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DIRECTIONS

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## Scottish Prison Rules (Complaints) Direction 2022

Made - - - -

8<sup>th</sup> March 2022

The Scottish Ministers make the following Direction in exercise of the powers conferred by section 39 of the Prisons (Scotland) Act 1989(a) and rules 125 and 156 of the Prisons and Young Offenders Institutions (Scotland) Rules 2011(b) (“the Prison Rules”) and all other powers enabling them to do so.

### Citation, commencement, application and interpretation

1.—(1) This Direction may be cited as the Scottish Prison Rules (Complaints) Direction 2022 and comes into force on the day after the day on which it is made.

(2) Any reference in this Direction to a rule is a reference to the rule in the Prison Rules bearing that number.

(3) References in this Direction to prisons and prisoners are to be construed as including young offenders institutions and young offenders respectively unless otherwise specified or the context otherwise requires.

### Interpretation

2.—(1) In this Direction—

“contracted-out prison” has the same meaning as in rule 2(1);

“ICC hearing” means the hearing to be arranged by the Internal Complaints Committee under rule 123(4);

“Internal Complaints Committee” is to be interpreted in accordance with rule 123(3);

“confidential matter” has the same meaning as in rule 124(7)(a);

“form PCF1” means the prisoner complaint form set out in Schedule 1;

“form PCF2” means the prisoner complaint form set out in Schedule 2;

“Governor” means the Governor in Charge;

“officer” has the same meaning as in rule 2(1);

“prisoner” is to be interpreted in accordance with rule 2(4);

“residential first line manager” has the same meaning as in rule 2(1);

“residential officer” has the same meaning as in rule 124(7)(b);

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(a) 1989 c.45; section 39 was amended by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9) (“the 1993 Act”), section 24 and 25, Schedule 5, paragraph 6(6)(b) and Schedule 7, paragraph 1; by the Criminal Justice and Public Order Act 1994 (c.33) (“the 1994 Act”), section 116(4); by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), Schedule 4, paragraph 75(4)(a); and 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 Management of Offenders etc. (Scotland) Act 2005, 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 section 53 of the Scotland Act 1998 (c.46).

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

- (2) In relation to a contracted-out prison, references in this Direction—
- (a) to a “Governor” include references to a director approved by the Scottish Ministers for the purposes of section 107(1) of the Criminal Justice and Public Order Act 1994(a);
  - (b) to a “Governor”, in paragraph 6, are to be construed as references to the Scottish Ministers where a prisoner wishes to make a complaint concerning any confidential matter which relates to the controller; and
  - (c) to an “officer” include references to a prisoner custody officer certified as such under section 114(1) of the Criminal Justice and Public Order Act 1994(b) and performing custodial duties at any prison.

### **Oral complaints to the residential first line manager**

**3.**—(1) For the purposes of making an oral complaint under rule 122(2), the prisoner must inform a residential first line manager (“RFLM”) that the matter being discussed is to be treated as a complaint under the prison complaints procedure.

(2) On receiving an oral complaint made under rule 122(2), the RFLM must ask the prisoner whether he or she wishes to discuss the complaint under rule 122(3).

(3) For the purposes of responding to an oral complaint under rule 122(4)(b) or (5)(b) the RFLM must complete—

- (a) part 1 of the form PCF1 providing the prisoner’s personal details and a brief summary of the complaint;
- (b) part 2 of the form PCF; and
- (c) part 3 of the form PCF1 providing a summary of the investigation conducted under rule 122(4)(a), a note of the RFLM’s decision, and the reasons for that decision.

(4) Once the RFLM has completed parts 1 to 3 of the form PCF1, the RFLM must—

- (a) return the form PCF1 to the prisoner together with a copy of any written report which may have been prepared under rule 122(4)(a); and
- (b) retain a copy of the form PCF1.

(5) Notwithstanding the maximum time limits specified in rules 122(3), (4) and (5), the RFLM must aim to discuss complaints and respond to complaints as soon as possible.

### **Written complaints to the residential first line manager**

**4.**—(1) For the purposes of making a written complaint under rule 122(2), the prisoner must—

- (a) complete part 1 of form PCF1 providing the prisoner’s personal details, the nature of the complaint and the prisoner’s desired outcome; and
- (b) give the form PCF1, with part 1 completed, to a RFLM.

(2) On receiving a written complaint made under rule 122(2), the RFLM must ask the prisoner whether he or she wishes to discuss the complaint under rule 122(3).

(3) Where a written complaint made under rule 122(2) is resolved by a discussion under rule 122(3), the RFLM must—

- (a) complete part 2 of the form PCF1;
- (b) complete part 3 of the form PCF1 providing a summary of the discussion and how the complaint was resolved;
- (c) return the form PCF1 to the prisoner; and
- (d) retain a copy of the form PCF1.

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(a) 1994 c.33; section 107(1) was amended by S.I. 1999/1820, article 4 and paragraph 115 of Schedule 2.

(b) 1994 c.33; section 114(1) was amended by S.I. 1999/1820, article 4 and paragraph 115 of Schedule 2.

(4) Where a written complaint is not resolved by a discussion under rule 122(3), for the purposes of responding to a written complaint under rule 122(4)(b) or (5)(b) the RFLM must—

- (a) complete Part 2 of the form PCF1; and
- (b) complete part 3 of the form PCF1 providing—
  - (i) a summary of the investigation conducted under rule 122(4)(a);
  - (ii) a note of the RFLM's decision; and
  - (iii) the reasons for that decision.

(5) Once the RFLM has completed parts 2 and 3 of the form PCF1, in accordance with sub-paragraph (4), the RFLM must—

- (a) return the form PCF1 to the prisoner together with a copy of any written report which may have been prepared under rule 122(4)(a); and
- (b) retain a copy of the form PCF1.

(6) Notwithstanding the maximum time limits specified in rules 122(3), (4) and (5), the RFLM must aim to discuss complaints and respond to complaints as soon as possible.

### **Referral of complaints to the Internal Complaints Committee**

**5.—**(1) For the purposes of referring a complaint to the Internal Complaints Committee (“ICC”) under rule 123(2), the prisoner must complete part 4 of the form PCF1 providing—

- (a) a note of why the prisoner is not satisfied with the response of the RFLM and the prisoner's desired outcome;
- (b) confirmation as to whether or not the prisoner wishes to attend the ICC hearing;
- (c) confirmation as to whether or not the prisoner wishes to be assisted at the ICC hearing together with a note of who they wish to provide assistance and what assistance they wish that person to provide; and
- (d) confirmation as to whether or not the prisoner wishes to call witnesses at the ICC hearing together with a note of who the prisoner wishes to call and how that witness will support the complaint.

(2) Once the prisoner has completed part 4 of the form PCF1, the prisoner must give the form PCF1 to an officer and the officer must then convey the form to the ICC.

(3) Where, in the form PCF1, a prisoner—

- (a) requests assistance by another prisoner at the ICC hearing; or
- (b) notes an intention to call witnesses at the ICC hearing,

the ICC must inform the prisoner of its decision on those matters prior to the ICC hearing.

(4) For the purposes of making recommendations to the Governor under rule 123(8) the chair of the ICC must complete part 5 of the form PCF1 providing—

- (a) a summary of the ICC hearing;
- (b) a note of the reasons for any decision taken by the ICC under sub-paragraph (3); and
- (c) a note of the ICC's decision in relation to the complaint, the reasons for that decision and any recommendations to be made to the Governor.

(5) Once the chair of the ICC has completed part 5 of the form PCF1, he or she must—

- (a) ensure the form is signed by the chair and two members of the ICC; and
- (b) give the form PCF1 to the Governor.

(6) For the purposes of making a decision under rule 123(9), the Governor must complete part 6 of the form PCF1 providing—

- (a) confirmation as to whether the Governor endorses or rejects the ICC's decision;
- (b) where the Governor decides to reject the ICC's decision, the reasons for the Governor's decision; and
- (c) a note of any further action proposed by the Governor.

(7) Once the Governor has completed part 6 of the form PCF1, the Governor must—

- (a) return the form PCF1 to the prisoner; and
- (b) retain a copy of the form PCF1.

(8) Notwithstanding the maximum time limit specified in rule 123(9), the ICC must aim to provide recommendations under rule 123(8) and the Governor must aim to provide a decision under rule 123(9) as soon as possible.

### **Complaints to the Governor in relation to confidential matters**

**6.**—(1) For the purposes of making a complaint under rule 124(2), the prisoner must complete part 1 of form PCF2 providing—

- (a) the prisoner's personal details;
- (b) a statement of the nature of the complaint and the prisoner's desired outcome; and
- (c) the reasons why the complaint is considered to be about a confidential matter.

(2) Once the prisoner has completed part 1 of the form PCF2, the prisoner must give the form PCF2 in a sealed envelope to a residential officer who must then convey the complaint to the Governor without delay.

(3) For the purposes of responding to a complaint under rule 124(3), (4) or (5) the Governor must complete part 2 of the form PCF2 providing—

- (a) a statement as to whether the complaint is considered to be about a confidential matter;
- (b) where the complaint is not considered to be about a confidential matter, the reasons for the Governor's decision on that matter;
- (c) where the complaint is considered to be about a confidential matter—
  - (i) a summary of any investigation conducted into the complaint;
  - (ii) a note of the Governor's decision; and
  - (iii) the reasons for the Governor's decision.

(4) Once the Governor has completed part 2 of the form PCF2, the Governor must return the form PCF2 to the prisoner in a sealed envelope.

(5) Notwithstanding the maximum time limits specified in rules 124(4) and (5), the Governor must aim to respond to complaints made under rule 124(2) as soon as possible.

### **Revocation of previous direction**

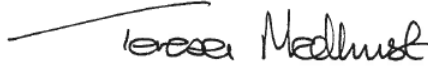
**7.**—(1) Subject to sub-paragraph (2), the Scottish Prison Rules (Complaints) Direction 2013 made on 10 October 2013 is revoked.

(2) The Scottish Prison Rules (Complaints) Direction 2013 made on 10 October 2013 shall remain in force in relation to any complaint made by a prisoner under rules 122 or 124 prior to 9<sup>th</sup> March 2022.

This Direction consisting of this and the preceding four pages together with the Schedules annexed is subscribed as follows—

It is signed for and on behalf of the Scottish Prison Service, an executive agency of the Scottish Ministers, at Edinburgh on 8<sup>th</sup> March 2022 by Teresa Medhurst, Chief Executive, before this witness by way of video conference, Sharon Lawson, Executive Personal Assistant/Chief Executive, Calton House, Redheughs Rigg, Edinburgh.

For the Scottish Prison Service:

A handwritten signature in black ink, appearing to read "Teresa Medhurst". The signature is written in a cursive style with a long horizontal stroke above the name.A handwritten signature in black ink, appearing to read "Sharon Lawson". The signature is written in a simple, slightly cursive style.

Witness:

SCHEDULE 1



PCF 1

**PRISONER COMPLAINT FORM PCF1**

**PART 1: Complaint to Residential First Line Manager (RFLM)**

For completion by the prisoner or, for oral complaints which require a written response, by the RFLM.

If you need assistance in completing this complaint form please speak to a member of staff.

If you think that any aspect of your complaint relates to issues of equality or diversity please attach a completed equality and diversity form (EDF).

**Personal Details**

Name: \_\_\_\_\_ Prison Number: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Establishment: \_\_\_\_\_ Hall: \_\_\_\_\_ Cell No: \_\_\_\_\_

**Your Complaint**

Please describe in your own words what your complaint is about.

(Continue on separate sheet if necessary)

What in your view would resolve the problem?

Prisoner's signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Please pass this form to a Residential First Line Manager.**

A copy of this form must be retained.

**Complaint Reference No:**  
(To be completed by an officer)

**PCF 1**

**PART 2: Confirmation of discussion between the prisoner and the Residential First Line Manager (RFLM)**

For completion by the RFLM for all complaints:

Date on which the RFLM asked the prisoner if he or she would like to discuss the complaint under rule 122(3).	
Did the prisoner wish to discuss the complaint under rule 122(3)? (Delete as applicable.)	<u>YES/NO</u>
If yes, the date on which the RFLM discussed the complaint with the prisoner.	

Signed.....

**PART 3: Response by the Residential First Line Manager (RFLM)**

For completion by the RFLM for all written complaints.

For oral complaints which are not resolved within 48 hours, the RFLM must:

- complete the personal details of the prisoner and provide a brief summary of the complaint in PART 1
- complete PART 2; and
- complete PART 3.

**Date complaint received by RFLM:** \_\_\_\_\_

Summary of investigation and evidence to support your decision.

**PART 3: Response by the Residential First Line Manager (RFLM) (Continued)**

Decision and Reasons.

(Continue on separate sheet if necessary)

RFLM's Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

**Notice under Rule 122(6) of the Prisons and Young Offenders Institutions (Scotland) Rules 2011:**

If you are dissatisfied with the response to the complaint you can ask the Internal Complaints Committee (ICC) to consider it. You must do so in writing no later than 2 weeks from the date of the RFLM's decision by completing Part 4 of this Form.

A copy of this form must be retained.

**Complaint Reference No:**  
(To be completed by an officer)





**Complaint Reference No:**  
(To be completed by an officer)

**PCF 1**

**Part 5: Response from the ICC:**

For completion by the Chair of the ICC.

Summary of hearing including any evidence led and the ICC's decision in relation to assistance of the prisoner or the calling of witnesses and, where the prisoner's request for assistance or to call witnesses is refused, the reasons for that decision.

Decision and reasons, including any recommendations made by the ICC.

ICC Chair's Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

2<sup>nd</sup> Member's Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_

3<sup>rd</sup> Member's Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_

**Part 6: Decision of the Governor (within 20 days)**

Do you endorse the ICC's decision? Yes  No

If no, provide reasons for rejection and any further action proposed.

Governor's Signature: \_\_\_\_\_ Print name: \_\_\_\_\_ Date: \_\_\_\_\_

**Notice under Rule 123(10) of the Prisons and Young Offenders Institutions (Scotland) Rules 2011:**

If you are dissatisfied with the response to your complaint you may be able to refer the complaint to the Scottish Public Services Ombudsman (SPSO). Contact details are:

 **FREEPHONE 0800 377 7330**

 **FREEPOST SPSO**

A copy of this form must be retained.

**Complaint Reference No:**  
(To be completed by an officer)

SCHEDULE 2



**PCF 2**

**PRISONER COMPLAINT FORM – PCF2**

**PART 1: Complaint about Confidential Matters:**

For completion by the prisoner.

If you need assistance in completing this complaint form please speak to a member of staff.

If you think that any aspect of your complaint relates to issues of equality or diversity please attach a completed equality and diversity form (EDF1).

**Personal Details**

Name: \_\_\_\_\_ Prison Number: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
 Establishment: \_\_\_\_\_ Hall: \_\_\_\_\_ Cell No: \_\_\_\_\_

**Your Complaint**

Please describe in your own words what your complaint is about and why you consider it is of an exceptionally sensitive or serious nature.

(Continue on separate sheet if necessary)

What in your view would resolve the problem?

Prisoner's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Please place this form in the sealed envelope provided and pass it to a Residential Officer who will forward it to the Governor without delay.

**Complaint Reference No:**  
(To be completed by the Governor)

**PCF 2**

**PART 2: Response from the Governor (within 7 days)**

For completion by the Governor.

Is this complaint about a confidential matter which is either of an exceptionally sensitive or serious nature?

Yes

No

If no, please provide reasons for that decision.

If yes, please provide your decision and reasons for that decision, including a summary of any investigation and evidence to support your decision.

If the complaint is not considered confidential, the prisoner may follow the procedure under Rule 122 (PCF1).

Governor's Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

Please return this completed form to the prisoner in a sealed envelope and mark as "Confidential PCF2".

**Notice under Rule 124(6) of the Prisons and Young Offenders Institutions (Scotland) Rules 2011:**

If you are dissatisfied with the response to your complaint you may be able to refer the complaint to the Scottish Public Services Ombudsman (SPSO) to consider it. Contact details are:

 **FREEPHONE 0800 377 7330**

 **FREEPOST SPSO**

**Complaint Reference No:**  
(To be completed by the Governor)

