

1989 No. 330

PRISONS

The Prison (Amendment) Rules 1989

<i>Made</i> - - - -	<i>6th March 1989</i>
<i>Laid before Parliament</i>	<i>10th March 1989</i>
<i>Coming into force</i> -	<i>1st April 1989</i>

In exercise of the powers conferred upon me by section 47 of the Prison Act 1952(a), I hereby make the following Rules:

1. These Rules may be cited as the Prison (Amendment) Rules 1989 and shall come into force on 1st April 1989.

2. The Prison Rules 1964(b) shall be amended as follows:

(a) for rule 37(2) there shall be substituted—

“(2) A prisoner’s legal adviser may, subject to any directions given by the Secretary of State, interview the prisoner in connection with any other legal business out of hearing but in the sight of an officer.”;

(b) for rules 47 to 56 there shall be substituted—

“Offences against discipline

47. A prisoner is guilty of an offence against discipline if he—

- (1) commits any assault;
- (2) detains any person against his will;
- (3) denies access to any part of the prison to any officer;
- (4) fights with any person;
- (5) intentionally endangers the health or personal safety of others or, by his conduct, is reckless whether such health or personal safety is endangered;
- (6) intentionally obstructs an officer in the execution of his duty;
- (7) escapes or absconds from prison or from legal custody;
- (8) fails—
 - (a) to return to prison when he should return after being temporarily released under rule 6 of these Rules, or
 - (b) to comply with any condition upon which he is so released;

(a) 1952 c.52; section 47 was extended by section 23(2) of the Criminal Justice Act 1961 (c.39), section 13(5) of the Criminal Justice Act 1982 (c.48) and paragraph 14 of Schedule 8 to the Criminal Justice Act 1988 (c.33); and amended by Schedule 4 to the Criminal Justice Act 1961, section 66(5) of the Criminal Justice Act 1967 (c.80), paragraph 33 of Schedule 8 to the Courts Act 1971 (c.23) and paragraph 7 of Schedule 14 to the Criminal Justice Act 1982. Section 47 of the 1952 Act was also affected by an amendment to section 52(2) of that Act by section 66(4) of the Criminal Justice Act 1967. Paragraph 1 of Schedule 8 to the Criminal Justice Act 1988 contains amendments affecting these provisions.

(b) S.I. 1964/388; relevant amending instruments are S.I. 1971/2019, 1972/1860, 1974/713, 1983/568, 1988/89 and 1421.

- (9) has in his possession—
 - (a) any unauthorised article, or
 - (b) a greater quantity of any article than he is authorised to have;
- (10) sells or delivers to any person any unauthorised article;
- (11) sells or, without permission, delivers to any person any article which he is allowed to have only for his own use;
- (12) takes improperly any article belonging to another person or to a prison;
- (13) intentionally or recklessly sets fire to any part of a prison or any other property, whether or not his own;
- (14) destroys or damages any part of a prison or any other property, other than his own;
- (15) absents himself from any place where he is required to be or is present at any place where he is not authorised to be;
- (16) is disrespectful to any officer or any person visiting a prison;
- (17) uses threatening, abusive or insulting words or behaviour;
- (18) intentionally fails to work properly or, being required to work, refuses to do so;
- (19) disobeys any lawful order;
- (20) disobeys or fails to comply with any rule or regulation applying to him;
- (21) in any way offends against good order and discipline;
- (22) (a) attempts to commit,
 - (b) incites another prisoner to commit, or
 - (c) assists another prisoner to commit or to attempt to commit,
 any of the foregoing offences.

Disciplinary charges

48.—(1) Where a prisoner is to be charged with an offence against discipline, the charge shall be laid as soon as possible and, save in exceptional circumstances, within 48 hours of the discovery of the offence.

(2) A prisoner who is to be charged with an offence against discipline may be kept apart from other prisoners pending adjudication.

(3) Every charge shall be inquired into, in the first instance, by the governor.

(4) Every charge shall be first inquired into not later, save in exceptional circumstances, than the next day, not being a Sunday or public holiday, after it is laid.

Rights of prisoner charged

49.—(1) Where a prisoner is charged with an offence against discipline, he shall be informed of the charge as soon as possible and, in any case, before the time when it is inquired into by the governor.

(2) At any inquiry into a charge against a prisoner he shall be given a full opportunity of hearing what is alleged against him and of presenting his own case.

Governor's punishments

50.—(1) If he finds a prisoner guilty of an offence against discipline the governor may, subject to rule 52 of these Rules, impose one or more of the following punishments:

- (a) caution;
- (b) forfeiture for a period not exceeding 28 days of any of the privileges under rule 4 of these Rules;

- (c) exclusion from associated work for a period not exceeding 14 days;
- (d) stoppage of earnings for a period not exceeding 28 days;
- (e) cellular confinement for a period not exceeding 3 days;
- (f) forfeiture of remission of sentence of a period not exceeding 28 days;
- (g) in the case of a prisoner otherwise entitled to them, forfeiture for any period of the right, under rule 41(1) of these Rules, to have the articles there mentioned;
- (h) in the case of a prisoner guilty of escaping or attempting to escape and who is entitled to it, forfeiture of the right to wear his own clothing under rule 20(1) of these Rules.

(2) If a prisoner is found guilty of more than one charge arising out of an incident, punishments under this rule may be ordered to run consecutively.

Referrals to the Board of Visitors

51.—(1) Where at an inquiry held pursuant to rule 48(3) of these Rules the governor decides that, if the prisoner were found guilty, the punishments provided under rule 50 above would, having regard to the nature and circumstances of the offence, be inadequate, he may refer the charge to the Board of Visitors.

(2) Where a charge is referred to a Board under this rule, the chairman shall summon a special meeting at which not more than five nor fewer than two members shall be present.

(3) The Board so constituted shall inquire into the charge and, if they find the prisoner guilty, they may, subject to rule 52 below, impose one or more of the following punishments:

- (a) caution;
- (b) forfeiture or postponement for any period of any of the privileges under rule 4 of these Rules;
- (c) exclusion from associated work for a period not exceeding 56 days;
- (d) stoppage of earnings for a period not exceeding 56 days;
- (e) cellular confinement for a period not exceeding 56 days;
- (f) forfeiture of remission of sentence of a period not exceeding 120 days;
- (g) in the case of a prisoner otherwise entitled to them, forfeiture for any period of the right under rule 41(1) of these Rules to have the articles there mentioned;
- (h) in the case of a prisoner guilty of escaping or attempting to escape and who is entitled to it, forfeiture of the right to wear his own clothing under rule 20(1) of these Rules.

(4) The Secretary of State may require any charge to which this rule applies to be referred to him, instead of to the Board of Visitors, and in that case an officer of the Secretary of State (not being an officer of a prison) shall inquire into the charge and, if he finds the prisoner guilty, he may impose one or more of the punishments specified in paragraph (3).

(5) If a prisoner is found guilty of more than one charge arising out of an incident, punishments under this rule may be ordered to run consecutively, but in the case of forfeiture of remission of sentence, the total period forfeited shall not exceed 180 days.

Offences committed by young persons

52.—(1) In the case of an offence against discipline committed by an inmate who was under the age of 21 when the offence was committed (other than an offender in relation to whom the Secretary of State has given a

direction under section 13(1) of the Criminal Justice Act 1982 that he shall be treated as if he had been sentenced to imprisonment)–

(a) rule 50 of these Rules shall have effect, but–

(i) the maximum period of forfeiture of privileges under rule 4 of these Rules shall be 14 days; and

(ii) the maximum period of stoppage of earnings shall be 14 days;

(b) rule 51 shall have effect, but the punishments which may be imposed shall be modified as follows:

(i) the maximum period of forfeiture or postponement of privileges shall be 28 days;

(ii) the maximum period of exclusion from associated work and stoppage of earnings shall be 28 days;

(iii) the maximum period of cellular confinement shall be 7 days;

(iv) the maximum period of forfeiture of remission of sentence shall be 90 days; and

(v) the maximum period of forfeiture of remission of sentence, where punishments for more than one charge arising out of an incident are ordered to run consecutively, shall be 135 days.

(2) In the case of an inmate who has been sentenced to a term of youth custody or detention in a young offender institution, and by virtue of a direction of the Secretary of State under section 13 of the Criminal Justice Act 1982, is treated as if he had been sentenced to imprisonment for that term, any punishment imposed on him for an offence against discipline before the said direction was given shall, if it has not been exhausted or remitted, continue to have effect as if made pursuant to rule 50 or 51 of these Rules as the case may be.

(3) In the case of an inmate detained in a prison who, by virtue of paragraph 12 of Schedule 8 to the Criminal Justice Act 1988, on 1st October 1988 fell to be treated for all purposes of detention, release and supervision as if his sentence had been a sentence of detention in a young offender institution, any award for an offence against discipline made in respect of him before that date under rule 50, 51 or 52 of the Prison Rules 1964, which were then in force, or treated by virtue of rule 5(4A)(a) as having been imposed under those Rules, shall, if it has not been exhausted or remitted, continue to have effect as if it were a punishment imposed pursuant to rule 50 or 51 of these Rules, as the case may be.

Particular punishments

53.—(1) A punishment of stoppage of earnings may, instead of forfeiting all a prisoner's earnings for a specified period not exceeding 28 or 56 days (as the case may be), be expressed so as to forfeit a proportion (not being less than one-half) of his earnings for a specified period not exceeding a correspondingly greater number of days.

(2) No punishment of cellular confinement shall be imposed unless the medical officer has certified that the prisoner is in a fit state of health to be so dealt with.

Prospective forfeiture of remission

54.—(1) In the case of an offence against discipline committed by a prisoner who is detained only on remand or to await trial or sentence, a punishment of forfeiture of remission may be imposed notwithstanding that the prisoner has not (or had not at the time of the offence) been sentenced.

(2) A punishment under paragraph (1) above shall have effect only in the case of a sentence of imprisonment or detention in a young offender

(a) As inserted by S.I. 1983/568.

institution being imposed which is reduced, by section 67 of the Criminal Justice Act 1967(a), by a period which includes the time when the offence against discipline was committed.

Suspended Punishments

55.—(1) Subject to any directions given by the Secretary of State, the power to impose a disciplinary punishment (other than a caution) shall include power to direct that the punishment is not to take effect unless, during a period specified in the direction (not being more than six months from the date of the direction) the prisoner commits another offence against discipline and a direction is given under paragraph (2) below.

(2) Where a prisoner commits an offence against discipline during the period specified in a direction given under paragraph (1) above the person or Board dealing with that offence may—

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

Remission and mitigation of punishments and quashing of findings of guilt

56.—(1) The Secretary of State may quash any finding of guilt and may remit any punishment or mitigate it either by reducing it or by substituting another award which is, in his opinion, less severe.

(2) Subject to any directions given by the Secretary of State, the governor may remit or mitigate any punishment imposed by a governor, and a Board of Visitors may remit or mitigate any punishment.”;

(c) in rule 92—

- (i) after the words “Prison Act 1952 shall” in paragraph (1) there shall be inserted “subject to paragraph (1A) below”,
- (ii) after paragraph (1) there shall be inserted—

“(1A) The Secretary of State may terminate the appointment of a member if he is satisfied that—

- (a) he has failed satisfactorily to perform his duties,
- (b) he is by reason of physical or mental illness, or for any other reason, incapable of carrying out his duties, or
- (c) he has been convicted of such a criminal offence, or his conduct has been such, that it is not in the Secretary of State’s opinion fitting that he should remain a member.”,

(iii) for paragraphs (3) and (4) there shall be substituted—

“(3) Subject to paragraph (2) above, at their first meeting in any year of office the Board shall appoint one of their members to be chairman and one to be vice-chairman for that year and thereafter shall fill any casual vacancy in either office promptly.

(4) The vice-chairman’s term of office shall come to an end when, for whatever reason, that of the chairman comes to an end.”;

(a) 1967 c.80, section 67 has been amended by section 64 of the Criminal Justice Act 1972 (c.71), section 47 of the Criminal Law Act 1977 (c.45), section 78 of the Criminal Justice Act 1982 (c.48) and section 49 of the Police and Criminal Evidence Act 1984 (c.60).

(d) there shall be deleted from rule 94(4) the words from "knowledge" to the end.

Home Office
6th March 1989

Douglas Hurd
One of Her Majesty's Principal Secretaries of State

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Prison Rules 1964, as amended, to make new provision for offences against discipline (rule 2(a)). In particular the offences of mutiny, doing gross personal violence, making a false and malicious allegation against an officer and repeatedly making groundless complaints are abolished and new offences of detaining a person against his will, denying an officer access to part of a prison, fighting, intentionally endangering the health or personal safety of another, obstructing an officer and intentionally or recklessly starting a fire are created. They also amend some of the rules relating to prisoners' access to legal advisers (rule 2(a)) and the constitution and functions of Boards of Visitors (rule 2(c) and (d)).

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