

2012 No. 26

PRISONS

**The Prisons and Young Offenders Institutions (Scotland)
Amendment Rules 2012**

Made - - - - *6th February 2012*

Laid before the Scottish Parliament *8th February 2012*

Coming into force - - *19th March 2012*

The Scottish Ministers make the following Rules in exercise of the powers conferred by sections 8, 11, 12, 33A and 39 of the Prisons (Scotland) Act 1989(a) 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 2012 and come into force on 19th March 2012.

Amendment of the Prison Rules

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

(2) In rule 2(1), for the definition of “biometric data” substitute—

““biometric data” means fingerprints and any other data specified by direction made by the Scottish Ministers;”.

(3) In the heading to, and in, rule 6, after “discrimination” insert “, harassment and victimisation”.

(a) 1989 c.45; section 8 was amended by the Management of Offenders etc. (Scotland) Act 2005 (asp 14) (“the 2005 Act”) section 21(6); section 11 was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40) (“the 1995 Act”) Schedule 4, paragraph 75(2); section 12 was amended by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9) (“the 1993 Act”) Schedule 5, paragraph 6(2)(a) and Schedule 7, paragraph 1; section 14 was amended by the 1993 Act, Schedule 5, paragraph 6(3) and by the Local Government etc. (Scotland) Act 1994 (c.39) Schedule 13, paragraph 162(3) and Schedule 14, paragraph 1; section 33A was added by the Criminal Justice and Public Order Act 1994 (c.33) (“the 1994 Act”), section 116(3). Section 39 was amended by the 1993 Act, section 24 and 25, Schedule 5, paragraph 6(6)(b) and Schedule 7, paragraph 1; the 1994 Act, section 116(4); the 1995 Act, Schedule 4, paragraph 75(4)(a), by 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 added by the 1993 Act, section 23); 41(2B) (which was added 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 added by the 1994 Act, section 151(2) and amended by the 2005 Act, section 16); and 41C(1) (which was added 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.

(b) S.S.I. 2011/331.

(4) For rule 12, substitute—

“**12.**—(1) For any of the purposes specified in paragraph (2), the Governor may take from a prisoner and record—

- (a) the prisoner’s biometric data;
- (b) the prisoner’s description including any distinctive marks on his or her body;
- (c) the prisoner’s photograph;
- (d) details of the prisoner’s next of kin or another emergency contact; and
- (e) any other personal particulars of the prisoner that are relevant.

(2) The purposes for which the Governor may take and record the particulars specified in paragraph (1) are—

- (a) the identification of a prisoner;
- (b) the management of a prisoner or prisoners in general;
- (c) the administration of the prison; and
- (d) the prevention, detection and prosecution of crime.

(3) Any photograph or biometric data must be destroyed—

- (a) in the case of an untried prisoner, if the prisoner is released before trial or disposal of proceedings or is acquitted after trial and is not further remanded; or
- (b) in the case of a prisoner who is the subject of extradition, removal or deportation proceedings, if the prisoner successfully defends those proceedings and is released from custody.

(4) Any biometric data taken from a prisoner, other than a prisoner mentioned in paragraph (3)(a) or (b), must be destroyed no later than 24 months after the prisoner is released from prison.

(5) The Scottish Ministers may specify in a direction the conditions under which information recorded in terms of this rule must be recorded, stored, updated, disclosed and destroyed.”.

(5) In rule 18, after paragraph (2) insert—

“(3) Untried prisoners must be assigned high supervision level at all times.”.

(6) Rule 19 is amended as follows:—

- (a) in paragraph (1), after “except” insert “untried prisoners and”; and
- (b) paragraph (3) is revoked.

(7) Rule 32 is amended as follows:—

- (a) at the end of paragraph (2)(a), omit “or”;
- (b) at the end of paragraph (2)(b) insert “or”;
- (c) after paragraph (2)(b) insert—
 - “(c) the Governor has ordered the prisoner to wear other appropriate clothing so as to comply with the terms of a direction made under paragraph (5).”;
- (d) at the end of paragraph (4)(c) insert “or”;
- (e) in paragraph (4)(d), for “proceedings; or” substitute “proceedings.”; and
- (f) paragraph (4)(e) is revoked.

(8) Rule 55 is amended as follows:—

- (a) for paragraph (2) substitute—
 - “(2) A letter or package to which this rule applies may be opened by an officer or employee.

(2A) 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 (5); and
- (b) in accordance with any conditions specified in a direction by the Scottish Ministers made under paragraph (5).”;

- (b) paragraph (5)(a) is revoked; and
- (c) paragraph (5)(b) is revoked.

(9) Rule 82(2) is amended as follows:—

- (a) for “at any time” substitute “during any period”;
- (b) at the end of sub paragraph (c), omit “or”; and
- (c) after sub paragraph (d), insert—
 - “(e) undertaking a rehabilitative programme arranged in terms of rule 84; or
 - (f) undertaking vocational training arranged in terms of rule 84.”.

(10) In rule 85, paragraph (2) is revoked.

(11) For rule 86 substitute—

“**86.**—(1) Subject to the terms of any direction made by the Scottish Ministers under paragraph (4), a prisoner is entitled to be paid earnings where the prisoner undertakes—

- (a) work in terms of rules 82 or 85;
- (b) work carried out while on temporary release for work under Part 15 of these Rules;
- (c) an educational class, including physical education, arranged in terms of rule 84 or 85 which is in lieu of work;
- (d) counselling arranged in terms of rule 84 or 85 which is in lieu of work;
- (e) a rehabilitative programme arranged in terms of rule 84 which is in lieu of work; and
- (f) vocational training arranged in terms of rule 84 which is in lieu of work.

(2) A prisoner who undertakes any of the activities specified in paragraphs (1)(c), (d), (e) or (f) which is not in lieu of work is not entitled to be paid earnings for that activity.

(3) Subject to the terms of any direction made by the Scottish Ministers under paragraph (4), a prisoner who is excused from working under rule 82(2)(a) or (b) is entitled to be paid an allowance in lieu of earnings.

(4) The Scottish Ministers may specify in a direction—

- (a) the conditions under which earnings may be paid to a prisoner under paragraph (1); and
- (b) the conditions under which an allowance may be paid to a prisoner under paragraph (3).”.

(12) Rule 100 is amended as follows:—

- (a) after paragraph (3) insert—

“(3A) On any grant of special escorted leave, the Governor may impose—

- (a) such conditions as the Governor considers appropriate from the conditions specified in a direction made under paragraph (5); and
- (b) such further conditions as the Governor considers appropriate having regard to the individual circumstances of the prisoner.”; and

- (b) for paragraph (5)(d) substitute—

“(d) the conditions or types of conditions which may be imposed by the Governor on any grant of special escorted leave.”.

(13) In rule 105(7), for the words from “The Governor” to “the effect of”, substitute “The Governor must ensure that visitors are made aware of the effect of”.

(14) In rule 105(7) for the words from “The Governor” to “the effect of” substitute “The Governor must ensure that visitors are made aware of the effect of”.

(15) In rule 135—

(a) after paragraph (4), insert—

“(4A) On any grant of temporary release the Governor may impose—

- (a) such conditions as the Governor considers appropriate from the conditions specified in a direction made under rule 138; and
- (b) such further conditions as the Governor considers appropriate having regard to the individual circumstances of the prisoner.”; and

(b) after paragraph (5), insert—

“(5A) The Governor may arrange for an allowance to be paid to prisoners on temporary release to cover travelling expenses and the prisoner’s general subsistence while on temporary release.”.

(16) In rule 138, for paragraph (1)(e) substitute—

“(e) the conditions or types of conditions which may be imposed by the Governor on any grant of temporary release;”.

(17) Schedule 2 is amended as follows:—

(a) in the table after the entry for HMP Inverness, insert—

LOW MOSS	Argyll & Bute Council	1	0
	Renfrewshire Council	2	1
	East Renfrewshire Council	1	0
	East Dunbartonshire Council	4	1
	West Dunbartonshire Council	4	2
	Inverclyde Council	3	1

(b) in the table, for the entry for HMP Open Estate substitute—

OPEN ESTATE	Angus Council	2	1
	Dundee City Council	3	1
	Perth & Kinross Council	5	2

KENNY MACASKILL
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
6th February 2012

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) of these Rules replaces rule 12 of the Prison Rules to clarify what information can be taken from a prisoner and for what purposes that information can be taken. The new rule 12 also makes provision for the destruction of biometric data taken from prisoners.

Rules 2(5) and (6) of these Rules amend rules 18 and 19 of the Prison Rules so as to ensure that untried prisoners are assigned high supervision level at all times.

Rules 2(8) amends rule 55 of the Prison Rules so as to clarify when non-privileged correspondence can be opened by officers or employees.

Rule 2(9) amends rule 82 of the Prison Rules so as to clarify when prisoners can be excused from working.

Rule 2(11) replaces rule 86 of the Prison Rules to enable a prisoner to be paid an allowance in lieu of earnings where the prisoner has been excused from working under rule 82(2)(a) or (b). The new rule 86 also clarifies the activities for which prisoners are entitled to be paid earnings.

Rule 2(12) amends rule 100 of the Prison Rules so as to allow Governors a greater discretion in setting conditions on grants of special escorted leave. Rule 100 is also amended to allow the Scottish Ministers to specify types of conditions which may be imposed by Governors on a grant of special escorted leave.

Rule 2(13) amends rule 135 of the Prison Rules to set out in detail the Governor’s power to impose conditions on a grant of temporary release. Rule 2(13) also enables Governors to arrange for an allowance to be paid, to prisoners who have been granted temporary release, in order to cover the prisoner’s travel and subsistence costs.

Rule 2(14) amends rule 138 of the Prison Rules to enable the Scottish Ministers to specify types of conditions which may be imposed by Governors on a grant of temporary release.

Rule 2(15) amends schedule 2 to the Prison Rules in order to make provision for the composition of a visiting committee for HMP Low Moss which is scheduled to open in March 2012. Rule 2(15) also amends the composition of the visiting committee for HMP Open Estate.

The remaining rules are technical amendments designed to clarify minor points in the Prison Rules.

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