2005 No. 869

PRISONS

The Prison (Amendment) Rules 2005

Made - - - - -	*21st March 2005*
Laid before Parliament	*23rd March 2005*
Coming into force - -	*18th April 2005*

The Secretary of State, in exercise of the powers conferred upon him by section 47 of the Prison Act 1952(**a**) hereby makes the following Rules:

1.—(1) These Rules may be cited as the Prison (Amendment) Rules 2005 and shall come into force on 18th April 2005.

(2) The requirement in rule 2 (as substituted by paragraph 1 of the Schedule) of the approval of the Lord Chancellor for the appointment of a District Judge (Magistrates' Courts) or Deputy District Judge (Magistrates' Courts) as an adjudicator does not apply to a person who is approved to act as an adjudicator on the date when these Rules come into force, and such a person may continue to act as an adjudicator for so long as he holds office as a District Judge (Magistrates' Courts) or Deputy District Judge (Magistrates' Courts).

2. The Prison Rules 1999(**b**) shall have effect subject to the amendments set out in the Schedule to these Rules.

Home Office
21st March 2005

Paul Goggins
Parliamentary Under-Secretary of State

(**a**) 1952 c. 52. Section 47 was affected by an amendment to section 52(2) of that Act by section 66(4) of the Criminal Justice Act 1967 (c. 80) and was extended by section 85(2) and (4) of the Criminal Justice Act 1991 (c. 53) and by section 16B of the Prison Act 1952 (as inserted by section 1 of the Prisons (Alcohol Testing) Act 1997) (c. 38)).
(**b**) S.I. 1999/728, as amended by S.I. 2002/2116. There are other amendments to the Prison Rules 1999 which are not relevant to the subject matter of these Rules.

SCHEDULE 1 Rule 2

AMENDMENTS TO THE PRISON RULES 1999

1. In paragraph (1) of rule 2 (interpretation), for the definition of "adjudicator" substitute—

""adjudicator" means a District Judge (Magistrates' Courts) or Deputy District Judge (Magistrates' Courts)(**a**) approved by the Lord Chancellor for the purpose of inquiring into a charge which has been referred to him;".

2. In rule 42 (record and photograph)—

(a) in paragraph (2) after the word "photograph" insert "or any other personal record";

(b) after paragraph (2) insert—

"(2A) In this rule "personal record" may include personal information and biometric records (such as fingerprints or other physical measurements).".

3. After rule 50A, insert—

"**Compulsory testing for alcohol**

50B.—(1) This rule applies where an officer, acting under an authorisation in force under section 16B of the Prison Act 1952(**b**) (power to test prisoners for alcohol), requires a prisoner to provide a sample for the purpose of ascertaining whether he has alcohol in his body.

(2) When requiring a prisoner to provide a sample an officer shall, so far as is reasonably practicable, inform the prisoner—

(a) that he is being required to provide a sample in accordance with section 16B of the Prison Act 1952; and

(b) that a refusal to provide a sample may lead to disciplinary proceedings being brought against him.

(3) An officer requiring a sample shall make such arrangements and give the prisoner such instructions for its provision as may be reasonably necessary in order to prevent or detect its adulteration or falsification.

(4) Subject to paragraph (5) a prisoner who is required to provide a sample may be kept apart from other prisoners for a period not exceeding one hour to enable arrangements to be made for the provision of the sample.

(5) A prisoner who is unable to provide a sample of urine when required to do so may be kept apart from other prisoners until he has provided the required sample, except that a prisoner may not be kept apart under this paragraph for a period of more than 5 hours.

(6) A prisoner required to provide a sample of urine shall be afforded such degree of privacy for the purposes of providing the sample as may be compatible with the need to prevent or detect any adulteration or falsification of the sample; in particular a prisoner shall not be required to provide such a sample in the sight of a person of the opposite sex.".

4. In rule 51 (offences against discipline)—

(a) for paragraph (9) substitute—

"(9) is found with any substance in his urine which demonstrates that a controlled drug has, whether in prison or while on temporary release under rule 9, been administered to him by himself or by another person (but subject to rule 52);";

(b) for paragraph (10) substitute—

"(10) is intoxicated as a consequence of consuming any alcoholic beverage (but subject to rule 52A);";

(c) for paragraph (11) substitute—

"(11) consumes any alcoholic beverage whether or not provided to him by another person (but subject to rule 52A);".

(**a**) A District Judge (Magistrates' Courts) and Deputy District Judge (Magistrates' Courts) as appointed under section 10A and section 10B, respectively, of the Justices of the Peace Act 1997 (c. 25) as inserted by section 78 of the Access to Justice Act 1999 (c. 22). Sections 10A and 10B of the 1997 Act are prospectively repealed by the Courts Act 2003 (c. 39) and re-enacted by section 22 and section 24, respectively, of that Act.

(**b**) As inserted by section 1 of the Prisons (Alcohol Testing) Act 1997 (c. 38).

5. After rule 52 insert—

"**Defences to rule 51(10) and rule 51(11)**

52A. It shall be a defence for a prisoner charged with an offence under rule 51(10) or (11) to show that—

(a) the alcohol was consumed by him in circumstances in which he did not know and had no reason to suspect that he was consuming alcohol;

(b) the alcohol was consumed by him without his consent in circumstances where it was not reasonable for him to have resisted; or

(c) the alcohol was provided to him pursuant to a written order under rule 25(1).".

6. After rule 55A insert—

"**Review of adjudicator's punishment**

55B.—(1) A reviewer means a Senior District Judge (Chief Magistrate)(**a**) approved by the Lord Chancellor for the purposes of conducting a review under this rule or any deputy of such a judge as nominated by that judge.

(2) Where a punishment is imposed by an adjudicator under rule 55A(1), a prisoner may, within 14 days of receipt of the punishment, request in writing that a reviewer conducts a review.

(3) The review must be commenced within 14 days of receipt of the request and must be conducted on the papers alone.

(4) The review must only be of the punishment imposed and must not be a review of the finding of guilt under rule 55A.

(5) On completion of the review, if it appears to the reviewer that the punishment imposed was manifestly unreasonable he may—

(a) reduce the number of any additional days awarded;

(b) for whatever punishment has been imposed by the adjudicator, substitute another punishment which is, in his opinion, less severe; or

(c) quash the punishment entirely.

(6) A prisoner requesting a review shall serve any additional days awarded under rule 55A(1)(b) unless and until they are reduced.".

7. In rule 61 (remission and mitigation of punishments and quashing of findings of guilt)—

(a) at the beginning of paragraph (1) insert—

"Except in the case of a finding of guilt made, or a punishment imposed, by an adjudicator under rule 55A(1)";

(b) for paragraph (2) substitute—

"(2) Subject to any directions given by the Secretary of State, the governor may, on the grounds of good behaviour, remit or mitigate any punishment already imposed by an adjudicator, governor or the board of visitors.".

8. In rule 71 (control of persons and vehicles)—

(a) for paragraph (1) substitute—

"(1) Any person or vehicle entering or leaving a prison may be stopped, examined and searched and in addition any such person may be photographed, fingerprinted or required to submit to other physical measurement.";

(b) after paragraph (1) insert—

"(1A) Any such search of a person shall be carried out in as seemly a manner as is consistent with discovering anything concealed about the person or their belongings.".

(**a**) A Senior District Judge (Chief Magistrate) is appointed under section 10A of the Justices of the Peace Act 1997 (c. 25) as inserted by section 78 of the Access to Justice Act 1999 (c. 22). Section 10A of the 1997 Act is prospectively repealed by the Courts Act 2003 (c. 39) and re-enacted by section 23 of that Act.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Prison Rules 1999. Rule 2 introduces the Schedule, which sets out the following amendments to the 1999 Rules.

Paragraph 1 amends rule 2 to provide that references to an "adjudicator" mean a District Judge (Magistrates' Courts) or a Deputy District Judge (Magistrates' Courts) approved by the Lord Chancellor.

Paragraph 2 amends rule 42 so as to prohibit a copy of any personal record being given to a person not authorised to receive it.

Paragraph 3 inserts a new rule 50B which establishes the procedure which is to apply where an officer requires a prisoner to provide a sample under section 16B of the Prison Act 1952.

Paragraph 4 amends rule 51 to change the way in which certain offences under the Prison Rules apply.

Paragraph 5 inserts a new rule 52A which provides a defence to the disciplinary offences of being intoxicated or having consumed alcohol.

Paragraph 6 inserts a new rule 55B which provides for a reviewer to review a punishment imposed by an adjudicator and sets out the procedure to be followed when a prisoner requests such a review.

Paragraph 7 amends rule 61 with the effect that the Secretary of State may not under that rule consider adjudications referred to an adjudicator, although a governor may do so on grounds of good behaviour.

Paragraph 8 amends rule 71 with the effect that those visiting prisons in whatever capacity may be photographed, fingerprinted or required to submit to other physical measurement.

ISBN 0-11-072644-8

9 780110 726441

£3.00

© Crown copyright 2005

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E0624 4/2005 150624 19585