EXPLANATORY MEMORANDUM TO

The Attorney General's Human Rights Guidance (Northern Ireland Prison Service – Prison Order and Discipline) Order (Northern Ireland) 2014

SR 2014 No. 152

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the the Attorney General for Northern Ireland to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under the powers conferred by section 8(3)(c) of the Justice (Northern Ireland) Act 2004 and is subject to the negative resolution procedure.

2. Purpose

2.1. The Statutory Rule brings into operation human rights guidance for the Northern Ireland Prison Service (in relation to prison order and discipline) by the Attorney General for Northern Ireland on the exercise of Northern Ireland Prison Service functions in a manner consistent with international human rights standards.

3. Background

3.1. Section 8(1) of the Justice (Northern Ireland) Act 2004 obliges the Attorney General for Northern Ireland to issue guidance for criminal justice organisations on the exercise of their functions in a manner consistent with international human rights standards. This Statutory Rule brings into operation guidance for the Northern Ireland Prison Service in relation to Conditions of Imprisonment, as required by section 8(3)(c) of the 2004 Act.

4. Consultation

4.1. The Attorney General has consulted with the Advocate General pursuant to section 8(1A) and section 8(5A) of the Justice (Northern Ireland) Act 2004.

5. Equality Impact

5.1. The Attorney General for Northern Ireland is not listed as a public authority for the purpose of section 75 of the Northern Act 1998.

5.2. The Statutory Rule provides for the coming into force of the guidance under section 8 of the Justice (Northern Ireland) Act 2004. This guidance is based upon international human rights standards and therefore the principles of equality and non-discrimination form a central component of the guidance which the Statutory Rule brings into operation.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment is not required.

7. Financial Implications

7.1. Not applicable.

8. Section 24 of the Northern Ireland Act 1998

8.1. It is the view of the Attorney General that this Statutory Rule is compliant with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. The Attorney General is making the Statutory Rule in fulfilment of a legal requirement under section 8 of the Justice (Northern Ireland) Act 2004.

10.2. The Statutory Rule applies to Northern Ireland only. There is no corresponding Great Britain Statutory Instrument.

11. Additional Information

11.1. The text of the guidance is attached to this Explanatory Memorandum at Annex A.

ANNEX A

HUMAN RIGHTS GUIDANCE FOR THE NORTHERN IRELAND PRISON SERVICE PRISON ORDER AND DISCIPLINE

INTRODUCTION

1. Human rights standards are designed to make life better for individuals and communities and they should not be, and not be viewed as, burdens to competent professionals conscientiously carrying out their duties. When competent professionals are working diligently to the high standards set by their own disciplines, they will almost invariably comply with human rights standards. This guidance is designed to assist professionals by offering them a framework within which their own professional standards can safely operate. By following this guidance those to whom it is addressed can be confident that their work is compliant with international human rights standards.

2. This guidance is without prejudice to the requirement on all public authorities to comply with their obligations under section 6 of the Human Rights Act 1998 and with EU law.

THIS GUIDANCE IS ADDRESSED TO THE NORTHERN IRELAND PRISON SERVICE IN RELATION TO PRISON ORDER AND DISCIPLINE

3. This guidance draws on the international human rights standards of most relevance and assistance to the Northern Ireland Prison Service. Guidance under section 8 of the Justice (Northern Ireland) Act 2004 is not designed to be static or unduly rigid. As a matter of domestic law, the Northern Ireland Prison Service must comply with the Prison and Young Offenders Centre Rules (Northern Ireland) 1995, as amended,

'the Prison Rules'. This guidance either supplements the Prison Rules or constitutes a guide to how the Prison Rules should be applied.

INTERNATIONAL STANDARDS

4. This guidance reflects the international standards from the following instruments:

- European Convention for the Protection of Human Rights and Fundamental Freedoms;
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- Recommendation (2006) 2 of the Committee of Ministers to member states on the European Prison Rules;
- Recommendation No. R (98) 7 of the Committee of Ministers to member states concerning the ethical and organisational aspects of health care in prison;
- Recommendation (2006) 13 of the Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse;
- United Nations Standard Minimum Rules for the Treatment of Prisoners;
- United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ("The Bangkok Rules");
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules");
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, United Nations General Assembly Resolution 43/173;
- Universal Declaration of Human Rights;
- International Covenant on Civil and Political Rights.

SECURITY, CONTROL AND USE OF FORCE

This section of the Guidance supplements Parts III and IV of the Prison Rules, in particular rules 16, 32, 35, 36, 38, 39, 41, 46, 47, 48 and 49.

Security

5. Prisoners should be assessed on admission to determine the safety risk they pose to other prisoners, prison staff, those visiting or working in the prison, and to themselves. They should also be assessed to determine the risk that they would present to the community if they were to escape, and the risk that they will try to escape. Each prisoner should be held in security conditions appropriate to these levels of risk.

6. The level of security necessary should be reviewed at regular intervals throughout a prisoner's detention. The security measures applied to individual prisoners should be the minimum necessary to achieve their safe custody and to maintain a well-ordered community.

7. Special high security measures should only be applied in exceptional circumstances and clear procedures should be followed in these instances. The application of such measures should be approved by a competent authority for a specified period of time with any extension of time subject to a new approval by the competent authority. Such measures should apply to individuals and not to groups of prisoners.

Searches

8. Staff should be trained to carry out searches which respect the dignity of those being searched and their personal possessions. Detailed procedures should be available and followed by staff when searching:

    - areas where prisoners live, work or congregate;
    - prisoners;
    - visitors and their possessions; and

- staff.

9. Persons being searched should not be humiliated by the searching process and should only be searched by staff of the same gender. There should be no internal searches of prisoners' bodies by prison staff. An intimate search may be conducted by a medical practitioner only.

10. Prisoners should be present when their personal property is being searched unless investigating techniques or the potential threat to staff prohibits this.

Discipline

11. Disciplinary measures should be mechanisms of last resort.

12. Whenever possible, prison authorities should use mechanisms of restoration and mediation to resolve disputes with and among prisoners.

13. Only conduct likely to constitute an immediate threat to good order, safety or security may be defined as a disciplinary offence.

14. A prisoner should not be punished without being informed of the offence alleged and given an opportunity of presenting his or her defence.

15. Any punishment should be proportionate to the offence, with consideration given to any physical or mental vulnerability of the prisoner.

16. Punishment should not include a total prohibition on family contact or association, or a reduction in diet. Collective punishments and corporal punishment, punishment by placing in a dark cell, and other similar forms of inhuman or degrading punishment should not be permitted.

17. Solitary confinement should be avoided as a punishment and should only be used in exceptional cases where the prisoner should be placed in solitary confinement to protect him or herself and to protect other prisoners. Those placed under solitary confinement, particularly those who are vulnerable either physically or mentally, should be monitored with a view to ensuring their safety.

18. Instruments of restraint should never be applied as a punishment, and should be used only as a means of last resort to bring a prisoner under control and to remove the safety risk he or she poses to themselves or others. Restraints should not be used longer than is necessary to achieve that control.

19. Prison staff should not use force against prisoners except in self-defence or in cases of attempted escape or active or passive physical resistance to a lawful order and always as a last resort. The amount of force used should be the minimum necessary and should be imposed for the shortest necessary time.

20. Detailed procedures regarding the use of force should be in place including in relation to the types of force that may be used, the circumstances in which each may be used, members of staff entitled to use types of force, the level of authority required and the reports to be completed once force has been used.

Control and Use of Force

21. Staff must abstain from inflicting violence or any form of physical or mental ill-treatment on prisoners in their care, and must do all in their power to ensure that such behaviour is not engaged in by others.

22. Staff who deal with prisoners should be trained in techniques that enable the minimal use of force in the restraint of prisoners who are aggressive.

23. In circumstances where other methods of control fail and where the interest of security and safety necessitates the use of restraints, the instruments of restraint should not be applied for any longer time than is strictly necessary.

Non-Discrimination

24. Staff must abstain from any form of discrimination in the implementation of sanctions and measures and do all in their power to prevent discrimination by other persons and bodies.

GENERAL

25. The Northern Ireland Prison Service should ensure that the above guidance is circulated to all staff to ensure that it is properly taken into account.

26. The Northern Ireland Prison Service should ensure that this guidance is made available to all prisoners.

27. Regard must be had to this guidance when making or reviewing contractual or other agreements with other statutory agencies.

REVIEW AND MONITORING

28. Difficulties encountered in the application of this guidance by the Northern Ireland Prison Service should be notified to the Attorney General as soon as possible.

29. The Attorney General will formally seek the views of the Northern Ireland Prison Service on the revision or amendment of this guidance annually. It is open to the Northern Ireland Prison Service to suggest revision or amendment of this guidance at any time.

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Attorney General for Northern Ireland