



STATUTORY INSTRUMENTS.

S.I. No. 11 of 2013



PRISON RULES (AMENDMENT) 2013

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I, ALAN SHATTER, Minister for Justice and Equality, in exercise of the powers conferred on me by section 35 of the Prisons Act, 2007 (as adapted by the Justice and Law Reform (Alteration of Name of Department and Title of Minister) Order 2011 (S.I. No. 138 of 2011)), hereby make the following rules—

Citation, interpretation, construction and commencement

1. (1) These Rules may be cited as the Prison Rules (Amendment) 2013.
- (2) "the Prison Rules 2007" mean the Prison Rules 2007 (S.I. No. 252 of 2007).
- (3) The Prison Rules 2007 and these Rules shall be construed together as one.
- (4) The Prison Rules 2007 and these Rules may be cited together as the Prison Rules 2007 to 2013.
- (5) These Rules shall come into operation on 14 January 2013.
2. The Prison Rules 2007 are amended by the insertion of the following rules after Rule 57 (Prisoner's meeting with officer of Minister):

"Complaints of a criminal offence

57A. (1) Any allegation by a prisoner to a prison officer or a member of the Irish Prison Service that an act has been committed that may constitute a criminal offence shall be notified, by such officer or member, to the Governor and to the Garda Síochána and the Governor shall arrange for a record to be kept of—

- (a) the identity of the complainant and the time and date the complaint was made,
 - (b) the details of the complaint,
 - (c) the time and date the complaint was notified to the Governor, and
 - (d) the time and date of the notification to the Garda Síochána and the name of the member notified.
- (2) The Governor shall, on being notified of such a complaint—
- (a) arrange for any relevant evidence, including CCTV recordings, to be preserved as long as they may be required for any investigation by the Garda Síochána, or any criminal proceedings,

Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 18th January, 2013.

- (b) arrange for the prisoner in question to be examined and any injuries or marks recorded and photographed if any physical force is alleged, and
- (c) arrange for the names of all prisoners, staff and others who may be potential witnesses to be recorded.

Preparation of internal reports on complaints

57B. (1) (a) This Rule shall apply to any complaint made after the Rule comes into operation by any person alleging—

- (i) assault or use of excessive force against a prisoner, or
- (ii) ill treatment, racial abuse, discrimination, intimidation, threats or any other conduct against a prisoner of a nature and gravity likely to bring discredit on the Irish Prison Service,

whether or not the incident occurred before this Rule comes into operation and shall apply notwithstanding Rule 57A.

- (b) It shall not be necessary to duplicate a record for the purposes of this Rule if a record has already been made for the purposes of Rule 57A.
 - (c) Nothing shall be done under this Rule which might interfere with or prejudice any investigation by the Garda Síochána or possible criminal proceedings.
- (2) (a) It shall be the duty of every prisoner, prison officer and other member of prison staff whether engaged under a contract of employment or a civil servant, to whom a complaint is made, to notify the Governor of any such complaint to which this Rule applies.
- (b) The Governor shall arrange for a record to be kept of
 - (i) the identity of the complainant and the time and date the complaint was made,
 - (ii) the details of the complaint, and
 - (iii) the time and date the complaint was notified to the Governor.
 - (c) If necessary the complainant shall be given assistance to record his or her complaint in writing. The prisoner shall be assured that the complaint can be made without fear of repercussions and the Governor shall take any steps necessary to ensure that there is no victimisation of the prisoner.

(d) If the Governor is a subject of the complaint, the Governor shall forthwith notify the Director General of the Irish Prison Service and the Inspector of Prisons.

(3) The Governor shall, on being notified of such a complaint, or if the provisions of subparagraph (2) (d) apply, such other person as may be designated by the Director General of the Irish Prison Service (hereafter referred to as the "Designated Officer"),

(a) arrange for any relevant material, including CCTV recordings, to be preserved as long as they may be required for any investigation by the Garda Síochána and any investigation under this Rule, or any proceedings,

(b) arrange for the prisoner in question to be examined and any injuries or marks recorded and photographed if any physical force is alleged,

(c) arrange for the names of all prisoners, staff and others who may be potential witnesses to be recorded, and

(d) advise the complainant that the complaint is being investigated and the procedures involved.

(4) The Governor shall, within seven days of being notified of such a complaint, or the Designated Officer where the Governor is the subject of the complaint, refer the complaint and the evidence gathered pursuant to subparagraph (3) to the Director General and also notify the Inspector of Prisons.

(5) (a) Subject to subparagraphs (b) and (c), the Director General shall appoint an investigation team comprising one or more persons to investigate the complaint. The person or persons appointed shall not be members of staff serving at the prison to which the complaint relates or have had a recent association with that prison through having worked there or otherwise, and may be persons from outside the Irish Prison Service. The Governor and Inspector of Prisons shall be notified of the appointment of the person or persons.

(b) The Director General may decide not to appoint an investigation team if he or she is satisfied that the complaint is vexatious, without foundation or falls outside the scope of this Rule. If such a decision is made the Director General shall document the reasons for the decision and arrange for the complainant, the Governor and the Inspector of Prisons to be advised of the decision and the reasons for the decision.

(c) If the complaint is withdrawn, the Governor, or the Designated Officer where the Governor is the subject of the complaint, shall inquire as to why the complaint was withdrawn, document the reasons given and forward a report to the Director General. If

there is any evidence of any threat or inducement for the complainant to withdraw the complaint, the initiation of disciplinary proceedings shall be considered. On receipt of the Governor's or the Designated Officer's report, the Director General may decide that the investigation should be terminated (and if so document the reasons for doing so and advise the Inspector of Prisons) or direct that the investigative process should continue.

(6) The purpose of an investigation under this Rule shall be to advise whether there are grounds for the complaint, and to make recommendations on the future management of such complaints or their subject matter. Nothing in this Rule shall prevent the initiation of disciplinary proceedings before an investigation team is appointed or reports.

(7) It shall be the duty of every prisoner, Governor, prison officer and other member of prison staff whether engaged under a contract of employment or a civil servant to cooperate fully with an investigation team appointed for the purpose of this Rule.

(8) The complainant shall be advised of the identity of the member or members of the investigation team and how the team may be contacted.

(9) The investigation team shall investigate the complaint. To this end the team may gather further evidence, interview persons and take statements. The team shall be given access to the prison and all records to which the complaint relates or any other prison.

(10) (a) On completion of this investigation, the team shall submit a report to the Governor, unless the Governor is the subject of the complaint, and the Director General. If an investigation is not completed within 3 months from the date of the complaint an interim report shall be submitted to the Governor, unless the Governor is the subject of the complaint, and Director General documenting the progress made and the reasons why they will require further time to complete the report. The Inspector of Prisons shall be provided with a copy of every report submitted under this paragraph and the complainant shall be advised of the reasons for any delay.

(b) The Governor, or the Director General where the Governor is the subject of the complaint, shall make his or her finding on the basis of the report that:

(i) there are reasonable grounds for sustaining the complaint,

(ii) there are no reasonable grounds for sustaining the complaint, or

(iii) it has not been possible to make a determination as set out at (i) or (ii) above

and may state the reasons for his or her finding.

The Governor, or the Director General where the Governor is the subject of the complaint, shall decide, what action if any should be taken, on the basis of the report and any other matters that he or she considers relevant. The finding and decision of the Governor, or the Director General where the Governor is the subject of the complaint, shall be documented and if any matters not in the report are taken into consideration for the purpose of deciding what action shall be taken those matters shall be referred to in the documentation. The Governor, or the Director General where the Governor is the subject of the complaint, shall advise the complainant and any person against whom the complaint was made that the report of the investigating team has been received, and give, subject to subparagraph (c) below, a general outline of the report and advise them of his or her finding and decision. A copy of any report and the Governor's finding and decision shall be forwarded by the Governor to the Director General and the Inspector of Prisons or if the Governor is the subject of the complaint the Director General shall forward a copy of the report to the Inspector of Prisons.

- (c) Subject to subparagraph (d) below no part of the report shall be made public or made known to the complainant or the person against who the complaint is made if it contains adverse findings about an identifiable person or if it might prejudice any criminal proceedings. A prisoner may be told that disciplinary proceedings have been initiated and the outcome of such proceedings.
- (d) The finding of the Governor and the report shall not be a basis for imposing any disciplinary sanction on an officer or a prisoner but notwithstanding this and any time limits provided for in the Prison (Disciplinary Code for Officers) Rules S.I. 289 of 1996 (hereafter referred to as the "Disciplinary Code"), such a report or the report with any additional statements or information may
 - (i) be used by a Governor to ground a Complaint Form under the Disciplinary Code against an officer and, subject to (e) below, any evidence gathered for the investigation may be referred to in disciplinary proceedings including at an Oral Hearing under the Disciplinary Code, or
 - (ii) be used by the Governor to ground an allegation of a breach of prison discipline and subject to (e) below, any evidence gathered for the investigation may be referred to in proceedings for breach of prison discipline.
- (e) Statements made by an officer, prisoner or the Governor to the investigating team shall not be used in disciplinary proceedings against that officer or the Governor or the prisoner in proceedings for breach of prison discipline without his or her consent.

(f) For the purpose of this Rule, reassignment of duties or suspension from duty on full pay shall not be regarded as a disciplinary action.

(11) A complainant shall be advised that if he or she is not satisfied with the outcome of the investigation, he or she may write to the Inspector of Prisons and the Director General of the Irish Prison Service stating why he or she is not satisfied.

(12) The Inspector of Prisons shall have oversight of all investigations carried out under this Rule, shall have access to any material relevant to any such investigation and may investigate any aspect that he or she considers relevant."

3. The Prison Rules 2007 are amended by the substitution of the following paragraph for paragraph (13) of Rule 67 (Breach of prison discipline):

"(13) (a) Pursuant to Part 3 of the Prisons Act, 2007, the Governor shall inform a prisoner of his decision to impose a penalty, suspend the operation of a penalty or restore lost remission, as soon as may be after he or she has made a decision to so do.

(b) The Governor shall not include a prohibition on receiving visits as a penalty without specifying why that prohibition has been decided upon.

(c) A decision to impose "loss of all privileges" for a specified period shall not be interpreted as including a prohibition on receiving visits unless it is specifically included in accordance with subparagraph (b)."

4. The Prison Rules 2007 are amended by the substitution of the following paragraph for paragraph (5) of Rule 85 (Duties of a prison officer):

"(5) A prison officer shall, while on duty,-

(a) wear a uniform in such a manner and of such type and description as is specified by the Governor or Director General, unless the Governor so directs;

(b) wear identification marks in such a manner and of such type and description as is specified by the Governor or Director General, unless the Governor so directs; and

(c) maintain a level of appearance and personal cleanliness consistent with standards of a disciplined service."

5. The Prison Rules 2007 are amended by the insertion of the following definition in paragraph (2) of Rule 2 (Interpretation) after the definition of "breach of prison discipline":

" "CCTV" means any fixed and permanent system employing optical devices for recording visual images of events;"

6. The Prison Rules 2007 are amended by the substitution of the following paragraph for paragraph (13) of Schedule 1 (Breaches of Prison Discipline)

"(13) gives false evidence to, frustrates or fails to cooperate with an investigation or inquiry under section 12 of the Prisons Act, 2007 (Inquiry into alleged breach of discipline), section 15 of the Prisons Act, 2007 (Appeal against forfeiture of remission of portion of sentence) or Rule 57B (Preparation of internal reports on complaints)".



GIVEN under my Official Seal,
9 January 2013.

ALAN SHATTER,
Minister for Justice and Equality.

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