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D I R E C T I O N S

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## Scottish Prison Rules (Disciplinary Appeals) 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(1) and rules 119(1) and 156 of the Prisons and Young Offenders Institutions (Scotland) Rules 2011(2) (“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 (Disciplinary Appeals) 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.

(4) In this Direction—

“appeal” means a disciplinary appeal brought under rule 118;

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

“disciplinary hearing” means a hearing into an alleged breach of discipline arranged under rule 113(1);

“form PAF1” means the disciplinary appeal form set out in Schedule 1;

“form PAF2” means the disciplinary appeal form set out in Schedule 2;

“Governor” means the Governor in Charge;

“ICC appeal hearing” means a hearing arranged by the Internal Complaints Committee in relation to a disciplinary appeal made under rule 118(4)(a);

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

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

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

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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”), 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).

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

### **Disciplinary appeals to the Internal Complaints Committee (“ICC”)**

2.—(1) For the purposes of bringing a disciplinary appeal under rule 118(1), in circumstances where the disciplinary hearing was chaired by any officer other than the Governor in Charge, the prisoner must complete part 1 of form PAF1 providing—

- (a) a note of the prisoner’s personal details;
- (b) a note of the grounds of appeal and the prisoner’s preferred outcome from the appeal;
- (c) confirmation as to whether or not the prisoner wishes to attend the ICC appeal hearing;
- (d) confirmation as to whether or not the prisoner wishes to be assisted at the ICC appeal hearing together with a note of who they wish to provide assistance and what assistance they wish that person to provide; and
- (e) confirmation as to whether or not the prisoner wishes to call witnesses at the ICC appeal hearing together with a note of who the prisoner wishes to call and how that witness will support the appeal.

(2) Once the prisoner has completed part 1 of form PAF1 the prisoner must give the form to an officer and the officer must then convey the form to the ICC.

(3) Where, in the form PAF1, a prisoner—

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

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

(4) For the purposes of making recommendations to the Governor in relation to the appeal the chair of the ICC must complete part 2 of the form PAF1 providing—

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

(5) Once the chair of the ICC has completed part 2 of the form PAF1, he or she must—

- (a) ensure the form is signed by the chair and two members of the ICC; and
- (b) give the form PAF1 to the Governor.

(6) For the purposes of making a decision in relation to the appeal, the Governor must complete part 3 of the form PAF1 providing—

- (a) confirmation as to whether the Governor endorses or rejects the ICC’s decision;
- (b) subject to rule 118(5), where the Governor decides to reject the ICC’s decision, the reasons for the Governor’s decision; and
- (c) a note of any action proposed by the Governor.

(7) Once the Governor has completed part 3 of the form PAF1, the Governor must—

- (a) return the form PAF1 to the prisoner;
- (b) retain a copy of the form PAF1; and
- (c) in accordance with rule 123(10) as it applies to the appeal, inform the prisoner of the process by which the prisoner may refer the matter to the Scottish Public Services Ombudsman.

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

### Disciplinary appeals to the Scottish Ministers

3.—(1) For the purposes of bringing an appeal under rule 118(1), in circumstances where the disciplinary hearing was chaired by the Governor in Charge or took place in a contracted-out prison the prisoner must complete part 1 of form PAF2 providing—

- (a) a note of the prisoner's personal details;
- (b) a note of the grounds of appeal and the prisoner's preferred outcome from the appeal.

(2) Once the prisoner has completed part 1 of form PAF2 the prisoner must give the form to an officer and the officer must then convey the form to the Scottish Ministers.

(3) For the purposes of providing a decision in relation to the appeal in terms of rule 118(6)(b) the Scottish Ministers must complete part 2 of the form PAF2 providing—

- (a) a summary of the investigation conducted under rule 118(6)(a) including a note of any evidence considered or rejected by the Scottish Ministers;
- (b) a note of the Scottish Minister's decision; and
- (c) the reasons for that decision.

(4) Once the Scottish Ministers have completed part 2 of the form PAF2, they must—

- (a) return the form PAF2 to the prisoner; and
- (b) retain a copy of the form PAF2.

(5) Notwithstanding the maximum time limit specified in rule 118(6)(b), the Scottish Ministers must aim to provide a decision on the appeal as soon as possible.

### Revocation of previous direction

4.—(1) Subject to sub-paragraph (2), the Scottish Prison Rules (Disciplinary Appeals) Direction 2019 made on 17 January 2019 is revoked.

(2) The Scottish Prison Rules (Disciplinary Appeals) Direction 2019 shall remain in force in relation to any disciplinary appeal made by a prisoner under rule 118 prior to 9<sup>th</sup> March 2022.

This Direction consisting of this and the preceding two 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:



S Lawson

Witness:



## SCHEDULE 1

PAF1

**DISCIPLINARY APPEAL FORM – PAF1****Fill out this form if:**

- **you want to appeal the decision reached or punishment awarded in your disciplinary hearing; and**
- **your appeal relates to a disciplinary hearing which WAS NOT heard by the Governor in Charge in a public prison or the SPS Controller in a private prison.**

**Appeals should be made no later than 14 days after the date the decision was made.**

**Your appeal will be heard by the ICC.**

**PART 1: Disciplinary Appeal**

For completion by the prisoner.

If you need assistance in completing this appeal form please speak to a member of staff. If you think that any aspect of your appeal relates to issues of equality or diversity please attach a completed equality and diversity form (EDF).

**Personal Details**

Name:

Prison Number:

Establishment:

Hall:

Cell No:

Date of Disciplinary Hearing:

PR2 Reference Number:

My appeal is about: being found guilty **and** my punishment.

or : **only** about my punishment.

Please state the grounds of appeal and the outcome you want.

Please continue on page 2

Appeal Reference No:  
(To be completed by an officer)

**PAF1**

(Continue on separate sheet if necessary)

The appeal will be heard by the Internal Complaints Committee (ICC).

Do you wish to attend the appeal hearing? Yes  No

Do you wish to be assisted at the appeal hearing? Yes  No

If you wish to be assisted by someone at the hearing, please provide their name(s) and explain what assistance is required and why.

Do you wish to call witnesses? Yes  No

If yes, please provide their name(s) and explain how they will support your appeal so that the Chair of the ICC can make a decision about their attendance.

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

**Please pass this form to an officer.**

Appeal Reference No:  
(To be completed by an officer)

**PART 2: Response from the ICC Disciplinary Appeal**

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: \_\_\_\_\_

**Please pass this form to the Governor.**

Appeal Reference No:  
(To be completed by an officer)

PAF1

**PART 3: Endorsement by Governor in Charge (within 20 days of referral to the ICC):**

For completion by the GIC.

Do you endorse the ICC's decision?

Yes

No

**In accordance with rule 118(5), the Governor must endorse a recommendation of the ICC to quash any finding of guilt, or to remit or mitigate any punishment, but may reject any other decision of the ICC.**

If the ICC's decision is rejected, please provide the reasons for that decision

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 process by which your appeal was heard you may be able to refer the matter to the Scottish Public Services Ombudsman (SPSO). Contact details are: **FREEPHONE 0800 377 7330** **FREEPOST SPSO**Appeal Reference No:  
(To be completed by an officer)

A copy of this form must be retained.

## SCHEDULE 2



PAF2

**DISCIPLINARY APPEAL FORM – PAF2****Fill out this form if:**

- **you want to appeal the decision reached or punishment awarded in your disciplinary hearing: and**
- **your appeal relates to a disciplinary hearing which WAS heard by the Governor in Charge in a public prison or the SPS Controller in a private prison.**

**Appeals should be made no later than 14 days after the date the decision was made.****Your appeal will be heard by the Scottish Ministers.****PART 1: Disciplinary Appeal:**

For completion by the prisoner.

If you need assistance in completing this appeal form please speak to a member of staff. If you think that any aspect of your appeal relates to issues of equality or diversity please attach a completed equality and diversity form (EDF).

**Personal Details**

Name:

Prison Number:

Establishment:

Hall:

Cell No:

Date of Disciplinary Hearing:

PR2 Reference Number:

My appeal is about : being found guilty **and** my punishment. or : **only** about my punishment. 

Please state the grounds of appeal and the outcome you want.

(Continue on separate sheet if necessary)

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

**Please pass this form to an officer.**

Appeal Reference No:

(To be completed by an officer)



**PAF2**

**Part 2 Response from Scottish Ministers (within 20 days)**

Summary of investigation including evidence considered and rejected.

[Empty box for summary of investigation]

Decision and the reasons for your decision

[Empty box for decision and reasons]

Representative of the Scottish Ministers 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 **process** by which your appeal was heard you may be able to refer the matter to the Scottish Public Services Ombudsman (SPSO). SPSO contact details are:

 **FREEPHONE 0800 377 7330**

 **FREEPOST SPSO**

Appeal Reference No:  
(To be completed by an officer)

A copy of this form must be retained.