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## DIRECTION

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# Scottish Prison Rules (Correspondence) Direction 2021

Made - - - -

10 December 2021

The Scottish Ministers make the following direction in exercise of the powers conferred on by section 39 of the Prisons (Scotland) Act 1989(a), and rules 55, 56 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 and application

1.—(1) This direction may be cited as the Scottish Prison Rules (Correspondence) Direction 2021 and comes into force at 0005 hours on 13<sup>th</sup> December 2021.

(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. In this direction—

“correspondence” means letters and packages,

“court” is to be interpreted in accordance with rule 56(7),

“Governor” means—

- (a) the Governor in Charge
- (b) the Deputy Governor
- (c) any authorised Unit Manager, or
- (d) where there is no officer as mentioned in paragraphs (a) to (c) present for the time being in the prison, the most senior officer who is present in the prison at that time,

“Governor in Charge” has the same meaning as in rule 2(1),

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

“prison” is to be interpreted in accordance with rule 2(4),

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

“prohibited article” has the same meaning as in rule 2(1),

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- (a) 1989 c.45, section 39 was amended by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9), sections 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), section 116(4); by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), schedule 4, paragraph 75(4)(a); by the Crime and Disorder Act 1998 (c. 37), schedule 8, paragraph 71 and schedule 10, paragraph 1; by the Management of Offenders (Scotland) Act 2019 (asp 14), section 55(2); and by the Counter-Terrorism and Sentencing Act 2021 (c.11), schedule 13(7), paragraph 51(2). 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, rules 55 and 56 were substituted by S.S.I. 2016/131, rule 2(9); rule 55 will be amended from 13 December 2021 by S.S.I. 2021/446, rule 2(3).

“publication” includes the posting or displaying of material on the internet,  
“unauthorised property” has the same meaning as in rule 2(1),  
“untried prisoners” has the same meaning as in rule 2(1).

### **Reading of prisoners’ correspondence**

3.—(1) Subject to sub-paragraph (2), the contents of correspondence to which rule 55 applies must not be read by an officer or employee unless the officer has reasonable cause to believe that the contents of the correspondence may—

- (a) endanger the security of the prison,
- (b) endanger the safety of any person,
- (c) relate to a criminal activity, or
- (d) constitute a breach of paragraph 5.

(2) Correspondence from a prisoner to a person who has made a request under rule 60(1) may be read by an officer.

(3) Correspondence may only be read by an officer under sub-paragraphs (1) or (2) where—

- (a) the officer has explained to the prisoner concerned the reason why the correspondence is being read, and
- (b) the prisoner concerned is present when the correspondence is being read.

### **Restrictions on sending correspondence**

4.—(1) Subject to rule 61, a prisoner may only send correspondence where the prisoner can meet the cost of postage.

(2) Prisoners are prohibited from corresponding with—

- (a) any person whom the Governor suspects is involved, along with the prisoner, in planning activities which constitute a threat to the security and good order of the prison or which relate to criminal activity,
- (b) any authority or organisation which the Governor suspects is involved, along with the prisoner, in planning activities which constitute a threat to the security and good order of the prison or which relate to criminal activity.

(3) For the purposes of rule 60, the reasonable steps which a Governor may take to prevent or restrict communication from a prisoner to a person who has made a request under rule 60(1) include—

- (a) ordering all correspondence from the prisoner to that person to be read under paragraph 3(2),
- (b) preventing the prisoner from sending correspondence to that person
- (c) preventing the prisoner from sending certain forms of correspondence to that person,
- (d) preventing the prisoner from making telephone calls to that person, and
- (e) any other reasonable step considered by the Governor to be appropriate in the circumstances.

(4) Where the Governor has taken steps to prevent a prisoner from sending correspondence to any person, authority or organisation under this paragraph, the Governor may also, if the Governor considers it reasonable to do so, prevent the prisoner from sending correspondence to any other person at the same address.

### **Restrictions as to the nature and description of correspondence**

5.—(1) A prisoner may not send or receive any correspondence which consists of or contains any of the following—

- (a) a prohibited article or unauthorised property,
- (b) escape plans or material which may be prejudicial to the security or good order of the prison,
- (c) plans or material which would be likely to assist or encourage the commission by any person of a criminal offence,
- (d) material which may be prejudicial to national security,
- (e) material which describes the making of any weapon, explosive, poison or other destructive device,
- (f) obscure or coded messages which are not readily intelligible or decipherable,
- (g) threats of violence or of damage to property likely to induce fear in the recipient,
- (h) material which is designed to blackmail or extort the recipient,
- (i) material which is indecent or obscene,
- (j) information which would create a threat or danger of violence or physical harm to any person,
- (k) material which is intended (either by the prisoner or the recipient) for publication, for use by radio or television or for an entry into a literary competition and which—
  - (i) is likely to appear in a publication associated with a person, authority or organisation to whom the prisoner is prohibited from sending any letters or packages as specified in paragraph 5,
  - (ii) relates to the prisoner's past offences or those of others unless that information consists of serious representations about the prisoner's conviction or sentence or the criminal justice system in general, or
  - (iii) refers to individual prison officers or prisoners in such a way as might identify them.
- (l) in the case of a prisoner who is the subject of extradition, removal or deportation proceedings, material constituting or arranging any financial transaction unless the Governor is satisfied that there is a real need for the transaction, and
- (m) in the case of a prisoner who is in sequestration, material constituting or arranging any financial transaction except—
  - (i) on the advice of the court,
  - (ii) to pay a fine or debt wholly or in part in order to secure the prisoner's early release,
  - (iii) to defend criminal proceedings brought against the prisoner,
  - (iv) to meet costs associated with legal proceedings brought by or against the prisoner, or
  - (v) to meet expenditure allowable under the Prison Rules.

#### **Arrangements for the disposal of certain correspondence**

6.—(1) Where any correspondence sent by or to a prisoner is found to be in contravention of any of the restrictions in paragraphs 4 or 5 and is subsequently prevented from being sent or received by the prisoner under rule 55(5)(a), an officer may—

- (a) in the case of correspondence sent to the prisoner and the sender is known to the officer, return the correspondence to the sender,
- (b) in the case of correspondence sent by the prisoner, return the correspondence to the prisoner,
- (c) in the case of correspondence which may be of assistance to the police in any criminal investigation, deliver the correspondence to the police.

(2) Sub-paragraph (1) does not apply to correspondence which falls to be dealt with under rule 55(6).

(3) Where any correspondence is prevented from being sent or received by the prisoner under rule 55(5)(a), an officer must inform the prisoner and explain why the correspondence has not been sent or received by the prisoner.

### **Privileged correspondence**

7.—(1) Prisoners may only correspond with the following persons, authorities and organisations subject the conditions specified in rule 56(2) to (4)—

- (a) The Scottish Human Rights Commission,
- (b) The Equality and Human Rights Commission,
- (c) The Law Society of Scotland,
- (d) The Scottish Information Commissioner,
- (e) The Information Commissioner’s Office,
- (f) The Risk Management Authority,
- (g) The Samaritans,
- (h) The Scottish Children’s Reporter Administration,
- (i) The Scottish Legal Complaints Commission,
- (j) The Scottish Public Services Ombudsman.

(2) Correspondence sent by the Scottish Legal Aid Board to a prisoner and marked “privileged” shall be subject to the conditions in rule 56(2) to (4).

### **Revocation of previous direction**

8. The Scottish Prisoner Rules (Correspondence) Direction 2012 made on 19<sup>th</sup> March 2012 is revoked.

This direction consisting of this and the three preceding pages 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 10 December 2021 by Teresa Medhurst, Interim Chief Executive, before this witness, Emma Murphy, Legal Services Manager, Calton House, Redheughs Rigg, Edinburgh.

For the Scottish Prison Service:



Witness:

