SCOTTISH STATUTORY INSTRUMENTS

# 2002 No. 107

# PRISONS
# YOUNG OFFENDERS INSTITUTIONS

## The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2002

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| *Made - - - -* | *6th March 2002* |
| *Laid before the Scottish Parliament - - - -* | *8th March 2002* |
| *Coming into force - -* | *1st April 2002* |

The Scottish Ministers, in exercise of the powers conferred by section 39 of the Prisons (Scotland) Act 1989(**1**) and of all other powers enabling them in that behalf, hereby make the following Rules:

### Citation, commencement and interpretation

**1.**—(1) These Rules may be cited as the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2002 and shall come into force on 1st April 2002.

(2) In these Rules–

(a) a reference to "the principal Rules" is a reference to the Prisons and Young Offenders Institutions (Scotland) Rules 1994(**2**);

(b) "security category" has the meaning ascribed to it in rule 3 of the principal Rules immediately before these Rules come into force.

(**1**) 1989 c. 45 ("the 1989 Act"); 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) and Schedule 7, by the Criminal Justice and Public Order Act 1994 (c. 33) ("the 1994 Act"), sections 116(4) and 130(4) and by the Crime and Disorder Act 1998 (c. 37), Schedule 8, paragraph 71; section 39 is to be read with sections 3A(5), (6) and (7) (which was inserted by the Crime and Punishment (Scotland) Act 1997 (c. 48) ("the 1997 Act"), section 43(2)), 8(1) and (2), 11(1), 12 (as amended by the 1993 Act, Schedule 5, paragraph 6(2)), 14(1) (as amended by the 1993 Act, Schedule 5, paragraph 6(3)), 19(3) and (4) (as amended by the 1993 Act, Schedule 5, paragraph 6(4)), 24 (which was repealed by the 1993 Act, Schedule 7 but was saved by Schedule 6 to that Act in relation to any "existing prisoner" within the meaning specified in paragraph 1 of Schedule 6), 33A (which was inserted by the 1994 Act, section 116(3)), 41(2B) (which was inserted by the 1994 Act, section 153(3)), 41B(1) (which was inserted by the 1994 Act, section 151(2)) and 41C(1) (which was inserted by the 1997 Act, section 42) of the 1989 Act; section 39 is also to be read with sections 107(4), 110(7) and 114(3) of the 1994 Act; section 39 was extended by the Courts Martial (Appeals) Act 1968 (c. 20), section 52 (as amended by the 1989 Act, Schedule 2, paragraph 10). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(**2**) S.I. 1994/1931, amended by S.I. 1996/32, 1997/2007, 1998/1589, 1998/2504 and 1999/374 and S.S.I. 2000/187.

**Amendment of Rule 3 of the principal Rules**

**2.**—(1) Rule 3 of the principal Rules (interpretation)(**3**) is amended in accordance with paragraph (2) of this rule.

(2) In paragraph (1)–

(a) in sub-paragraph (b) of the definition of "Governor"–

(i) after "Parts" there is inserted "2A,"; and

(ii) before "51(3)(b)" there is inserted "14B(2)(g), 14B(3), 14D(1)(b)(iii), 14F(5),";

(b) the definition of "security category" is omitted; and

(c) after the definition of "stateless person" there is inserted the following definition:–

""supervision level" means a supervision level which may be assigned in accordance with Part 2A of these Rules;".

**Amendment of Rule 13 of the principal Rules**

**3.** For rule 13(2)(b) of the principal Rules (allocation of prisoners) there is substituted–

"(b) the supervision level of a prisoner;".

**Substitution of Part 2A of the principal Rules**

**4.** For Part 2A of the principal Rules (security categories)(**4**) there is substituted–

"PART 2A

SUPERVISION LEVELS

**Supervision levels**

**14A.** The supervision levels which may be assigned to prisoners in accordance with this Part of these Rules are specified in column 1 of the Table set out below and the description of each level is set out opposite that level in column 2 of the Table:–

| *Column 1*<br>*Supervision Level* | *Column 2*<br>*Description* |
|---|---|
| High Supervision | A prisoner for whom all activities and movements require to be authorised, supervised and monitored by an officer. |
| Medium Supervision | A prisoner for whom activities and movements are subject to limited supervision and restrictions. |
| Low Supervision | A prisoner for whom activities and movements are subject to minimum supervision and restrictions, and who may be given the opportunity to participate in supervised or unsupervised activities in the community. |

(**3**) Rule 3 was amended by S.I. 1996/32, rule 2, S.I. 1998, rule 3, S.I. 1999/374, rule 3 and S.S.I. 2000/187, rule 2.
(**4**) Part 2A was inserted by S.I. 1998/1589, rule 7, and was amended by S.I. 1999/374, rules 6 and 7.

**Assignment of supervision levels**

**14B.**—(1) Every prisoner shall be assigned a supervision level in accordance with the provisions of this Part of these Rules.

(2) Subject to the following paragraphs of this rule, a prisoner shall be assigned the appropriate supervision level having regard, so far as applicable, to the following criteria:–

(a) the seriousness of the offence for which the prisoner has been convicted;

(b) the prisoner's previous convictions;

(c) any outstanding charges;

(d) the length of time that the prisoner has spent in custody;

(e) the prisoner's conduct in custody;

(f) the prisoner's trustworthiness and stability; and

(g) any other criteria as may be specified in a direction made by the Scottish Ministers for the purposes of this rule.

(3) Any such direction made by the Scottish Ministers may make provision for the relative importance that is to be given to each of the criteria in determining the assignment of a supervision level, and may make provision as to the form and content of any document that may be required to be completed by the Governor when assigning, or when reviewing the assignment of, a supervision level.

(4) Subject to paragraph (7) below, all prisoners, on reception, shall be assigned high supervision level.

(5) Within 72 hours of reception, the supervision level of all prisoners shall be reviewed in accordance with the provisions of these Rules.

(6) An untried prisoner, or a prisoner who has been convicted but is awaiting sentence, shall be assigned no lower a supervision level than medium supervision level.

(7) On reception, a prisoner who is–

(a) transferred under paragraph 1 of Schedule 1 to the Crime (Sentences) Act 1997(**5**) where the transfer is–

(i) a restricted transfer within the meaning of paragraph 6(1) of that Schedule; and

(ii) has been made for a temporary purpose; or

(b) transferred under paragraph 2 or 3 of Schedule 1 to the said Act of 1997,

shall be assigned for the period of the detention a supervision level which, in the opinion of the Governor, is the nearest equivalent to the prisoner's classification in the prison or place in the part of the United Kingdom, the Channel Islands or the Isle of Man in which the prisoner was detained immediately before the transfer took place.

(8) Following the review of a supervision level in terms of paragraph (5) above, the Governor shall keep under review and shall formally review within 6 months, and thereafter at least once in every period of 12 months, the supervision level assigned to each prisoner and may, if appropriate, assign another supervision level to the prisoner.

(9) The entitlement of any prisoner who is assigned low supervision level to participate in supervised or unsupervised activities in the community shall be subject to the requirements of rule 91 and of Part 14 of these Rules.

(**5**) 1997 c. 43.

**Information regarding assignment of a supervision level**

**14C.**—(1) This rule does not apply to the assignment of high supervision level on reception or to the review of a supervision level to which rule 14D applies.

(2) Following the assignment of a supervision level or the review of a supervision level in accordance with this Part of these Rules, the Governor shall–

(a) inform the prisoner in writing–

(i) in the case of the assignment of a supervision level of the reasons why the supervision level assigned is appropriate; or

(ii) in the case of a review which has resulted in no change of level, of the reasons why a lower level is not appropriate; and

(b) if asked to do so by the prisoner concerned, but subject to paragraph (3), provide the prisoner with–

(i) a copy of any document to which he has had regard; and

(ii) a summary of any other information of which he was aware and to which he has had regard,

in reaching the relevant decision.

(3) If the Governor is of the opinion that any document or any other information of which he was aware and to which he had regard in reaching the relevant decision would, if disclosed to the prisoner, be likely to be damaging on one or more of the following grounds, namely:–

(a) that it would be likely adversely to affect the health, welfare or safety of the prisoner or of any other person;

(b) that it would be likely to result in the commission of an offence;

(c) that it would be likely to facilitate an escape from legal custody or the doing of any act prejudicial to the safe keeping of persons in legal custody;

(d) that it would be likely to impede the prevention or detection of offences or the apprehension or prosecution of suspected offenders; or

(e) that it would be likely otherwise to damage the public interest,

he shall not be obliged to provide the prisoner with a copy of that document or a summary of that other information but shall, in writing, inform the prisoner, but only insofar as is practicable without prejudicing the purposes for which that document or other information is not disclosed, of the gist of that document or information.

**Right to make representations prior to certain reviews of supervision level**

**14D.**—(1) This rule applies when, in the course of a review of a prisoner's supervision level, a Governor is minded to assign–

(a) a higher supervision level than the existing level that is assigned to the prisoner; or

(b) a supervision level other than low supervision to a prisoner who is–

(i) a long-term prisoner who is eligible to be considered by the Parole Board for Scotland in terms of Part I of the 1993 Act;

(ii) a life prisoner who has served the part of his sentence specified in an order made under section 2(3) of the 1993 Act; or

(iii) a prisoner who has not yet served the part of his sentence specified in sub paragraph (i) or (ii) but who has served such part of his sentence as may be specified in a direction made by the Scottish Ministers.

(2) The Governor shall–

(a) provide the prisoner with a written notice informing him–

(i) of the supervision level that he is minded to assign to the prisoner;

(ii) of the reasons why he is so minded; and

(iii) of the procedure by which the prisoner may make written representations in relation to the proposed assignment of the supervision level; and

(b) if asked to do so by the prisoner concerned, but subject to paragraph (3), provide the prisoner with–

(i) a copy of any document to which he has had regard; and

(ii) a summary of any other information of which he was aware and to which he has had regard,

in considering the matter.

(3) If the Governor is of the opinion that any document or other information of which he was aware and to which he had regard in considering the matter would, if disclosed to the prisoner, be likely to be damaging on any ground mentioned in rule 14C(3), the Governor shall not be obliged to provide the prisoner with a copy of that document or a summary of that other information but shall inform the prisoner in the notice under paragraph (2), but only insofar as is practicable without prejudicing the purposes for which that document or other information is not disclosed, of the gist of that document or information.

(4) In a case to which paragraph (2) applies, the Governor shall–

(a) consider any representations made by the prisoner by virtue of that paragraph before reaching a decision in relation to the assignment of a supervision level; and

(b) if he assigns the supervision level in circumstances as mentioned in paragraph (1), provide the prisoner with a written statement of reasons for his decision.

**Imposition of special security measures**

**14E.**—(1) Subject to the following paragraphs of this rule, the Governor may impose special security measures, being measures which are separate from and additional to anything that can be done under Part 9 of these Rules, on any prisoner who is assigned high supervision level where he considers that the imposition of these measures are necessary–

(a) in the interests of the health, welfare or safety of the prisoner or any other person; or

(b) to prevent an escape from legal custody or the doing of any act prejudicial to the safe keeping of persons in legal custody.

(2) Where the Governor is minded to impose special security measures on a prisoner (other than an untried prisoner), he shall–

(a) provide the prisoner with a written notice informing him–

(i) of the measures that he is minded to impose;

(ii) of the reasons why he is so minded; and

(iii) of the procedure by which the prisoner may make written representations in relation to the imposition of the special security measures; and

(b) if asked to do so by the prisoner concerned, but subject to paragraph (3), provide the prisoner with–

(i) a copy of any document to which he has had regard; and