

**EXPLANATORY DOCUMENT TO THE
REGULATORY REFORM (PRISON OFFICERS) (INDUSTRIAL ACTION)
ORDER 2005**

2005 No. 908

**THE REFORM OF Section 127 OF THE CRIMINAL JUSTICE AND PUBLIC
ORDER ACT 1994 BY ORDER UNDER THE REGULATORY REFORM ACT
2001**

STATEMENT BY HM PRISON SERVICE

INTRODUCTION

This statement is laid before Parliament in accordance with section 6 of the Regulatory Reform Act 2001 together with the draft of the Regulatory Reform (Prison Officers)(Industrial Action) Order 2004 which we propose to make under section 1 of that Act. The purpose of the draft Order is to amend Section 127 of the Criminal Justice and Public Order Act (1994)

DESCRIPTION OF PROPOSAL

We propose a change to primary legislation. This change will affect three types of prison staff. Staff employed in public sector prisons, are called Prison Officers. There are two types of staff employed by private sector prisons: Custody Officers, who work within secure training centres (contracted out to the private sector), and Prisoner Custody Officers, who work within prisons (contracted out to the private sector) and who escort prisoners when they are being moved between custodial establishments, and courts. Section 127 of the Criminal Justice and Public Order Act 1994 (S.127) provides that a person owes a duty to the Secretary of State ^[1] not to induce Prison Officers, Custody Officers and Prisoner Custody Officers to withhold their services or to commit a breach of discipline. Loss or damage caused to the Secretary of State ^[1] by a person who induces a Prison Officer to withhold their services or to commit a breach of discipline is actionable by the Secretary of State ^[1] against that person. The change that is proposed is to amend S. 127, in order to dis-apply it in relation to inducements in respect of Prison Officers in England and Wales, and Scotland. S. 127 will continue to apply in respect of Prison Officers in Northern Ireland as well as private sector prison staff (Custody Officers and Prisoner Custody Officers), wherever they are located in the UK.

EXTENT

The order extends to the United Kingdom.

^[1] or in Scotland, the Scottish Ministers

As a reserved matter concerning employment and industrial relations legislation, the amendment of S. 127 in so far as it applies to Scotland is a matter for the Secretary of State rather than Scottish Ministers. However, it is recognised that Ministerial responsibility for Scottish Prisons is a devolved matter and therefore rests with Scottish Ministers. As such, the Secretary of State has jointly considered responses to the consultation exercise with Scottish Ministers in so far as they are relevant to Scotland so as to ensure that the consideration of responses and decisions about next steps were fully informed. Scottish Ministers shall continue to be consulted on developments and kept informed of progress in the taking forward of Parliamentary processes for the amendment of S. 127. Final and formal consent to the amendment in so far as it applies to Scotland shall be sought before the Order comes into force. S. 127 will continue to apply in Northern Ireland, as there is currently no legally enforceable agreement in place.

BACKGROUND

Currently S. 127 of the Criminal Justice and Public Order Act 1994 provides that there is a duty owed to the Secretary of State^[1] not to induce a Prison Officer, Custody Officer or Prisoner Custody Officer to withhold his services or to commit a breach of discipline, and

that loss or damage sustained by the Secretary of State^[1] is actionable against the person in breach. The context of S. 127 is as follows. At common

^[1] or in Scotland, the Scottish Ministers

law it is a tort ^[2] for a person to induce another person to breach a contract of employment or to interfere or induce another person to interfere with the performance of such a contract, or to threaten to do those things.

This legal liability effectively restricted workers' organisations from organising industrial action. To allow industrial action, it was necessary for statute to provide exemption from this common law liability. The present provision is section 219 of the Trade Union and Labour Relations (Consolidation) Act 1992. Section 219(1) provides that an act done in contemplation or furtherance of a trade dispute is not actionable in tort ^[2] on the ground only (a) that it induces another person to break a contract or interferes or induces another person to interfere with its performance, or (b) that it consists in his threatening that a contract (whether one to which he is a party or not) will be broken or its performance interfered with, or that he will induce another person to break a contract or interfere with its performance.

A 1993 High Court case held that a dispute between the Prison Officers Association (POA) and HM Prison Service did not amount to a 'trade dispute' as defined, because it was not a dispute between 'workers' and their employer. The Employment Appeal Tribunal in *Home Office v Robinson* [1982] ICR 31 had already accepted that, as a Prison Officer has the powers and privileges of a constable, he was therefore not an 'employee' who could bring proceedings for unfair dismissal. The Government at the time recognised this as unfair. They wanted to limit the possibility of prison staff taking action whilst ensuring that they also had appropriate protection under

^[2] the reference to tort should be construed as delict in relation to Scotland

employment law. For this reason section 126 of the Criminal Justice and Public Order Act 1994 was subsequently enacted, thereby allowing Prison Officers the right to bring unfair dismissal proceedings. However, S. 127 was enacted as a safeguard against industrial action.

The present Government made a commitment to restoring the full trade union statutory rights to Prison Officers prior to the 1997 General Election. The current Home Secretary, David Blunkett reinforced this commitment at the POA Annual Conference in May 2003. Between 1997 and the present day there has been a much-improved relationship between the Prison Services in both the England and Wales and Scotland jurisdictions and the Prison Officers union, the POA. This improved relationship resulted in both the POA and the Prison Service in England and Wales signing a contractually binding agreement that resulted in third party dispute resolution through an independent arbitrator tied to a no strike agreement. The agreement, which was known as the Voluntary Agreement (VA), was signed in 2001 and provided that the POA 'would not induce, authorise or support any form of industrial action by any of its members relating to a dispute concerning any matter, whether covered by the VA or otherwise, which would have had the effect of disrupting the operations of the Prison Service. Both parties will use their best endeavours to prevent any form of industrial action.' (Clause 4 (11)).

The POA gave notice of termination of the Voluntary Agreement on 27 January 2004, which underpins the proposal to dis-apply S. 127 so far as the England and Wales jurisdiction is concerned. However, the Prison Service and the POA NEC have agreed a new legally enforceable collective

agreement that will provide protections equivalent to the Voluntary Agreement in that *"The POA agrees that it will not induce, authorise or support any form of Industrial Action by any of its members employed in the Prison service relating to a dispute concerning any matter, whether covered by this agreement or otherwise."* *"In the event of a breach of this agreement by the POA, the Prison service may take action in court, including Injunctive Relief."*

In Scotland, the Scottish Prison Service entered into its own Voluntary Industrial Relations Agreement (VIRA) in December 2001 with each of the Trades Unions it recognises for collective bargaining purposes. In respect of the POA, the VIRA is similarly legally binding to the extent that the POA have contracted not to induce, authorise or support any form of industrial action by its members (see Clauses 4.2 and 4.10). The POA have not given notice to withdraw from the VIRA in Scotland where there appears to be a continuing degree of satisfaction on the part of both SPS and the POA with the degree of satisfaction on the part of both SPS and the POA with the arrangements in place.

In the England and Wales and Scottish Prison Services an atmosphere of joint working and consultation has been fostered which has borne fruit in terms of better dialogue and an open approach to contentious issues. Indeed, since entering into the Voluntary Agreement in Scotland, the Scottish Prison Service and each of the Trade Unions it recognises for collective bargaining purposes have signed a Partnership Agreement, which is built on the principles of partnership working as defined in the TUC's 1997 'Partners for Progress' document. At the same time, the legally enforceable collective agreements tie the parties in both jurisdictions into formal dispute resolution

procedures, which include recourse to ACAS conciliation and independent binding arbitration.

THE PROPOSALS

The proposed change to the legislation recognises the improvement in relations between the POA and the Prison Services in both the England and Wales and the Scotland jurisdictions, and honours the pledge made by the Government prior to the 1997 General Election and reiterated by the Home Secretary in 2003.

The original intention was to remove the application of S. 127 in relation to inducements of Prison Officers in England, Wales and Scotland, Custody Officers and Prisoner Custody Officers wherever they are employed in the United Kingdom, and for S. 127 to remain with regards to Prison Officers in Northern Ireland. However, following consultation, it emerged that there is no equivalent of the Voluntary Agreement in place in respect of private sector prison staff (Custody Officers and Prisoner Custody Officers), and therefore the proposal to dis-apply S. 127 from Custody Officers and Prisoner Custody Officers was dropped.

It is now the intention of the Minister of State to take the earliest opportunity to remove the application of S. 127 in relation to Prison Officers in Northern Ireland and private sector prison staff (Custody Officers and Prisoner Custody Officers) by making a further order under the Regulatory Reform Act, should there be a comparable commitment to a legally binding collective agreement like the Voluntary Agreement. However, at the present time the POA and the Northern Ireland Prison Service have not decided whether to begin the

process of agreeing a legally binding collective agreement. All of the Private Sector Criminal Justice Service providers have also yet to begin this process with their recognised Trades Unions.

BURDENS IMPOSED BY EXISTING LAW (Section 6(2)(a) of the 2001 Act)

S. 127(1) of the Criminal Justice and Public Order Act 1994 is a “burden” for the purposes of the Regulatory Reform Act 2001, in the sense of being a restriction on the public at large.

THE REMOVAL OR REDUCTION OF EXISTING BURDENS (Section 6(2)(b) of the 2001 Act)

The obligation not to contravene S. 127 is a “burden” for the purposes of the Regulatory Reform Act 2001, in the sense of being a restriction (preventing particular action) or a requirement (not to act in a particular way). The fact that particular behaviour will no longer be actionable is also the removal of a “sanction”.

THE RE-ENACTMENT OF EXISTING BURDENS (Section 6(2)(c) of the 2001 Act)

The Regulatory Reform Order will not re-enact any existing burdens.

THE IMPOSITION OF NEW BURDENS (Section 6(2)(f) of the 2001 Act)

The Regulatory Reform Order will not impose any new burdens.

THE REMOVAL OF INCONSISTENCIES OR ANOMALIES (Section 1(1)(d) of the 2001 Act)

The Regulatory Reform Order will not remove inconsistencies or anomalies.

NECESSARY PROTECTION (Section 6(2)(d) of the 2001 Act)

Currently S. 127 of the Criminal Justice and Public Order Act 1994 provides that there is a duty owed to the Secretary of State ^[1] not to induce a Prison Officer to withhold his services or to commit a breach of discipline, and that loss or damage sustained by the Secretary of State ^[1] is actionable against the person in breach.

We are of the opinion that the proposal does not remove any necessary protection. It is believed that the protection afforded by S. 127 is no longer necessary.

The Prison Service and the POA have signed a legally enforceable collective agreement that will provide the protections equivalent to S. 127. This is annexed at Annex B to this document. A ballot of POA members ratified the agreement. The legally enforceable Voluntary Agreement currently in place in the Scottish Prison Service jurisdiction can be found at Annex C.

The legally enforceable collective agreement in England and Wales and its counterpart in Scotland will provide protection from the risk of industrial action

^[1] or in Scotland, the Scottish Ministers

in the public sector running of prisons and the removal of the statutory restriction normalises the status of Prison Officers in industrial relations terms. As such, we believe that no necessary protection will be lost by this proposal. It is important to point out that the legally enforceable collective agreements could be terminated if either party gave 12 months notice of termination to the Director General of HM Prison Service in England and Wales or in the case of Scotland the Chief Executive of the Scottish Prison Service. In these circumstances the Director General of HM Prison Service in England and Wales or in the case of Scotland the Chief Executive of the Scottish Prison Service would have to re-negotiate with the POA a new legally enforceable collective agreement, as there would no longer be necessary protection.

EXPECTATION AS TO THE EXERCISE OF RIGHTS AND FREEDOMS (Section 6(2)(e) of the 2001 Act)

We believe that this proposal will not prevent any person from continuing to exercise any right or freedom. The changes restore the full trade union statutory rights of state employed Prison Officers in England, Wales and Scotland within a context of a contractual dispute resolution process that safeguards the continuing provision of service in the Prison Services within England, and Wales and for Scotland.

PROPORTIONALITY (Sections 1(1)(b) and 1(1)(c) of the 2001 Act)

Our proposal will neither re-enact an existing burden, nor impose a new one.

FAIR BALANCE AND DESIRABILITY (Section 3(2) of the 2001 Act)

Our proposal will not impose a new legal burden.

SUBORDINATE PROVISIONS (Section 6(2)(g) of the 2001 Act)

The proposed change is of a single-issue nature and there are no subordinate provisions that our order includes which would be amendable by future orders.

SAVINGS AND COSTS (Section 6(2)(h) of the 2001 Act)

The proposal, is designed to be cost neutral in terms of the fact that, whilst the full trade union statutory rights of prison staff have been re-instated, the contractual limitations in place mean that these rights are voluntarily restricted.

BENEFITS OTHER THAN SAVINGS (Section 6(2)(i) of the 2001 Act)

The Home Secretary has indicated that the removal of S. 127 in England Wales and Scotland for state employed prison officers is Government policy and this echoes the earlier pre-election pledge that goes back to 1997. The benefits of this change are largely connected with honouring that commitment and thereby further improving industrial relations through a demonstration of good will, albeit that the changes in themselves will not have a great deal of

practical impact given that there are “no strike” contractual arrangements in place in the England and Wales and Scotland Prison Service jurisdictions.

THE CONSULTATION (Sections 5(1) and 6(2)(j) of the 2001 Act)

The initial consultation period ran from 15 December 2003 to 9 February 2004. The consultation exercise lasted for 8 weeks as opposed to the normal 12 weeks, because the issue had been subject to preliminary consultation between the major stakeholders, and had been widely reported in the press, stimulating public debate. Secondly the single-issue nature of the proposed change meant that each consultation response would be essentially for or against the proposal, and therefore a period of 8 weeks was considered sufficient.

The purpose of the consultation was to elicit views on a proposed change to Regulation; the amendment of the Criminal Justice & Public Order Act 1994, specifically the removal of S. 127 in England, Wales and Scotland. The consultation included the general public and the consultation document was sent to 135 individuals and organisations who had a particular interest in employee relations/trade unionism, criminal justice and legal issues generally, including the CBI and TUC.

This information was also made available at the following websites:

- The Home Office website at: www.homeoffice.gov.uk ;
- The HM Prison service website at www.hmprisonservice.gov.uk ;
- The Scottish Prison Service website at www.sps.gov.uk ;
- The Cabinet Office website at www.cabinet-office.gov.uk ;

- and UK-Online at www.ukonline.gov.uk

REPRESENTATIONS RECEIVED AS A RESULT OF CONSULTATION (Section 6(2)(k) of the 2001 Act)

REPRESENTATIONS RECEIVED AS A RESULT OF THE INITIAL CONSULTATION 15 DECEMBER 2003 TO 9 FEBRUARY 2004

The consultation resulted in three substantive responses, all of which were considered. The first, from the POA, was supportive of the changes. The second, from Nicky Padfield from the Department of Criminology at the University of Cambridge, was not supportive. The third, from a confederation of private custodial services providers, pointed out that private sector custodial service providers did not enjoy the protection provided by a legally binding collective agreement, which resulted in the department amending the proposals and reconsulting.

It is appropriate to outline the responses and deal with them in turn.

Representations made by the Prison Officers Association (POA)

Brian Caton the General Secretary of the POA responded on behalf of the POA and confirmed support for the “repeal of S. 127.”

Response to representations made by the Prison Officers Association

In their response the POA stated that they support the “repeal of S. 127.” We agree that, if supported by the necessary protection afforded by a legally enforceable collective agreement, there is no further requirement for S. 127 to remain in force in England, Wales and Scotland in respect of prison officers employed in the public sector. However, in order to maintain necessary protection and safeguard service delivery, we intend to amend S. 127 so as to ensure its continued application in Northern Ireland shall remain in force in respect of Prison Officers in Northern Ireland and Prisoner Custody Officers employed by the private sector. Further proposals to dis-apply S. 127, as so amended, will be brought forward as and when the necessary protection afforded by legally enforceable collective agreements are introduced in respect of prison officers in Northern Ireland, Custody Officers and Prisoner Custody Officers employed in the private sector.

Representations made by Nicky Padfield of Institute of Criminology at the University of Cambridge

The first criticism of the proposed change is that Northern Ireland is excluded; that is to say, it is proposed that S. 127 should persist in the province and that “the only reason given for not making the change in Northern Ireland is the absence of the VA in that jurisdiction”.

Secondly, the point is made that to alter S. 127 in isolation does nothing to address the deficiencies of the 1952 Prisons Act.

Thirdly, the respondent raises a concern of proportionality in that in the industrial action (indeed any industrial action) following the repeal of S. 127 may have an adverse effect on prisoners' rights (and presumably welfare).

Fourthly, the respondent criticises the shortened period of consultation.

Finally the respondent criticises the "clumsy way in which Scottish matters are dealt with as a result of a muddled law on devolution."

Response to representations made by Nicky Padfield of Institute of Criminology at the University of Cambridge

In answer to the first criticism (the decision that the amendment to S. 127 should not apply to Northern Ireland) the following points can be made. The Home Secretary reinforced the commitment to repeal S. 127 in May 2003 because of the much-improved relationships between the POA and the Prison Services in both the England and Wales and Scotland jurisdictions. This improved relationship resulted in the POA and the Prison Services in England and Wales and Scottish Prison Service signing separate contractually binding agreements with the POA which provide for in third party dispute resolution through an independent arbitrator tied to a "no strike" agreement. Unfortunately relatively poor industrial relations in Northern Ireland have not allowed the same developments in that province. The POA in Northern Ireland have instigated industrial action on several occasions in the recent past. Until employee relations are normalised S. 127 cannot be dis-applied in

Northern Ireland, as this would risk industrial action, and hence could jeopardise the provision of custodial services.

Secondly, the criticism is made that an amendment to S. 127 does nothing to address the deficiencies of the Prisons Act 1952. There may be perceived deficiencies in the Prisons Act 1952. However, in the context of the proposed changes this is not relevant.

The criticism is also raised that in the event of any industrial action following the repeal of S. 127 there may be an adverse effect on prisoners and this has not been given adequate consideration. The respondent may have misinterpreted the proposal, as the protections contained in the collective agreement will block any industrial action from taking place.

Criticism of the regulatory reform process may or may not be justified; however, they are not pertinent to the proposed changes and the consultation document.

The shortness of the consultation period is criticised. The respondent is correct in that the period of consultation for an RRO is normally 12 weeks. However, as preliminary consultation between the major stakeholders was carried out, and the proposal was of a single-issue nature, it was decided that a shortened period of 8 weeks was justified.

The respondent suggests that it may have been easier and more appropriate to remove S. 127 by statutory amendment. This would appear to run counter to the previous argument, as a statutory amendment would not involve a mandatory requirement to consult. Additionally it is government policy to fulfil

the commitment made by the Home Secretary in a timely a way as is possible and a Regulatory Reform Order was the most appropriate vehicle.

The comments on devolution are noted. They appear to relate generally to the arrangements under the Scotland Act 1998 for devolution of functions to the Scottish Ministers, rather than to specific proposals concerning S. 127. As a reserved matter concerning employment and industrial relations legislation, the amendment of S. 127 insofar as it applies to Scotland is a matter for the Secretary of State rather than Scottish Ministers. However, it is recognised that Ministerial responsibility for Scottish Prisons is a devolved matter and therefore rests with Scottish Ministers. As such, it was necessary for the Secretary of State to ensure that Scottish Ministers were fully consulted and informed of developments.

The respondent raised the point that the government intends to introduce NOMS without primary legislation. This is not relevant in terms of this consultation.

Representations made by the Private Custodial Services providers

As previously explained, we received a response to the initial consultation from a confederation of private custodial services providers, who pointed out that they providers did not enjoy the protection provided by a legally binding collective agreement. Therefore, if S. 127 were dis-applied to private sector prison staff (Custody Officers and Prisoner Custody Officers), there would be no necessary protection. This had been overlooked and the consultation had

obviously worked. It resulted in the department amending the proposals and re-consulting.

The representations made by the Private Custodial Services providers in response to the first consultation was as follows:-

It is the view of the private sector companies that the total removal of S. 127 of the Criminal Justice and Public Order Act 1994 may cause disruption to the services provided by any or all of their companies if any industrial action were to take place. They assert that up until now these private sector companies have been able to rely on the protection of S. 127 in avoiding the possibility of industrial action.

Furthermore, recognition agreements between these private sector companies and their recognised trades unions may or may not be legally binding and may or may not include provisions, which prevent industrial action being taken in pursuance of a dispute.

Additionally, the private sector providers point out that any repeal of S. 127 may have an adverse effect should any public prison ever be contracted out and that this would limit the flexibility of those tendering in terms of union recognition and other employee relations matters.

Response to representations made by Private Custodial Service

Providers

The respondent makes the point that the removal of S. 127 of the Criminal Justice and Public Order Act 1994 may cause disruption to services provided to prisoners. This point is amplified later in the paper; however, the general thrust of this point is presumably connected with the fact that the Private Custodial Services Providers state that there are risks involved with the removal of S. 127 in terms of the fact that they do not enjoy the protection afforded by a legally binding collective agreement. This is a valid point accepted by the Department (see below). The industrial relations environment as respects the Private Custodial Service Providers in England, Wales and Scotland is sound but this cannot be guaranteed in the future, and without a legally binding collective agreement we cannot guarantee necessary protection. Therefore we will amend the proposal.

The Private Custodial Services Providers raise the point that should S. 127 be removed it would limit the flexibility of potential contractors of prisons being contracted out of the public sector. We believe that the removal of S. 127 would not affect the opportunities within the competitive market place. However, it is recognised that there would be a need to maintain protection through a legally binding collective agreement should S. 127 be removed. It is recognised that in the event of a public sector prison being the subject of a successful bid from the private sector then the constraints on staff in relation to their transfer from public to private employment will need to be addressed.

It would be desirable in such an eventuality for the private sector company involved to agree a legally binding collective agreement with the trades union representing the staff in question. However, until such principles can be agreed this particular issue further supports our proposal not to dis-apply S. 127 from Custody Officers and Prisoner Custody Officers.

Finally, the Private Custodial Services Providers raise the point that the consultation document was not sent to the unions they recognise. The consultation document was published on the Home Office website, the Cabinet Office website and the websites of the English and Welsh Prison Service as well as that of the Scottish Prison Service. The consultation document was sent to the Private Custodial Services providers and as it is proper for the Private Custodial Services to manage their own industrial relations, it would also be proper for them to elicit the views of their recognised trades unions who are unknown to the Prison Service of England and Wales and Scotland.

CHANGES MADE TO PROPOSALS IN LIGHT OF REPRESENTATIONS (Section 6(2)(l) of the 2001 Act)

As previously mentioned at the end of the initial round of consultation, an important issue was raised from a consortium of Private Custodial Service providers. The respondents stated that if S. 127 of the Criminal Justice and Public Order Act 1994 in England, Wales and Scotland was removed in its entirety then there would be no necessary protection in place because of the

absence of legally enforceable collective agreements between themselves and their recognised trades unions.

The Minister accepted this point and took the decision to amend the proposed Order so as to not to dis-apply S. 127 in respect of Prison Officers in Northern Ireland, and Custody Officers and Prisoner Custody Officers employed by the private sector (wherever they may be employed in the United Kingdom).

REPRESENTATIONS RECEIVED AS A RESULT OF FURTHER CONSULTATION (Section 6(2)(k) of the 2001 Act)

Because of the important changes to the proposals detailed above, the department reconsulted on the amended proposals. The further consultation period ran for 8 weeks from 21 March 2004 to 26 May 2004. The consultation included the general public and the consultation document was sent to 135 individuals and organisations with a particular interest in employee relations/trade unionism, criminal justice and legal issues generally, including the CBI and TUC. [*as before*].

This information was also made available at the following websites:

- The Home Office website at: www.homeoffice.gov.uk;
- The HM Prison service website at www.hmprisonservice.gov.uk;
- The Scottish Prison Service website at www.sps.gov.uk;
- The Cabinet Office website at www.cabinet-office.gov.uk;
- and UK-Online at www.ukonline.gov.uk

The further consultation resulted in five substantive responses. The first, from the Prison Service Union, questioned the reason for not dis-applying the section from Custody Officers and Prisoner Custody Officers. The second, from the Prison Governors' Association, was supportive of the changes. The third, from the General Municipal and Boilermakers Union (GMB), also questioned the reason for not dis-applying the section from Custody Officers and Prisoner Custody Officers. The fourth, from Nicky Padfield of the University of Cambridge, was received after the closing date of the consultation period but was considered. It was not supportive of the proposal. The fifth, from the Public and Commercial Services Union, supported the proposed changes but called for S. 127 to be completely removed from statute.

Representations made by the Prison Service Union (PSU)

The PSU represents Custody Officers and Prisoner Custody Officers, and a small number of Prison Officers. However the PSU is not recognised by HM Prison Service for collective bargaining purposes.

Firstly the PSU stated that they were aware of the content of the response made during the last round of consultation by the "*collective*" of private operators in the industry, in their letter of 9 February 2004. They stated that they fully understood the reasons why the private sector would not wish to see the removal of S. 127. Without legally binding industrial relations agreements, they would indeed be vulnerable to disruptive action from their employees.

Secondly, they state that it has always been open to the private operators to protect themselves against the effect of such legislative adjustment by entering into legally enforceable agreements with any demonstrably honourable, independent trades union with a record of integrity in such matters but have chosen not to do so.

Thirdly, the Prison Service Union states it has never advocated any form of industrial action within the custodial environment and that they believe that any such action is a wholly inappropriate method of dispute resolution.

Fourthly, the respondent states that the proposal that S. 127 be dis-applied for Custody Officers in the future subject to a legally enforceable collective agreement being negotiated between Private Sector companies and the unions representing those staff, amounts to nothing less than meaningless, political rhetoric. The Union accuses the Home Secretary of being disingenuous and that the Prison Service knows only too well that some Private Sector companies will do anything to avoid granting recognition and collective bargaining rights to any independent trade union. They doubt that there would be a situation where all private sector companies, present and future, will be in a position to become parties to such legally enforceable agreements.

In their fifth point, the Prison Service Union state that by now removing unfairness for state employed Prison Officers in the area of trades union rights, the Government will create an arguably greater unfairness towards

some of those people employed in the private custodial sector. They ask the Government to dis-apply S. 127 entirely.

Response to representations made by the Prison Service Union

We fully agree to the first point that if S. 127 is dis-applied to their members without legally binding industrial relations agreements, the private sector employers would indeed be vulnerable to disruptive action from their employees.

Secondly, they state that it has always been open to the private operators to enter into legally enforceable agreements with their trades unions. We acknowledge this. However, this would be a policy decision for each individual company.

We agree with the third point made by the Prison Service Union, which states that industrial action within the custodial environment is a wholly inappropriate method of dispute resolution.

The fourth point made in our view is an incorrect assumption. It is stated that the proposal that S. 127 be dis-applied for Prison Officers in Northern Ireland, Custody Officers and Prisoner Custody Officers in the future subject to a legally enforceable collective agreement is nothing less than meaningless, political rhetoric. This is not the case. The Home Secretary would encourage all private sector companies to work with their recognised trades unions

towards jointly signing such legally binding collective agreements in support of positive employment relations.

The fifth point the Prison Service Union makes is that dis-applying S. 127 in respect of Prison Officers and not Custody Officers and Prisoner Custody Officers could lead to greater unfairness to those people employed in the private custodial sector. It had been the intention of the Government to dis-apply S. 127 entirely. However, as previously explained, S. 127 can only be dis-applied in respect of any group of workers if there will remain equivalent necessary protection following dis-application. The absence of a legally binding collective agreement renders it impossible for the Minister to pass such an Order through Parliament in relation to Prison Officers in Northern Ireland as well as Custody Officers and Prisoner Custody Officers.

Representations made by the Prison Governors' Association (PGA)

The PGA commented on the proposal and made reference to Annex A of the Consultation Document. They were in favour of the proposal as long as necessary protection was maintained.

Response to representations made by the Prison Governors' Association (PGA)

The comments from the PGA are noted. However the representations are made with regards to the Voluntary Agreement, which will be replaced by a new legally enforceable collective agreement and are therefore not deemed as relevant.

Representations made by the General Municipal and Boilermakers

Union (GMB)

The GMB represents Custody Officers and Prisoner Custody Officers in the Private Sector.

Firstly, the GMB stated in their response that they believed that the proposal to dis-apply S. 127 should not be conditional upon GMB signing legally binding collective agreements which prohibit GMB from organising, and members from taking, industrial action.

Secondly, the GMB stated they believed that the dis-application of S. 127 will lead to greater fairness in the workplace, and will enhance industrial relations.

Thirdly, they propose that an advisory group should be set up to consider the issues further, with representation from the Home Office, Private Prison operators, GMB, and other unions with membership in areas affected by S. 127.

The fourth point they make is that the present consultation concentrates on the special statutory restrictions on the right to organise industrial action in public and private prisons. GMB believes that the removal of these restrictions should be coupled with the introduction of a more general right for the individual to take industrial action. It is the restriction on the individual that is central to the weakness in UK industrial action law.

Fifthly, the GMB is concerned that the proposal to dis-apply S. 127 appears to be conditional on GMB agreeing to a legally binding collective agreement with the private sector companies. They state that GMB policy is to oppose “no strike” agreements: that is, an agreement where the disputes and grievance procedure moves automatically through to final arbitration with no requirement for a separate decision to be made to go to binding arbitration by either party. The GMB are not opposed to arbitration in principle where that came about by either joint or trade union reference.

The final point is a question why the Home Secretary gave his personal commitment at the Prison Officers’ Conference in May 2003 to repeal S. 127 yet no such commitment has been made to the GMB.

Response to representations made by the GMB

In response to the first representation made by the GMB that they believe that the proposal to dis-apply S. 127 should not be conditional upon GMB signing legally binding collective agreements (which would prohibit them from organising, and members from taking, industrial action,) the following point must be made. S. 127 can only be dis-applied if the Minister can be satisfied that there will remain equivalent necessary protection following dis-application. Unfortunately, in the absence of a legally binding collective agreement such an Order cannot be achieved.

The second point the GMB made was that they believe that the dis-application of S. 127 would lead to greater fairness in the workplace, and will enhance

industrial relations. We concur with this opinion. However in the absence of a legally binding collective agreement the operational effectiveness of the organisation is at risk.

The GMB also propose that an advisory group should be set up to consider the issues around S. 127 further. They have suggested representation from the Home Office, Private Prison operators, GMB, and other unions with membership in areas affected by S. 127 to attend a meeting. Although the Home Secretary can suggest that it would be beneficial for private prison operators and their recognised trades unions to sign a legally binding collective agreement this is a matter for those parties to determine: The Home Secretary has no locus.

The fourth point they make is that the present consultation concentrates on the special statutory restrictions on the right to organise industrial action in public and private prisons. GMB believes that the removal of these restrictions should be coupled with the introduction of a more general right for the individual to take industrial action. It is the restriction on the individual that is central to the weakness in UK industrial action law. The issue the GMB raises here goes beyond the confines of this exercise and therefore for the purpose of this consultation is not relevant.

The fifth point they make is that the GMB is concerned that the proposal to dis-apply S. 127 appears to be conditional on GMB agreeing to a legally binding collective agreement with the private sector companies. They state that GMB policy is to oppose “no strike” agreements, that is an agreement

where the disputes and grievance procedure moves automatically through to final arbitration with no requirement for a separate decision to be made to go to binding arbitration by either party. As already pointed out, necessary protection to safeguard service delivery within our Prisons must remain following the dis-application of S. 127.

The sixth point is a question why the Home Secretary gave his personal commitment at the Prison Officers' Association Conference in May 2003 to repeal S. 127 yet no such commitment has been made to the GMB. The Home Secretary was invited to the POA annual conference specifically to speak about S. 127. The Home Secretary was formalising a commitment made by the Government in their 1997 Pre-election Manifesto. The POA had made steps to ensure that necessary protection would be preserved by signing a legally binding collective agreement in order for S. 127 to be dis-applied in their case. There has been no request from the GMB for S. 127 to be dis-applied from their members and as yet no intention to offer the requisite necessary protection.

Representations made by Nicky Padfield of the University of Cambridge

Firstly, the respondent makes a general criticism of the propriety of the Regulatory Reform Process and why the Government did not choose to use primary legislation to make the necessary changes.

The second point the respondent makes is that to alter S. 127 in isolation does nothing to address the deficiencies of the 1952 Prisons Act. The

consultation was regarding S. 127 but the respondent does not agree that this means that the deficiencies of the 1952 Prisons Act are not relevant.

The respondent also attached a copy of an article she wrote which appeared in Volume 168 of "Justice of the Peace." The article was entirely based on observations she had made in the initial period of consultation. Response has been given to the same points, which were outlined earlier in this document.

Response to representations made by Nicky Padfield the University of Cambridge

The first point the respondent makes is a general criticism of the propriety of the Regulatory Reform Process and questions why the Government did not choose to use primary legislation to make the necessary changes. It was decided that the most appropriate vehicle for S. 127 to be amended would be through the regulatory reform process, rather than wait indefinitely for an appropriate piece of primary legislation to tag the reforms on to. This ensures that the reforms are delivered as quickly as possible.

Secondly, the point is made that to alter S. 127 in isolation does nothing to address the deficiencies of the 1952 Prisons Act. This may or may not be the case, however it is suggested that in the context of the proposed changes this is not relevant.

The respondent also attached a copy of an article she wrote which appeared in Volume 168 of "Justice of the Peace." The article was entirely based on

observations she had made in the initial period of consultation and raised the same points outlined earlier in this document.

Representations made by the Public and Commercial Services Union

Firstly the Public and Commercial Services Union welcomed the proposal but stated that all prison workers, regardless of their role should be allowed to take industrial action and be enabled to exercise full trade union rights.

The second point made is that they believe that dis-application should include Prison Officers in Northern Ireland, Custody Officers and Prisoner Custody Officers employed by the private sector.

The final point made is that the Public and Commercial Services Union is concerned that certain companies have previously resisted recognising trades unions and will prefer to retain S. 127 as opposed to agreeing a legally binding collective agreement with the unions representing their employees.

Response to representations made by the Public and Commercial Services Union

Firstly the Public and Commercial Services Union welcomed the proposal but stated that all prison workers, regardless of their role, should be allowed to take industrial action and be enabled to exercise full trade union rights. We acknowledge the point made by the Public and Commercial Services Union, however, but cannot agree. We are of the opinion that any form of industrial

action within the custodial environment is a wholly inappropriate method of dispute resolution, which would present a real threat to the ongoing operational effectiveness of the Prison Service and therefore a risk to the public and prisoners.

The second point made is that they believe that dis-application should include Prison Officers in Northern Ireland, Custody Officers and Prisoner Custody Officers. In response, S. 127 can only be dis-applied if the Minister is satisfied that there will remain equivalent necessary protection following dis-application. Unfortunately, in the absence of a legally binding collective agreement, as is the case in relation to Prison Officers in Northern Ireland, Custody Officers and Prisoner Custody Officers, the Minister is unable to reach this view.

The final point made is that the Public and Commercial Services Union is concerned that certain companies have previously resisted recognising Trades Unions and will prefer to retain S. 127 as opposed to agreeing a legally binding collective agreement with the unions representing their employees. As pointed out in the consultation document, the Secretary of State encourages all criminal justice service providers in the public and private sectors to enter into legally binding collective agreements with their recognised trade unions. Unfortunately, at present this is not the case with in the private sector and Northern Ireland and therefore the necessary protection, afforded by S. 127 cannot be guaranteed. Therefore the proposed dis-application will be restricted to state employed Prison Officers in England, Wales and Scotland.

OTHER ISSUES

Compatibility with European Convention on Human Rights

The Government considers that the provisions of this draft order 2004 are compatible with Convention rights.

Charges on Public Revenue

No charges on public revenue effected by this proposal.

Retrospective Effect

The proposal will have no retrospective effect.

Future Legislation

There are no further reforms planned in this particular policy area. However, further changes would be considered should officers in Northern Ireland or the private sector agree to similar collective agreement to that signed by the POA and prison service.

Implementation

We are aiming to have the order implemented by early 2005, as this is the earliest possible date that the Order can be made because of the Parliamentary schedule.

LIST OF ANNEXES

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Annex B	Joint Industrial Relations Procedural Agreement (Between HM Prison Service and Prison Officers Association).	Page 55
Annex C	Voluntary Industrial Relations Procedural Agreement (Between Scottish Prison Service and Prison Officers Association).	Page 72
Annex D	Statutory Instrument S. 127 Criminal Justice and Public Order Act (1994)	Page 87
Annex E	Draft Proposed Amended Statutory Instrument S. 127 Criminal Justice and Public Order Act (1994)	Page 90

LIST OF CONSULTEES

Annex A

Action for Prisoners Families

Unit 102 Riverbank house
1 Putney Bridge Approach
London SW6 3JD

ACPO

25, Victoria Street,
London SW1H 0EX

Adam Smith Institute

23 Great Smith Street
London
SW1P 3BL

Advisory, Conciliation and Arbitration Service

Brandon House
180 borough high Street
London
SE1 1LW

Adfam

Waterbridge House
32-36 Loman Street
London SE1 0EH

Alcoholics Anonymous

PO Box 1
Stonebow House
Stonebow
York
North Yorkshire
YO1 7NJ

Alpha for Prisons and Caring for Ex-offenders

Holy Trinity Brompton
Brompton Road
London SW7 1JA

Apex Charitable Trust

St Alphage House
Wingate Street
2, Fore Street
London EC2Y 5DA

Business Enterprise Advice and Training (BEAT)

Southbank House
Black Prince Road
London SE1 7SJ

Cambridge Institute of Criminology

Nicky Padfield
7 West Road
Cambridge
CB3 9DT

CARILLION (previously Tarmac)

Construction House
Birch Street
WOLVERHAMPTON
West Midlands
WV1 4HY

C.B.I.

Centre Point
103 New Oxford Street
London
WC1A 1DU

Clinks (Prison Community Links)

15, Priory Street
York
YO1 6ET

Compass

5 Priory Street
York
North Yorkshire
YO1 6ET

Cranstoun Drug Services

4th Floor, Broadway House
112-134 The Broadway
London SW19 1RL

Cruse Bereavement Care

126, Sheen Road
Richmond upon Thames
Surrey
TW91UR

CSV (Community Service Volunteers)

237, Pentonville Road
London
N1 9JL

DePaul Trust

1, St Vincent Street
London
W1M 3HD

Fine Cell Work

PO Box 30738
London
WC1H 0RL

Foundation Training Company

Careers Workshop
HMYOI Feltham
Bedfont Road
Feltham
TW13 4ND

Gamblers Anonymous

PO Box 88
London
SW10 0EU

Gamcare

2&3 Baden Place
Crosby Row
London

SE1 1YW

Geese Theatre Company

Midlands Arts Centre
Cannon Hill Park
Birmingham
West Midlands
B12 9QH

GMB

National Office
22/24 Worples Road
London
SW19-4DD

GROUP 4 PRISON SERVICES

Farncombe House
BROADWAY
Worcestershire
WR12 7LJ

Her Majesty's Inspectorate of Prisons

1st Floor, Ashley House
Monck Street
London
SW1P 2BQ

Hibiscus

15, Great St Thomas Apostle
Mansion House
London
EC4V 2BB

Home Affairs Select Committee

Home Affairs Committee
House of Commons
London
SW1A 0AA

Inside Out Trust

55 High Street
Hurstpierpoint

West Sussex
BN6 9PX

Irene Taylor Trust

Unit 315
Bon Marche Centre
241 Ferndale Road
London
SW9 8BJ

KidsVIP

Old Diary Cottage
Andover Road
Winchester
Hampshire
SU22 6AZ

Koestler Award Scheme

Langley House Trust
PO Box 181
Witney
Oxfordshire
OX28 6WD

Law Commission for England and Wales

Conquest House
Theobalds Road
London
WC1N 2BQ

The Mothers' Union

24 Tufton Street
London
SW1P 3RB

Morrison, Fiona

50 Foresters Lea Crescent
Dunfirmline
KY12

National Association of Prison Visitors

32, Newnham Ave
Bedford
Bedfordshire
MK41 9PT

NACAB (National Association of Citizens' Advice Bureaux)

Myddleton House
115-123 Pentonville Road
Islington
London
N1 9LZ

Narcotics Anonymous

UK Service Office
202 City Road
London
EC1V 2PH

Nacro

169, Clapham Road
London
SW9 0PU

The New Bridge

27a Medway Street
London
SW1P 2BD

Out-Side-In

PO Box 119
Orpington
Kent
BR6 9ZZ

Oxford University – Faculty of Law

University of Oxford
Faculty of Law
St Cross Building
St Cross Road
OX1 3UL

Parents in Prison

PO Box 55
Royston
SG8 5GE

PREMIER PRISON SERVICES LTD

Centennial Court
Easthampstead Road
BRACKNELL
Berkshire
RG12 1YQ

Phoenix House

Asra House
1, Long Lane
London
SE1 4PG

Prince's Trust

18, Park Square East
London
NW1 4LH

Prison Advice and Care Trust (PACT)

Lincoln House
1-3 Brixton Road
London
SW9 6DE

Prisoners Education Trust

Wandle House
Riverside Drive
Mitcham
Surrey
CR4 4SU

Prison Fellowship for England and Wales

PO Box 945
Maldon
Essex
CM9 4EW

Prison Governors' Association

Room 405
Horseferry House
Dean Ryle Street
London
SW1P 2AW

Prison Officers' Association

Cronin House
245 Church Street
Edmonton
London
N9 9HW

Prison Service Trade Union Side

Room 628Horseferry House
Dean Ryle Street
London
SW1P 2AW

Prison Phoenix Trust

PO Box 328
Oxford
Oxon OX2 7HF

PSU

Prison Service Union
16 Regent Place
Rugby
Warwickshire
CV21 2PN

RAPt

27-29 Vauxhall Grove
London
SW8 1SY

Relate

Herbert Gray College
Little Church Street
Rugby
West Midlands
CV1 3AP

Revolving Doors Agency

45-49 Leather Lane

London

EC1N 7TJ

Safeground

Antonia Rubenstein, Director

The Salvation Army

101 Newington Causeway

London

SE1 6BN

Samaritans

The Upper Mill

Kingston Road

Ewell

Surrey

KT17 2AF

Scarman Centre

University of Leicester

The Friars

154 Upper New Walk

Leicester

LE1 7QA

SECURICOR CUSTODIAL SERVICES

Sutton Park House

15 Carshalton Road

SUTTON

Surrey

SM1 4LD

The Scottish Executive

Scottish Executive Justice Department

St. Andrews House

Regent Road

Edinburgh

EH1 3DG

Scottish Law Commission

140 Causewayside
Edinburgh
EH9 1PR

SOVA

1st Floor,
Chichester House
37 Brixton Lane
London
SW9 6D2

Stonham Housing Association

235-241 Union Street
London
SE1 0LR

TILBURY DOUGLAS

George Road
Erdington
BIRMINGHAM
B23 7RZ

Tomorrow's People

4th Floor, Rothermere House
49-51 Cambridge Road
Hastings
East Sussex
TN34 1DT

T.U.C.

Congress House
Great Russell Street
London
WC1B 3LS

Turning Point

2-6 Westcliffe House
Braddocks Close
Rochdale

Lancashire
OL12 9UZ

UNITED KINGDOM DETENTION SERVICES (UKDS)

48 George Street
LONDON
W1H 9RF

The Unit for Arts and Offenders

Neville House
90-91 Northgate
Canterbury
Kent
CT1 1BA

Unlock

35a High Street
Snodland
Rochester
Kent
ME6 5AG

Women in Prison

3b Aberdeen Studios
22, Highbury Grove
London
N5 2EA

Writers in Prison Network Ltd

PO Box 71
Welshpool
Powys
SY21 0WB

YMCA Partnerships in Prisons

55, High Street
Banbury
Oxfordshire
OX16 5JJ

Welsh Assembly

National Assembly for Wales

Cardiff Bay
Cardiff
CF99 1NA

Scottish Consulatees

Advisory, Conciliation and Arbitration Service (Scotland)

151 West George Street
Glasgow
G2 7JJ

Association of Chief Police Officers in Scotland

Central Scotland Police
Randolphfield,
Stirling,
Scotland,
FK8 2HD

Anniesland College

Hatfield Drive
Glasgow
G12 0YE

APEX Scotland

9 Great Stuart Street
Edinburgh
EH3 7TP

Black and Ethnic Minorities Infrastructure in Scotland

The Mansfield Traquir Centre
15 Mansfield Place
Edinburgh
EH3 6BB

Capital City Partnership

The Canon Mill
1 Canon Street
Edinburgh
EH3 5HE

Catholic Church

General Secretariat, Bishops' Conference of Scotland

64 Aitken Street
Airdrie
Lanarkshire
ML6 6LT

Church of Scotland Board of Social Responsibility

121 George Street
Edinburgh
EH2 4YN

Chartered Institute of Personnel and Development

CIPD House
Camp Road
Wimbledon
London
SW19 4UX

Communities Scotland

27-29 Palmerston Place
Edinburgh
EH12 5AP

Convention of Scottish Local Authorities

Rosebery House
9 Haymarket Terrace
Rosebery House
Edinburgh
EH12 5XZ

Cranstoun Drug Services

Scottish Central Office
Academy Buildings
6-7 Rose Terrace
Perth
PH1 5HA

The Crown Office and Procurator Fiscal Service

Crown Office
25 Chambers Street,
EDINBURGH
EH1 1LA

Disability Rights Commission

DRC Helpline
FREEPOST MID02164
Stratford upon Avon
CV37 9BR

Drug Action Team – Scotland National Office

Pitteuchar Resource Centre
211 Tantallon Avenue
Glenrothes
KY7 4QA

Employers Forum on Age

2nd Floor, The Tower Building,
11 York Road,
London
SE1 7NX

Equal Opportunities Commission

St Stephens House
279 Bath Street,
Glasgow
G2 4JL

Falkirk Council

Municipal Buildings,
Falkirk
FK1 5RS.

Fairbridge

73 Ferry Road
Edinburgh
EH6 4AQ

Families Outside

19A Albany Street
Edinburgh
EH1 3QN

Four Square

3rd Floor
28 North Bridge

Edinburgh
EH1 1QG

Gay Men and Lesbians in the Prison Service

P.O BOX 65
Leigh
Lancs
WN7 5XO

GMB

National Office
22/24 Warpole Rd
London
SW19 4DD

HM Prisons Inspectorate for Scotland

HM Prisons Inspectorate
Saughton House
Broomhouse Drive
Edinburgh
EH11 3XD

Job Centre Plus

Argyle House
3 Lady Lawson Street
Edinburgh
EH3 9SD

Laing O'Rourke Construction

Willow House
Kestrel View
Strathclyde Business Park
Bellshill
ML4 3PB

Lauder College

Halbeath
Dunfermline
KY11 8DQ

The Law Society of Scotland

26 Drumsheugh Gardens
Edinburgh
EH3 7YR

Motherwell College

Dalzell Drive
Motherwell
ML1 2DD

NCH Scotland

85 Neilston Road
Paisley
PA2 6ES

Prison Service Union

16 Regent Place
Rugby
Warwickshire
CV21 2PN

Public and Commercial Services Union.

Suite 320-323,
Baltic Chambers
50, Wellington Street,
Glasgow,
G2 6HJ

Prison Officers Association Scottish National Committee

21 Calder Road,
Edinburgh
EH11 3PF

Premier Prison Services Limited

HM Prison Kilmarnock
Mauchline Road
Kilmarnock
KA1 5AA

Prince's Trust

57 Queen Street
Glasgow

G1 3EN

Reliance Custodial Services

Reliance Monitoring Services
Prism House
Rankin Avenue
East Kilbride Technology Park
G75 0QF

Safeguarding Communities - Reducing Offending

National Office
1 Broughton Market
Edinburgh
EH3 6NU

Scottish Churches Parliamentary Office

14 Johnston Terrace
Edinburgh
EH1 2PW

Scottish Courts Service

Hayweight House,
23 Lauriston Street,
Edinburgh,
EH3 9DQ.

Scottish Enterprise

150 Broomielaw
Atlantic Quay
Glasgow
G2 8LU

Scottish Executive Health Department

St Andrew's House
Regent Road,
Edinburgh,
EH1 3DG

Scottish Parliamentary Justice Committee

Justice 1 Committee
The Scottish Parliament
Edinburgh EH99 1SP

Scottish Parliamentary Justice Committee

Justice 2 Committee
The Scottish Parliament
Edinburgh
EH99 1SP

Securicor Staff Association

HMP Parc
Heol Hopcyn John
Bridgend
Mid-Glamorgan
CF35 6AP

Shelter Scotland

Scotia Bank House
6 South Charlotte Street
Edinburgh
EH2 4AW

Scottish Prison Service

Calton House,
5 Redheughs Rigg,
South Gyle,
Edinburgh,
EH12 9HW

Scottish Prison Service Trade Union Side

Calton House,
5 Redheughs Rigg,
South Gyle,
Edinburgh,
EH12 9HW

Scottish Qualifications Authority

Hanover House
24 Douglas Street
Glasgow
G2 7NQ

Stonewall Scotland

c/o The LGB Centre

11 Dixon Street
Glasgow G1 4AZ

Strathclyde University

Stenhouse Building
173 Cathedral Street
Glasgow
G4 0RG

Strathclyde University Business School

University of Strathclyde,
McCance Building
16 Richmond Street,
Glasgow,
G1 1XQ

Scottish Trades Union Congress

333 Woodlands Road
Glasgow
G3 6NG

The Wise Group

72 Charlotte Street
Glasgow
G1 5DW

Turning Point Scotland

54 Govan Road
Glasgow
G41 4PA

Association of Visiting Committees

PO Box 2781
Glasgow
G61 3YL

Workers Educational Association

34B Thistle Street
North West Lane
Edinburgh

EH2 1EA

West of Scotland Racial Equality Council

Napiershall Centre

39 Napiershall St

Glasgow

G20 6EZ

**JOINT INDUSTRIAL RELATIONS
PROCEDURAL AGREEMENT
BETWEEN
HM PRISON SERVICE
AND
THE PRISON OFFICERS' ASSOCIATION**

1. Parties to the Agreement

The parties to this *agreement* are:

HM Prison Service

acting on behalf of the Secretary of State for the Home Department,
and

The Prison Officers' Association

2. Definitions

For the purposes of this *agreement* the words and phrases set out in Schedule III to this *agreement* shall have the meaning set out in that Schedule. For ease of reference the words and phrases defined by that schedule are shown in italics in this *agreement*.

3. Principles

3(1) The parties agree that the overriding objectives of this collective *agreement* shall be that industrial relations are conducted in accordance with the procedures set out in Schedules I and II to this *agreement*. The purpose is to ensure that all collective disputes or grievances, whether at local, area or national level, are dealt with effectively and differences are resolved without affecting the normal working of the *Prison Service*. Where the parties are in dispute, then *status quo ante* as defined in Schedule III of this document will be the accepted position of both parties.

3(2) The *agreement* is underpinned by a partnership approach to solving industrial relations issues with both parties being committed to the success of the service. The overall intention is to create a climate of good relations between the parties in which there will be no occasion or necessity for the *POA* to consider *industrial action*.

3(3) (i) To achieve these objectives the *Prison Service* will initiate discussions as soon as possible on any proposals for changes to policy or procedures that directly affects staff at national, area or local level. All relevant material and information will be provided prior to

discussion, consultation and negotiation, unless specifically restricted on the basis of Law, e.g. Trade Union and Labour Relations (Consolidation) Act 1992 s181 to 183.

(ii) The *Prison Service* recognises that the *POA* at all levels may wish to initiate change and this should be sought through existing arrangements, either through local meetings or as in Section 5 (4) through Whitley Council arrangements. Accordingly, such proposals will not be subject to any part of the disputes procedure within this agreement.

3(4) The *Prison Service* fully recognises that effective trade union representation is essential to the conduct of relationships between management and staff. The *Prison Service* will provide agreed facilities to the *POA*:

- (i) To advise new staff of the work of the *POA* during Induction procedures.
- (ii) and allow meetings and provide facilities that allows the *POA* to communicate with its members within recognised guidelines
- (iii) and allow it to fully represent its members and properly participate in the procedures set out in this *agreement*;

and in any event shall not be less favourable than as described in the existing Facilities Agreement.

4. Matters Excluded from Schedules I and II.

4(1) The *Prison Service* will follow the procedures defined at Schedules I and II in relation to any matter that in any way affects the grades of staff which the *POA* represents, however the following matters are excluded from the procedures laid down in this *agreement*.

- (i) All matters which relate to issues of Pay. This exclusion shall remain for so long as the Pay Review Body continues to exist.
- (ii) Shift patterns - provided that:
 - (a) the *profiles* have been agreed between the parties or, in the absence of an agreement, decided by the arbitrator in accordance with the terms of this *agreement*, and
 - (b) there has been full consultation about the shift patterns in accordance with the current national agreements, with both sides using their best endeavours to reach agreement.
 - (c) the shift patterns comply with legal parameters and national guidelines and/or are collectively agreed by both parties.

(iii) Changes at local level provided they are within nationally agreed parameters examples being Prison Service Orders and Instructions, Prison Rules and Prison Standards.

(iv) An individual's grievance or disciplinary action against an individual. Any policy issues, which arise by reason of an individual case, shall be covered by the terms of this *agreement*.

5. General

5(1) The parties intend that this *agreement* shall constitute a legally enforceable contract.

5(2) The parties agree that communication at the earliest possible opportunity and at the lowest possible level is a key aim essential to effective industrial relations. The parties' commitment to achieving this aim demonstrates the positive attitude of both parties required to produce a climate of partnership delivery.

5(3) In order to facilitate discussion, consultation and negotiation on matters covered within paragraph 4 (Schedule II) the parties will follow the procedures in this *agreement*.

5(4) Discussion, consultation and negotiation on national policies and procedures will be dealt with through the *Prison Service Whitley Council Procedures*.

5(5) Both parties commit to respond promptly to proposals put to them by the other party and to adhere to the timetable set out in Schedule II.

5(6) Pending the outcome of any negotiation or arbitration conducted under the provisions of this *agreement* both parties will maintain the *status quo ante*, which for the purpose of this *agreement* shall mean the working practices or conditions in place immediately prior to the event that led to the *Change Implementation Procedure* being commenced. The *Prison Service* will not impose any change whilst the matter is subject to negotiation or arbitration, under the provisions of this *agreement* except in cases of a clear *Operational Emergency* as sanctioned by the *DG* or *DDG*.

5(7) This *agreement* incorporates Schedules I, II, III and the Annex.

6. Notice of Termination and Withdrawal

This *agreement* will be terminated if either party has given 12 months' notice of termination in writing to the *DG* of the *Prison Service* or National Chairman of the *POA* as appropriate and that period of notice has expired.

7. Amendment

This *agreement* can only be amended by the written agreement of both parties.

8. Reflection in Conditions of Service

8(1) The conditions of service of employees for whom the *POA* has recognition rights for collective bargaining purposes will be amended to reflect this collective *agreement* and it will be published as an annex to the Staff Handbook.

8(2) This *agreement* supersedes the following agreements:

- i. NTS 78/1993
- ii. G 25/1995
- iii. IG 116/1995
- iv. The Voluntary Agreement dated 11.04.01

Signed for and on behalf of the Prison Service

..... **Date:**.....

Signed for and on behalf of the Prison Officers' Association

..... **Date:**.....

SCHEDULE I

1. Principles:

- 1(1) This *agreement* will be operated within the following principles:
- (i) To resolve any dispute at the lowest possible level.
 - (ii) Recognition of the legitimate rights of both parties.
 - (iii) An obligation to behave responsibly towards to each other.
 - (iv) To consult respective parties at the earliest possible stage of any proposed change.
 - (v) To provide each other with all relevant information relating to the matter under discussion, consultation or negotiation.
 - (vi) Both parties should work within the agreed procedures.
 - (vii) Throughout the procedure it is incumbent on both parties to maintain communications at all levels with a view to resolving the issue.
 - (viii) Both parties are committed to jointly providing an agreed, effective and ongoing training package to managers and union representatives in order to ensure a common understanding of the content and spirit of this *agreement*.
 - (ix) Substitutes should only attend meetings if any of the parties are unable to meet set dates.

2. JIRPA Business Meetings

- 2(1) The parties will set up a committee which will be constituted and have the remit set out below. The committee shall be constituted as follows:
- (i) the *DDG* or his or her nominated representative, who shall act as Chair of the meeting;
 - (ii) Up to two Vice Chairs of the *POA* and two other nominated *POA NEC* Representatives.
 - (iii) members of *PERG*;
- 2(2) The committee will meet on a monthly basis.
- 2(3) The committee can meet at the request of either side outside of the normal monthly meetings.
- 2(4) The committee will consider and agree upon the issues defined in paragraph 3(2)(Schedule I) and 4(1) (Schedule II) of this *agreement*.
- 2(5) In the event that the parties do not agree upon any matter within its remit under paragraph 2(4) then the dispute will be referred to arbitration.

- 2(6) The Committee will by agreement, and in consultation with ACAS, decide from time to time the panel of arbitrators. The appointment of an arbitrator from the panel to conduct a Schedule II, Stage 5 arbitration will be at the sole discretion of ACAS.

3. The Appropriate Level of Negotiation

3(1) Negotiation between management and the *POA* shall be conducted at the managerial level at which the authority to make decisions on those issues rests and so:

- (i) Where a Governor has the managerial authority to make a change, which has an affect upon those grades of staff represented by the *POA*, then the matter will be dealt with at establishment level between the local branch of the *POA* and local management.
- (ii) Where an Area Manager has the managerial authority to make a change which has an affect upon those grades of staff represented by the *POA*, then the matter will be dealt with at area level between the appropriate *POA NEC member* and the Area Manager.
- (iii) Where a change is a matter of national policy and procedure, which has an affect upon those grades of staff represented by the *POA*, then the matter will be dealt with at national level via the National Whitley Committee meetings.

3(2) In the event of a disagreement regarding the level at which the negotiation should take place then the matter will be decided at the next *Business Meeting*.

SCHEDULE II

The Change Implementation Procedure

Stage 1 - Discussion

- 1(1) Where the parties wish to enter into negotiations relating to the introduction of change then such issues will be resolved at the appropriate level where at all possible.
- 1(2) At the outset of negotiations the Governor or an appropriate Prison Service employee will open a *CIP log* and all relevant documents as defined by Para 3. (3)(i)(Principles) will be made available to both parties. The parties will then meet at the earliest appropriate time to discuss the issue.
- 1(3) If agreement is reached the parties will record the agreement and the *CIP log* will be updated to record the fact that resolution was achieved.
- 1(4) Where agreement on the issue cannot be effected between parties at the lowest appropriate level then the issue, will pass to second stage process immediately. *The Prison Service* side will update the *CIP log* and send the same to *PERG*.

Stage 2 - Intervention between *PERG* and *POA NEC* (AREA LEVEL)

- 2(1) *PERG*, in conjunction with the area manager and relevant *POA NEC* representatives, will consult and advise the parties to attempt to seek resolution within 14 days of receipt.
- 2(2) If the second stage process is successful in brokering a satisfactory resolution the Governor or an appropriate *Prison Service* employee will then record the outcome on the *CIP log* and return the issue to appropriate parties for action.

Stage 3 - Mediation

- 3(1) Should the issue fail to be agreed at the second stage then *ACAS* should be invited to offer mediation to seek a resolution between parties. This should be effected within 14 days, subject to availability of key players from both parties, but in any event within no longer than a maximum of 21 days.
- 3(2) Mediators will be appointed at the sole discretion of *ACAS* but will not be members of the agreed arbitration panel.
- 3(3) Where mediation fails to achieve a resolution the parties shall:
 - (i) seek to agree the terms of reference for an arbitration;

and the *Prison Service* side shall:

- (ii) update the *CIP log* to record that fact of disagreement; and,
- (iii) send the *CIP log* together with all relevant papers and any agreed terms of reference to both the nominated *POA* Vice Chair and to *PERG*; and,
- (iv) request that the issue be considered at the next monthly *Business Meeting*.

Stage 4 – The *Business Meeting*

4(1) The *Business Meeting* will evaluate the issue referred to it and rule on what should be the next step in the process. That step will be one of the following:

- (i) That the matter be referred back to the lower level because the parties have failed to properly follow the process.
- (ii) That the matter should not be referred to arbitration because it is an issue which is excluded from resolution under this procedure by reason of the exclusions contained in paragraph 4.
- (iii) Agree the terms of reference. After seeking the assistance of *ACAS* where appropriate, the matter will be referred to arbitration and the level of that arbitration will be determined bearing in mind all the principles set out in this *agreement*.
- (iv) Immediately refer the issue to arbitration if the *Business Meeting* cannot agree.
- (v) Where issues are to be accepted for pendulum arbitration, the *Business Meeting* will consider the level at which the issue should be resolved.

a) Local Level: The issue is one that effects an Establishment singularly and therefore arbitration procedures should be taken forward by the Governor and Local Branch officials. Any subsequent determination will be binding only upon that particular establishment.

b) Area Level: The issue relates to measures being introduced by the Area Manager. Therefore the issue will be considered to be an Area dispute and the arbitration will be managed by appointed Area representatives or persons appointed to act on their behalf. Determinations will be considered binding upon those Establishments for which the issue was intended to apply.

c) National: Where an issue has National Implications and where Whitley Council negotiation has failed to achieve resolution. The arbitration will be managed by National officials and the determination will be accepted as being pendulum arbitration binding across the service.

Stage 5 - Arbitration

5(1) Arbitration will be conducted in accordance with the following provisions:

- (i) The arbitrator will be someone nominated by ACAS from the agreed panel.
- (ii) The arbitrator will regulate the procedure at the arbitration hearing.
- (iii) The arbitrator's decision will only be binding upon those who have been a party to the arbitration thus a decision relating to a dispute will apply in accordance with the specification at Stage 4(1)(v) above.

5(2) The procedure will be as follows:

- (i) The *Business Meeting* will finalise the proposed terms of reference for the arbitration after seeking further guidance if necessary, from ACAS.
- (ii) The hearing date will be agreed with the parties and will normally take place no later than 6 weeks from the request for arbitration.
- (iii) The hearing will normally take place at *Prison Service* premises although ACAS offices may also be used.
- (iv) No later than seven days before the hearing, the parties will each supply
 - a) the arbitrator with a copy of a written *statement of case*
 - b) the other party with at least two copies.
- (v) The *statement of case* will contain all submissions upon which the party relies in support of or in opposition to the claim and will include the following particulars:
 - a) The class or classes of employees concerned and the number of employees in such class or classes.
 - b) The nature of the claim.
 - c) The *status quo ante*.
 - d) The grounds in support of or opposition to the claim.
 - e) Where reference is made to any document or documents, copies or extracts thereof will be provided.
 - f) The names and status of the representative or representatives who will appear before the arbitrator.

- (vi) If one of the parties requests that the case should be adjourned from the date fixed to a later date, the following will apply:
 - a) Consent to an adjournment must be sought from the other party.
 - b) If this consent is forthcoming, then notice of such agreed adjournment shall be sent to the arbitrator as soon as possible and the arbitrator will fix a new hearing date.
 - c) If one party refuses to consent to the request for adjournment, then the party seeking the adjournment may make formal application to the arbitrator whose decision will be final.
- (vii) Although the parties will be free to elaborate and explain their cases to the arbitrator at the hearing, oral submissions will be with reference to the written *statement of case* only. Neither side shall be able to amend their *statement of case* in the course of the arbitration without the consent of the other party.
- (viii) After the hearing, the arbitrator will produce a reasoned written decision giving details of the arbitration award within 14 days of the conclusion of the hearing.
- (ix) The arbitrator's award will be sent simultaneously to both parties.
- (x) Any variation to this procedure shall be effective only with the written consent of both parties.

SCHEDULE III - GLOSSARY OF TERMS

ACAS	The Advisory, Conciliation and Arbitration Service
<i>Agreement</i>	The JIRPA which incorporates Schedules I, II, III and the Annex.
<i>Business Meeting</i>	A monthly meeting, chaired by the <i>DDG</i> or his/her nominated representative, up to two Vice Chairs of the <i>POA</i> , two other nominated <i>POA NEC</i> representatives, and members of <i>PERG</i> and should be conducted in accordance with the provisions of Schedule I paragraph 2.
<i>Change Implementation Procedure</i>	Those procedures set out in Schedule II.
<i>CIP log</i>	A log of essential information kept in accordance with the requirements of Schedule II.
<i>DDG</i>	The Deputy Director General of the <i>Prison Service</i>
<i>DG</i>	The Director General of the <i>Prison Service</i>
<i>Grades for which the POA is recognised</i>	Officers - Senior Officers - Principal Officers - Operational Support Grades - Night Patrols - Auxiliary Officers - Stores people - NHS grades - Managers Grades E, F, G
<i>Industrial Action</i>	Any actions by one or more individuals, which affects, or attempts to affect, the normal working or performance of the <i>Prison Service</i>
<i>NEC</i>	The National Executive Committee of the <i>POA</i> as defined in their rules.
<i>Operational Emergency</i>	An occasion where staff will be required to act contrary to the terms of an agreement whether national or local, when events make such action necessary having been identified as a clear operational emergency. Management will aim to give as much notice as possible to the <i>POA</i> and such a situation can only be designated by the <i>DG</i> or <i>DDG</i> who will state the reasons for so doing in writing.

<i>PERG</i>	The <i>Prison Service's</i> Pay and Employee Relations Group.
<i>POA</i>	The Prison Officers' Association
<i>Prison Service</i>	The public sector <i>Prison Service</i> in England and Wales.
<i>Prison Service Whitley Council</i>	Those procedures and practices which are current
<i>Procedures</i>	as at the date of this <i>agreement</i> .
<i>Profiles</i>	Work assessments of an establishment that identifies the staffing requirements for each work area required to complete the identified tasks within the establishment or area specified therein.
<i>Second Stage Intervention</i>	A process undertaken by <i>PERG</i> in conjunction with the area manager and <i>POA (NEC)</i> area representatives to effect next stage resolve in the <i>Change Implementation Procedure</i> .
<i>SOSHD</i>	The Secretary of State for Home Department
<i>Statement of Case</i>	Submissions upon which the parties rely on in support of or in opposition to their claim, which must be supplied to the mediator and/or arbitrator.
<i>Status Quo Ante</i>	The working practices or conditions in place immediately prior to the event that led to the <i>Change Implementation Procedure</i> being commenced.

THE ANNEX

- (1) Notwithstanding the other provisions in this *agreement* the *POA* recognises the *SOSHD* has the authority to set the budget for and to direct changes in the operation of the *Prison Service*.
- (2) Nothing in this *agreement* shall prejudice any discretion of the *SOSHD* under statute or affect any of his/her rights, powers and/or privileges arising by virtue of any statute.
- (3) Both parties accept that the *SOSHD* has the power to overrule the award of the arbitrator for overwhelming reasons of national security or public interest, in which case the arbitrator's award will not be implemented. To exercise that power, the *SOSHD* shall give a reasoned explanation to the House of Commons (when Parliament is in session) or to the Prime Minister (when Parliament is not in session) and shall publish that reasoned explanation.
- (4) Provided that the *SOSHD* does not exercise his/her power to overrule the arbitrator's award, the award will be implemented as if it were an agreement between the parties and, if appropriate, it will be incorporated into the contract of employment of the employees affected by the ruling.
- (5) In the event of a breach of this *agreement* by the *POA*, the *Prison Service* may take action in court, including seeking Injunctive Relief. In the event of a breach of this *agreement* by the *Prison Service* the *POA* may take action in court, including seeking a Declaratory Order.
- (6) The *POA* agrees that it will not induce, authorise or support any form of *industrial action* by any of its members employed in the *Prison Service* relating to a dispute concerning any matter, whether covered by this *agreement* or otherwise. Both parties will use their best endeavours to prevent any form of *industrial action*. Nothing in this *agreement* shall prevent the *POA* from consulting with its members and assessing their views whether by ballot or any other means.

For the purposes of this *agreement* the operation of the *Prison Service* shall include any work that contributes to the operation of the *Prison Service*, i.e. work normally carried out by grades of staff represented by the *POA* or by other staff working within an establishment whose duties and responsibilities fall outside the representation of the *POA*.

- (7) In the event of a dispute between the parties as to whether action which is in progress, or is or may be intended or proposed, is *industrial action* the question will be decided by the *SOSHD* whose decision will be final. A written and reasoned explanation will be final, and will be given to both parties as soon as is reasonably possible.

CHANGE IMPLEMENTATION LOG (CIP log)
The standard forms to be utilised as per Schedule II

1. Comprehensive Description of Change/Issue. (Annex any relevant documents)

Date of notification to other party.....

Name of the person giving this notification

2. Local Record of Meetings/ Dialogue with Union.

3. Brief description of the *Status Quo ante*

7. Draft Terms of Reference as agreed at local/area level, to be considered by the *Business Meeting* (please see Schedule II for guidance)

8. Record of *Business Meeting*/ Dialogue

Resolved?	Yes/No	<i>[if no - referral to arbitration; or refer back to appropriate level - area/local] [if yes - no further action]</i>
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Date of referral to *Business Meeting*.....
Signed (*POA*).....
Signed Management/*DDG*.....

9. Approved Terms of Reference For Arbitration to Proceed

Signed: (*POA Vice Chair*)_____

Signed: (Management/*DDG*)_____

VOLUNTARY AGREEMENT IN PLACE IN THE SCOTLAND PRISON SERVICE JURISDICTION

VOLUNTARY INDUSTRIAL RELATIONS AGREEMENT

Between

The Scottish Prison Service (SPS) and the Trade Unions Comprising the SPS Trade Union Side

1. PARTIES TO THE AGREEMENT

The parties to this agreement are the Scottish Prison Service, acting on behalf of the Scottish Ministers; the Prison Officers Association (Scotland) (POA(S)), the Public Commercial Services Union (PCS) and Prospect, which comprise the Scottish Prison Service Trade Union Side (TUS).

PRINCIPLES

2.1 The parties agree that the overriding objective of this collective agreement shall be that industrial relations are conducted in accordance with the procedures set out in schedule 1 to this agreement. The purpose is to ensure that all collective disputes whether at local or national level are dealt with effectively and differences are resolved without disruption to the operation of the SPS.

2.2 The agreement is underpinned by a partnership approach to solving industrial relations issues with all parties being committed to the success of the SPS as described by its vision, goals and values. The overall intention is to create a climate of relations between the parties in which there will be no occasion or necessity for the recognised constituent unions within the TUS (currently POA(S); PCS and Prospect) to consider industrial action.

2.3 To achieve these objectives the SPS will initiate consultation as soon as is reasonably practical on any proposals within the scope of this agreement. Relevant material and information will be provided to enable informed and constructive consultation prior to SPS taking decisions.

2.4 The SPS recognises that effective trade union representation is important to the conduct of relationships between management and staff in the service and to this end will provide reasonable facilities to the recognised constituent unions.

3. SCOPE OF THE INDUSTRIAL RELATIONS PROCEDURAL AGREEMENT

3.1 This agreement applies to all collective matters of policy and procedures or the collective application of policy and procedures which have a significant impact on those grades of staff represented by the recognised constituent unions within TUS and which relate to any of the following matters (3.1.1 to 3.1.6)

3.1.1 Terms and conditions of employment, or the physical conditions in which any workers are required to work;

3.1.2 Allocation of work or the duties of employment between workers or groups of workers;

3.1.3 All policies and procedures related to conditions of employment;

3.1.4 Facilities for accredited representatives of trade unions;

3.1.5 Machinery for negotiation or consultation, and other procedures, relating to any of the above matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures.

3.1.6 Changes at local level only where the Failure to Agree involves a disputed interpretation of nationally jointly agreed parameters.

3.2 Any dispute relating to matters set out in sub-paragraph (3.1) above shall be resolved using the procedures set out in the VIRA (Schedule 1).

Exclusions from VIRA:

3.3 It has not proved possible for the parties to agree the appropriateness of the VIRA procedure in relation to determining pay within the Scottish Prison Service.

To allow the adoption of the VIRA procedure, it has been jointly agreed that, in relation to annual pay negotiations, a separate interim procedure will be adopted to resolve disputes arising from a failure to agree in pay negotiations. If such a failure to agree occurs, the matter will be referred to ACAS for conciliation and, failing resolution, binding arbitration. The arbitration question will be determined in conciliation talks with ACAS.

Adoption of this interim arrangement will not prejudice the position of any party in determining the permanent policy and procedure to be adopted in pay review matters.

3.4 Changes at local level provided they are within nationally agreed parameters will not be eligible for resolution through the VIRA. (Unless 3.1.6 applies).

3.5 Matters concerning an individual grievance, individual disciplinary action or any type of individual complaint, will be determined by the appropriate agreed procedures and will not be eligible for resolution through the VIRA.

4. GENERAL

4.1 The SPS and TUS are committed to working in partnership and jointly intend that all proceedings and interactions will be conducted respectfully and with dignity as exemplified in, and in accordance with, the SPS Standards of Behaviour for Relationships at Work.

4.2 SPS and POA(S) intend that this agreement shall constitute a legally enforceable contract between them.

4.3 Notwithstanding the other provisions in this agreement the recognised constituent unions within SPS TUS recognise the Scottish Ministers' right to set the budget and to direct changes in the operation of the SPS.

4.4 Nothing in this agreement shall prejudice any discretion of the Scottish Ministers under Statute or effect any of their rights, powers and privileges arising by virtue of Statute.

4.5 In order to facilitate consultation on matters covered within paragraph 3.1.1 to 3.1.6 which bear on the work of the staff for which the constituent trade unions are recognised the parties will follow the procedures in the VIRA (Schedule 1) from time to time in force.

4.6 All parties commit to respond promptly to proposals put to them and to adhere to the time scales set out in the VIRA (Schedule 1).

4.7 All parties accept that national instructions and agreements take precedence over local agreements, instructions and action.

4.8 For the purposes of this agreement a matter is exclusive to SPS staff if it is a matter in respect of which the Chief Executive of the SPS exercises delegated authority.

4.9 Pending the outcome of any negotiation, conciliation or arbitration conducted under the provisions of this agreement all parties will maintain the "status quo". The SPS will not impose any disputed change whilst the matter is subject to negotiation, conciliation or arbitration, under the

provisions of this agreement except in cases covered in the **Annex 1** to this Agreement (Situations In Which The Status Quo May Be Temporarily Suspended). All parties to this agreement will use their best endeavours to prevent any form of industrial action.

4.10 In entering this contract the POA(S) agrees that it will not induce, authorise or support any form of industrial action by any of its members relating to a dispute concerning any matter, whether covered by this agreement or otherwise.

4.11 In the event of a breach of this agreement by either SPS or the POA(S), the aggrieved party shall have access to remedy through the courts.

5. NOTICE OF TERMINATION AND WITHDRAWAL

This agreement will be terminated if either party has given twelve months notice of termination (or a shorter period by mutual agreement) in writing to the Chief Executive of the SPS or the Full Time Officers of the recognised constituent trade unions as appropriate and that period of notice has expired.

6. AMENDMENT

This agreement can only be amended by agreement between the parties. The agreement will be reviewed by the parties after twelve months of operation or following conclusion of 6 arbitration references, whichever comes first.

7. REFLECTION IN CONDITIONS OF SERVICE

The conditions of service of employees for whom the constituent unions within SPS TUS have recognition rights for collective bargaining will be amended to reflect this collective agreement.

8. This agreement supersedes the SPS National Disputes Procedure - agreement between SPS management and SPS TUS, 1994.

Signed for and on behalf of the Scottish Prison Service:

..... **Date:**.....

Signed for and on behalf of the Scottish Prison Service Trade Union Side:

.....**[POA(S)]** **Date:**.....

.....**[PCS]** **Date:**.....

.....**[Prospect]** **Date:**.....

SCHEDULE 1

Voluntary Industrial Relations Agreement

1. Principles

The VIRA will operate within the following principles:

- 1.1 To resolve any dispute at the lowest competent level;
- 1.2 Recognition of the rights of all parties;
- 1.3 An obligation to behave responsibly towards each other;
- 1.4 To consult respective parties at an early stage;
- 1.5 To provide each other with all necessary information required for meaningful consultation and negotiation;
- 1.6 All parties should work within the agreed procedure;
- 1.7 Throughout the procedure it is incumbent on all parties to maintain communications at all levels with a view to resolving the issue;
- 1.8 All parties are committed to jointly providing an agreed and effective training package to managers and union representatives in order to ensure a common understanding of the content and spirit of this agreement;
- 1.9 Substitutes should attend meetings if any of the parties are unable to meet set dates;

2.

2.1 Negotiations between management and the recognised constituent trade unions within SPS TUS shall be conducted at the managerial level at which the authority to make decisions on those issues identified in paragraph 3(1) of the voluntary agreement rests.

2.2 Where a change is a matter of national policy and procedure which has a significant impact on those grades of staff represented by the constituent trade unions then the matter will be dealt with at national level between the Full Time Officers of the constituent trade unions and the Manager in SPS Headquarters responsible for the change.

2.3 In the event of a disagreement regarding the level at which the negotiation should take place then the matter will be decided by the Head of Employee Relations after consultation with the appropriate Full Time Officer of the constituent trade union.

3. Potential Failures to Agree

3.1 If the dispute is one which is being pursued locally, and the parties believe that after the process of consultation/ negotiation they have reached a potential failure to agree, they should initiate the following action:-

the local management and trade union should contact SPS HQ and the appropriate FTO respectively, giving details of the potential failure to agree. SPS HQ and the appropriate FTO will discuss and determine whether the dispute may have a national impact. If it is determined that the case does have national implications, then the issue will be pursued at national level (see **para. 4**). Conversely, if it is determined that the issue has local impact only, then the potential failure to agree may follow one of two routes:-

EITHER

SPS HQ or the appropriate FTO may determine that the issue should not be pursued. If management decide not to pursue the issue, the position prior to the situation which led to the potential failure to agree will prevail. Should the trade union decide not to proceed, then the management proposal which led to the potential failure to agree will be implemented.

OR

The issue is confirmed as a failure to agree and is passed back to local management and trade union to pursue to the next stage of VIRA as outlined in **para 5** below.

4. Failures to Agree on a National Issue

If, despite the best endeavours of the parties, the process of consultation/ negotiation fails to resolve a matter which falls within the scope of **3.1** then a Failure to Agree (FTA) may be submitted by either party and the case pursued through the VIRA as outlined in **para. 5** below.

5. The party submitting the FTA will verbally inform the other party at the conclusion of the meeting, and confirm the FTA in writing within 24 hours by submitting the FTA registration document (VIRA 1) (see **Annex 2**).

5.1 Responsibility for distributing the VIRA 1 lies with Headquarters Employee Relations section. For information purposes copies of the VIRA 1 will be sent to:

Employee Relations section at SPS Headquarters

SPS TUS

The Establishment Governor in Charge; Director or Head of Training

The local accredited representative(s) of the constituent trade union(s)
The FTO(s) of the constituent trade union(s)
ACAS [FAX 0141 221 4697]

5.2 It is accepted by all parties that the submission of a FTA will require the matter to automatically proceed to conciliation.

6. Conciliation

6.1 The conciliation process will commence within 14 calendar days of ACAS being informed of the FTA.

6.2 ACAS will be informed immediately (on the date shown on the VIRA 1) by telephone by Headquarters Employee Relations section. (0141 242 1709 or 0141 242 1710).

6.3 ACAS will liaise between the parties to determine a suitable date and location for conciliation.

6.4 Three rooms should be available for use during the conciliation process, one for each of the parties and one for use by the conciliator. One of the rooms should be large enough to accommodate all parties in the event that a full meeting is necessary.

6.5 The conciliation will commence with the conciliator being apprised of the nature of the dispute. This session may be conducted jointly with all the parties or separately with each as the conciliator decides.

6.6 It is essential that each party ensures that personnel with the necessary authority to make decisions attend conciliation.

6.7 ACAS will regulate the procedure for conciliation and have sole discretion on the formalities for conduct of the meeting.

6.8 At the end of the conciliation process ACAS will verbally summarise and agree the position with the parties. The summary will include:

6.8.1 whether the issue(s) in dispute is resolved;

or,

6.8.2 whether conciliation is suspended to allow the parties to review their position;

or,

6.8.3 whether some of the issues in dispute are resolved;

or,

6.8.4 whether the matter is to be referred to arbitration.

6.9 The outcome of the conciliation meeting will be confirmed to the parties in writing.

6.10 If the outcome of the conciliation is that the matter is to be referred to arbitration, joint Terms of Reference for arbitration must be agreed. Joint Terms of Reference will be agreed at union FTO and SPS Director level. The process of agreeing joint Terms of Reference will be concluded during conciliation.

7. Arbitration

Arbitration will be conducted in accordance with the following provisions.

7.1 The arbiter will be nominated by ACAS from a panel of three agreed by the parties. Each arbiter must undertake an induction programme jointly provided by the parties prior to carrying out arbitration hearings. The arbiter nominated on each occasion will be the next person on the list by rotation. ACAS will only by-pass the rotation system if the next arbiter is not available within the agreed timescale.

7.2 The arbiter will regulate the procedure at the arbitration hearing.

7.3 The overall procedure will be as follows:

7.3.1 The parties will agree the Terms of Reference for the arbitration at conciliation;

7.3.2 The hearing date will be agreed with the parties and will normally take place no later than 4 calendar weeks from the date of agreed Terms of Reference being established;

7.3.3 The hearing will normally take place at the SPS premises. No later than seven calendar days prior to the hearing, the parties will each supply the arbiter with a copy of a written Statement of Case (SoC) and will exchange between themselves at least two copies of their respective written statements. The SoC must address the question agreed for arbitration and not introduce new issues;

7.3.4 The parties may present whatever information and arguments they see fit to the arbiter and the arbiter will exercise her/his own judgement as to the weight to be given to all such information and arguments;

7.3.5 Although the parties will be free to elaborate and explain their case to the arbiter at the hearing, oral submissions will be with reference to the written SoC only.

7.4 The SoC will contain all submissions upon which the party relies in support of or in opposition to the claim and will include the following:

7.4.1 The class or classes of employees concerned and the number of employees in such class or classes;

7.4.2 The nature of the claim;

7.4.3 The existing situation;

7.4.4 The grounds in support of or opposition to the claim;

7.4.5 Where reference is made to any document or documents, copies or extracts thereof will be provided;

7.4.6 The names and status of the representative or representatives who will appear before the arbiter.

7.5 If one of the parties requests that the case should be adjourned from the date fixed to a later date, the following will apply:

7.5.1 Consent to an adjournment must be sought from and agreed by the other party;

7.5.2 If the consent is forthcoming, then notice of such agreed adjournment shall be sent to the arbiter as soon as possible and the arbiter will fix a new hearing date;

7.5.3 If one party refuses consent to the request for adjournment, then the party seeking the adjournment may make formal application to the arbiter whose decision is final;

7.6 After the hearing, the arbiter will produce a written report summarising the points made by each party and giving details of the arbitration award. This report will be given within 14 days of the conclusion of the hearing.

7.7 The arbiter's award will be sent simultaneously to all parties.

7.8 The parties fully understand and accept that the Scottish Ministers have the power to overrule the award of the arbiter for reasons of national security or public interest, in which case the arbiter's award will not be implemented. To exercise that power, the Scottish Ministers shall give a reasoned explanation to the Scottish Parliament (when the Scottish Parliament is in session) or to the First Minister (when the Scottish Parliament is not in session) and shall publish that reasoned explanation.

7.9 Provided that the Scottish Ministers do not exercise their power to overrule the award, the award will be implemented as if it was an agreement between the parties and if appropriate incorporated into the contract of employment of the employees.

7.10 Any variation to this procedure shall be effective only with the consent of all parties.

7.11 In the event of a dispute between the parties as to whether a matter is capable of and suitable for arbitration under this agreement, a final decision will be taken by the arbiter.

GLOSSARY OF TERMS

- ACAS Service** - Advisory, Conciliation and Arbitration
- Arbiter** - A designated person drawn from the ACAS list of arbiters who will carry out the arbitration process
- Arbitration** - The process by which all parties will put their case and having taken into consideration all of the evidence a binding decision will be made by the Arbiter
- Best Endeavours** - In the context of this agreement, best endeavours is where it can be clearly demonstrated that meaningful discussion/ consultation/ negotiation has taken place in an attempt to resolve the matter.
- Conciliation** - The process by which agreement is sought between the parties, facilitated by ACAS.
- Consultation** - The process where one party asks the views/opinions of another party. Where any views/opinions submitted by a party are not accepted then they should be informed of the reasons for non acceptance.
- Discussion** - The process where an informal conversation takes place regarding a particular subject.
- FTA** - Failure to Agree
- FTO** - Full Time Official of a recognised trade union
- Industrial Action** - Any action which disrupts the normal running of the SPS
- National** - Relating to Scotland
- Negotiation** - The process where parties take all reasonable steps to reach an agreement.
- PCS** - Public Commercial Services Union
- POAS** - Prison Officers Association of Scotland
- Statement of Case (SoC)** - Submissions upon which the parties rely in support of or in opposition to their claim which must be supplied to the arbiter
- Status Quo** - *The practices or behaviour which had been previously agreed, (explicitly or impliedly) and in place prior to the change that caused the FTA*

ANNEX 1

Situations in Which The Status Quo May Be Temporarily Suspended

1. Pending the outcome of any negotiation, conciliation or arbitration conducted under the provisions of this agreement all parties will maintain the "status quo." The SPS will not impose any disputed change whilst the matter is subject to negotiation, conciliation or arbitration, under the provisions of this agreement except in cases where every reasonable alternative has been exhausted. The circumstances in which the status quo might be suspended are:-

a). In cases of immediate operational emergency;

Or,

b). Where there is substantial and supported evidence that offers the Governor in Charge, as the legally responsible person, just cause to believe that adherence to the status quo would, on balance, create significant risk of an operational emergency situation developing;

Or,

c). Where there is substantial and supported evidence that offers the Governor in Charge, as the legally responsible person, just cause to believe that adherence to the status quo would, on balance, represent a significant risk to the delivery of custody, order or the essential care of prisoners within an establishment.

2. In the circumstances described in (a), (b), or (c) above, the Governor in Charge is the individual who bears legal accountability for maintaining the health and safety of all persons present within the Establishment.

3. Exceptional Duty Payments may be awarded if the duties required of staff comply with the conditions set out under the Exceptional Duty Payments Policy. Exceptional Duty Payments are not payments in compensation for the temporary suspension of the status quo under the terms of the Voluntary Industrial Relations Agreement, and in no circumstances should they be seen as such.

4. For **(a)** above, the Governor in Charge, as the legally responsible person, will have immediate authority to temporarily suspend the status quo having carried out a dynamic risk assessment whenever the immediacy of the situation prevents the formal process being undertaken. He or she must, following temporary suspension of the status quo, record the reasons in writing and furnish a copy to appropriate Establishment representatives of the recognised trade unions, the Operations Director and the Head of Employee Relations. As soon as is operationally possible, a formal assessment must be made in relation to the risk that would be created by restoring the status quo. The status quo will be restored as soon as the Governor in Charge as the legally responsible person, is satisfied, having considered the Risk

Assessment, that no significant risk to health and safety exists through its restoration

5. In the case of **(b)** and **(c)** above, the status quo may be temporarily suspended **only** where there is substantial and supported evidence that leads the Governor In Charge to believe that non-suspension of the status quo would, on balance, allow significant risk of an operational emergency situation to develop, or allow a significant risk to the delivery of custody, order, or the essential care of prisoners short of an operational emergency situation. Before making any decision with regard to **(b)** or **(c)**, the Governor in Charge must ensure that:-

5.1 Consultation takes place at the earliest opportunity with Establishment representatives of the appropriate recognised trade unions.

5.2 A risk assessment is carried out that will identify the degree of risk associated with the prevailing circumstances and determine the impact of maintaining the status quo. The status quo will remain in place unless the Governor In Charge, in the light of the risk assessment, identifies that continued maintenance is no longer sustainable and action is required to protect the health and safety of either staff, prisoners, or members of the public or to maintain custody, order, or the essential care of prisoners. The risk assessment will at agreed intervals be jointly reviewed and monitored by the Governor in Charge and Establishment representatives of the appropriate recognised trade unions. Representatives should, wherever possible, have Health and Safety training and competence. In any case, Health and Safety representatives appointed by the trade unions recognised by the SPS, whether branch officials or not, should be involved wherever possible.

6. If as the legally responsible person the Governor in Charge temporarily suspends the status quo provision, this shall only be until such time as the risk assessment has confirmed that the particular risks that led to the suspension of the status quo have been effectively controlled. In each and every case where it is proposed to temporarily suspend the status quo without the agreement of Establishment Representatives of appropriate recognised trade unions, the Governor in Charge shall first consult with the Head of Employee Relations, Employee Relations Manager or Director of HR and National Representatives of appropriate recognised trade unions prior to actioning any temporary suspension. Efforts to resolve the dispute to which the status quo relates should continue under the Voluntary Industrial Relations Agreement uninterrupted.

7. In cases where temporary suspension is actioned without agreement of Establishment Representatives of appropriate recognised trade unions, a Critical Incident Review meeting will take place the next working day (i.e. Monday to Friday). This will be attended by the Governor in Charge, an Establishment Managers with direct operational knowledge of the circumstances, a Local Representative of the appropriate Trade Union, the Head of Employee Relations, the Secretary to the TUS, and a National Official of the appropriate recognised trade union. The Critical Incident Review

meeting will determine what factors led to the failure to agree in relation to the temporary suspension of the status quo, and whether these were avoidable. Any lessons will also be noted and acted upon in relation to the effectiveness of the Voluntary Industrial Relations Agreement in providing safeguards against the inappropriate suspension of the status quo.

Criminal Justice and Public Order Act 1994

1994 CHAPTER 33

An Act to make further provision in relation to criminal justice (including employment in the prison service); to amend or extend the criminal law and powers for preventing crime and enforcing that law; to amend the Video Recordings Act 1984; and for purposes connected with those purposes

[3rd November 1994]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

127 Inducements to withhold services or to indiscipline

(1) A person contravenes this subsection if he induces a prison officer—

- (a) to withhold his services as such an officer; or
- (b) to commit a breach of discipline.

(2) The obligation not to contravene subsection (1) above shall be a duty owed to the Secretary of State [or, in Scotland, to the Scottish Ministers].

(3) Without prejudice to the right of the Secretary of State [or, in Scotland, to the Scottish Ministers], by virtue of the preceding provisions of this section, to bring civil proceedings in respect of any apprehended contravention of subsection (1) above, any breach of the duty mentioned in subsection (2) above which causes the Secretary of State [or, in Scotland, to the Scottish Ministers] to sustain loss or damage shall be actionable, at his suit or instance, against the person in breach.

(4) In this section “prison officer” means any individual who—

(a) holds any post, otherwise than as a chaplain or assistant chaplain or as a medical officer, to which he has been appointed for the purposes of section 7 of the Prison Act 1952 or under section 2(2) of the Prison Act (Northern Ireland) 1953 (appointment of prison staff),

(b) holds any post, otherwise than as a medical officer, to which he has been appointed [for the purposes of section 3(1A)] of the Prisons (Scotland) Act 1989, or

(c) is a custody officer within the meaning of Part I of this Act or a prisoner custody officer, within the meaning of Part IV of the Criminal Justice Act 1991 or Chapter II or III of this Part.

(5) The reference in subsection (1) above to a breach of discipline by a prison officer is a reference to a failure by a prison officer to perform any duty imposed on him by the prison rules or any code of discipline having effect under those rules or any other contravention by a prison officer of those rules or any such code.

(6) In subsection (5) above “the prison rules” means any rules for the time being in force under section 47 of the Prison Act 1952, section 39 of the Prisons (Scotland) Act 1989 or section 13 of the Prison Act (Northern Ireland) 1953 (prison rules).

(7) This section shall be disregarded in determining for the purposes of any of the relevant employment legislation whether any trade union is an independent trade union.

(8) Nothing in the relevant employment legislation shall affect the rights of the Secretary of State [or in Scotland, the Scottish Ministers] by virtue of this section.

(9) In this section “the relevant employment legislation” has the same meaning as in section 126 above.

NOTES

Initial Commencement

Royal Assent

Royal Assent: 3 November 1994: see s 172(4).

Amendment Sub-s (2): words “or, in Scotland, to the Scottish Ministers” in square brackets inserted by SI 1999/1820, art 4, Sch 2, Pt I, para 115(1), (10)(a).

Date in force: 1 July 1999: see SI 1999/1820, art 1(2).

Sub-s (3): words “or, in Scotland, to the Scottish Ministers” in square brackets in both places they occur inserted by SI 1999/1820, art 4, Sch 2, Pt I, para 115(1), (10)(a).

Date in force: 1 July 1999: see SI 1999/1820, art 1(2).

Sub-s (4): in para (b) words “for the purposes of section 3(1A)” in square brackets substituted by SI 1999/1820, art 4, Sch 2, Pt I, para 115(1), (10)(b).

Date in force: 1 July 1999: see SI 1999/1820, art 1(2).

Sub-s (8): words “or in Scotland, the Scottish Ministers” in square brackets inserted by SI 1999/1820, art 4, Sch 2, Pt I, para 115(1), (10)(c).

Date in force: 1 July 1999: see SI 1999/1820, art 1(2).

A proposal in the form of a Draft Order laid before both Houses of Parliament under section 6(1) of the Regulatory Reform Act 2001

DRAFT STATUTORY INSTRUMENTS

2004 No. []

REGULATORY REFORM

The Regulatory Reform (Prison Officers)(Industrial Action) Order 2004

Made (…)

Coming into Force (…)

Whereas:

- (a) The Secretary of State for the Home Department (“the Secretary of State”) consulted-
- (i) such organisations as appear to the Secretary of State to be representative of interests substantially affected by the Secretary of State’s proposals;
 - (ii) such other persons as the Secretary of State considered appropriate; and
 - (iii) the National Assembly for Wales;

- (b) following the consultation mentioned in recital (a) it appeared to the Secretary of State appropriate to vary part of his proposals and to undertake further consultation with respect to the variations;
- (c) following the further consultation, it appeared to the Secretary of State that it was appropriate to proceed with the making of this Order;
- (d) a document setting out the Secretary of State's proposals was laid before Parliament as required by section 6 of the Regulatory Reform Act 2001 and the period for Parliamentary consideration under section 8 of that Act expired;
- (e) the Secretary of State had regard to the representations made during that period and in particular to *[name any Parliamentary report]*;
- (f) a draft of this Order was laid before Parliament with a statement giving details of those representations and the changes to the Secretary of State's proposals in the light of them;
- (g) the draft was approved by resolution of each House of Parliament; and
- (h) the Secretary of State is of the opinion that this Order does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise;

Now, therefore, the Secretary of State, in exercise of the powers conferred upon him by section 1 of the Regulatory Reform Act 2001, hereby makes the following Order:

Citation and commencement

1. - This Order may be cited as the Regulatory Reform (Prison Officers)(Industrial Action) Order 2004 and shall come into force on the day after the day on which it is made.

Amendment of section 127 (4) of the Criminal Justice and Public Order Act 1994

2. - Section 127 (4) of the Criminal Justice and Public Order Act 1994¹ ("the 1994 Act") (inducements to prison officers to withhold services or to indiscipline) shall be amended as follows:

(a) in paragraph (a), omit the words "for the purposes of section 7 of the Prison Act 1952 or"; and

¹ 1994 c.33.

(b) omit paragraph (b).

Consequential provision

3. – (1) For section 128 (5) of the 1994 Act substitute:

“(5) For the purposes of this section, the prison service comprises all the individuals who:

(a) hold any post, otherwise than as a chaplain or assistant chaplain or as a medical officer, to which those individuals have been appointed for the purposes of section 7 of the Prison Act 1952 or under section 2 (2) of the Prison Act (Northern Ireland) 1953 (appointment of prison staff); or

(b) hold any post, otherwise than as a medical officer, to which those individuals have been appointed for the purposes of section 3 (1A) of the Prisons (Scotland) Act 1989.”.

(2) For the definition of “prison officer” in section 64 (8) of the Disability Discrimination Act 1995² substitute:

“ “prison officer” means a person who:

(a) holds any post, otherwise than as a chaplain or assistant chaplain or as a medical officer, to which he has been appointed for the purposes of section 7 of the Prison Act 1952 or under section 2 (2) of the Prison Act (Northern Ireland) 1953 (appointment of prison staff);

(b) holds any post, otherwise than as a medical officer, to which he has been appointed for the purposes of section 3 (1A) of the Prisons (Scotland) Act 1989; or

(c) is a prisoner custody officer within the meaning of Part IV of the Criminal Justice Act 1991 or Chapter II or III of Part VIII of the Criminal Justice and Public Order Act 1994;”.

Paul Goggins Parliamentary Under-Secretary of State, Home Office 2004

EXPLANATORY NOTE

(This note is not part of the Order)

Section 127 of the Criminal Justice and Public Order Act 1994 (“the 1994 Act”) enables the Secretary of State (or, in Scotland, the Scottish Ministers) to bring an action against any person who causes loss or damage by inducing a prison officer to withhold his services as such an officer or to commit a breach of discipline. The effect of the amendments made by this Order is that section 127 will no longer apply in relation to such an inducement in respect of a prison officer in England and Wales, or in Scotland, although it will continue to apply in respect of such a prison officer in Northern Ireland as well as in respect of a custody officer and a prisoner custody officer as defined in section 127 (4) (c) of the 1994 Act.

² 1995 c. 50.