design a revised complaints procedure. The new complaints system involves a two stage process whereby prisoners complain to their residential first line manager with a further referral to the internal complaints committee if the prisoner so chooses. The policy objective in relation to the new complaints system is to ensure early resolution of prisoner complaints and to involve front line staff in the process from an early stage.

Consultation

A public consultation took place from 21 March 2011 – 10 June 2011. The consultation report is published on the SPS website and contains a full list of the bodies consulted together with a list of those who responded and who agreed to the release of this information. The Annex to the consultation report sets out the SPS response to all issues raised by respondents.

The organisations which responded to the consultation include: The Scottish Public Services Ombudsman, the Association of Visiting Committees, Families Outside, The Law Society of Scotland, The Prison Reform Trust, NHS Boards, Prisoners and the SPS Trade Union Side.

Impact Assessment

An equality impact assessment, which incorporates key elements of the child impact assessment as recommended by the Children's Commissioner, has been completed on the draft SSI and is attached at Annex 2. One of the key issues which emerged from both the consultation and the equality impact assessment was prisoners' ability to understand the Rules given poor literacy levels within the prison population. SPS therefore intends to produce an easy to read guide to the Rules to assist prisoners in understanding the Rules. SPS will also translate the guide into a number of languages together with key parts of the Rules.

It was also identified during the drafting of the Rules and the equality impact assessment that the Prisons (Scotland) Act 1989 requires to be modernised as it applies to the practising of religion in prison in order to reflect multi-cultural Scotland. This change to primary legislation will be pursued when an appropriate Bill is identified. In the meantime the chaplaincy teams in prisons will continue to work together to ensure that prisoners receive appropriate pastoral care relevant to their religion or belief.

Financial Effects

The Cabinet Secretary for Justice confirms that no Business and Regulatory Impact Assessment is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Prison Service

September 2011

ANNEX 1

Summary of key changes in the Prisons and Young Offenders Institutions (Scotland) Rules 2011 (the Rules)

Background

The Rules were last comprehensively reviewed in 1994 although they were consolidated in 2006 to incorporate a number of amendments that had been made between 1994 and 2006.

The majority of the changes to the Rules focus on modernising the language and rearranging some of the parts of the Rules so that they flow more logically. However there are two areas of the Rules that have been changed significantly, namely Part 5 and Part 12.

Part 5 - Health and Welfare

The most significant changes relate to the removal of many of the previous provisions for healthcare both within Part 5 of the Rules and elsewhere in the Rules. This is because responsibility for the healthcare of prisoners will pass to Health Boards on 1 November 2011 and it will no longer be appropriate that healthcare provisions feature in the same level of detail in the Rules. These provisions will be covered in a direction and guidance made under health legislation.

Part 12 - Requests and Complaints

The Scottish Public Services Ombudsman (SPSO) took over responsibility for dealing with prisoner complaints from the Scottish Prisons Complaints Commissioner in October 2010. The Rules relating to prisoner complaints have therefore been amended to bring them in line with the SPSO's best practice. Both the SPCC and the SPSO were fully consulted on changes to this part of the Rules.

Changes to the 2006 Rules

The main differences between the 2006 Rules and these Rules are set out below.

Part 1 –General

There are minor changes and additions to this part of the Rules that reflect the main changes elsewhere in the body of the Rules themselves. The definition of Medical Officer has been deleted as that term is no longer used in the Rules. Various other defined terms have been changed or added to reflect changes made to the remainder of the Rules.

Part 2 –Reception, Records, Categorisation and Allocation

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
Title	The title of this Part of the 2006 Rules referred to "classification".	The title of this part has been changed to Reception, Records, Categorisation and Allocation.
9. Procedure on reception of prisoners	9(4): Subject to paragraph (5), every prisoner shall be required by an officer to take a hot bath or shower.	9(4): This rule now provides that an officer may (a) order that a prisoner must take a shower or bath; or (b) on the advice of a healthcare professional, order that a prisoner must not take a shower or bath.

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
	(9)(3): The Governor may deliver....any prohibited article in the possession of the prisoner to the police.	9(3): This rule has been changed to reflect that prohibited articles in the possession of the prisoner should be dealt with in accordance with Rule 104.
10. Interview and medical examination of prisoners on reception	10(2) placed an obligation on medical officers to conduct a medical examination of prisoners on reception.	Paragraph (2) of old rule 10 has been deleted. This provision will be covered in a direction and guidance made under health legislation.
11. Information to be given to prisoners on reception	11(6): On reception every prisoner shall be provided with information in writing by the Governor concerning the following matters.....	11(6): The words “in writing” have been deleted and reliance placed on Rule 11 (8) which reads: “The information to be provided to any prisoner in terms of this rule must be provided in a manner which enables the prisoner to understand it.”.
12. Registration and records of prisoners	<p>12(1) As soon as may be reasonably practicable following reception the following particulars of every prisoner shall be recorded by the Governor insofar as the Governor considers they are relevant to the identification and management of that prisoner.....</p> <p>12(8): The Governor shall ensure that information recorded in terms of this rule is kept confidential.</p>	<p>12(1): This rule allows data to be recorded “for the prevention or detection of crime” and now allows for a prisoner’s biometric data to be taken (rather than limiting such information to fingerprints). A definition of biometric data is contained in Rule 2.</p> <p>12(1)(d): This provision allows the Governor to record details of the prisoner’s next of kin or emergency contacts.</p> <p>12(4): This rule provides for the destruction of photographs and biometric data as soon as practicable for those prisoners listed at paragraph 3 unless the Governor or Scottish Ministers consider retention of the prisoner’s photograph or biometric data to be necessary for the efficient operation of prisons. In such circumstances retention must not exceed 24 months from the date of the prisoner’s release.</p> <p>12(5): This rule adds a Direction making power as follows: “The Governor must ensure that information recorded in terms of this rule is recorded, stored, updated, disclosed and destroyed in accordance with such conditions as may be specified in a direction by the Scottish Ministers”</p>
N/A	N/A	13: This is a new rule about recording data about a prisoner’s religion
13. Classification of prisoners		14: The term classification has been deleted throughout this rule and the term category or categorisation used instead.

Part 3 - Supervision Levels

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
16. Supervision levels	N/A	17(2): This is a new provision which makes it clear that the supervision levels assigned to prisoners do not reflect the risk or danger a prisoner may pose when on temporary release from a prison
17. Assignment of supervision levels	17(8) Provides for a review of prisoner's supervision level within 6 months and then at least once in every period of 12 months.	19(1): This rule provides for a review of a prisoner's supervision level within 6 months and then at least once in every period of 12 months for prisoners assigned medium or high supervision level.
21. Reviews of imposition of special security measures	21(1) provides for a review of special security measures at least once in every period of 6 months.	25(1): This rule reduces the review period to 2 months
N/A	N/A	27(3): This is a new rule which makes it explicit that the Governor must comply with the obligations to disclose information prior to making their decision

Part 4 - Accommodation, clothing, hygiene and food

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
22 Accommodation of prisoners in cells and rooms 23. Standard of accommodation 27. Provision of clothing to prisoners 30. Personal hygiene	Various provisions in each of these rules relating to the duties of medical officers.	References to "medical officer" throughout these particular rules have been removed to provide that the Governor now takes certain action following a recommendation from a healthcare professional. The duties on healthcare professionals will be covered in a direction and guidance made under health legislation.
22. Accommodation of prisoners in cells and rooms	N/A	28: This rule includes a new provision that the Governor must carry out a risk assessment where prisoners are required to share a cell.
28. Change of clothing	28(2) outlines what may be specified in a direction about the frequency of changing socks and underwear	33(5): This provision limits the period that a direction can be in place to a period not exceeding a month.
29. Prisoners' food	29(2) outlines what may be in a direction about food and drink (when there are exceptional circumstances in a prison)	35(5): This limits the period that such a direction can be in place to a period not exceeding a month
30. Personal Hygiene	30(2) provides that there should be access at reasonable times to facilities to enable a prisoner to shower or bathe at least twice a week.	34: This rule provides for access at reasonable times to enable a prisoner to wash and shower on a daily basis where adequate arrangements can be made. Rule 34(1)(b) goes on to provide that where adequate arrangements cannot be made the prisoner must be allowed to bathe or shower at least every other day.

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
		34(3): This is a new provision that provides that an officer may (a) order that a prisoner must take a shower or bath or (b) on the advice of a healthcare professional order that a prisoner must not take a shower or bath.

Part 5 – Health and Welfare

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
31. Smoking	No prisoner shall smoke in prison except.....where rule 22(2) applies, in a cell or room in which that prisoner is accommodated and which the Governor designates as a smoking area in accordance with a direction given by the Scottish Ministers	36(2): This rule has been changed to provide that “Prisoners must not smoke in a cell or room which.....has been designated by the Governor as a non-smoking cell or room in accordance with a direction given by the Scottish Ministers” 36(3): This is a new provision that provides that no person may smoke within the facilities provided in a prison for mothers and babies.
33 General duty of medical officers to attend prisoners 39 Transfer to hospital for treatment for mental disorder 40 Records of mental treatment	Various duties on medical officers.	These rules have been deleted from the Rules. These provisions will be covered in a direction and guidance made under health legislation.
37 Duty of medical officer to notify certain matters	Various duties on medical officers.	40: This Rule has been changed to reflect that the Governor must give effect to a recommendation from a healthcare professional without delay. The balance of rule 37 has been deleted. These provisions will be covered in a direction and guidance made under health legislation.
N/A	N/A	41: This is a new Rule that sets out the circumstances where a Governor can order a prisoner to be accommodated in specified conditions on health grounds. The corresponding obligations on healthcare professionals will be covered in a direction and guidance made under health legislation.
42. Visits to untried and civil prisoners	Untried and civil prisoners could request their own chosen medical or dental practitioner to visit them.	This rule has been deleted.

Part 6 - Religion

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
Part 6 in general	N/A	The language in Part 6 has been modernised and this Part no longer provides duties for members of the chaplaincy team.

Part 7 – Privileges and Prisoners’ Property

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
48. Possession of tobacco by untried and civil prisoners	This rule permitted untried and civil prisoners to have tobacco in their cell.	This rule has been deleted. Governors can set out the arrangements for the possession of tobacco within the system of privileges described at rule 45(2).
50. Personal property of prisoners	This rule covered the items of a prisoner’s property which could be received into prison.	46: A definition of personal property is added in this rule.
52. Personal property of prisoners in rooms or cells	This rule covered the prisoner’s entitlement to keep items in their cell and the Governor’s power to refuse certain items.	47: This expands old rule 52 and provides at 47(4) that the Governor may, where practicable, provide secure lockers within a prisoner’s cell to enable a prisoner to store medication and personal property.
N/A	N/A	49: This is a new rule which sets out how the Governor will dispose of personal property
N/A	N/A	50: This is a new rule which sets out the Governor’s powers to deal with unclaimed property after the prisoner leaves prison.

Part 8 - Communications

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
General layout	This part of the 2006 rules was contained under one heading.	This part has been divided into 2 sections with the first section covering prisoners’ correspondence and other communications and the second covering prison visits.
56. Prisoners’ correspondence	This rule set out a prisoner’s entitlement to send and receive correspondence.	54(2): This is a new part of this rule which clarifies that prisoners do not have any right to send or receive electronic communications.
57 - 60. Correspondence with courts & legal advisors and other restrictions	These rules set out the restrictions on opening and reading certain of the prisoner’s correspondence.	55-59: These rules have been expanded to set out more clearly the circumstances and conditions under which a letter or package may be opened and, once opened, read.
57. Opening and reading of correspondence from and to courts	57(7) defines “court”	56(6): The definition of court has been expanded in this rule.

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
N/A	N/A	58: This is a new rule which applies to correspondence between a prisoner who has a life-threatening illness and a registered medical practitioner. This new rule essentially provides the same safeguards as correspondence with the courts and legal advisers.
N/A	N/A	59: This is a new rule which provides for certain forms of correspondence specified by Ministers to be treated as privileged.
N/A	N/A	60: This is a new rule which indicates that any person who does not want to receive any communication from a prisoner may make a request to the Governor and the Governor must take all reasonable steps to prevent any communication from the prisoner to that person.
62. Communication by telephone	This rule set out the restrictions which could be applied to a prisoner's right to use a telephone.	62(4): This rule adds a provision that the reasons for refusing the use of or restricting the use of a telephone must be given in writing if the prisoner so requests.
63. Visits by persons of a prisoner's choice	<p>63(3) provides for visits to young prisoners (young prisoners are defined as under 16 years of age)</p> <p>63(6) provides a direction making power in relation to reducing visits due to circumstances in the prison</p> <p>63(8) provides for visits on a personal basis from persons who are/were journalists, authors or media representative</p>	<p>This part of the rule has been deleted as children under 16 cannot be sent to prison or young offenders institutions following the commencement of section 64 of the Criminal Justice and Licensing (Scotland) Act 2010.</p> <p>63(7) is a new provision which limits the duration a direction to one month. After one month Scottish Ministers must reconsider the circumstances before any further direction is made</p> <p>63(8) This rule has been deleted.</p> <p>63(3) sets out that any prisoner that does not use the full allowance of visits within 28 consecutive days shall lose the right to receive the unused visits. The exception to this being where the prisoner has obtained the permission of the Governor to accumulate visits under Rule 65.</p> <p>63(5)(b) changes old rule 63(4)(b) to within the hearing of an officer unless the Governor authorises otherwise.</p> <p>63(8) is a new Rule that sets out the arrangements for visits from prisoners on</p>

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
	N/A	temporary release from either the same prison or another prison.
64(5). Visits to untried and civil prisoners	64(5) provides a direction making power in relation to reducing visits due to circumstances in the prison.	64 (7) is a new provision that limits the duration of a direction to one month. After one month Scottish Ministers must reconsider the circumstances before any further direction is made.
65 Accumulated visits	This rule set out how a prisoner could accumulate visits to receive them at another prison.	65: This rule has been redrafted to make clear the criteria for such visits. It also adds a limit to how many applications for accumulated visits can be made in any 12 month period. The timescale for eligibility for accumulated visits in terms of sentence length has increased to 14 months.
68. Visits by police constables	68(2)(b) provided that the visit must take place within the hearing of an officer.	68(3): This rule has been changed so that the visit must take place outwith the hearing of an officer unless the prisoner or visitor requests otherwise.
70. Special visits to certain prisoners in connection with further proceedings	70(4)(a) provided that the visit must be outwith the sight of an officer.	70(5): This rule has been changed so that visits from a medical practitioner must be outwith the sight of an officer unless the medical practitioner so requests.
72. Visits by the Parliamentary Commissioner for Administration or officers on their behalf	N/A	72(3) This is a new part of the rule which provides that, with the prisoner's consent, sound recording equipment may be used to record the interview.
73 Visits by journalists, authors or media representatives	N/A	73: This has been re-titled to visits by media representatives.
74. Visits by members of the Parole Board for Scotland	These visits were previously limited to one or two members of the Parole Board.	74(1): the term "one or two members" has been removed and replaced with the word "members".

Part 9 - Work, Education, Earnings and Recreation

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
80. Application of Part 9	80(2) set out how this Part applied to young prisoners.	References to young prisoners have been deleted as children under 16 cannot be sent to prison or young offenders institutions following the commencement of section 64 of the Criminal Justice and Licensing (Scotland) Act 2010.
82. Prisoners' work	82(2)(a): This set out the ability of Governors to excuse prisoners from work on medical grounds in light of the advice of a medical officer.	82(2)(a). The wording has been changed to reflect that the Governor can excuse a prisoner from work on the advice of a healthcare professional. These provisions will also be covered in a direction and guidance made under health legislation.

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
84, 86 & 87. Work opportunities, education and counselling	These rules set out the obligations on Governors to provide opportunities for work, education and counselling to prisoners.	84: The 3 old rules have been restructured into this new rule. The defined term "purposeful activity" has been added to the rule. References to young prisoner have been deleted for the reasons described above.
89. Exercise and time in the open air-	89(1)(a) provided that every prisoner shall be given the opportunity to take exercise for not less than an hour every day and to spend time in the open air. 89(1)(b) provides that every prisoner shall be given the opportunity to take exercise for not less than one hour every day except where a medical officer has not passed the prisoner as fit for admission.	87(1): This rule provides that every prisoner and young offender must be given the opportunity to take exercise or where the weather permits to spend time in the open air for not less than one hour every day. 87(3): This rule provides that where the Governor receives advice from a healthcare professional that a prisoner or young offender is not fit to participate in any activities the Governor may order the prisoner not to participate in the relevant activity. These provisions will also be covered in a direction and guidance made under health legislation.
91. Prohibition on prisoners carrying on any trade, profession or vocation from prison	This rule set out a general prohibition on prisoners carrying on a trade profession or vocation from the prison.	89: This is a new rule which provides that a prisoner is not permitted to retain any monies generated from the sale of any item produced by the prisoner either in the course of the prisoner's work in the prison or in the prisoner's spare time.

Part 10 – Security and Control

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
93. Control of Prisoners	This rule set out when force could be used against a prisoner.	91(2): This rule expands the description of the use of force and 91(3) is a new part of the rule that introduces the requirement for an officer to keep a written record of any use of force.
106 & 109 searching of prisoners	These rules made general provisions relating to the search of a prisoner and his or her cell.	92: This rule provides more detail about how a search of a prisoner, a prisoner's cell and a prisoner's property will be carried out. 92(6) is a new part to the rule that provides that where a search involves the use of equipment, that equipment must be used in accordance with the manufactures instructions. 92(9) clarifies that the power to search includes the power to examine.

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
94 Removal from association	<p>94(2) restricted the Governor to specifying one prescribed activity in the order for removal from association.</p> <p>The prisoner had no entitlement to make representations under rule 94.</p> <p>94(10) placed an obligation on the medical officer to visit the prisoner as soon as practicable (following removal from association) and thereafter as often as is necessary but at least once in every 7 days.</p> <p>94(8) allowed the Governor to permit a prisoner who has been removed from association to associate with prisoners in relation to one prescribed activity.</p>	<p>95(4) is a new provision which allows the Governor to list any number of prescribed activities in the order.</p> <p>95(9) & (10) are new parts to this rule which provide that a prisoner is entitled to make representations to the Governor (against removal from association), where in the opinion of the Governor it is practicable to do so prior to an order being made or prior to the Governor's application to Scottish Ministers to extend the order.</p> <p>Old rule 94(10) has been removed. These provisions will be covered in a direction and guidance made under health legislation.</p> <p>95(13) is a new rule added about the expiry time for extensions granted by Scottish Ministers. That means extensions expire at 23.59 hours on the day falling one month from the expiry of the 72 hour period or a previous extension.</p> <p>95(15) changes old rule 94(8) to enable the Governor to permit association with other prisoners for the purpose of engaging or taking part in any number of activities as may be specified by the Governor.</p>
95 Prohibited articles	95(2) permitted a prisoner to receive alcoholic liquor where prescribed by a medical officer.	102(3) the term "alcoholic liquor" has been removed from the new rule.
97 & 98 Orders as to the use of restraints and conditions of use of restraints	These rules made general provision regarding the use of restraints including the time limit for such use and the action required upon the advice of a medical officer.	<p>96(4), (5) & (6): These rules make a new provision obliging the Governor to consult with a registered medical practitioner regarding the use of restraints.</p> <p>96(6): This is a new provision whereby only persons trained to use a body belt may apply the restraints.</p> <p>96(6)(d) provides that an officer must monitor the prisoner continuously during the period that the prisoner is placed under a restraint.</p>

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
		<p>96(6)(f): This rule reduces the period from 24 hours to 12 hours beyond which the Governor requires the agreement of Scottish Ministers to continue the use of restraints.</p> <p>96(6)(h): This is a new rule that provides that the Governor must advise the registered medical practitioner as soon as reasonably practicable of any matters relevant to the prisoner's health.</p> <p>These provisions will also be covered in a direction and guidance made under health legislation.</p>
99 Temporary confinement in a special cell	This rule set out the power of Governors to order a violent or refractory prisoner to be confined in a special cell.	97(2): This rule provides that the Governor must consider any recommendations made by the healthcare professional. The duty on medical officers to visit a prisoner who is temporarily confined in a special cell has been removed. This provision will be covered in a direction and guidance made under health legislation.
100. Temporary confinement to cell	This rule set out the power of Governors to order a disobedient, disorderly or emotional prisoner to be confined in a cell or room.	98(4): This is a new rule which provides that the officer must inform a supervising officer in writing of the temporary confinement of a prisoner in a cell.
111. Special escorted leave	111(3)(d) provides that "a prisoner serving a sentence for a term of more than one year who has served at least one third of his or her sentence" may be eligible for special escorted leave.	<p>100(3): This rule contains an express obligation on the Governor to assess the risk that the prisoner may escape or pose a danger to the public.</p> <p>The restriction on eligibility for special escorted leave contained in old rule 111(3)(d) has been deleted from new rule 100.</p>
96. Unauthorised property	96(6) provided restrictions on prisoners' right to possess tobacco	103(2): This rule provides that a prisoner may only possess tobacco within the prison where he or she has been authorised to possess tobacco as a privilege granted under rule 45. The reference to the prisoner's age has been deleted.
N/A	N/A	<p>104(2), (3), (4) & (6): These are new provisions which describe how the Governor may deal with a prohibited article or unauthorised property.</p> <p>104(5): This is a new rule that describes how a Governor may deal with a personal communication device.</p>

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
101. Admission of visitors	<p>This rule set out the restrictions which an officer may have applied in granting access to the prison to visitors.</p> <p>101(4) visitors who are/were journalists visiting on a personal rather than professional basis</p>	<p>105(1)(b): This is a new provision whereby, on the request of an officer, a visitor must produce a valid form of identification if so required by an officer.</p> <p>105(2) & (3): These are new provisions allowing a visitor's photograph to be taken and retained with the visitor's consent.</p> <p>Old Rule 101(4) has been deleted in rule 105.</p>
102 Searching of visitors	<p>This rule made general provision about searching visitors and their possessions.</p>	<p>106(1): This rule changes the provision relating to the searching of vehicles and restricts the power to search such vehicles in terms of the Rules to vehicles taken into any restricted area of the prison and restricted area is defined at Rule 106(9)(b).</p> <p>106(5)(e): This is a new provision whereby "the use of trained sniffer dogs under the control of a trained officer" is permitted in order to search visitors.</p> <p>106(6): This is a new rule which provides that any equipment used in a search must be used in accordance with the manufacturer's instructions.</p> <p>106(8)(e): This is a new provision which sets out that if it is necessary to use reasonable force under section 41(2B)(d) of the 1989 Act, the force used must be proportionate to the threat or resistance posed by the visitor.</p> <p>106 (9): This rule clarifies that the power to search includes the power to examine.</p>
104 Searching of persons providing contracted out services	<p>This rule made general provision about searching those performing contracted out services to the prison.</p>	<p>108(1)(a): This is a new provision - healthcare professionals have been added to the searching provisions.</p> <p>108(2): This changes the provision relating to the searching of vehicles and restricts the power to search such vehicles in terms of the Rules to vehicles taken into any restricted area of the prison and restricted area is defined at Rule 108(9)(b).</p> <p>108(3)(c): This provision clarifies that the use of reasonable force is permitted where it is necessary to do so and such force must be reasonable and proportionate to the</p>

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
		<p>threat or resistance posed by the person being searched.</p> <p>108(5)(e): This is a new provision whereby trained sniffer dogs under the control of a trained officer can be used to search.</p> <p>108(6): This is a new rule which provides that any equipment used has to be used in accordance with the manufacturer's instructions.</p> <p>108(8)(d): This is a new provision which sets out that if it is necessary to use reasonable force under section 41(2B) (d) of the 1989 Act, the force used must be proportionate to the threat or resistance posed by the person being searched.</p> <p>108(9): This provision clarifies that the power to search includes the power to examine.</p>
105: Viewing of prisons	This rule sets out the restrictions applicable to those who wish to view a prison.	109(2)(b) is new provision prohibiting those viewing the prison from making any live or recorded broadcast.

Part 11 - Discipline

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
114. Reports of breaches of discipline and removal from association	114 (2) –(5) sets out procedures in relation to removal from association pending the making of a report in terms of 114(1).	Old rules 114(2)-(5) have been deleted.
N/A	N/A	112(4): This is a new rule which provides that breaches of discipline committed in another prison may be charged but only in accordance with Rule 116.
116 & 117 Inquiry into disciplinary charges; Adjudication of charges	These rules set out general provisions in relation to the disciplinary process following the making of a disciplinary charge.	<p>113(2): This is a new rule which defines disciplinary hearing.</p> <p>113 (10) & (11) expands on the provisions of old rule 117(1) &(2)</p> <p>113 (14): This is a new rule which provides that the Governor must inform the prisoner whether the prisoner has been found guilty or not guilty of the breach of discipline charged.</p>

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
		113(15): This is a new rule which provides that before the Governor determines whether a punishment is appropriate he/she must consider whether the breach of discipline is aggravated because it contains an element of discrimination.
119 Punishment	119(3)(a) the Governor must inform a medical officer as soon as possible after cellular confinement is imposed.	114(2): This is a new rule which provides that the Governor must consider whether the breach of discipline was aggravated in terms of rule 113(15)(a) in setting the level of punishment. 114(4): This changes the approach of old rule 119(3)(a) so that a healthcare professional must be informed instead of a medical officer. This provision will also be covered in a direction and guidance made under health legislation.
120 Suspended punishments	This rule made provision for punishments to be suspended and then served following a subsequent breach of discipline.	115(3): This is a new rule which provides definitions of “suspended punishment” and “further punishment”.
118 Breaches of discipline occurring before reception into prison	This rule covered breaches of discipline occurring prior to reception and also breaches of discipline involving controlled drugs.	116 & 117: The two parts of old rule 118 are now contained in separate rules. 116(1): This is a new provision which describes who this rule applies to.
130 & 131 Appeals in relation to disciplinary proceedings; Power of Scottish Ministers to quash findings of guilt and to remit or mitigate punishments	These rules were contained in Part 12 of the 2006 Rules.	These Rules have been moved from Part 12 Requests and Complaints to this Part. 118(2): This is a new rule which defines disciplinary appeals and states that they must be made in writing. 118(3): This is a new rule which provides that the appeal does not suspend that punishment. 118(4)(b)&(c): These are new rules providing that where the disciplinary hearing was chaired by the Governor in Charge, the appeal is to the Scottish Ministers; and where the disciplinary hearing took place in a contracted out prison, the appeal is to the Scottish Ministers. 118(6): This is a new rule which provides that where an appeal is made to the Scottish Ministers in terms of 118(4)(b) or (c) the Scottish Ministers must investigate any

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
		relevant matters in the appeal and provide a written decision to the prisoner within 20 days of the appeal being made.

Part 12 – Requests and Complaints

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
121 Requests to speak to an officer of the Scottish Ministers, a member of the visiting committee, a sheriff or a justice of the peace		120(4): This is a new rule which provides that prisoners who wish to make a complaint to a member of staff of the Scottish Administration must first exhaust all remedies available to the prisoner through the complaints procedure.
123. Complaints to the residential officer	N/A	122: The prisoner complaints process has been changed to reflect SPSO's best practice model, which has 2 stages with an emphasis on early resolution. Old rule 123 has been changed to reflect the revised 2 tier system and there are revised timescales as described at new rules 122(4) – (6). A prisoner who wishes to raise a complaint makes the complaint to the Residential First Line Manager (RFLM) in the first instance.
124. Complaints to the residential unit manager	N/A	This rule has been deleted
125 Referral of complaints to the internal complaints committee (ICC)		<p>123(2): This is a new rule which provides that a referral to the ICC must be made in writing no later than 2 weeks after the RFLM provides a response to the prisoner.</p> <p>123(3): This is a new rule which provides that the Governor must appoint an ICC and it must have 3 members and at least 2 must be officers or employees. This change means that persons other than officers and employees may sit on an ICC.</p> <p>123(9): This rule provides a new time limit of 20 days for the ICC to consider a complaint referred to it by a prisoner and for the Governor to confirm whether he/she endorses or rejects the ICC decision. If the Governor rejects the ICC decision he/she must inform the prisoner of any further action that is proposed in relation to the complaint.</p> <p>123(10) is a new part to the rule that provides that the Governor must inform the prisoner of the process by which the complaint may be referred to the SPSO if</p>

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
		they are not satisfied with the decision.
126 Referral of complaint to the Governor	N/A	This rule has been deleted as the Governor is involved in stage 2 of the complaints process as described at new rule 123.
127 Complaints the Governor in relation to confidential matters	This rule set out a separate process for confidential complaints.	124(6): This is a new rule which provides that the Governor must inform the prisoner of the process by which the complaint may be referred to the SPSO if they are not satisfied with the decision.
128. Complaints concerning medical treatment	This rule set out a separate process for medical complaints.	This rule has been deleted as responsibility for healthcare and healthcare complaints will transfer to Health Boards on 1 November 2011.
130 & 131 Appeals in relation to disciplinary proceedings; Power of Scottish Ministers to quash findings of guilt and to remit or mitigate punishments	See Part 11 above.	New rule 118 which reflects these old rules has been moved to Part 11.
132 Direction with respect to complaints procedures	N/A	125(d): This is a new rule about providing prisoners with assistance in referring a complaint to the SPSO.

Part 13 – Female prisoners

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
133. Separation of male and female prisoners	This rule details the restrictions on accommodating male and female prisoners.	126: This rule clarifies the provisions of old Rule 133 and provides that female prisoners must not share the same accommodation as male prisoners and the respective accommodation for male and female prisoners must, so far as reasonably practicable, be in separate parts of the prison.
134 Pregnancy and confinement		127: This rule sets out the action that a governor must take when he/she is informed by a healthcare professional that a prisoner is pregnant or is likely to give birth before the expiration of her sentence or period of committal. These provisions will also be covered in a direction and guidance made under health legislation. 127(9) this rule provides for the Governor to arrange for the transfer of any prisoner who is pregnant to the hospital out with the prison upon receiving the advice of a healthcare professional. This provision will

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
		also be covered in a direction and guidance made under health legislation.
135. Accommodation of female prisoners' babies	This rule set out the powers of the Governor to decide whether or not a prisoner should be allowed to have her baby with her in prison.	128(5): This is a new rule which provides that the Governor must take into consideration the best interests of the baby and the ability of the prisoner to care for her baby in making a decision under this rule.

Part 14 – Transfer and Discharge of Prisoners

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
137. Medical assessment prior to transfer or release	This rule placed duties on medical officers to assess a prisoner prior to their release.	131: This rule has been amended to reflect that the Governor will seek advice from a healthcare professional regarding a prisoner's fitness to travel prior to ordering the transfer of that prisoner. The balance of provisions in old Rule 137 have been deleted. These provisions will be covered in a direction and guidance made under health legislation.
139. Release of Fine defaulters after payment	139(4) set out the restrictions applicable to payment of fines by cheque.	133(2): This is a new provision whereby the methods of payment may be specified in a direction by the Scottish Ministers.

Part 15 – Temporary Release

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
145 Unavailability of temporary release	(c) in the opinion of a medical officer, suffering from mental disorder; or (d) in the opinion of a medical officer, otherwise unfit.	Part 15 has been restructured. 134(1): This is a new rule which provides that "In this part "temporary release" means any of the forms of temporary release defined in Rule 136. 134(3)(b) provides that prisoners are disqualified from obtaining temporary release if a healthcare professional is of the opinion that they are not fit enough. These provisions will be covered in a direction and guidance made under health legislation. The disqualification of an appellant from being considered for temporary release has been deleted from this rule. 135: This is a new rule which sets out how to apply for different types of temporary

		<p>release. 135(4) is a new rule which provides that the Governor must assess the risk that the prisoner may abscond or pose a danger, or cause harm to the public, when considering whether it is appropriate to grant temporary release to an eligible prisoner.</p> <p>135(5): This is a new rule which provides that the Governor must inform the prisoner in writing of the decision and the reasons for refusing temporary release.</p> <p>135(6): This is a new rule which provides that the Governor may make such arrangements as the Governor considers appropriate for the transport to and from prison of prisoners who have been granted temporary release.</p>
140,142,143,144. Various forms of temporary release	<p>These rules provided for: Short leave and winter and summer leave; Unescorted day release of prisoners assigned low supervision level; Unescorted day release of prisoners assigned low supervision level for compassionate reasons; Temporary release for work etc</p>	136: This is a new rule which defines the various forms of temporary release.
146. Recall of prisoners granted temporary release		137(2): This is a new rule which provides that the Governor must inform the prisoner in writing of the reasons for recalling the prisoner to prison.
147. Direction with respect to temporary release		<p>138(1)(c): This is a new provision which allows the Ministers to specify in a direction “the manner in which the Governor must assess the risk that the prisoner may abscond or pose a danger to the public.</p> <p>138(2): This rule allows Ministers to make different provision for different forms of temporary release in a direction under this rule.</p>

Part 16 – Officers and employees

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
151 Searches of officers and employees	151(4)(a) provided that a search of an officer or employee had to be carried out “by at least 2 officers who shall be of the same sex as the officer or employee being searched.”	<p>142(1)(e): This is a new provision relating to the searching of vehicles taken into any restricted area of the prison and restricted area is defined at 142(8).</p> <p>142(2)(a): This changes old rule 151(4)(a)</p>

		<p>to provide that “..the officer conducting the search must be of the same gender as the person being searched”</p> <p>142(2)(c): This is a new rule which provides that the use of reasonable force is permitted where it is necessary and such force must be reasonable and proportionate to the threat or resistance posed by the person being searched.</p> <p>142(4)(e): This is a new rule which provides that trained sniffer dogs under the control of a trained officer may be used in a search.</p> <p>142(5): This is a new rule which provides that equipment used in a search under paragraphs (4)(b), (c) or (d) must be used in accordance with the manufacturer’s instructions.</p> <p>142(6): This is a new rule which provides that any prohibited articles found in the course of a search may be seized and dealt with in accordance with Rule 104.</p> <p>142(7): This is a new rule which sets out how a search carried out under section 41(2A) of the Act will be undertaken.</p> <p>142(8): This is a new rule which provides that any power to search includes the power to examine.</p>
--	--	---

Part 17 – Visiting Committees

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
155. Constitution of visiting committees	N/A	Very limited changes have been made to Part 17. The language has been modernised.

Part 18 - Supplementary

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
165 Directions	N/A	156(b) and (c): These are new rules which provide that, in directions made under the rules, Ministers may make provision in relation to all prisons, specified parts of prisons, specified prisons, all prisoners or specified classes of prisoners.

Schedules

Previous rule (2006 Rules)	Relevant paragraphs (2006 Rules)	Corresponding new Rule and description of change (2011 Rules)
Schedule 1 Breaches of Discipline		<p>The breaches of discipline have been re-ordered and given a number rather than a letter.</p> <p>There are 2 new breaches of discipline at 22 and 25. 22 is a new offence in relation to prohibited articles and 25 has expanded the existing breach of discipline (u) so that a prisoner can be charged if he or she has taken a substance that is not a controlled drug but is a substance that he or she is not authorised to have.</p>
		Schedules 2 and 3 sets out the constitution of visiting committees for prisons and legalised police cells respectively.
		Schedule 4 formally revokes the 2006 Rules and two other sets of amendment rules.
		Schedule 5 sets out the transitional arrangements in relation to a number provisions in the Rules

ANNEX 2
IMPACT ASSESSMENT PUBLISHING TEMPLATE

ESTABLISHMENT / DIRECTORATE	Prisons Directorate
NAME OF POLICY / FUNCTION	Legal Services Branch
POLICY LEAD	Ruth Sutherland
AIMS OF POLICY or DESCRIPTION OF PRINCIPLES OF FUNCTION	The Prisons and Young Offenders Institutions (Scotland) Rules 2011 are made under section 39 of the Prisons (Scotland) Act 1989 and set out the Rules for the management of prisons.
IS THIS A PROPOSED OR EXISTING POLICY/FUNCTION?	Existing although the 2011 Rules are a new Scottish Statutory Instrument
IS THERE DISCRETION WITHIN THIS POLICY?	Certain rules provide for Governors discretion whilst others set out what will happen.
DATE OF ASSESSMENT	Concluded in August 2011
REVIEW DATE	N/A see below
DATE REVIEW COMPLETED (The policy lead must ensure that the policy/function receives regular review and template updated and published).	August 2011
DATE REPORT PUBLISHED & WHERE	September 2011 on the Scottish Prison Service (SPS) website.

<u>Assessment</u>	
A brief account of how you assessed the possible effects of the policy or function?	<p>The review of the Rules took over 2 years to complete and involved Governors, staff, prisoners and SPS stakeholders. The Rules must comply with the law (including ECHR). The rules were also scrutinised for compliance with equality legislation and a formal impact assessment was carried out both before and after the Rules went out to public consultation. The impact assessment also covered the rights of the child where appropriate.</p>
A summary of the results of your assessment, including the likely impact of the proposed policy promoting equality.	<p>The impact assessment established that the changes made to the Rules were generally positive. The key changes to the Rules can be found on the SPS website.</p> <p>One matter considered during the impact assessment which will require further action was in relation to Part 6 (religion) where the primary legislation (Prisons (Scotland) Act 1989) requires to be modernised. The change to primary legislation will be pursued when an appropriate Bill is found.</p> <p>The Rules contain a provision relating to the elimination of discrimination and this rule incorporates the 9 protected characteristics contained within the Equality Act 2010.</p> <p>Part 13 of the Rules provides that the Governor must consider whether a mother keeping her baby in prison is in the best interests of the baby.</p> <p>The consultation responses highlighted concern in relation to prisoner literacy and therefore whether Rules would be understood as well as difficulties for prisoners who do not speak English. The SPS is currently drafting a guide to the Rules in an easy to read format which will be translated into a number of languages. Key parts of the Rules will also be translated. In addition information on the Prison Rules will be fed into the national prisoner induction package currently under review. These measures are considered to be positively promoting equality.</p>

Any available technical reports, and how to get access to them.	N/A
---	-----

<u>Consultation</u>	
Why you consulted.	The Prison Rules had not been substantially reviewed since 1994. The aim of the review was to ensure the Rules continued to comply with the law; reflected current SPS policy and practice and were clearly written. As well as involving internal stakeholders in the review it was considered essential to carry out a public consultation.
How you went about it	The draft Rules were published on the SPS website together with a summary of key changes. The consultation included third sector organisations with an interest in prisons as well as prisoners themselves.
A summary of the replies	The SPS response to the consultation feedback is published on the SPS website.
Did the consultation lead to an amendment of the Policy?	Yes. The SPS response to the consultation provides the detail of the changes made to the draft Rules. There were a number of changes made to clarify rules in respect of equality issues - rule 1.6 for example was expanded to cover the 9 protected characteristics in the Equality Act 2010. Rule 128 was recast to provide that the Governor must consider the best interests of the prisoner's baby.

<u>Monitoring</u>	
What monitoring processes have been put in place?	SPS and the Scottish Government Legal Directorate monitor relevant case law and where changes to the Rules are required this will be done.
List any systems or methods used (i.e. PR2, SPS People, corporate measure etc).	SPS retain a file relating to proposed rule changes and when any amendments are required these will be taken forward.

<u>Next Steps</u>	
How do you intend to review this impact assessment?	We will keep the Prison Rules under review. We will listen to feedback from prisoners, staff and external stakeholders in considering any changes to the Prison Rules.

Once this Template is completed, please pass to Communications Branch at Calton House for publication on the SPS Web and Intranet sites.