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## STATUTORY INSTRUMENTS

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# 1999 No. 728

## The Prison Rules 1999

### PART II

### PRISONERS

#### COMMUNICATIONS

#### Communications generally

[<sup>F1</sup>34.—(1) Without prejudice to sections 6 and 19 of the Prison Act 1952 and except as provided by these Rules, a prisoner shall not be permitted to communicate with any person outside the prison, or such person with him, except with the leave of the Secretary of State or as a privilege under rule 8.

(2) Notwithstanding paragraph (1) above, and except as otherwise provided in these Rules, the Secretary of State may impose any restriction or condition, either generally or in a particular case, upon the communications to be permitted between a prisoner and other persons if he considers that the restriction or condition to be imposed—

- (a) does not interfere with the convention rights of any person; or
  - (b) (i) is necessary on grounds specified in paragraph (3) below;  
(ii) reliance on the grounds is compatible with the convention right to be interfered with;  
and  
(iii) the restriction or condition is proportionate to what is sought to be achieved.
- (3) The grounds referred to in paragraph (2) above are—
- (a) the interests of national security;
  - (b) the prevention, detection, investigation or prosecution of crime;
  - (c) the interests of public safety;
  - (d) securing or maintaining prison security or good order and discipline in prison;
  - (e) the protection of health or morals;
  - (f) the protection of the reputation of others;
  - (g) maintaining the authority and impartiality of the judiciary; or
  - (h) the protection of the rights and freedoms of any person.

(4) Subject to paragraph (2) above, the Secretary of State may require that any visit, or class of visits, shall be held in facilities which include special features restricting or preventing physical contact between a prisoner and a visitor.

(5) Every visit to a prisoner shall take place within the sight of an officer or employee of the prison authorised for the purposes of this rule by the governor (in this rule referred to as an “authorised employee”), unless the Secretary of State otherwise directs, and for the purposes of this paragraph a visit to a prisoner shall be taken to take place within the sight of an officer or authorised employee

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if it can be seen by an officer or authorised employee by means of an overt closed circuit television system.

(6) Subject to rule 38, every visit to a prisoner shall take place within the hearing of an officer or authorised employee, unless the Secretary of State otherwise directs.

(7) The Secretary of State may give directions, either generally or in relation to any visit or class of visits, concerning the day and times when prisoners may be visited.

(8) In this rule—

- (a) references to communications include references to communications during visits;
- (b) references to restrictions and conditions upon communications include references to restrictions and conditions in relation to the length, duration and frequency of communications; and
- (c) references to convention rights are to the convention rights within the meaning of the Human Rights Act 1998.]

#### Textual Amendments

**F1** Rule 34 substituted (24.10.2000) by [The Prison \(Amendment\) \(No. 2\) Rules 2000 \(S.I. 2000/2641\)](#), rules 1, 4

#### Personal letters and visits

**35.**—(1) Subject to paragraph (8), an unconvicted prisoner may send and receive as many letters and may receive as many visits as he wishes within such limits and subject to such conditions as the Secretary of State may direct, either generally or in a particular case.

(2) Subject to [F<sup>2</sup>paragraphs (2A) and (8)], a convicted prisoner shall be entitled—

- (a) to send and to receive a letter on his reception into a prison and thereafter once a week; and
- (b) to receive a visit twice in every period of four weeks, but only once in every such period if the Secretary of State so directs.

[F<sup>3</sup>(2A) A prisoner serving a sentence of imprisonment to which an intermittent custody order relates shall be entitled to receive a visit only where the governor considers that desirable having regard to the extent to which he has been unable to meet with his friends and family in the periods during which he has been temporarily released on licence.]

(3) The governor may allow a prisoner an additional letter or visit as a privilege under rule 8 or where necessary for his welfare or that of his family.

(4) The governor may allow a prisoner entitled to a visit to send and to receive a letter instead.

(5) The governor may defer the right of a prisoner to a visit until the expiration of any period of cellular confinement.

(6) The [F<sup>4</sup>independent monitoring board] may allow a prisoner an additional letter or visit in special circumstances, and may direct that a visit may extend beyond the normal duration.

(7) The Secretary of State may allow additional letters and visits in relation to any prisoner or class of prisoners.

(8) A prisoner shall not be entitled under this rule to receive a visit from:

- (a) any person, whether or not a relative or friend, during any period of time that person is the subject of a prohibition imposed under rule 73; or
- (b) any other person, other than a relative or friend, except with the leave of the Secretary of State.

(9) Any letter or visit under the succeeding provisions of these Rules shall not be counted as a letter or visit for the purposes of this rule.

#### Textual Amendments

- F2 Words in rule 35(2) substituted (26.1.2004) by [The Prison \(Amendment\) Rules 2003 \(S.I. 2003/3301\)](#), rules 1, [4\(a\)](#)
- F3 Rule 35(2A) inserted (26.1.2004) by [The Prison \(Amendment\) Rules 2003 \(S.I. 2003/3301\)](#), rules 1, [4\(b\)](#)
- F4 Words in [rule 35\(6\)](#) substituted (1.4.2008) by [The Prison \(Amendment\) Rules 2008 \(S.I. 2008/597\)](#), rules 1, [4\(a\)](#)

#### [<sup>F5</sup>Interception of communications

**35A.**—(1) The Secretary of State may give directions to any governor concerning the interception in a prison of any communication by any prisoner or class of prisoners if the Secretary of State considers that the directions are—

- (a) necessary on grounds specified in paragraph (4) below; and
- (b) proportionate to what is sought to be achieved.

(2) Subject to any directions given by the Secretary of State, the governor may make arrangements for any communication by a prisoner or class of prisoners to be intercepted in a prison by an officer or an employee of the prison authorised by the governor for the purposes of this rule (referred to in this rule as an “authorised employee”) if he considers that the arrangements are—

- (a) necessary on grounds specified in paragraph (4) below; and
- (b) proportionate to what is sought to be achieved.

[  
<sup>F6</sup>(2A) The governor may not make arrangements for interception of any communication between a prisoner and

- (a) the prisoner’s legal adviser; or
- (b) any body or organisation with which the Secretary of State has made arrangements for the confidential handling of correspondence,

unless the governor has reasonable cause to believe that the communication is being made with the intention of furthering a criminal purpose and unless authorised by the chief operating officer of the prison service.]

(3) Any communication by a prisoner may, during the course of its transmission in a prison, be terminated by an officer or an authorised employee if he considers that to terminate the communication is—

- (a) necessary on grounds specified in paragraph (4) below; and
- (b) proportionate to what is sought to be achieved by the termination.

(4) The grounds referred to in paragraphs (1)(a), (2)(a) and (3)(a) above are—

- (a) the interests of national security;
- (b) the prevention, detection, investigation or prosecution of crime;
- (c) the interests of public safety;
- (d) securing or maintaining prison security or good order and discipline in prison;
- (e) the protection of health or morals; or
- (f) the protection of the rights and freedoms of any person.

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(5) Any reference to the grounds specified in paragraph (4) above in relation to the interception of a communication by means of a telecommunications system in a prison, or the disclosure or retention of intercepted material from such a communication, shall be taken to be a reference to those grounds with the omission of sub-paragraph (f).

(6) For the purposes of this rule “interception”—

- (a) in relation to a communication by means of a telecommunications system, means any action taken in relation to the system or its operation so as to make some or all of the contents of the communications available, while being transmitted, to a person other than the sender or intended recipient of the communication; and the contents of a communication are to be taken to be made available to a person while being transmitted where the contents of the communication, while being transmitted, are diverted or recorded so as to be available to a person subsequently; and
- (b) in relation to any written or drawn communication, includes opening, reading, examining and copying the communication.

#### Textual Amendments

- F5** Rules 35A-35D inserted (24.10.2000) by [The Prison \(Amendment\) \(No. 2\) Rules 2000 \(S.I. 2000/2641\)](#), [rules 1, 5](#)
- F6** [Rule 35A\(2A\)](#) inserted (1.1.2010) by [The Prison and Young Offender Institution \(Amendment\) Rules 2009 \(S.I. 2009/3082\)](#), [rule 1, Sch. 1 para. 5](#)

#### Permanent log of communications

**35B.**—(1) The governor may arrange for a permanent log to be kept of all communications by or to a prisoner.

(2) The log referred to in paragraph (1) above may include, in relation to a communication by means of a telecommunications system in a prison, a record of the destination, duration and cost of the communication and, in relation to any written or drawn communication, a record of the sender and addressee of the communication.

#### Textual Amendments

- F5** Rules 35A-35D inserted (24.10.2000) by [The Prison \(Amendment\) \(No. 2\) Rules 2000 \(S.I. 2000/2641\)](#), [rules 1, 5](#)

#### Disclosure of material

**35C.** The governor may not disclose to any person who is not an officer of a prison or of the Secretary of State or an employee of the prison authorised by the governor for the purposes of this rule any intercepted material, information retained pursuant to rule 35B or material obtained by means of an overt closed circuit television system used during a visit unless—

- (a) he considers that such disclosure is—
  - (i) necessary on grounds specified in rule 35A(4); and
  - (ii) proportionate to what is sought to be achieved by the disclosure; or
- (b) (i) in the case of intercepted material or material obtained by means of an overt closed circuit television system used during a visit, all parties to the communication or visit consent to the disclosure; or

- (ii) in the case of information retained pursuant to rule 35B, the prisoner to whose communication the information relates, consents to the disclosure.

**Textual Amendments**

**F5** Rules 35A-35D inserted (24.10.2000) by [The Prison \(Amendment\) \(No. 2\) Rules 2000 \(S.I. 2000/2641\)](#), rules 1, 5

**Retention of material**

**35D.**—(1) The governor shall not retain any intercepted material or material obtained by means of an overt closed circuit television system used during a visit for a period longer than 3 months beginning with the day on which the material was intercepted or obtained unless he is satisfied that continued retention of it is—

- (a) necessary on grounds specified in rule 35A(4); and
- (b) proportionate to what is sought to be achieved by the continued retention.

(2) Where such material is retained for longer than 3 months pursuant to paragraph (1) above the governor shall review its continued retention at periodic intervals until such time as it is no longer held by the governor.

(3) The first review referred to in paragraph (2) above shall take place not more than 3 months after the decision to retain the material taken pursuant to paragraph (1) above, and subsequent reviews shall take place not more than 3 months apart thereafter.

(4) If the governor, on a review conducted pursuant to paragraph (2) above or at any other time, is not satisfied that the continued retention of the material satisfies the requirements set out in paragraph (1) above, he shall arrange for the material to be destroyed.]

**Textual Amendments**

**F5** Rules 35A-35D inserted (24.10.2000) by [The Prison \(Amendment\) \(No. 2\) Rules 2000 \(S.I. 2000/2641\)](#), rules 1, 5

**Police interviews**

**36.** A police officer may, on production of an order issued by or on behalf of a chief officer of police, interview any prisoner willing to see him.

**Securing release**

**37.** A person detained in prison in default of finding a surety, or of payment of a sum of money, may communicate with and be visited at any reasonable time on a weekday by any relative or friend to arrange for a surety or payment in order to secure his release from prison.

**[<sup>F7</sup>Visits from] legal advisers**

**38.**—(1) [<sup>F8</sup>Where] the legal adviser of a prisoner in any legal proceedings, civil or criminal, to which the prisoner is a party [<sup>F8</sup>visits the prisoner, the legal adviser] shall be afforded reasonable facilities for interviewing him in connection with those proceedings, and may do so out of hearing but in the sight of an officer.

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(2) <sup>F9</sup>[On such a visit,] 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.

#### Textual Amendments

- F7** Words in rule 38 heading inserted (1.1.2010) by The Prison and Young Offender Institution (Amendment) Rules 2009 (S.I. 2009/3082), rule 1, **Sch. 1 para. 6(a)**
- F8** Words in rule 38(1) inserted (1.1.2010) by The Prison and Young Offender Institution (Amendment) Rules 2009 (S.I. 2009/3082), rule 1, **Sch. 1 para. 6(b)**
- F9** Words in rule 38(2) inserted (1.1.2010) by The Prison and Young Offender Institution (Amendment) Rules 2009 (S.I. 2009/3082), rule 1, **Sch. 1 para. 6(c)**

#### <sup>F10</sup>**Delivery and receipt of legally privileged material**

**39.**—<sup>F11</sup>(1) A prisoner may deliver to, or receive from, the prisoner's legal adviser and any court, either by post or during a legal visit under rule 38, any legally privileged material and such material may only be opened, read or stopped by the governor in accordance with the provisions of this rule.]

(2) <sup>F12</sup>[Material] to which this rule applies may be opened if the governor has reasonable cause to believe that it contains an illicit enclosure and any such enclosures shall be dealt with in accordance with the other provision of these Rules.

(3) <sup>F13</sup>[Material] to which this rule applies may be opened, read and stopped if the governor has reasonable cause to believe its contents endanger prison security or the safety of others or are otherwise of a criminal nature.

(4) A prisoner shall be given the opportunity to be present when any <sup>F14</sup>[material] to which this rule applies is opened and shall be informed if it or any enclosure is to be read or stopped.

(5) A prisoner shall on request be provided with any writing materials necessary for the purposes of paragraph (1).

(6) In this rule, "court" includes the European Commission of Human Rights, the European Court of Human Rights and the European Court of Justice; and "illicit enclosure" includes any article possession of which has not been authorised in accordance with the other provisions of these Rules and any <sup>F15</sup>[material] to or from a person other than the prisoner concerned, his legal adviser or a court.

#### Textual Amendments

- F10** Rule 39 heading substituted (1.1.2010) by The Prison and Young Offender Institution (Amendment) Rules 2009 (S.I. 2009/3082), rule 1, **Sch. 1 para. 7(a)**
- F11** Rule 39(1) substituted (1.1.2010) by The Prison and Young Offender Institution (Amendment) Rules 2009 (S.I. 2009/3082), rule 1, **Sch. 1 para. 7(b)**
- F12** Word in rule 39(2) substituted (1.1.2010) by The Prison and Young Offender Institution (Amendment) Rules 2009 (S.I. 2009/3082), rule 1, **Sch. 1 para. 7(c)**
- F13** Word in rule 39(3) substituted (1.1.2010) by The Prison and Young Offender Institution (Amendment) Rules 2009 (S.I. 2009/3082), rule 1, **Sch. 1 para. 7(c)**
- F14** Word in rule 39(4) substituted (1.1.2010) by The Prison and Young Offender Institution (Amendment) Rules 2009 (S.I. 2009/3082), rule 1, **Sch. 1 para. 7(c)**
- F15** Word in rule 39(6) substituted (1.1.2010) by The Prison and Young Offender Institution (Amendment) Rules 2009 (S.I. 2009/3082), rule 1, **Sch. 1 para. 7(c)**

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