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STATUTORY INSTRUMENTS

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**1998 No. 2504 (S.123)**

**PRISONS  
YOUNG OFFENDERS  
INSTITUTIONS, SCOTLAND**

The Prisons and Young Offenders Institutions  
(Scotland) Amendment (No.2) Rules 1998

*Made* - - - - *30th September 1998*  
*Laid before Parliament* *12th October 1998*  
*Coming into force* - - *3rd November 1998*

The Secretary of State, in exercise of the powers conferred on him by section 39 of the Prisons (Scotland) Act 1989(1) and of all other powers enabling him in that behalf, hereby makes the following Rules:

**Citation, commencement and interpretation**

1.—(1) These Rules may be cited as the Prisons and Young Offenders Institutions (Scotland) Amendment (No.2) Rules 1998.

(2) These Rules shall come into force on 3rd November 1998.

(3) In these Rules, a reference to “the principal Rules” is a reference to the Prisons and Young Offenders Institutions (Scotland) Rules 1994(2).

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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”), 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Act, Schedule 5, paragraph 6(3)), 19(3) and (4) (as amended by the 1993 Act, Schedule 5, paragraph 6(4)), 24 (which was repealed by the 1993 Act, Schedule 7 but was saved by Schedule 6 to that Act in relation to any “existing prisoner” within the meaning specified in paragraph 1 of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 was extended by the Courts-Martial (Appeals) Act 1968 (c. 20), section 52 (as amended by the 1989 Act, Schedule 2, paragraph 10).
- (2) S.I. 1994/1931, amended by S.I. 1996/32, 1997/2007 and 1998/1589.

### **Amendment of rule 3 of the principal Rules**

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

(2) For the definition of “long-term prisoner” in paragraph (1), there is substituted the following definition:—

““long-term prisoner” means a person serving a sentence of imprisonment for a term of four years or more which was imposed on or after 1st October 1993 and includes any person who is treated as such a prisoner for the purposes of any provision of Part I of the 1993 Act;”.

(3) For the definition of “short-term prisoner” in paragraph (1), there is substituted the following definition:—

““short-term prisoner” means a person serving a sentence of imprisonment for a term of less than four years which was imposed on or after 1st October 1993 and includes any person who is treated as such a prisoner for the purposes of any provision of Part I of the 1993 Act;”.

(4) For paragraph (3) there are substituted the following paragraphs:—

“(3) Except where the context otherwise requires and subject to paragraphs (4) to (7), for the purposes of any reference, however expressed, in these Rules to the term of imprisonment or other detention to which a person has been sentenced or which, having been sentenced, he has served (in whole or in part), consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term.

(4) Subject to paragraph (5), for the purposes of any reference, however expressed, in rule 100A to the term of imprisonment or other detention to which a person has been sentenced or which, or any part of which he has served, consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term if—

- (a) the sentences were passed at the same time; or
- (b) where the sentences were passed at different times, the person has not been released under Part I of the 1993 Act at any time during the period beginning with the passing of the first sentence and ending with the passing of the last.

(5) Paragraph (4) applies to a prisoner only where one or more of the sentences concerned was passed on or after 30th September 1998.

(6) In relation to a person who is serving, or is liable to serve, both a sentence of imprisonment imposed on conviction of an offence and a term of imprisonment or detention referred to in section 5(1)(a) or (b) of the 1993 Act(4), paragraph (4) shall not apply so as to require a term or terms of imprisonment imposed on conviction of an offence and a term or terms of imprisonment or detention referred to in the said section 5(1)(a) or (b) to be treated as a single term.

(7) Subject to paragraph (6), where a person has had imposed on him two or more terms of imprisonment or detention referred to in section 5(1)(a) or (b) of the 1993 Act, paragraphs (4) and (5) shall apply to those terms as if they were sentences of imprisonment imposed on conviction of an offence.”.

### **Substitution of rule 100 of the principal Rules**

3. For rule 100 of the principal Rules (Governor’s punishments)(5) there are substituted the following rules:—

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(3) Rule 3 was amended by S.I. 1996/32, rule 2 and S.I. 1998/1589, rule 3.

(4) 1993 c. 9; section 5(1)(a) was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40), Schedule 4, paragraph 86(3).

(5) Rule 100 was amended by S.I. 1996/32, rule 26 and by S.I. 1998/1589, rule 44.

### **“Governor’s punishments**

**100.**—(1) If he finds a prisoner guilty of a breach of discipline, the Governor may impose one or more of the following punishments:—

- (a) a caution;
- (b) forfeiture of any privileges granted under the system of privileges applicable to a prisoner for a period not exceeding 14 days;
- (c) stoppage of or deduction from earnings for a period not exceeding 56 days and of an amount not exceeding one half of the prisoner’s earnings in any week (or part thereof) falling within the period specified;
- (d) except in the case of a young prisoner, cellular confinement for a period not exceeding 3 days;
- (e) subject to rule 100A, an award of additional days not exceeding 14 days;
- (f) in the case of a prisoner who is an existing prisoner within the meaning of paragraph 1 of Schedule 6 to the 1993 Act who is serving a sentence of imprisonment for a term of more than 5 days, forfeiture of remission of sentence for a period not exceeding 14 days;
- (g) in the case of a prisoner guilty of escaping or attempting to escape, forfeiture of the entitlement to wear his own clothing under rule 18 for any period as may be specified;
- (h) in the case of an untried prisoner or a civil prisoner, forfeiture of either or both of the entitlements referred to in rules 41 and 46 for any period as may be specified; or
- (i) forfeiture of the entitlement to withdraw money in terms of rule 45(3) for any period not exceeding 14 days.

(2) Subject to rule 100A, if a prisoner is found guilty of more than one breach of discipline arising out of an incident, punishments under this rule (except for cellular confinement imposed under paragraph (1)(d)) may be ordered to run consecutively.

(3) Where cellular confinement is imposed on a prisoner under paragraph (1)(d)–

- (a) the Governor shall inform a medical officer as soon as possible;
- (b) any entitlement of the prisoner in terms of these Rules shall not, by reason only of the imposition of such confinement, be affected except insofar as expressly provided in a direction made for the purposes of sub-paragraph (c); and
- (c) the prisoner shall serve the period of confinement in accordance with the provisions of, and subject to any conditions imposed by, a direction made by the Secretary of State.

### **Awards of additional days**

**100A.**—(1) The exercise of the power conferred by rule 100(1)(e) to impose an award of additional days shall be subject to the provisions of this rule.

(2) An award of additional days may be made under rule 100(1)(e) in relation to–

- (a) a short-term prisoner or a long-term prisoner; or
- (b) an untried prisoner who is committed to prison for examination or trial on any criminal charge.

(3) In relation to a short-term prisoner or a long-term prisoner who has been sentenced–

- (a) to one term of imprisonment; or

- (b) to two or more terms of imprisonment which fall to be treated as a single term by virtue of section 27(5) of the 1993 Act(6),

no award of additional days may be made in respect of his sentence or, as the case may be, the single term if he has at any time been released on licence, in relation to his sentence, under Part I of the 1993 Act.

(4) In relation to any short-term prisoner or long-term prisoner who is serving an extended sentence within the meaning of section 210A of the Criminal Procedure (Scotland) Act 1995(7), an award of additional days may only be made in relation to the custodial term of his extended sentence.

(5) An award of additional days shall not exceed one-sixth of the sentence of a short-term prisoner or a long-term prisoner, either—

- (a) in respect of a breach of discipline of which the prisoner has been found guilty; or
- (b) when aggregated with the total of any award or awards of additional days which the prisoner may have been or is awarded under rule 100(1)(e) in respect of that sentence.

(6) Subject to paragraph (5), if any person in respect of whom an award of additional days may be made is found guilty of more than one breach of discipline arising out of an incident, awards of additional days under rule 100(1)(e) may be ordered to run consecutively but the total awarded shall not exceed 28 days.

(7) No award of additional days may be made in respect of a sentence of a short-term prisoner or a long-term prisoner if—

- (a) the breach of discipline was committed before the date on which he was sentenced to imprisonment; and
- (b) his sentence did not commence, by virtue of section 210(1) of the Criminal Procedure (Scotland) Act 1995(8), on or before the date on which the breach was committed.

(8) In the case of an untried prisoner who is committed to prison for examination or trial on any criminal charge, an award of additional days under rule 100(1)(e) shall have effect only if he subsequently becomes a short-term prisoner or a long-term prisoner or a person sentenced to detention under section 208 of the Criminal Procedure (Scotland) Act 1995 (the detention not being without limit of time) whose sentence commences, by virtue of section 210(1) of the said Act of 1995, on a date earlier than the date on which the sentence is passed.”.

St Andrew’s House,  
Edinburgh  
30th September 1998

*Henry B McLeish*  
Minister of State, Scottish Office

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(6) Section 27(5) was substituted by the Crime and Disorder Act 1998 (c. 37), section 111(3), but the substitution only applies where one or more of the sentences concerned was passed after the commencement of section 111 of the said Act of 1998.  
(7) 1995 c. 46; section 210A was inserted by the Crime and Disorder Act 1998, section 86(1).  
(8) 1995 c. 46; section 210 was amended by the Crime and Punishment (Scotland) Act 1997 (c. 48), section 12.

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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules further amend the Prisons and Young Offenders Institutions (Scotland) Rules 1994 (“the principal Rules”).

The amendments take into account changes in the law relating to calculation of sentences introduced by the Crime and Disorder Act 1998 (c. 37) (“the 1998 Act”).

Section 111 of the 1998 Act substitutes section 27(5) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9) (“the 1993 Act”) to the effect that a person is, for the purposes of early release provisions, to be regarded as having a single term comprising two or more sentences which are either consecutive terms or wholly or partly concurrent terms only where—

- (a) the sentences were passed at the same time; or
- (b) where the sentences were passed at different times, the person has not been released under Part I of the 1993 Act at any time during the period beginning with the passing of the first sentence and ending with the passing of the last.

By virtue of section 111(6) of the 1998 Act, this substitution only has effect where one or more of the sentences concerned was passed after the commencement of section 111 of the 1998 Act. Rule 3(3) of the principal Rules provided that all references in the Rules to a prisoner’s sentence are to be regarded as a reference to a single term where the prisoner is serving two or more terms which are either consecutive or wholly or partly concurrent. Rule 2 of these Rules makes new provision by substituting for rule 3(3) new paragraphs (3) to (7) which reflect the effect of the amendments made by section 111 of the 1998 Act. In relation to provisions of the principal Rules concerning additional days, there is provision substituting new definitions of long-term and short-term prisoner in rule 3(1) and new provision concerning aggregation of two or more sentences which reflects the new section 27(5) of the 1993 Act.

Rule 100 of the principal Rules (which concerns the governor’s punishments which may be imposed where a prisoner is found guilty of a breach of discipline) is substituted by rules 100 and 100A. The purpose is to make amended provision with respect to awards of additional days. One effect of the amendments is expressly to prohibit the making of an award of additional days in relation to a prisoner where he is serving the balance of his sentence having previously been released under Part I of the 1993 Act but thereafter recalled to prison on revocation of his licence.

The amendments to provisions relating to awards of additional days also make provision in relation to prisoners who are serving extended sentences within the meaning of section 210A of the Criminal Procedure (Scotland) Act 1995 (as inserted by section 86(1) of the 1998 Act). The effect is to limit the power to make an award of additional days so that it can only be made in relation to the custodial term of the extended sentence and not in relation to the whole sentence which also involves an extension period.