



REVIEW OF PRISON RULES 2011



SUMMARY OF CONSULTATION RESPONSES

September 2011

PRISON RULES CONSULTATION 2011

Introduction

The Prison Rules provide important safeguards for the fair treatment of prisoners while deprived of their liberty. They set out the framework for how Scottish prisons function and provide guidance for staff and prisoners about regulations and expectations in respect to behaviour within the custodial setting. It is 17 years since the Prison Rules were comprehensively reviewed in 1994, although some consolidating amendments were made in 2006. The review and revision to the Rules in 2011 offered an opportunity to modernise language, simplify presentation and incorporate new relevant legislative developments into the framework. The revised Rules take into account changes in both domestic and European law since 1994.

Two significant changes to the Rules involve the transfer of responsibility for healthcare provision in prisons to the National Health Service as of November 2011 and the transfer of prisoner complaints investigation from the Scottish Prisoner Complaints Commissioner to the Scottish Public Services Ombudsman which occurred in October 2010.

The Consultation was based around four key questions:

- Do the Rules cover all necessary topics?
- Does the sequencing of Sections flow logically?
- Are there any unforeseen risks to the proposed changes?
- Will prisoners find the Rules accessible and understandable?

Generally, contributors to the consultation exercise responded positively to the Rule revisions proposed. While some respondents did make suggestions for improved sequencing of Sections and Parts, the majority welcomed the modernisation of both language and content. Positive views were expressed on the comprehensiveness of the Rules, with relevant topics being addressed adequately. While many respondents advocated the use of ‘plain English’ in the text, there was recognition that the Rules required legal precision and linguistic rigour. The commitment to openness and transparency was commended by several contributors and the prevailing view was that the Rules reflected the reality of modern prison life and gave prisoners and staff clear direction on rights, responsibilities and appropriate behaviours.

A summary of themes raised in the responses received is outlined below.

Summary of Proposed Rule Changes and Comments Received

Part 1 – General

Part 1 of the Rules set out the application of the Rules, definitions (interpretation) of terms used within the Rules and Governors’ commitment to the elimination of discrimination. It also contained information on the availability of the Rules to officers and prisoners.

There were minor changes and additions proposed to this part of the Rules that reflected the main amendments elsewhere in the body of the Rules.

Comments received

In this Part, it was pointed out that the Scottish Ministers did not have the power to refer a case to the High Court. To avoid confusion alternative wording was suggested for Rule 1.2(7)(c). Another respondent advised that there were inconsistencies with the use of descriptions of ‘prisoners’, ‘young offenders’ and ‘prisons’ and recommended amendment to address the anomalies. On a definitional point in Rule 1.5, ‘media representative’ did not include representatives of the written media. Lastly, the description or definition of ‘health care professional’ required further consideration in light of Directions and Guidance being drafted by Scottish Government and NHS. In the majority of situations, this meant ‘doctor or nurse’, so the text within the new Prisons Rules ought to be consistent with the terminology of the new health care arrangements which will take effect on 1 November.

Part 2 – Reception, Record, Classification and Allocation

Part 2 dealt with matters relating to the reception of prisoners, their records, classification and location within prisons. The reception provisions set out how a prisoner was treated on arrival at a prison and the information the prisoner must be given. It contained provisions about how prisoners are registered, including arrangements for the collection of biometric data and the allocation of prisoners within the prison estate.

Changes to this part of the Rules included new updated provisions for collecting biometric data, rather than simply fingerprints. The definition of biometric data was contained in Part 1 of the Rules. There was also a new provision for the recording of data about a prisoner’s religion.

There was a change to the arrangements on reception for prisoners. Under the 2006 rules, prisoners were *required* to take a hot bath or shower unless the Governor or a medical officer directed otherwise. To reflect operational practice, the new Rules would mean that prisoners did not need to shower routinely on reception. Newer prisons have showers in cells so, unless there was a clear need for a prisoner to bathe on arrival, they would not be made to do so. The requirement for a prisoner to be seen by a medical officer soon after arrival at a prison or transfer from another prison was removed as responsibility for the healthcare of prisoners passes to the NHS in November 2011.

Comments received

Within this section concerns were expressed about the lack of reference between Rules within the Part and also the lack of cross-reference to other relevant pieces of legislation. The lack of cross reference in the Rules has led to omissions, especially in reflecting the interests of the child as paramount. Reference to child protection legislation and protection of vulnerable groups under the Children (Scotland) Act ought to be considered. Also, the Rules needed to take into consideration aspects of the Equality Act 2010 (e.g. recording data about prisoner religion, food and drink, religion, work and complaints). The links between separate Rules on religion and/or personal belief were not as clear they ought to be and more explicit referencing was required. What justification existed for passing to the chaplaincy team information about a prisoner who has declared him or herself as having no religious belief or who has refused to give any information about such belief?

Other issues raised concerned compliance with a number of processes and procedures. One respondent questioned what would be the response of SPS if a prisoner refused or resisted giving biometric data at reception? Another asked how SPS would comply with the provision of written information, when significant numbers prisoners have issues with literacy. What would be the position if there were good medical reasons why a prisoner could not take a shower or bath on reception, but this was not known or immediately apparent to staff? Governors' powers may need to be less directional in this respect.

Regarding the specific circumstances set out for the retention of a prisoner's photographic and biometric data after an acquittal (e.g. in connection with other criminal proceedings), reservations were expressed about information being taken legally for one purpose being used for other purposes without specific authority and proper controls. It was suggested inserting a requirement for a warrant granted by a Sheriff before the police or procurator fiscal could request the retention or disclosure of such information. Ideally, a new Rule would be of benefit requiring the prison authorities to inform the prisoner and his legal representatives that information was to be retained or communicated to others, enabling a legal challenge to any such decision to be made as appropriate.

Part 3 – Supervision Levels

Part 3 related to procedures for assigning supervision levels. Separate provision was made elsewhere for imposition of special security measures.

There were no significant changes to this part of the Rules and existing supervision level arrangements operating within prisons remained. The structure of the Part was reconfigured to avoid repetition about disclosure of information considered by the Governor, when a prisoner's supervision level was reviewed. It was made explicit that the Governor must comply with the obligations placed on them throughout this Part of the Rules (Rule 3.11). There was a new rule which made it clear that the supervision levels assigned to prisoners did not reflect the risk or danger a prisoner may pose when on temporary release from a prison (Rule 3.1 (a) and (b)). Although that has always been the case, it was not explicit in the 2006 rules. The timescale for reviewing special security measures was reduced from 6 months to 2 months to ensure that such measures were imposed for the shortest time necessary.

Comments received

The proposed changes were, for the most part, welcomed and there was support for changes which strengthened risk assessment and management procedures. However, a respondent ventured that the Rules did not provide for access to better work opportunities when a prisoner had a low supervision level. Prisoners should not need to be subjected to further security checks when they had achieved the necessary low supervision status for trusted jobs.

Part 4 – Accommodation, clothing, hygiene and food

Part 4 referred to the physical accommodation and care of prisoners. It covered cell accommodation, bedding, clothing, hygiene and the provision of food and drink.

Changes in this part were mostly structural. However, some changes of note were to Rule 4.1 (5) that provided for the Governor to carry out a risk assessment where prisoners were required

to share a cell and to Rule 4.7 (1) that provided for access at reasonable times to suitable washing and showering facilities on a daily basis where adequate arrangements could be made. Provision in the 2006 Rules for bathing or showering was at least twice a week. Most of the references to medical officer were either removed from this Part or were redrafted to provide that the Governor took action following a recommendation from a medical officer.

Comments received

The responses received generally referred to a need for greater specificity and accuracy in some of the standards outlined. For instance, while the standard of accommodation was specified, the Rules needed to clarify the standard of sanitation in more detail. Reference was made to the word 'adequate' in regard to cell size. A definitive standard was required through a 'cell certification' scheme which would determine how many persons could legally be held in each cell.

The Rules should also provide for a risk assessment to cover whether a prisoner smoked and should also require the Governor to 'taste' food, as opposed to simply 'checking' it. Further, concerns were expressed about the removal of the minimum number of times a prisoner had access to bathing facilities. A minimum number of times should be re-instated rather than rely on 'regular' access which was at risk of slippage in times of pressure on staff resources.

More specific direction was required regarding limitation of the period that purpose-built single (as distinct from a double) cell accommodation could be shared, especially when one of those sharing was a long term prisoner. A period of one month was too long in respect to the suspension of clothing provision in exceptional circumstances or temporary lack of facilities. Additionally, if prisoners were to be given access to the open air, the rules should be augmented to cover the provision of suitable clothing to take part in exercise. Points were also made in respect to access to natural light within the cell and to the right of the prisoner to grow, keep or remove facial hair as he wishes.

Part 5 – Health and Welfare

Part 5 made provision in relation to the health and welfare of prisoners.

The draft Rules now take account of the transfer of prison healthcare to the NHS from November 2011. Part 5 of the Rules, therefore, looked very different from the 2006 version. The main aim of the changes was to remove all duties on medical officers and other healthcare staff, as such duties no longer fall within the Prison Rules. A number of healthcare provisions in the 2006 Rules were deleted and will be reflected in Directions under the relevant Health Service legislation. Where the 2006 Rules provide for the Governor to take steps on the advice of medical officers, these Rules have been retained. However, further amendments were made to the Rules where it was possible to transfer the duties placed on medical officers, so that the duty now falls on the Governor on the advice of a medical officer. There was also a new rule setting out the circumstances where a Governor had to order a prisoner to be accommodated in particular conditions if advised to do so by a medical officer. This was to cover circumstances where it was in a prisoner's own health interests to be held in specified conditions within the prison. Procedural safeguards around prisoner's representation against being held in specified conditions have been built into this Rule (Rule 5.6).

Comments received

The comments in this section focused on how the Prisons Rules would operate in tandem with the Directions set out by the National Health Service. Respondents sought clarity on decision making processes. A number of respondents emphasised the importance of the arrangements for prisoners' health to be reflected appropriately in the Directions under the relevant Health Service legislation. At present complaints are handled by the prison, but after the transfer of healthcare to the NHS, there was likely to be a need for a system of joint investigation if complaints referred to healthcare issues. Some recognition in the Rules was required of NHS processes and timescales. Also, it was not clear how information about prisoners' physical or mental condition was to be brought to the attention of the Governor. The Rules proceeded on the assumption that all relevant medical matters would be reported promptly, but the Rules provide no specific mechanism for checking.

There was some ambiguity in Part 5 Rules. In some instances, the Prison Rules stated that a Governor should seek advice from a medical officer or healthcare professional, but in other instances, there was an assumption that the Governor would automatically take into account health considerations. The Prison Rules should place a positive duty on a Governor to seek assurances from health colleagues and to consult on health-related matters relevant to conditions under which prisoners were being held.

Governors were involved in decisions about the care of a mentally disordered offender and the effective transfer to hospital. Clarity was required on the roles and responsibilities of prison-based clinicians and the Governor with respect to the Mental Health (Care and Treatment) (Scotland) Act 2003. The duties of Governors needed to be properly reflected in the Prison Rules and accompanying guidance and directions to health care staff.

Some Rules would benefit from greater specificity, for instance, in circumstances where the prisoner was not able to give his or her consent for relatives to be informed of serious illness or injury. Additional Rules were needed to cover personal hygiene, especially for those who shared cells.

Concern was expressed about healthcare provision following transfer to NHS and the impact on infection control and health and safety generally. Respondents asked for more detailed information on the NHS changeover and how it would affect prisoners and health care provision. It was contended that the current consultation was taking place *before* information about the new health care arrangements was available.

Part 6 – Religion

Part 6 made provision in relation to religion or belief within prison.

This Part was restructured throughout to set out the rights of prisoners to manifest their religion or belief. Rule 6.4 described the duties of members of the Chaplaincy team and separated out those duties into pastoral and welfare duties. The changes were made to reflect that the Chaplaincy team operated in an ecumenical way in relation to the welfare needs of prisoners, as well as outlining that prisoners receive pastoral care appropriate to their religion or religious denomination. The revised format of this part also set out the circumstances in which a Governor could withhold the exercise of any right a prisoner to manifest their religion or belief.

Comments received

Some respondents did not support the proposed distinction between prisoners' welfare needs and pastoral care referred to in the Rules. Although Chaplains were sometimes involved in welfare work by providing practical help, it was not a primary aspect of the Chaplain's role. It was suggested instead, the distinction of a pastoral care duty and particular religious ministration duty, in order to cater for the faith-specific pastoral care provided by the Chaplain of the faith to which a prisoner may belong.

However, it was contested there were fundamental issues in the Prisons (Scotland) Act 1989 which would make the proposed Rules *ultra vires* unless the Act was amended. The provision in the Act specifying that a minister shall not be permitted to visit any other prisoners (than those who declare themselves to be of the minister's denomination) could not be avoided by calling some visits "welfare" and some "pastoral". The Rules also needed to take into consideration the Equality Act.

Part 7 – Privileges and Prisoners Property

Part 7 was about the system of privileges that exist in prisons and about the regulation of property (and money) belonging to prisoners which was received or kept at the prison. Issues around unauthorised property were covered in Part 10 that dealt with security, supervision and control.

There were a number of structural and styling changes in this Part of the rules and a definition of personal property was added. There was a new provision in Rule 7.3 (4), that a Governor may, where practicable, provide a secure locking facility to allow prisoners to secure medication and personal property. A new rule relating to the disposal of property that the Governor had refused to allow to be stored in a prisoner's cell or in central storage facilities in the prison (Rule 7.5) was added, as well as a new rule relating to the disposal of unclaimed property (Rule 7.6). There was a new provision in Rule 7.7 (6) which outlined the relationship between the Governor and prisoner in respect to monies held.

Comments received

The Rule allowing the Governor to provide secure lockers in cells was welcomed. Further, clarification was required in respect to such things as liability for postage when the Governor returned property to sender.

Part 8 – Communications

Part 8 dealt with matters relating to arrangements that enabled prisoners to communicate with people outwith the prison, as well as setting out prison visits arrangements. The Part was divided into two sections with the first covering prisoners' correspondence and other communications, and the second covering prison visits.

Prisoners' correspondence and other communications

The language in Part 8 was modernised and Rule 8.2 (2) was expanded to clarify that prisoners did not have the right to receive or send any form of electronic communication. A number of new rules were added to this section. Rule 8.3 was expanded to set out the circumstances and conditions under which a letter or package may be opened and 8.4 clarified the definition of ‘court’ in terms of the Rule. Rule 8.6 was a new rule that applied to correspondence between a prisoner who had a life-threatening illness and a registered medical practitioner. The Rule provided that where a prisoner had obtained the Governor’s prior consent to communicate with a medical practitioner in confidence, that correspondence would not normally be opened by an officer or employee. The new rule provided the same safeguards as those outlined for correspondence with the courts (8.4) and legal advisers (8.5). Rule 8.7 was also a new rule about the handling of privileged correspondence and made similar provision to that in Rule 8.5. There were new provisions at Rule 8.8 that dealt with requests from people who did not want to receive communication from a prisoner.

Prison Visits

The language throughout the section was modernised. The Rule relating to accumulated visits (Rule 8.13) was redrafted to make clear the criteria for such visits and a limit to how many applications for accumulated visits can be made in any 12 month period was added. There was also a change in timescales for eligibility for accumulated visits from 12 months to 18 months in recognition that prisoners with a 12 month sentence can in some instances be eligible for release at 6 months. Accumulated visits could be helpful to prisoners to keep in touch with their family when prisoners were held at a prison some distance from their home address.

There was a change to the arrangements for supervision of visits by the police and police members of the Scottish Crime and Drug Enforcement Agency. In the 2006 Rules, such visits were required to take place in sight and within hearing of a prison officer. The new provision allowed the visit to take place within sight of a prison officer, but only within hearing at the request of the visitor or prisoner.

In new Rule 8.18, additional privacy was provided by the new proposal that if the visit was undertaken by a medical practitioner, that it took place outwith the sight and hearing of a prison officer unless a medical officer requested that an officer was present. In Rule 8.22, the term ‘one or two members’ was removed to make that provision less restrictive.

Comments received

A number of additions were suggested to this section, such as the Committee for the Prevention of Torture being given due recognition in the Rules.

The Rules ought to include those *instructed* by external review bodies to assist in the exercise of their functions, for instance in recording interviews with prisoners. Members of the print media also needed to be covered by the Rules in the same way as to those applying to the electronic media.

Opposition was aired in respect to changes in eligibility for accumulated visits in the Rules and representation was made that the timescale for eligibility should be reduced. A longer period for accumulated visits would make it harder for prisoners to maintain relationships with friends

and family. The Part also contained no cross reference to child protection legislation which led to omissions in ensuring the best interests of the child were paramount.

The Part provided for a prisoner who had a life threatening condition to seek the permission of the Governor to correspond with a medical practitioner: however, the definition of a 'life threatening condition' was not clarified.

Part 9 – Work, Education, Earnings and Recreation

Part 9 made provision in relation to work, education, earnings, counselling and recreational activity. Except for untried and civil prisoners, all prisoners were required to work, for which they were entitled to receive earnings.

The key change to Part 9 was the addition of a description of purposeful activity which subsumed the arrangements for education (including physical education), counselling, vocational training, work placements and voluntary work outside the prison. These changes reflected that many prisoners participated in different forms of purposeful activity intended to enhance their rehabilitation and reduce the risk of reoffending. For some prisoners work in the traditional sense of the word was the most appropriate activity. For others it might be education and vocational training. Rule 9.5 placed a responsibility on Governors to provide an appropriate range of purposeful activities, rather than restricting such provision to work, education and counselling. There was a new provision at 9.10 that set out a prisoner was not permitted to retain any monies generated from the sale of any items he or she had made in prison.

Comments received

Changes to Part 9 were viewed as positive. However, it was argued that the Rules had no provision for specific purposeful activities for prisoners with disabilities or indeed, payment of pension wages for retired prisoners. Nor did the Rules take into consideration circumstances when there was inadequate provision of work to fully employ prisoners. Where raw materials had been purchased by the prisoner or provided by a third party, rather than the SPS, exceptions should be made in respect of the sale of such items.

Part 10 – Security and Control

Part 10 was about security matters, the control and custody of prisoners, prisoners' property and the admission and searching of visitors and contractors.

This part was restructured into 4 areas to cover (1) supervision and control of prisoners (2) confinement and custody of prisoners (3) seizure and control of property and (4) supervision and control of visitors. The reordering provided a more logical sequencing to the Part. Rule 10.3 provided more detail on how a search of a prisoner and a prisoner's cell and property would be carried out compared to the 2006 Rules. A requirement was introduced for an officer to keep a written record of any force he or she had had to use to control a prisoner.

Rule 10.6 (9) and (10) were new provisions to reflect the current operational practice of giving a prisoner the opportunity to make representation prior to an order being made that removed the prisoner from association (where it was practicable to do so) and at relevant points

thereafter, where application is made to Scottish Ministers to authorise the prisoner's continued removal from association. All references to medical officers were removed from the Part where such Rules placed an obligation on medical officers.

The conditions for the use of restraints were adjusted with a new reduced period from 24 hours to 12 hours, beyond which the Governor required the agreement of Scottish Ministers to continue the use of restraints. Only staff trained in the use of body belts could now be used to deploy them.

Rule 10.11 (3) made explicit provision for the Governor to assess the risk that the prisoner may escape or pose a danger to the public when considering if it is appropriate to grant special escorted leave.

There were new more detailed procedures covering the seizure and treatment of unauthorised property and prohibited articles, including new powers regulating the treatment of personal communication devices (mobile phones or parts of them) which took account of the new offence created in the Criminal Justice and Licensing (Scotland) Act 2010.

The arrangements for searching were reviewed so that where appropriate searching of prisoners, staff, contractors or visitors adhered to the same standards.

Comments received

The Rules permitted the search of a prisoner's clothing before or after removal by an officer of the opposite sex. This was inappropriate as it conflicted with rules for searching visitors. Further, the Rules should require that each prison clearly display in the gate reception area what forms of identification were classified as acceptable. Respondents were not clear about how all relevant information pertaining to the Rules was to be brought to the attention of visitors and professionals.

A number of comments were received on prisoner restraints. There ought to be some regulation in the Rules on the use of handcuffs within penal establishments (as opposed to escorts outside prisons) and in relation to temporary confinement in a special cell. The Rules ought to specify a time limit.

In respect to the use of restraints, standard records ought to be kept:- records of time applied; reasons for making the order; removal of restraints and reasons, comments by medical officer on each examination while in restraints and after removal; and records of what an officer viewed in each 15 minute interval observation carried out.

The Rules required an officer to monitor the use of physical restraint, including equipment or clothing, at least every 15 minutes. In such acute instances, continuous monitoring would be more appropriate and this ought to be reflected in the text. There was also merit to include within the Rules that regular updates were reported to health care professionals when body belts were in use.

The Rules ought to reflect that the minimum age for the purchase of tobacco in Scotland was now 18. Although possession by under-18s was not yet an offence, it was difficult to see how persons aged 16-17 could legally come into possession of cigarettes under terms of the Rules.

Part 11 – Discipline

Part 11 made provision in relation to the disciplinary system in prisons. This related to the adjudication of charges of breaches of discipline and specified the procedure to be followed. The part also regulated the imposition of punishments in relation to breaches of discipline.

There were a number of stylistic changes to Part 11 to provide a more coherent structure including more detailed provisions for the management of disciplinary hearings. There was a new provision at Rule 11.4 (14) that meant when the Governor found that a disciplinary charge was proven, and before determining whether a punishment was appropriate, he or she must consider whether the breach of discipline had been aggravated because of discrimination. The arrangements for disciplinary appeals were brought forward from Part 12, so that all matters relating to discipline were consolidated. There were no changes to the underlying principles behind the disciplinary process.

Comments received

Respondents advised that some of the Rules were not necessary, as under-16s can no longer be held in custody. The new provisions for an appeal in relation to disciplinary proceedings were welcomed, but clarification of the Rules was sought on how the proceedings of the Internal Complaints Committee were to be evidenced as having being conducted in an independent manner. It was argued that provision ought to be made for an independent observer to be present at appeals. The absence of any external input into the disciplinary process was a fundamental weakness of the new proposals and contrary to the rules of natural justice.

There was no specification of how, and in what circumstances, a disciplinary hearing might be chaired by an officer other than the Governor in Charge. Concerns were raised over the use of the term ‘exceptional circumstances’ in respect of the permission to grant a right of legal representation. It was routine in many European countries to have legal representation at hearings even when there was no remission or additional days at stake. There should also be a built-in period to allow a prisoner to appeal an orderly room decision before the punishment was imposed, especially where it was a punishment which could not be returned via appeal to the Internal Complaints Committee.

Part 12 – Requests and Complaints

Part 12 made provision in relation to requests and complaints by prisoners. It dealt with the internal complaints procedures which a prisoner might invoke.

With the transfer of the responsibilities of the Scottish Prisons Complaints Commissioner to the Scottish Public Services Ombudsman (SPSO) in October 2010, significant changes were made to this Part to bring the prisoner complaints process into line with SPSO best practice. In particular the layers in the prisoner complaints system were reduced with a focus on early resolution of the complaint.

There was shortening of some timescales to ensure early resolution; with the extension of others to allow for practical application. For example, the deadline in the 2006 Rules provided for a first response to a prisoner within 24 hours. This was changed to 5 days to allow for a

more meaningful assessment of the complaint and to take into account that complaints could be made at times when it would be impossible for a member of staff to comply with the 24 hour deadline (reflecting shift work for example).

Under the new arrangements, the Internal Complaints Committee would consider most prisoner complaints at Stage 2 of the process and make a decision on the complaint which would then be passed to the Governor. A prisoner who remained dissatisfied with the response to their complaint could refer their complaint to the SPSO.

There was no change to the ability of prisoners to make confidential complaints direct to the Governor. Healthcare complaints will fall to the NHS to manage using their own complaints process.

Comments received

Changes in the prisoner complaints process were thought to be well intended, with the process clearly laid out, but some fundamental concerns were expressed.

After the transfer of healthcare, there was likely to be the need for joint investigation of complaints and/or a handing over of complaints from either the prison or NHS. The Rules needed to recognise this eventuality and build in appropriate timescales. Yet, some respondents viewed the proposed 20 day timescale as lengthy, which may result in prisoner frustration if issues were not being seen to be getting resolved.

That the complaint now needed to be made directly the Residential First Line Manager broke the relationship between prisoners and gallery officers. The empowering of basic grade staff not only to receive complaints directly, but also to provide the first level of response in person in writing was one of the strengths of the old system. Respondents argued that the basic grade officer was effectively removed from the process. The prisoner no longer chose to whom to submit the complaint and the officer no longer fed back directly to the prisoner, thus destroying an opportunity for furthering the relationship between them.

The transparency of the old system contributed greatly to its effectiveness in resolving complaints, but that transparency had now been diminished. The prisoner would not have access to the actual person who would make the decision on the complaint, which was a significant departure from the previous process and removed a crucial factor in accountability.

The timescales for dealing with complaints were greatly extended; it was well recognised that speed was of the essence in dealing with prisoners' complaints. The complaints system was very different to its predecessor and further debate was required on principles and practice.

Part 13 – Female Prisoners

Part 13 made provision unique to female prisoners, particularly pregnant prisoners or prisoners who had babies and who were permitted to have them in prison. Only a few changes were proposed to this part of the Rules.

While there remained a presumption that female prisoners would be kept apart from males, there was a new provision in 13.1 that in some circumstances female could be kept in the same

establishment. That was partly to reflect existing practice (female prisoners were already held in some male establishments), but also to reflect the development of the concept of community facing prisons which hold all categories of offenders.

Where a female prisoner was allowed to look after her baby in prison, Rule 13.3 enshrined the principle that the Governor must put the child's interests first in considering conditions for the prisoner and her baby.

Comments received

The Rules in relation to female prisoners and the interests of the child were welcomed, although there was still a need to properly cross refer to relevant legislation protecting the best interests of the child. There was also the suggestion that Part 13 came more logically after Part 4.

Part 14 – Transfers and Discharge of Prisoners

Part 14 made provision in relation to arrangements for prisoners who were being transferred or discharged; and for part payment of fines by fine defaulters.

Only very minor drafting and language changes were made to this Part. The provisions relating to obligations on a medical officer to examine a prisoner prior to discharge or transfer were removed as such provisions would be for appropriate health legislation.

Comments received

Since cheque guarantee cards ceased to have any validity on 1 July 2011 there was no point in referring to them in the Rules in respect of fine payment. It may be more sensible to make provision for the acceptance of credit and debit cards.

Part 15 – Temporary Release

Part 15 set out provisions for the unescorted temporary release of prisoners from prison. The provisions described different reasons and criteria for unescorted temporary release

The part was restructured to describe eligibility for temporary release at the outset. Rule 15.2 outlined how application for temporary release could be made. It also made explicit provision for the Governor to assess the risk that the prisoner might abscond or pose a danger to the public, when considering if it was appropriate to grant temporary release. Rule 15.3 set out the definitions of the various forms of temporary release. The changes did not alter the underlying principles of the provisions contained in the 2006 Rules.

Comments received

The Part would benefit from cross reference to other legislation on the interests of the child.

Part 16 – Officers and Employees

Part 16 made provision in relation to officers and employees. It prescribed general duties and obligations and set out provisions for the searching of officers and employees.

The wording in this part was modernised. There was no material effect on the substance of the 2006 Rules. The section on searching was made consistent with the searching provisions in Part 10 relating to prisoners, visitors and contractors.

Comments received

It was suggested that the Rules should include reference to ‘prisoner escort officer’.

Part 17 – Visiting Committees

Part 17 made provision in relation to Visiting Committees. It set out the requirement for the constitution of Visiting Committees for prisons and young offenders institutions. The provisions also regulated the proceedings of Visiting Committees and the duties of members.

Only very minor changes were made with some modernisation of language, as the future role of the Visiting Committees was under review by the Scottish Government at the time of consultation.

Comments received

It was suggested that the timescales in Rules should be set by Scottish Ministers in consultation with the AVC. It was argued that the requirement to submit the annual report within 3 months of the end of the reporting year was unrealistic.

Part 18 Supplementary and Schedules 4 and 5

Part 18 contained supplementary provisions in relation to Directions, revocations and savings and transitional provisions.

Part 18 and Schedules 4 and 5 reflected the technical changes that were required to revoke formally the 2006 Rules and set out necessary transitional arrangements.

Comments received

There was some ambiguity in the wording of Schedule 1 in respect to administering a controlled drug. Confusion might arise for the officer as to what charge should be used against the prisoner. Also, Schedule 1 included numerous breaches of discipline that also amounted to criminal offences.