
SCOTTISH STATUTORY INSTRUMENTS

2016 No. 131

PRISONS

**The Prisons and Young Offenders Institutions
(Scotland) Amendment Rules 2016**

Made - - - - 24th February 2016
*Laid before the Scottish
Parliament* - - - - 24th February 2016
Coming into force - - 24th March 2016

The Scottish Ministers make the following Rules in exercise of the powers conferred by section 39 of the Prisons (Scotland) Act 1989(1) and all other powers enabling them to do so.

Citation and commencement

1. These Rules may be cited as the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2016 and come into force on 24th March 2016.

Amendment of the Prison and Young Offenders Institutions (Scotland) Rules 2011

2.—(1) The Prisons and Young Offenders Institutions (Scotland) Rules 2011(2) are amended as follows.

(2) In rule 2—

(a) for the definition of “constable” substitute—

““constable” has the same meaning as in section 99(1) of the Police and Fire Reform (Scotland) Act 2012;”;

(b) in paragraph (b) of the definition of “Governor”, for “55(5)” substitute “55(7)”;

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- (1) 1989 c.45; section 39 was amended by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9) (“the 1993 Act”), sections 24 and 25, Schedule 5, paragraph 6(6)(b) and Schedule 7, paragraph 1; the Criminal Justice and Public Order Act 1994 (c.33) (“the 1994 Act”), section 116(4); the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), Schedule 4, paragraph 75(4)(a), and the Crime and Disorder Act 1998 (c.37), Schedule 8, paragraph 71 and Schedule 10, paragraph 1. Section 39 is to be read with the following sections of the Prisons (Scotland) Act 1989: 19 (as amended by the 1993 Act, Schedule 5, paragraph 6(4)), 20A (which was inserted by the 1993 Act, section 23); 41(2B) (which was inserted by the 1994 Act section 153(3) and amended by the Criminal Justice and Licensing (Scotland) Act 2010, section 34(1)); 41B(1) (which was inserted by the 1994 Act, section 151(2) and amended by the Management of Offenders etc. (Scotland) Act 2005 (asp 14), section 16); and 41C(1) (which was inserted by the Crime and Punishment (Scotland) Act 1997 (c.48), section 42). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (c.46), section 53.
- (2) S.S.I. 2011/331 as amended by S.S.I. 2011/356 and S.S.I. 2012/26.

- (c) after the definition of “media representative” insert—
 - ““medical facility” includes any hospital and any other premises at which any form of services for the care of a person’s health is provided;”.

(3) In rule 4(1)(d), for “40” substitute “41”.

(4) For rule 13 substitute—

“Recording data about a prisoner’s religion, belief or non-belief

13. The Governor must maintain a record of any declaration made by a prisoner in accordance with rule 44A(2) or (3).”.

(5) For rule 39 substitute—

“Arrangements for care outwith prison

39.—(1) Where the Governor receives a recommendation from a healthcare professional that the condition of a prisoner’s health requires the prisoner to be—

- (a) referred to a medical practitioner or a specialist outwith the prison; or
- (b) treated at a medical facility outwith the prison,

the Governor must comply with paragraph (2) or paragraph (3).

(2) The Governor must grant the prisoner a period of unescorted release for health reasons where—

- (a) the prisoner is an eligible prisoner for the purposes of rule 134(2); and
- (b) the Governor considers that it is appropriate to grant temporary release to the prisoner under rule 135.

(3) The Governor must arrange for the escorted release of the prisoner to the medical practitioner, specialist or medical facility outwith the prison where—

- (a) the prisoner is not an eligible prisoner for the purposes of rule 134(2); or
- (b) the Governor considers that it is not appropriate to grant temporary release to the prisoner under rule 135.

(4) In this rule “unescorted release for health reasons” has the same meaning as in rule 136.”.

(6) After rule 44 insert—

“Declaration of religion, belief or non-belief

44A.—(1) An officer must ask a prisoner upon reception to declare his or her religion, belief or non-belief.

(2) A prisoner may declare his or her religion, belief or non-belief to an officer at any time.

(3) A prisoner may change a declaration made under paragraph (2) at any time.

(4) A prisoner is not obliged to give any information to an officer about having a particular religion, belief or non-belief upon reception or at any other time.

(5) Where a prisoner declares his or her religion, belief or non-belief under paragraph (2) or (3), the Governor must inform the chaplaincy team of the declaration.

(6) A prisoner is to be treated as having a particular religion, belief or non-belief for the purposes of these Rules if the prisoner has declared his or her religion, belief or non-belief under paragraph (2) or (3).”.

- (7) In rule 51(2)(b), for “55(5)” substitute “55(7)”.
- (8) In rule 54(1), for “55 to 60” substitute “55 to 57 and 60”.
- (9) For rules 55 to 59 substitute—

“Restrictions on general correspondence to and from the prisoner

55.—(1) This rule applies to any letter or package, other than one to which rule 56 or 57 applies, which a prisoner wishes to send or which is addressed to a prisoner.

(2) An officer or employee may open a letter or package to which this rule applies and remove the contents of that letter or package.

(3) Where an officer or employee proposes to open a letter or package to which this rule applies, or remove the contents of that letter or package, the officer or employee may ask the prisoner to be present when the letter or package is opened or its contents removed.

(4) The contents of a letter or package to which this rule applies may only be read by an officer or employee—

- (a) in the circumstances specified in a direction by the Scottish Ministers made under paragraph (7); and
- (b) in accordance with any conditions specified in a direction by the Scottish Ministers made under paragraph (7).

(5) Subject to paragraph (6), where a letter or package to which this rule applies is, or is found to contain anything, in contravention of the restrictions specified in a direction by the Scottish Ministers made under paragraph (7), an officer or employee may—

- (a) prevent the letter or package, or the contents of the letter or package, from being sent or from being received by the prisoner; and
- (b) deal with the letter or package, or the contents of the letter or package, in accordance with such arrangements as may be specified in a direction by the Scottish Ministers made under paragraph (7).

(6) Where a letter or package to which this rule applies is found to contain a prohibited article or any unauthorised property, the Governor must deal with the item in terms of rule 104.

(7) The Scottish Ministers may specify in a direction any of the following matters in relation to letters and packages to which this rule applies—

- (a) the circumstances in which a letter or package may be read;
- (b) the conditions under which a letter or package may be read;
- (c) the officers or employees who may be authorised to read a letter or package;
- (d) the restrictions as to the number of letters or packages which a prisoner may send;
- (e) the restrictions as to the amount of money (whether in the form of cash, cheques, bankers’ drafts or otherwise) which a prisoner may send or receive in a letter or package;
- (f) the times and frequency at which a prisoner may send or receive money (whether in the form of cash, cheques, bankers’ drafts or otherwise) in a letter or package;
- (g) the persons, authorities and organisations to whom a prisoner is prohibited from sending a letter or package;
- (h) the restrictions or conditions which apply where a prisoner wishes to send a letter or package to a person, authority or organisation with whom the prisoner is not prohibited from corresponding;

- (i) the general nature and description of letters or packages which a prisoner is not permitted to send or receive; and
- (j) the arrangements in accordance with which a letter or package, or the contents of a letter or package, may be dealt under paragraph (5)(b).

Opening and reading of confidential correspondence

56.—(1) This rule applies to a letter or package which can be clearly identified, from the outer face of the envelope or packaging, as containing or comprising confidential correspondence.

(2) An officer or employee must not open a letter or package to which this rule applies, or remove the contents of that letter or package, unless—

- (a) the officer or employee has cause to believe that it contains a prohibited article or unauthorised property; or
- (b) the officer or employee has reasonable cause to believe that the contents of the letter or package may—
 - (i) endanger the security of the prison;
 - (ii) endanger the safety of any person; or
 - (iii) relate to a criminal activity.

(3) Where an officer or employee proposes to open a letter or package to which this rule applies, or remove the contents of that letter or package, under paragraph (2), the officer or employee must—

- (a) inform the prisoner who wishes to send the letter or package or to whom the letter or package is addressed of the reason for opening the letter or package or removing its contents; and
- (b) ensure that the prisoner is present when the letter or package is opened or its contents removed, unless the prisoner refuses, or does not wish, to be present.

(4) The contents of a letter or package to which this rule applies must not be read by an officer or employee unless that officer or employee has—

- (a) been authorised by the Governor to do so under paragraph (5); and
- (b) informed the prisoner of the reason for reading the contents of the letter or package.

(5) The Governor may authorise an officer or employee to read the contents of a letter or package to which this rule applies where the Governor has reasonable cause to believe that the contents of the letter or package may—

- (a) endanger the security of the prison;
- (b) endanger the safety of any person; or
- (c) relate to a criminal activity.

(6) Where a letter or package to which this rule applies is found to contain a prohibited article or any unauthorised property, the Governor must deal with the item in terms of rule 104.

(7) In this rule—

“confidential correspondence” means court correspondence, legal correspondence, medical correspondence or privileged correspondence;

“court” includes, but is not limited to, the sheriff, the High Court of Justiciary, the Court of Session, the European Court of Justice, the European Court of Human Rights, the International Criminal Court, the Supreme Court, the First-tier Tribunal (Immigration

and Asylum Chamber), the Upper Tribunal (Immigration and Asylum Chamber), the Scottish Criminal Cases Review Commission and the Parole Board for Scotland;

“court correspondence” means a letter or package which is—

- (a) addressed to a court and which a prisoner gives to an officer or employee for the purpose of sending to that court; or
- (b) sent to a prisoner at the prison by a court;

“legal correspondence” means a letter or package which is—

- (a) addressed to a legal adviser and which a prisoner gives to an officer or employee for the purpose of sending to that legal adviser; or
- (b) sent to a prisoner at the prison by a legal adviser;

“medical correspondence” means a letter or package which contains personal health information about a relevant prisoner and is—

- (a) addressed to a registered medical practitioner and given to an officer or employee by the relevant prisoner for the purpose of sending to that registered medical practitioner; or
- (b) sent to the relevant prisoner at the prison by a registered medical practitioner;

“privileged correspondence” means a letter or package which is—

- (a) addressed to a person, authority or organisation specified in a direction made by the Scottish Ministers and which a prisoner gives to an officer or employee for the purpose of sending to that person, authority or organisation; or
- (b) sent to a prisoner at the prison by a person, authority or organisation specified in a direction made by the Scottish Ministers;

“relevant prisoner” means a prisoner who—

- (a) is certified as having a life-threatening illness by the registered medical practitioner from whom the prisoner is receiving treatment for that illness; and
- (b) has obtained the Governor’s prior consent to communicate with that registered medical practitioner in confidence.

Confidential correspondence which cannot be clearly identified

57.—(1) This rule applies to a letter or package which—

- (a) cannot be clearly identified from the outer face of the envelope or packaging as containing or comprising confidential correspondence;
- (b) an officer or employee has opened, and removed the contents thereof, under rule 55(2);
- (c) the officer or employee proposes to read in accordance with rule 55(4); and
- (d) the officer or employee subsequently identifies as containing or comprising confidential correspondence.

(2) From the moment that an officer or employee identifies a letter or package to which this rule applies as containing or comprising confidential correspondence, that letter or package must be treated in accordance with paragraphs (3) and (4).

(3) The contents of a letter or package to which this rule applies must not be read by an officer or employee unless that officer or employee has—

- (a) been authorised by the Governor to do so under paragraph (4); and

(b) informed the prisoner who wishes to send the letter or package or to whom the letter or package is addressed of the reason for reading the contents of the letter or package.

(4) The Governor may authorise an officer or employee to read the contents of a letter or package to which this rule applies where the Governor has reasonable cause to believe that the contents of the letter or package may—

- (a) endanger the security of the prison;
- (b) endanger the safety of any person; or
- (c) relate to a criminal activity.

(5) In this rule “confidential correspondence” has the meaning given by rule 56(7).”

(10) In rule 60(3), for “55(5)” substitute “55(7)”.

(11) In rule 68—

- (a) in the cross heading and in paragraphs (1) and (2) omit “police”; and
- (b) in paragraph (2), for “the chief constable” substitute “a chief inspector”.

(12) In rule 84(2)—

- (a) immediately after sub-paragraph (d) omit “and”; and
- (b) at the end of sub-paragraph (e) insert—

“; and

(f) any activity which is intended to assist the prisoner’s reintegration into the community following release”.

(13) In rule 92(3)(a), after “prisoner” insert—

“unless the search is carried out by the use of—

- (i) a stationary body scanner under paragraph (5)(c); or
- (ii) trained sniffer dogs under paragraph (5)(d)”.

(14) In rule 96—

(a) for paragraph (1) substitute—

“(1) In this rule “restraint” means—

- (a) a body belt; or
- (b) a back board.”; and

(b) in paragraph (6)(a), for “body belt” substitute “restraint”.

(15) In rule 106(3)(a), after “visitor” insert—

“unless the search is carried out by the use of—

- (i) a stationary body scanner under paragraph (5)(d); or
- (ii) trained sniffer dogs under paragraph (5)(e)”.

(16) In rule 108(3)(a), after “searched” insert—

“unless the search is carried out by the use of—

- (i) a stationary body scanner under paragraph (5)(d); or
- (ii) trained sniffer dogs under paragraph (5)(e)”.

(17) In rule 134—

- (a) in paragraph (2)(b), for “paragraph (3) or (4)” substitute “paragraph (3), (4) or (6)”;
- (b) after paragraph (5) insert—

“(6) A prisoner is disqualified from obtaining temporary release if the prisoner is subject to a deportation order unless the prisoner has been granted temporary release in the three months prior to the deportation order being made.

(7) For the purposes of paragraph (6), a prisoner is subject to a deportation order where—

(a) a deportation order has been made against the prisoner under section 5(1) of the Immigration Act 1971; and

(b) that order remains in force.”.

(18) In rule 136, for the definition of “unescorted day release for health reasons” substitute—

““unescorted release for health reasons” means the unescorted temporary release from prison of an eligible prisoner for a period not exceeding seven days, excluding travelling time, for the purposes of enabling the prisoner—

(a) to attend for treatment at a medical facility outwith the prison; or

(b) to attend counselling outwith the prison.”.

(19) After rule 136 insert—

“Extension of certain periods of temporary release

136A.—(1) Where the Governor considers it appropriate to do so, the Governor may, before the expiry of a period of relevant temporary release, apply to the Scottish Ministers to extend the period of relevant temporary release in accordance with this rule.

(2) The Scottish Ministers may—

(a) on an application of a Governor made under paragraph (1); and

(b) where they are satisfied that it is appropriate to do so,

allow the period of relevant temporary release to be extended by a period of no more than seven days.

(3) Where a period of relevant temporary release has been extended by the Scottish Ministers under paragraph (2), the period of extension is to be taken as a period of relevant temporary release for the purposes of this rule.

(4) In this rule “relevant temporary release” means unescorted release for health reasons as defined in rule 136.”.

(20) In rule 142(2)(a), after “searched” insert—

“unless the search is carried out by the use of—

(i) a stationary body scanner under paragraph (4)(d); or

(ii) trained sniffer dogs under paragraph (4)(e)”.

(21) In paragraph 30 of Schedule 1, after “under” insert “rule 100 or”.

St Andrew’s House, Edinburgh
24th February 2016

MICHAEL MATHESON
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Prisons and Young Offenders Institutions (Scotland) Rules 2011 (“the Prison Rules”).

Rule 2(4) and (6) makes provision about the religion, belief or non-belief of prisoners. Paragraph (4) replaces rule 13 of the Prison Rules so that it only provides for the recording of data about a prisoner’s religion, belief or non-belief. Paragraph (6) incorporates the remaining provisions of what was previously rule 13 into a new rule (rule 44A) which provides for the declaration of religion, belief or non-belief by prisoners. These provisions are considered to be more appropriately situated in Part 6 of the Prison Rules.

Rule 2(5) replaces rule 39 of the Prison Rules to clarify the arrangements which a Governor is required to make on receipt of a recommendation from a healthcare professional that a prisoner requires medical advice or treatment. Under the new rule 39, the Governor must either grant unescorted temporary release to the prisoner (in accordance with rules 134 and 135 of the Prison Rules) or arrange for the prisoner to be escorted to the medical practitioner, specialist or medical facility as appropriate.

Rule 2(7), (8) and (10) makes changes which are consequential upon the changes being made in rule 2(9).

Rule 2(9) replaces rules 55 to 59 of the Prison Rules with new rules 55 to 57. New rule 55 clarifies when general correspondence (correspondence other than confidential correspondence) can be opened and read. New rule 56 merges the provisions of previous rules 56 to 59 into one rule thereby clarifying the arrangements by which confidential correspondence (court, legal, medical or other privileged correspondence) can be opened and read. New rule 56 only applies to letters and packages which can be clearly identified from the outer face of the envelope or packaging as confidential correspondence.

New rule 57 is added to the Prison Rules to cater for the situation where correspondence cannot be clearly identified from the outer face of the envelope or packaging as confidential correspondence. New rule 57 ensures that this correspondence is treated as confidential from the moment it is identified as such by an officer or employee. The restrictions on reading this correspondence in rule 57(3) and (4) reflect the restrictions in rule 56 on reading confidential correspondence that can be clearly identified as such.

Rule 2(11) amends rule 68 of the Prison Rules to ensure that the use of the term “constable” accords with the defined term “constable” in rule 2 and to enable a chief inspector to authorise a constable to visit a prisoner under that rule.

Rule 2(12) amends rule 84 of the Prison Rules so as to add further description of activity to the definition of “purposeful activity”.

Rule 2(13), (15), (16) and (20) amends provisions in the Prison Rules on searching prisoners (rule 92), visitors (rule 106), specified persons (rule 108) and officers and employees (rule 142) so as to provide that certain searches of a person can be carried out by an officer of a different gender to that of the person being searched where the search is conducted by a stationary body scanner or sniffer dogs.

Rule 2(14) amends rule 96 of the Prison Rules to provide that a back-board may be used as a form of restraint under that rule.

Rule 2(17) amends rule 134 of the Prison Rules to provide that prisoners subject to a deportation order are prevented from obtaining temporary release unless they have been granted temporary release in the three months prior to the order being made.

Rule 2(18) removes the definition of “unescorted day release for health reasons” from rule 136 of the Prison Rules and replaces it with a definition of “unescorted release for health reasons” which is granted for the same reasons but can last for seven days rather than just one day.

Rule 2(19) inserts new rule 136A into the Prison Rules to enable the Scottish Ministers to extend a period of unescorted release for health reasons for additional periods of seven days at a time on the application of the Governor.

Rule 2(21) amends paragraph 30 of Schedule 1 to the Prison Rules to make it a disciplinary offence to fail to comply with a condition of special escorted leave granted under rule 100.