



CUSTODY RULES 2015

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Custody Act 1995

CUSTODY RULES 2015

Approved by Tynwald: 23 July 2015
Coming into Operation: 1 August 2015

The Department of Home Affairs makes the following Rules under sections 16, 17, 18, 19, 19A, 20, 21 and 23 of, and paragraph 13 of Schedule 2 and paragraph 9 of Schedule 3 to, the Custody Act 1995.

1 Title

These Rules are the Custody Rules 2015.

2 Commencement

If approved by Tynwald, these Rules come into operation on 1 August 2015.¹

3 Interpretation

(1) In these Rules —

“**the Act**” means the *Custody Act 1995*;

“**chaplancy team**” means representatives of any denomination appointed by the Governor to visit detainees further to rule 33 or perform religious services further to rule 34;

“**communication**” includes any written or drawn communication from a detainee to another person, whether it is intended to be transmitted by means of a postal service or not, and any communication from a detainee to any other person transmitted by means of a telecommunications system;

“**controlled drug**” has the same meaning as in the *Misuse of Drugs Act 1976*;

“**convicted detainee**” means a detainee who has been —

- (a) convicted;
- (b) found guilty of an offence;

¹ Tynwald approval required under section 16(3) of the Custody Act 1995

- (c) committed or attached for contempt of court or for failing to do so or abstain from doing anything required to be done or left undone,

and “**unconvicted detainee**” means any detainee other than a convicted detainee;

“**deputy governor**” means an officer holding a rank immediately below that of the governor;

“**governor**” includes an officer for the time being in charge of an institution;

“**health care professional**” means a person who is —

- (a) a health care professional as defined in the *Health Care Professionals Act 2014*;
- (b) a registered dentist as defined in the *Dental Act 1985*;
- (c) a registered optician as defined in the *Opticians Act 1996*;
- (d) a registered pharmacist who is a member of the Register established under Part 4 of the Pharmacy Order 2010 (of Parliament)²;

“**IMB**” means the Independent Monitoring Board established under Part 7 of these Rules;

“**legal adviser**” means, in relation to a detainee, his or her advocate, counsel or solicitor and includes a clerk acting on behalf of the detainee’s advocate or solicitor;

“**medical officer**”, as required under section 13(1)(b) of the Act, means a health care professional who is a registered medical practitioner and is under an arrangement made by the governor under rule 29(1) that requires him or her to provide health care services in an institution;

“**officer**” means an officer of an institution and, for the purposes of rule 15, a police officer or a prisoner custody officer certified under section 5 of the *Prisoner Escort Act 2008*;

“**registered medical practitioner**” as defined under the *Health Care Professionals Act 2014*;

“**sample**” means —

- (a) a sample of hair other than pubic hair;
- (b) a sample taken from a nail or from under a nail;
- (c) a swab taken from any part of a person’s body including the mouth but not any other body orifice;
- (d) saliva;

² SI 2010 No. 231.

- (e) a skin impression;
- (f) a sample of urine; or
- (g) a sample of breath;

“**short-term detainee**”, “**long-term detainee**” and “**discretionary life detainee**” have the same meanings as in Schedule 2 to the Act.

- (2) In these Rules a reference to an award of additional days means additional days awarded under these Rules by virtue of paragraph 13 of Schedule 2 to the Act.

4 Emergencies

- (1) Where any person, being an officer of a United Kingdom prison service of the grade of governor, is employed by reason of any emergency to act in the place of the governor of an institution by performing duties ordinarily performed by the governor of the institution, any reference to these Rules to the governor must be construed as including reference to the person so employed.
- (2) Where any person, being —
 - (a) a constable;
 - (b) a member of the armed forces of the Crown; or
 - (c) a prison officer normally employed in the United Kingdom,is employed by reason of any emergency to assist the governor of an institution by performing duties ordinarily performed by an officer of the institution, any reference in these Rules to such an officer (other than the governor) must be construed as including a reference to a person so employed.

5 Delegation of functions by governor

- (1) The governor of an institution may, with the consent in writing of the Department —
 - (a) authorise any deputy governor to perform the functions exercisable by the governor in rules 48 (Determination of mode of inquiry), 49 (Inquiry into a charge by the governor), 51 (Governor’s punishments) or 54 (Suspended punishment);
 - (b) authorise any officer of the institution to perform any other function exercisable by the governor;and any reference in these Rules to the governor must be construed as including a reference to an officer acting in pursuance of such an authorisation.
- (2) This rule does not apply to rule 58 (Review of punishment).

6 Application

- (1) Subject to paragraph (2) these Rules apply to all institutions.
- (2) These Rules, except Part 8, do not apply to an institution to which the Secure Care Home Custody Rules 2002³ apply.

PART 2

GENERAL

7 Purpose of work and training

Convicted detainees must, so far as the length of custody permits, be provided with a programme of work, training and education which must assist them to return to the community with the best chance of leading law-abiding and self-supporting lives after their release.

8 Conduct of officers

- (1) Every officer must treat detainees fairly, justly, impartially and with respect for their human rights.
- (2) Except where required or allowed by law, an officer must not discriminate against a detainee on the grounds of –
 - (a) age;
 - (b) disability;
 - (c) gender reassignment;
 - (d) marriage and civil partnership;
 - (e) pregnancy and maternity;
 - (f) race;
 - (g) religion or belief;
 - (h) sex; or
 - (i) sexual orientation.

9 Outside contacts

- (1) A detainee must be encouraged and assisted to sustain and strengthen such relationships with his or her family as are desirable in the best interests of both.
- (2) A detainee must be given the opportunity to inform his or her family of his or her detention or transfer to another institution.

³ SD 853/02.

- (3) A detainee must be encouraged and assisted to establish and maintain such relations with persons and agencies outside the institution as may, in the opinion of the governor, best promote the interests of the detainee's family and the social rehabilitation of the detainee.
- (4) A detainee must be allowed to keep himself or herself informed of current affairs, by the authority and under the direction of the governor, by reading newspapers and other publications and receiving radio and television news programmes.

10 After care

From the beginning of the detainee's detention consideration must be given, in consultation with the appropriate after-care organisations, to the detainee's future and the assistance to be given to the detainee on and after the release of the detainee.

11 Reception

- (1) Every detainee must be interviewed within 24 hours of his or her reception into an institution by an officer designated by the governor for the purpose, who must —
 - (a) check the warrant or other authority by virtue of which the detainee was received into the institution;
 - (b) explain to the detainee his or her rights and obligations;
 - (c) take such steps as are immediately necessary to secure the detainee's health and welfare; and
 - (d) provide the detainee with a booklet approved by the Department that makes reference to —
 - (i) these Rules;
 - (ii) any material provisions of the Act;
 - (iii) the procedures to be followed in making applications and complaints; and
 - (iv) all such other matters as are necessary to explain the detainee's rights and obligations.
- (2) The governor must cause the IMB to be notified of the reception in the institution of any juvenile within 24 hours of such reception.
- (3) This rule is without prejudice to section 14(6) of the Act (record of religious denomination).

12 Classification of detainees

- (1) Detainees may be classified in accordance with any direction of the Department, having regard to their age, temperament and record, and with a view to maintaining good order and facilitating training and, in the case of convicted detainees, of furthering the purpose of their training and treatment as provided by rule 7.
- (2) Detainees committed or attached for contempt of court, or for failing to do or abstain from anything required to be done or left undone —
 - (a) must be treated as a separate class for the purposes of this rule;
 - (b) notwithstanding anything in this rule, may be permitted to associate with any other class of detainees if they are willing to do so; and
 - (c) must have the same privileges as an unconvicted detainee under rules 29(6) and 62(6).

13 Separation of detainees

- (1) Separate living accommodation must, so far as practicable, be provided for women detainees.
- (2) Unconvicted detainees must, so far as is practicable, be kept out of contact with convicted detainees.
- (3) Nothing in this rule requires a detainee to be deprived unduly of the society of other persons.
- (4) This rule is without prejudice to section 12 of the Act.

14 Privileges

- (1) There must be established at every institution systems of privileges approved by the Department and appropriate to the classes of detainees there, which must include arrangements under which money earned by detainees in an institution, and money brought by or for them into the institution, may be spent by them within the institution.
- (2) Systems of privileges approved under paragraph (1), may include arrangements under which detainees may be allowed time outside their cells and in association with one another, in excess of the minimum time which, subject to the other provisions of these Rules apart from this rule, is otherwise allowed to detainees at the institution for this purpose.
- (3) Systems of privileges approved under paragraph (1) may include arrangements under which privileges —
 - (a) may be granted to detainees only in so far as they have met, and for so long as they continue to meet, specified standards in their behaviour and their performance in work or other activities; and

- (b) may be lost or forfeited as a result or consequence of disciplinary action.
- (4) Systems of privileges, which include arrangements of the kind referred to in paragraph (3)(a), must include procedures to be followed in determining whether or not any of the privileges concerned may be granted, or may continue to be granted, to a detainee.
- (5) The procedures provided under paragraph (4) must include requirements –
 - (a) that the detainee be given reasons for any decision adverse to the detainee; and
 - (b) a statement of the means by which the detainee may appeal against it.
- (6) This rule must not be taken to –
 - (a) confer on a detainee an entitlement to any privilege; or
 - (b) affect any provision in these Rules other than this rule as a result of which any privilege may be forfeited or lost.

15 Custody outside an institution

- (1) A person being taken to or from an institution in custody must be exposed as little as possible to public observation, and proper care must be taken to protect that person from curiosity and insult.
- (2) A detainee required to be taken in custody anywhere outside an institution must be kept in the custody of an officer.
- (3) A detainee required to be taken in custody to any court must, when the detainee appears before the court, wear his or her own clothing or ordinary civilian clothing provided by the governor.

16 Temporary release

- (1) The governor may, in accordance with this rule, release temporarily any detainee for any period or periods and subject to any condition.
- (2) Except as provided by paragraph (3), a detainee must not be released under this Rule for a period of more than 28 days without the consent of the Department (which may be given either generally or as respects any particular detainee).
- (3) Paragraph (2) does not apply where the detainee is released for the purpose of attending for treatment at a hospital (within the meaning of the *National Health Service Act 2001*).
- (4) A detainee released under this rule may be recalled at any time, whether any condition of the detainee's release has been broken or not.

- (5) Except in relation to release for a purpose mentioned in paragraph (3), this rule does not apply to —
- (a) persons remanded in custody;
 - (b) persons committed in custody for trial or to be sentenced or otherwise dealt with before or by a Court of General Gaol Delivery; or
 - (c) persons detained further to paragraphs 16(1) or 18(3) of Schedule 2 to the *Immigration Act 1971* (an Act of Parliament) as applied to the Isle of Man.

17 Record or photograph

- (1) A personal record of each detainee must be prepared and maintained in such manner as the Department may direct.
- (2) Every detainee may be photographed on reception and subsequently, but a copy of the photograph must not be given to any person not authorised to receive it.

18 Detainees' property

- (1) Subject to paragraph (2) any directions of the Department and rule 51 (Governor's punishments), an unconvicted detainee may be supplied with, at his or her own expense and retain for his or her own use, books; newspapers; writing materials; and any other means of occupation.
- (2) An unconvicted detainee may not be supplied with, or be allowed to retain, an article provided under paragraph (1) if, in the opinion of the governor, such an article is objectionable.
- (3) Anything, other than cash, which a detainee has at an institution and which the detainee is not allowed to retain for his or her own use must be taken into the governor's custody.
- (4) An inventory of the detainee's articles in the custody of the governor must be kept and a record must be kept of any alterations to the detainee's inventory. This record must also show whether or not the detainee is content with any alteration to the inventory.
- (5) Any cash which a detainee has at an institution must be paid into an account under the control of the governor and the detainee must be credited with the amount in the records of the institution.
- (6) The governor may confiscate any unauthorised article found in the possession of a detainee after the detainee's reception into custody, or concealed or deposited anywhere within an institution.
- (7) Any article which is either —
 - (a) confiscated further to paragraph (6); or

- (b) belonging to a detainee and remains unclaimed for a period of more than 6 months after the detainee leaves an institution, or dies,
may be sold or otherwise disposed of; and the net proceeds of any sale must be paid to the Manx Court Mission, for its general purposes.
- (8) This rule is subject to section 99(2) of the *Summary Jurisdiction Act 1989* (application of money found on detainee).

19 Money and articles received by post

- (1) Any money or other article (other than a letter or other communication) sent to a detainee through the post must be dealt with in accordance with the provisions of this rule, and the detainee must be informed of the manner in which it is dealt with.
- (2) Subject to paragraph (3), any cash must, at the discretion of the governor, be —
 - (a) dealt with in accordance with rule 18(5);
 - (b) returned to the sender; or
 - (c) in a case where the sender's name and address are not known, paid to the Manx Court Mission, for its general purposes.
- (3) Where cash is sent to a detainee committed to custody in default of a payment of any sum of money, the detainee must be informed of the receipt of the cash and, unless the court otherwise directs, it must be applied in or towards the satisfaction of the amount due from the detainee.
- (4) Any security for money must, at the discretion of the governor, be —
 - (a) delivered to the detainee or placed with the detainee's property at the institution;
 - (b) returned to the sender; or
 - (c) encashed and the cash dealt with in accordance with paragraph (2).
- (5) Any other article to which this rule applies must, at the discretion of the governor, be —
 - (a) delivered to the detainee or placed with the detainee's property at the institution;
 - (b) returned to the sender; or
 - (c) in a case where the sender's name and address are not known or the article is of such a nature that it would be unreasonable to return it, sold or otherwise disposed of, and the net proceeds of any sale applied in accordance with paragraph (2).

20 Applications and complaints

- (1) An application or complaint to the governor or the IMB relating to a detainee's custody may be made either orally or in writing by the detainee.
- (2) Every application by a detainee to raise a complaint or a request with the governor or the IMB must be recorded in writing by the officer to whom it is made in a form provided by the prison and promptly put before the governor, or the member of the IMB who next visits the prison, as the case may be.
- (3) The governor must consider any applications and complaints that are made to the governor under paragraph (1) as soon as possible except on a Sunday or a bank holiday.

21 Hygiene

- (1) All parts of the institution must be kept clean.
- (2) Every detainee must keep his or her person clean, and for that purpose must be provided with water and with toilet articles necessary for the detainee's health and cleanliness, which must be replaced as at either the detainee's expense or at the discretion of the institution.
- (3) Every detainee must be required –
 - (a) to wash at proper times; and
 - (b) to have a shower on reception and thereafter at least once a week.
- (4) A detainee's hair must not be cut without the consent of the detainee.

22 Beds and bedding

- (1) Every detainee must be provided with a separate bed and with separate bedding adequate for warmth and health.
- (2) Arrangements must be made for every detainee's bedding to be laundered or cleaned as often as necessary for the maintenance of hygiene.

23 Clothing

- (1) Subject to rules 14 and 15(3) and also paragraph (3), at the discretion of the governor a detainee may wear clothing of his or her own if and in so far as it is suitable, tidy and clean.
- (2) At the discretion of the governor a detainee may be permitted to arrange for the supply from outside the institution of sufficient suitable, tidy and clean clothing for the detainee's own use.
- (3) A detainee must not be allowed to wear his or her own clothing if –

- (a) the governor believes there are reasonable grounds that there is a serious risk of the detainee attempting to escape; or
- (b) the Department is of the opinion that the detainee would be, if the detainee escaped, highly dangerous to the public, police or the security of the state.

Such a detainee must, for as long as sub-paragraphs (a) or (b) apply, be required to wear items of clothing that are distinctive by virtue of being specially marked or coloured or both.

- (4) If the detainee has no suitable clothing then the detainee must be provided with clothing adequate for warmth and health.
- (5) The clothing provided further to paragraphs (3) or (4) must include suitable protective clothing for use at work, where this is needed.
- (6) A detainee may be provided, where necessary, with suitable and adequate clothing on his or her release.

24 Food

- (1) The food provided in an institution —
 - (a) must be wholesome, nutritious, well prepared and served, reasonably varied and sufficient in quantity; and
 - (b) must, so far as practicable, include food complying with the religious or ethical requirements of any detainee.
- (2) Subject to any direction of the Department, a detainee must not be allowed, except as authorised by a health care professional, to have any food other than that ordinarily provided.
- (3) Any person deemed by the governor to be competent must from time to time inspect the food both before and after it is cooked and must report any deficiency or defect to the governor.
- (4) In this rule “food” includes drink.

25 Alcohol, tobacco and liquids containing nicotine

A detainee must not—

- (a) possess or consume any alcohol;
- (b) smoke or possess any tobacco or smoking paraphernalia;
- (c) possess a liquid containing nicotine or any paraphernalia that may enable the inhalation of a vaporised liquid containing nicotine.

26 Exercise etc.

- (1) If the weather permits and subject to the need to maintain good order and discipline, a detainee must be given the opportunity to spend time in the open air at least once every day, for such period as may be reasonable in the circumstances.
- (2) If circumstances reasonably permit, a detainee must be given the opportunity to participate in physical education for at least one hour a week.
- (3) Without prejudice to paragraph (2), provision must be made for physical education activities for every detainee to foster personal responsibility and the detainee's interests and skills and encourage the detainee to make good use of his or her leisure on release.
- (4) Appropriate facilities must be provided for any detainee with a need for remedial physical activity.
- (5) A health care professional must advise upon the fitness of every detainee for physical education and remedial physical activity. Where appropriate the health care professional may excuse a detainee from, or modify, any such education or activity on medical grounds.

27 Work

- (1) A convicted detainee must not be required to do useful work for more than 10 hours a day.
- (2) A health care professional may excuse a detainee from work on medical grounds, and no detainee must be set to do work which is not of a class for which the detainee has been passed by a health care professional as being fit.
- (3) A detainee must not be set to do work of a kind not authorised by the Department.
- (4) A detainee must not work —
 - (a) in the service of another detainee;
 - (b) for an officer; or
 - (c) for the private benefit of any person not authorised by the Department.
- (5) An unconvicted detainee must be permitted, if the unconvicted detainee wishes, to work as if he or she were a convicted detainee.
- (6) A detainee must be paid for his or her work at rates approved by the Department, either generally or in relation to particular cases.
- (7) A detainee doing work must have at least one rest day in every week.

- (8) In this rule “work” means work of a useful nature or other purposeful activity.

28 Education

- (1) An education programme must be provided such that every detainee has opportunities to improve the detainee’s employment prospects, attitudes, self-respect, use of leisure time and morale.
- (2) Every detainee able to profit from the educational facilities provided at an institution must be encouraged to do so.
- (3) Special attention must be paid to the education and training of detainees with special educational needs, and if necessary they must be taught within the hours allotted to work.
- (4) A library must be provided in every institution for the use of all detainees.

29 Health care services

- (1) The governor must make arrangements as far as is practical to secure the provision to detainees of access to the same quality and range of health care services, including the services of a medical officer, as the general public receives under the *National Health Service Act 2001* as required under these Rules.
- (2) A health care professional must examine every detainee as soon as practicable after the detainee’s reception into an institution, and thereafter as necessary with a view to —
 - (a) the discovery of any illness or mental disorder; and
 - (b) the provision of any necessary medical treatment.
- (3) Any detainee may make a confidential request to see a health care professional.
- (4) A health care professional must visit every day (other than a Sunday or bank holiday) any detainee who is undergoing punishment by cellular confinement.
- (5) If an unconvicted detainee desires the attendance of a named health care professional other than one already working in the institution, and will pay for any expense incurred, the governor must, if satisfied that there are reasonable grounds for the request and unless the Department otherwise directs, allow the unconvicted detainee to be visited and treated by that health care professional in consultation with an appropriate health care professional working in the institution.

- (6) Subject to any directions given in the particular case by the Department, a health care professional selected by or on behalf of a detainee who is a party to any legal proceedings (including any appeal) must be afforded reasonable facilities for examining the detainee in connection with the proceedings, and may do so out of hearing but in sight of an officer.
- (7) A health care professional must report to the governor on the case of any detainee whose health is likely to be injuriously affected by continued detention or any conditions of detention. The governor must send the report to the Department without delay, together with the governor's own recommendations.
- (8) A health care professional must report to the governor on the case of any detainee suffering from any infectious or contagious illness or other condition requiring the detainee to be segregated from other detainees.
- (9) A health care professional must pay special attention to any detainee whose mental condition appears to require it, and make any special arrangements which appear necessary for the detainee's supervision or care.

30 Notification of illness or death of detainee

- (1) If a detainee —
 - (a) dies;
 - (b) becomes seriously ill;
 - (c) sustains any severe injury; or
 - (d) is removed to hospital on account of mental disorder,the governor must, if the governor knows the detainee's address, at once inform the detainee's spouse, partner or next of kin, and also any person who the detainee may reasonably have asked should be informed.
- (2) If a detainee dies, the governor must give notice immediately to —
 - (a) the coroner of inquests;
 - (b) the IMB; and
 - (c) the Department.

31 Notification of illness or death of spouse etc.

A detainee must be informed at once of the death or serious illness of the detainee's spouse, partner, parent, child, brother or sister.

32 Religious denomination

A detainee must be treated as being of the religious denomination stated in the record made in pursuance to section 14(6) of the Act, but the governor may, in a proper case and after due enquiry, direct that record to be amended.

33 Visits by chaplains

- (1) The governor must arrange for a member of the chaplaincy team of the institution –
 - (a) to visit every detainee of the appropriate denomination as soon as reasonably possible after the detainee is received into the institution, and regularly thereafter; and
 - (b) to visit any other detainee who requests to be so visited.
- (2) Where a detainee –
 - (a) belongs to a denomination for which no chaplain has been appointed; and
 - (b) requests to be visited by a minister of that denomination, the governor may arrange for the detainee to be so visited.

34 Religious services

- (1) The governor must make arrangement for the holding of divine service by a member of the chaplaincy team at least once in every week.
- (2) Every detainee must be allowed to attend divine service unless the governor considers that it would be prejudicial to good order and discipline to do so.

35 Female detainees with babies

- (1) The Department may, subject to such conditions as it thinks fit, allow a female detainee to keep a child of hers under 9 months old with her in the institution.
- (2) Where a female detainee is allowed to keep a child with her under paragraph (1) the governor must make any necessary arrangement to assist her to care for and maintain the child.

PART 3

MAINTENANCE OF ORDER

36 Maintenance of order and discipline

- (1) Order and discipline must be maintained with firmness, but with no more restriction than is required for safe custody and well-ordered community life.
- (2) In the control of detainees, officers must seek to influence them for good through their own example and leadership, to command their respect and to enlist their willing co-operation.

- (3) A detainee must not be employed in any disciplinary capacity.

37 Search

- (1) Every detainee must be searched when taken into custody by an officer, on the detainee's reception into an institution and subsequently as the governor thinks necessary or as the Department may direct.
- (2) A detainee must be searched in as seemly a manner as is consistent with discovering anything concealed.
- (3) A detainee must not be stripped and searched in the sight of other detainees, or in the sight of a person of the opposite gender.

38 Testing for drugs or alcohol

- (1) This rule applies where pursuant to section 19A of the Act an officer requires a detainee to provide one or more samples, for the purpose of ascertaining whether the detainee has any controlled drug or alcohol in the detainee's body.
- (2) When requiring a detainee to provide a sample, the officer must, so far as is reasonably practicable, inform the detainee —
 - (a) that the detainee is required to produce a sample in accordance with section 19A of the Act; and
 - (b) that failure or refusal to do so may lead to disciplinary proceedings being brought against the detainee.
- (3) The officer must require the detainee to provide a fresh sample, free from any adulteration.
- (4) The officer must make such arrangements and give the detainee such instructions as are reasonably necessary to prevent or detect any falsification or adulteration of the sample.
- (5) The detainee may be kept apart from other detainees for the purpose of providing the sample —
 - (a) for a period not exceeding one hour; or
 - (b) in the case of a sample of urine, where the detainee has been given a reasonable opportunity to provide the sample within that period but has failed or refused to do so, for such further period (not exceeding 5 hours) as is necessary to enable the detainee to do so.
- (6) Where a detainee is required to provide a sample of urine the detainee must be afforded such privacy for the purpose of doing so as it compatible with the need to prevent or detect any falsification or adulteration of the sample; and in particular the detainee must not be required to provide such a sample in the sight of a person of the opposite sex.

39 Removal from association

- (1) Where it appears desirable, for the maintenance of good order or discipline or in the detainee's own interests, that a detainee should not associate with other detainees, either generally or for particular purposes, the governor may arrange for the detainee's removal from association accordingly.
- (2) A detainee must not be removed under this rule for a period of more than 5 days without the authority of the Department. An authority given under this paragraph must not be for a period exceeding one month.
- (3) The governor may arrange at his or her discretion for a detainee removed under this rule to resume association with other detainees, and must do so in any case if a health care professional so advises on medical grounds.

40 Close supervision

- (1) Where it appears desirable, for the maintenance of good order or discipline or to ensure the safety of officers, detainees or any other person, that a detainee should not associate with other detainees, either generally or for particular purposes, the governor may direct the detainee's removal from association accordingly and the detainee's placement under close supervision in the institution.
- (2) A direction given under paragraph (1) must be for a period not exceeding one month, but may be renewed from time to time for a like period.
- (3) The governor may direct at his or her discretion for a detainee removed under this rule to resume association with other detainees.
- (4) In exercising any discretion under this rule, the governor must take account of any relevant medical conditions which are known to the governor, and must notify the Department forthwith of any direction given under the rule.

41 Use of force

- (1) An officer in dealing with a detainee must not use force unnecessarily and, when the application of force to a detainee is necessary, no more force than is necessary must be used.
- (2) An officer must not act deliberately in a manner calculated to provoke a detainee.

42 Temporary confinement

- (1) The governor may order a refractory or violent detainee to be confined temporarily in a special cell, but a detainee must not be so confined as a punishment or after the detainee has ceased to be refractory or violent.
- (2) A detainee must not be confined in a special cell for longer than 48 hours without a direction given by an officer of the Department (not being an officer of the institution). Such a direction must state the grounds for the confinement and the time during which it may continue.

43 Restraints

- (1) Subject to paragraph (2), the governor may order a detainee to be put under restraint having taken advice from a health care professional as to whether or not there are any medical reasons why the detainee should not be put under restraint.
- (2) A detainee may only be put under restraint where this is necessary to prevent the detainee from —
 - (a) injuring himself or herself;
 - (b) injuring others;
 - (c) damaging property; or
 - (d) creating a disturbance.
- (3) Notice of such an order must be given without delay to the IMB and the Department.
- (4) A detainee must not be kept in restraint longer than necessary and the detainee must not be kept in restraint for longer than 12 hours without a direction in writing given by an officer of the Department (not being an officer of the institution). Such a direction must state the grounds for the restraint and the time during which it may continue.
- (5) Particulars of every case of restraint under this rule must be recorded.
- (6) Except as provided by this rule a detainee must not be put under restraint otherwise than for safe custody during removal or on medical grounds at the direction of a health care professional. A detainee must not be put under restraint as a punishment.
- (7) Any means of restraint must be of a pattern authorised by the Department, and must be used in such manner and under such conditions as the Department may direct.

44 Offences against discipline

A detainee is guilty of an offence against discipline if the detainee —

- (a) commits any assault;
- (b) detains any person against his or her will;

- (c) without authority denies access to any part of the institution to any person;
- (d) fights with any person;
- (e) intentionally endangers the health or personal safety of others, or, by the detainee's conduct, is reckless whether such health or personal safety is endangered;
- (f) intentionally obstructs an officer in the execution of his or her duty, or any person (other than a detainee) who is at the institution for the purpose of working there, in the performance of that person's work;
- (g) escapes or absconds from an institution or legal custody;
- (h) is absent from any place the detainee is required to be or is present at any place where the detainee is not authorised to be;
- (i) fails to comply with any condition upon which he or she is temporarily released under rule 16;
- (j) is found with any substance in a sample which demonstrates that a controlled drug or alcohol has, whether in an institution or while on temporary release under rule 16, been administered to the detainee by the detainee or another person (but subject to rule 45);
- (k) without reasonable excuse fails or refuses to provide a sample in accordance with rule 38 for the purpose of ascertaining whether or not the detainee has any controlled drug or alcohol in the detainee's body;
- (l) is intoxicated as a consequence of consuming alcohol or a controlled drug (but subject to rule 45);
- (m) consumes any alcohol or controlled drug whether or not provided to him by another person (but subject to rule 45);
- (n) has in the detainee's cell or room or in the detainee's possession –
 - (i) any prohibited article;
 - (ii) any unauthorised article; or
 - (iii) a greater quantity of any article than the detainee is authorised to have;
- (o) sells or delivers to any person, without permission, any article which the detainee is allowed to have only for the detainee's own use;
- (p) takes improperly any article belonging to another person or to an institution;

- (q) intentionally or recklessly sets fire to any part of an institution or any other property, whether or not the detainee's own;
- (r) destroys or damages any part of an institution or any other property, other than the detainee's own;
- (s) is disrespectful to any person at an institution;
- (t) uses threatening, abusive, insulting or indecent words or behaviour;
- (u) intentionally fails to work properly or, being required to work, refuses to do so;
- (v) disobeys or fails to comply with any lawful order, rule or regulation applying to the detainee;
- (w) receives any controlled drug or, without the consent of an officer, any other article, during the course of a visit (not being a document given to the detainee by the detainee's legal adviser at an interview such as in mentioned in rule 65); or
- (x) attempts to commit, incites another detainee to commit, or assists another detainee to commit or attempt to commit, any of the foregoing offences.

45 Defences to rules 44(j), 44(l) and 44(m)

It is a defence for a detainee charged with an offence under rules 44(j), 44(l) and 44(m) to show that –

- (a) the controlled drug or alcohol had been, prior to its administration, lawfully in the detainee's possession for the detainee's use or was administered to the detainee in the course of a lawful supply of the drug to the detainee by another person;
- (b) the controlled drug or alcohol was administered by or to him in circumstances in which the detainee did not know and had no reason to suspect that such a controlled drug or alcohol was being administered; or
- (c) the controlled drug or alcohol was administered by or to the detainee under duress without the detainee's consent where it was not reasonable for the detainee to have resisted.

46 Laying of disciplinary charges

- (1) Where a detainee is to be charged with an offence against discipline, the charge must be laid as soon as possible and, save in exceptional circumstances, within 48 hours of the discovery of the offence.
- (2) A detainee who is charged with an offence against discipline may be kept apart from other detainees pending the determination of mode of inquiry under rule 48 or governor's inquiry into charge under rule 49.

47 Rights of prisoners charged

- (1) A detainee must be informed under rule 46(1) that he or she is to be charged with an offence against discipline before the matter is inquired into by the governor or, as the case may be, the IMB.
- (2) At any inquiry into a charge against a detainee the detainee must be given a full opportunity of hearing what is alleged against him or her and of presenting his or her own case.
- (3) At an inquiry into a charge against a detainee by the IMB under rule 50, the detainee must be given the opportunity to be legally represented.

48 Determination of mode of inquiry

- (1) In the case of a charge of any of the following offences –
 - (a) escaping or absconding from an institution or from legal custody;
or
 - (b) assaulting an officer;the governor must, unless the governor dismisses it forthwith, refer the charge to the IMB for inquiry.
- (2) In the case of a charge for an offence not specified in sub-paragraphs (a) or (b) the governor must commence inquiries into the charge in accordance with rule 49.

49 Inquiry into a charge by the governor

If, further to rule 48(2), the governor is to commence inquiries into a charge, the governor must commence inquiries into the charge no later than the next day, not being a Sunday or a bank holiday, after the charge is laid.

50 Inquiry into a charge by the IMB

- (1) If, further to rule 48(1), the governor refers a charge to the IMB, the IMB must commence inquiries into any charge not later than, save in exceptional circumstances, 28 days after the charge was referred.
- (2) The chair of the IMB must constitute a panel consisting of not fewer than 3 members of the IMB, who must inquire into any charge referred to it under rule 48(1).
- (3) A person appointed under rule 84(3) must attend any inquiry under paragraph (1) and record the proceedings of the panel.

51 Governor's punishments

- (1) If the governor finds the detainee guilty of an offence against discipline the governor may, subject to paragraphs (2) to (4) and rule 52A, impose one or more of the following punishments –

- (a) caution;
 - (b) forfeiture for a period not exceeding 42 days of any privileges under rule 14(1);
 - (c) exclusion from work or recreational activities for a period not exceeding 21 days;
 - (d) stoppage or deduction from earnings for a period not exceeding 84 days and of an amount not exceeding 84 days earnings;
 - (e) cellular confinement for a period not exceeding 3 days;
 - (f) in the case of a detainee otherwise entitled to them, forfeiture for any period of the right under rule 18(1) to have the articles there mentioned; or
 - (g) in the case of a detainee found guilty of an offence under rule 44(q) or 44(r) in respect of destroying or damaging any part of the institution or any other property belonging to the institution, a compensation requirement calculated in accordance with rule 53.
- (2) An award of a caution must not be combined with any other punishment for the same charge.
- (3) If a detainee is found guilty of more than one charge arising out of an incident, punishments under this rule may be ordered to run consecutively, but in the case of an award of cellular confinement, the total period added must not exceed 3 days.
- (4) When proposing to impose a punishment of cellular confinement the governor must –
- (a) consult with an appropriate health care professional, who must inform the governor whether there are any medical reasons why the detainee should not be so dealt with; and
 - (b) give effect to any recommendation made by that health care professional before imposing the punishment.
- (5) In imposing a punishment under this rule, the governor must take into account any guidelines the Department may from time to time issue as to the level of punishment that should normally be imposed for a particular offence against discipline.

52 Punishments by the IMB

- (1) If the IMB finds a detainee guilty of an offence against discipline the IMB may, subject to paragraph (2) and rule 52A, impose one or more of the following punishments –
- (a) any of the punishments mentioned in rule 51(1)(a) to (d) and rule 51(1)(g);
 - (b) cellular confinement for a period not exceeding 56 days;

- (c) in the case of a short-term detainee, long-term detainee or discretionary life detainee, an award of additional days not exceeding 180 days; or
 - (d) in the case of a remand detainee, an award of additional days not exceeding 180 days conditionally upon his or her becoming a short-term or long-term detainee.
- (2) A caution must not be combined with any other punishment for the same charge.
- (3) If a detainee is found guilty of more than one charge arising out of an incident, punishments under this rule may be ordered to run consecutively but, in the case of an award of additional days, the total period must not exceed 42 days and, in the case of award of cellular confinement, the total period must not exceed 56 days.
- (4) When proposing to impose a punishment of cellular confinement the IMB must
 - (a) consult with an appropriate health care professional, who must inform the IMB whether there are any medical reasons why the detainee should not be so dealt with; and
 - (b) give effect to any recommendation made by that health care professional before imposing the punishment.
- (5) In imposing a punishment under this rule, the IMB must take into account any guidelines the Department may from time to time issue as to the level of punishment that should normally be imposed for a particular offence against discipline.

52A Increase in punishment for offences aggravated by hostility

- (1) This rule applies where the governor or the IMB is considering the appropriate punishment for an offence against discipline.
- (2) If the offence was aggravated by hostility, the governor or the IMB –
 - (a) must treat that fact as an aggravating factor (that is to say, a factor that increases the punishment that is imposed); and
 - (b) must state and record that the offence was so aggravated.
- (3) For the purposes of this rule an offence is aggravated by hostility if –
 - (a) at the time of committing the offence, or immediately before doing so, the offender demonstrates towards the victim of the offence hostility based on –
 - (i) the victim's membership (or presumed membership) of a racial group;
 - (ii) the victim's membership (or presumed membership) of a religious group;

- (iii) the victim's membership (or presumed membership) of a sexual orientation group;
 - (iv) a disability or presumed disability of the victim; or
- (b) the offence is motivated (wholly or partly) by hostility towards –
 - (i) members of a racial group based on their membership of that group;
 - (ii) members of a religious group based on their membership of that group;
 - (iii) members of a sexual orientation group based on their membership of that group;
 - (iv) persons who have a disability or a particular disability.
- (4) It is immaterial for the purposes of sub-paragraph (a) or (b) or paragraph (3) whether or not the offender's hostility is also based, to any extent, on any other factor not mentioned in that sub-paragraph.
- (5) In this rule –
 - “disability” means any physical or mental impairment;
 - “membership”, in relation to a racial, religious or sexual orientation group, includes association with members of that group;
 - “presumed” means presumed by the offender;
 - “racial group” has the same meaning as in the *Race Relations Act 2004*;
 - “religious group” means a group of persons defined by religious belief or lack of religious belief; and
 - “sexual orientation group” means a group of persons defined by reference to sexual orientation.

53 Requirement to pay for damage to institution property

- (1) This rule applies where the governor or, as the case may be, the IMB has determined to impose a punishment under rule 51(1)(g).
- (2) The governor or, as the case may be, the IMB must require the detainee to pay for the cost of making good the damage from, or replacing property destroyed as a result of, the commission of the relevant disciplinary offence.
- (3) The requirement imposed under paragraph (2) is referred to in this rule as a “compensation requirement”.
- (4) The amount required to be paid under a compensation requirement must not exceed the cost of making good the damage from, or replacing the property destroyed as a result of, the commission of the relevant disciplinary offence and, in any event, must not exceed £2,000.
- (5) Where a compensation requirement has been imposed the governor may debit any amount of money with which the detainee has been credited in the books of the institution under rule 18(5) in order to recover the whole or part of the amount required to be paid as a compensation requirement.
- (6) The amount debited under paragraph (5) on any occasion must not be such as to reduce below £5 the amount with which the detainee is credited in the books of the institution under rule 18(5).
- (7) The compensation requirement ceases to have effect after 2 years from the date on which it was imposed regardless of whether or not the full amount has been paid.

54 Suspended punishment

- (1) Subject to any directions given by the Department, the power to impose a disciplinary punishment (other than a caution) includes the power to direct that the punishment is not to take effect unless, during the period specified in the direction (not being more than 6 months from the date of that direction), the detainee commits another offence against discipline and a direction is given under paragraph (2).
- (2) Where a detainee commits an offence against discipline during the period specified in a direction given under paragraph (1) the person dealing with that offence may –
 - (a) direct that the suspended punishment must take effect;
 - (b) reduce the period or amount of the suspended punishment and direct that it must take effect as so reduced;
 - (c) vary the original direction by substituting for the period specified a period expiring not later than 6 months from the date of variation; or

- (d) give no direction with respect to the suspended punishment.

55 Remission and mitigation of punishments and quashing of findings of guilt

- (1) Subject to any directions given by the Department, following a punishment imposed under rule 51 the governor may –
- (a) remit or mitigate any punishment he or she has imposed;
 - (b) quash any finding of guilt.
- (2) Subject to any directions given by the Department, following a punishment imposed under rule 52 the governor may submit a request to the IMB that –
- (a) any punishment imposed by IMB be remitted or mitigated;
 - (b) the IMB quash any finding of guilt.
- (3) The IMB must consider and respond to any submission by the governor under paragraph (2) within 14 days.

56 Forfeiture of remission

- (1) In this rule, “existing detainee” and “existing licensee” have the meanings given by paragraph 6 of Schedule 3 to the Act.
- (2) In relation to any existing detainee or existing licensee who has forfeited any remission of his or her sentence, the provisions of Schedule 2 to the Act apply as if he or she had been awarded such number of additional days as equals the number of days of remission which he or she has forfeited.

57 Prospective award of additional days

An award of additional days under rule 52(1)(d) may be made in the case of a detainee who is detained only on remand, even though he has not, or had not at the time of the offence, been sentenced, but must have effect only if he or she becomes a short-term or long-term detainee whose sentence is reduced under section 6 of the Act by a period which includes the time when the offence against discipline was committed.

58 Review of punishment

- (1) If a detainee wishes to have his or her punishment reviewed the detainee or the detainee’s legal representative, within 28 days of receipt of the punishment, must submit a request in writing to the appropriate authority that it conduct a review.
- (2) The appropriate authority must, within 14 days of receipt of the request, commence the review.

- (3) The review must be conducted on papers alone.
- (4) On completion of the review, if it appears to the appropriate authority that the punishment imposed was manifestly unreasonable, the appropriate authority may —
 - (a) reduce the number of additional days awarded;
 - (b) for whatever punishment has been imposed substitute another punishment which is, in the opinion of the appropriate authority, less severe;
 - (c) quash the punishment entirely; or
 - (d) quash the finding of guilt and the punishment entirely.
- (5) A detainee requesting a review must serve any additional days awarded under rule 52(1)(d) unless and until they are reduced.
- (6) For the purposes of this rule, “**appropriate authority**” means —
 - (a) for a punishment imposed by a deputy governor, the governor; or
 - (b) for a punishment imposed by the governor or the IMB, the Department.

PART 4

COMMUNICATIONS

59 Communications generally

- (1) Except as provided by the Act or these Rules, a detainee must not be permitted to communicate with any outside person, or that person with the detainee, without the permission of the Department or as a privilege under rule 14.
- (2) Notwithstanding paragraph (1), and except as otherwise provided in these Rules, the Department may impose any restriction or condition, either generally or in a particular case, upon the communications to be permitted between a detainee and other persons if the Department considers that the restriction or condition to be imposed —
 - (a) is necessary on grounds specified in paragraph (3) below; and
 - (b) is proportionate to what is sought to be achieved.
- (3) The grounds referred to in paragraph (2) are —
 - (a) the interests of national security;
 - (b) the prevention, detection, investigation or prosecution of a crime;
 - (c) the interests of public safety;
 - (d) securing or maintaining the security of the institution;

- (e) securing or maintaining good order and discipline in the institution;
- (f) the protection of health or morals;
- (g) the protection of the reputation of others;
- (h) maintaining the authority and impartiality of the judiciary; or
- (i) the protection of the rights and freedoms of any person.

60 Interception of communications

- (1) The Department may give directions to the governor concerning the interception in an institution of any communication by any detainee or class of detainees if the Department considers that, subject to paragraph (2), the directions are –
 - (a) necessary on the grounds specified in rule 59(3); and
 - (b) proportionate to what is sought to be achieved.
- (2) Any reference to the grounds specified in rule 59(3) in relation to the interception of a communication by means of a telecommunications system in a prison, or the disclosure or retention of intercepted material from such a communication, must be taken to be a reference to those grounds with the omission of 59(3)(i).
- (3) Subject to any directions given by the Department, the governor may make arrangements for any communication by a detainee or class of detainees to be intercepted in an institution by an officer if the governor considers that the arrangements are –
 - (a) subject to paragraph (2), necessary on the grounds specified in rule 59(3); and
 - (b) proportionate to what is being sought to be achieved by the termination.
- (4) Any communication by a detainee may, in the course of its transmission in an institution, be terminated by an officer if that person considers that termination of the communication is –
 - (a) subject to paragraph (2), necessary on the grounds specified in rule 59(3); and
 - (b) proportionate to what is being sought to be achieved by the termination.
- (5) For the purposes of this rule –
 - (a) “**interception**” means –

- (i) in relation to a communication by means of a telecommunication system, any action taken in relation to the system or its operation so as to make some or all of the contents of the communications available, while being transmitted, to a person other than the sender or intended recipient of the communication and the contents of the communication, while being transmitted, are diverted or recorded so as to be made available to a person subsequently; and
 - (ii) in relation to any written or drawn communication, includes opening, reading, examining and copying the communication; and
- (b) “**telecommunication system**” has the meaning given by section 2 of the *Telecommunications Act 1984*.

61 Personal letters and telephone calls

- (1) Subject to the following provisions of this rule, a detainee may send and receive as many letters as the detainee wishes within such limits and subject to such conditions as the Department may direct, either generally or in a particular case.
- (2) Subject to the following provisions of this rule, a detainee may make as many telephone calls as the detainee wishes at the detainee’s expense within such limits and subject to such conditions as the Department may direct, either generally or in a particular case.
- (3) Subject to the following provisions of this rule, a detainee is entitled to send a letter at the expense of the Department on his or her reception to an institution and thereafter once a week.
- (4) The governor may allow a detainee to send an additional letter at the expense of the Department as a privilege under rule 14 or where necessary for the detainee’s welfare or that of the detainee’s family.
- (5) The governor may allow a detainee entitled to a visit to send a letter or make a telephone call at the expense of the Department instead.
- (6) The Department may allow additional letters in relation to any detainee or class of detainee.
- (7) A detainee must not be permitted to send a letter or make a telephone call to a person under 18, other than the detainee’s child, without the consent of that person’s parent or guardian and that of the governor.
- (8) Any letter or telephone call under the succeeding provisions of these Rules must not be considered a letter or telephone call for the purposes of this rule.

62 Personal visits

- (1) Every visit to a detainee must take place within the hearing of an officer, unless the Department directs otherwise.
- (2) The Department may give directions, generally or in relation to any visit or class of visits, concerning the day and times when detainees may be visited.
- (3) The Department may allow additional visits to any detainee or class of detainees.
- (4) A detainee must not be permitted to receive a visit from a person who has not attained the age of 18, other than the detainee's —
 - (a) child;
 - (b) spouse; or
 - (c) civil partner;without the consent of that person's parent or guardian and that of the governor.
- (5) Except for a person specified in paragraph (4)(b) or (c), a person who has not attained the age of 18 must not be permitted to enter the institution for the purpose of visiting a detainee unless that person is accompanied by a person of 18 or over.
- (6) Subject to the provisions of this rule, an unconvicted detainee may receive as many visits as the unconvicted detainee wishes within such limits and subject to such conditions as the Department may direct, either generally or in a particular case.
- (7) Subject to the provisions of this rule, a convicted detainee must be entitled to receive a visit twice in every period of 4 weeks.
- (8) The governor may allow a detainee an additional visit as a privilege under rule 14 or where necessary for the welfare of the detainee or that of the detainee's family.
- (9) The governor may defer the right of a detainee to a visit until the expiration of any period of cellular confinement.
- (10) Any visit under the succeeding provisions of these Rules must not be counted as a visit for the purposes of this rule.

63 Police interviews

A police officer may, on production of an order issued by or on behalf of the Chief Constable, interview any detainee willing to see the police officer.

64 Access to consular representation

A detainee who is not a British citizen, British Dependent Territory citizen or British Overseas citizen must be —

- (a) informed without unreasonable delay of the detainee's right to request contact with a diplomatic or consular representative of the State of which the detainee is a national; and
- (b) allowed reasonable facilities to communicate with any such representative.

65 Interview with legal adviser

- (1) The legal adviser of a detainee in any legal proceedings, civil or criminal, to which the detainee is a party must be afforded reasonable facilities for interviewing the detainee in connection with those proceedings, and may do so out of hearing but in the sight of an officer.
- (2) A detainee's legal adviser may, subject to any directions given by the Department, interview the detainee in connection with any other legal business out of hearing but in the sight of an officer.

66 Correspondence with legal advisers and courts

- (1) A detainee may correspond with his or her legal adviser and any court and such correspondence may be opened, read or stopped by the governor only in accordance with the provisions of this rule.
- (2) Correspondence to which this rule applies may be opened if the governor has reasonable cause to believe that it contains an illicit enclosure and any such enclosures must be dealt with in accordance with the other provisions of these Rules.
- (3) Correspondence to which this rule applies may be opened, read and stopped if the governor has reasonable cause to believe its contents endanger the security of the institution or the safety of others or are otherwise of a criminal nature.
- (4) A detainee must be given the opportunity to be present when any correspondence to which this rule applies is opened and must be informed if it or any enclosure is to be read or stopped.
- (5) A detainee must, on request, be provided with writing materials necessary for the purposes of paragraph (1).
- (6) In this rule —

“**court**” includes the European Court of Human Rights;

“**illicit enclosure**” includes any article prohibition of which has not been authorised in accordance with other provisions of these Rules and any correspondence to or from a person other than the detainee concerned, the detainee's legal adviser or a court.

67 Securing release

A person detained in default of finding a surety, or of payment of a sum of money, may communicate with and be visited at any reasonable time on a weekday by any relative or friend to arrange for a surety or payment in order to secure that person's release from custody.

68 Visits by business associates

Following the reception of a detainee into an institution, the governor may allow the detainee not more than 3 visits by a bona fide business associate for the purpose of settling the detainee's business affairs.

69 Communications with media

- (1) A detainee must not be permitted to make, directly or indirectly, any unauthorised communication with any media relating to matters concerning the institution or its staff or other detainees.
- (2) A detainee must not, without authority, publish any matter or make public any pronouncement relating to the administration of any institution or to any detainee.
- (3) For the purposes of this rule, "**media**" includes, but is not limited to —
 - (a) a newspaper or any other publication;
 - (b) a programme service within the meaning of Part 1 of the *Broadcasting Act 1993*;
 - (c) a person who disseminates information for public consumption, whether for pecuniary advantage or not;
 - (d) a representative, or person purporting to represent, media including, but not limited to, those specified in sub-paragraphs (a) to (c).

PART 5**PERSONS HAVING ACCESS TO INSTITUTIONS****70 Viewing of institutions**

- (1) Outside persons must not be permitted to view an institution unless authorised by statute or the Department.
- (2) A person viewing an institution must not be permitted to take a photograph, make a sketch, make a recording in any format or communicate with a detainee unless authorised by statute or the Department.

71 Prohibited articles

- (1) No person may, without authority —
 - (a) convey into or throw into or deposit in an institution;
 - (b) convey or throw out of an institution;
 - (c) convey to a detainee; or
 - (d) deposit in any place with intent that it may come into the possession of a detainee,any prohibited article prescribed in the Schedule to these Rules.
- (2) Anything so conveyed, thrown or deposited may be confiscated and disposed of by the governor.

72 Control of persons and vehicles

- (1) Any person or vehicle entering or leaving an institution may be stopped, examined and searched. Any examination or search of a person must be carried out in as seemly a manner as is consistent with discovering anything concealed.
- (2) Any person entering or leaving an institution may also be photographed, fingerprinted or required to submit to other physical measurement.
- (3) The governor may direct the removal from an institution of any person who does not leave on being required to do so.
- (4) Without prejudice to any other powers to prohibit or restrict entry to institutions and to its powers under rules 62, 65, and 68, the Department may —
 - (a) with a view to securing discipline;
 - (b) with a view to securing good order;
 - (c) for the prevention of crime; or
 - (d) in the interests of any persons;impose prohibitions on visits by a person to an institution or to a detainee in an institution for such periods of time as it considers necessary.
- (5) Paragraphs (1) and (2) must not prevent any visit to a detainee by a legal adviser for the purposes of an interview under rule 65.

PART 6

OFFICERS OF INSTITUTIONS

73 General duty of officers

- (1) It is the duty of every officer to conform to these Rules and the rules and regulations of the institution, to assist and support the governor in the maintenance of these Rules and the rules and regulations of the institution and to obey the governor's lawful instructions.
- (2) An officer must inform the governor promptly of any abuse or impropriety which comes to the officer's knowledge.

74 Code of discipline

The Department may approve a code of discipline to have effect in relation to officers, or such classes of officers as it may specify, setting out the offences against discipline, the awards which may be made in respect of them and the procedure for dealing with charges.

75 Gratuities forbidden

An officer must not receive any unauthorised fee, gratuity or other consideration in connection with his or her office.

76 Search of officers

An officer must submit himself or herself to be searched in the institution if the governor so directs. Any such search must be conducted in as seemly a manner as is consistent with discovering anything concealed.

77 Transactions with detainees

- (1) An officer must not take part in any business or pecuniary transaction with or on behalf of a detainee without the permission of the Department.
- (2) No officer may, without authority, do or attempt to do any of the following on behalf of a detainee —
 - (a) bring in;
 - (b) take out;
 - (c) knowingly allow to be brought in; or
 - (d) deposit in any place with the intent that it shall come into the possession of a detainee,
any article whatsoever.

78 Contact with former detainees

An officer must not, without the consent of the governor, communicate with any person the officer knows to be a former detainee.

79 Communications to the media

- (1) An officer must not make, directly or indirectly, any unauthorised communication with any media relating to matters concerning the institution or its staff or other detainees.
- (2) An officer must not, without authority, publish any matter or make public any pronouncement relating to the administration of any institution or to any detainee.
- (3) For the purposes of this rule, “**media**” includes, but is not limited to –
 - (a) a newspaper or any other publication;
 - (b) a programme service within the meaning of Part 1 of the *Broadcasting Act 1993*;
 - (c) a person who disseminates information for public consumption, whether for pecuniary advantage or not;
 - (d) a representative, or person purporting to represent, media including, but not limited to, those specified in sub-paragraphs (a) to (c).

PART 7**INDEPENDENT MONITORING BOARD****80 Constitution of the Independent Monitoring Board**

- (1) The Department must appoint an Independent Monitoring Board (IMB) for each institution.
- (2) The members of the IMB must satisfy themselves as to –
 - (a) the state of the premises of the institution;
 - (b) the administration of the institution; and
 - (c) the treatment of the institution’s detainees.
- (3) The IMB must inquire into and report upon any matter into which the Department asks the IMB to inquire.
- (4) The IMB must direct the attention of the governor to any matter which calls for the governor’s attention and must report to the Department on any matter the IMB considers it expedient to report.
- (5) The IMB must immediately inform the Department of any abuse which comes to the knowledge of the IMB.

- (6) Before exercising any power under these Rules the IMB and any member of the IMB must consult the governor in relation to any matter which may affect discipline.

81 Eligibility for membership of the IMB

The following persons are not eligible to be members of the IMB –

- (a) a person who is, or has at any time in the past 5 years been, a member of the Isle of Man Constabulary;
- (b) a person who is in the service of the Department;
- (c) a member of the Council or the Keys; or
- (d) a person interested in any contract for the supply of goods or services to the institution.

82 Procedure for appointment of persons to the IMB

- (1) The IMB must consist of 10 or more persons appointed by the Department.
- (2) When a vacancy arises on the IMB the Department may adopt the procedure specified in paragraphs (3) to (8).
- (3) Where the vacancy arises because a serving member's term of office has expired, or is about to expire the Department may reappoint the member on the recommendation of the chair of the IMB.
- (4) For the purposes of paragraph (3), and this paragraph, "**term of office**" means a period of 3 years served by a single person. A person appointed to fill a casual vacancy will not, for the purpose of paragraph (3), have served a term of office.
- (5) Where the vacancy arises in any other case the Department must advertise the vacancy in such manner as it thinks fit and invite interested persons to apply.
- (6) Prior to advertising for persons to fill a vacancy on the IMB the Department must prepare a person specification and a description of the role the member will be expected to perform in consultation with the Chair of the IMB.
- (7) Applications for appointment to the IMB must be considered by a panel of the following persons –
 - (a) a senior officer of the Department;
 - (b) the Chair of the IMB, or a member of the IMB appointed by the Chair of the IMB; and
 - (c) the Deputy Chair of the IMB, or a member of the IMB appointed by the Deputy Chair of the IMB.

- (8) The proceedings of the IMB are not invalidated by any vacancy in the membership or defect in the appointment of a member.

83 Tenure of office

- (1) Subject to paragraph (2) a member of the IMB holds office —
- (a) for a term of 3 years from the date of appointment; or
 - (b) if the member was appointed to fill a casual vacancy, until the person in whose place the member was appointed would ordinarily have gone out of office.
- (2) A member of the IMB may resign at any time by giving notice in writing to the Department.
- (3) A member of the IMB ceases to be a member of the IMB if appointed to any of the positions specified in rule 81.
- (4) If the Department is satisfied that a member of the IMB —
- (a) has become bankrupt or made an arrangement with creditors;
 - (b) is incapacitated by physical or mental illness;
 - (c) has been convicted of such an offence that it is not in the Department's opinion fitting that the person remain a member of the IMB;
 - (d) has not met the required standards for performance or conduct for IMB members such that it is not, in the Department's opinion, fitting that the person remain a member of the IMB; or
 - (e) holds, or appears to hold or could appear to hold, any conflict of interest between the member performing duties as a member of the IMB and any interest of that member, whether personal, financial or otherwise;

the Department may declare that person's office as a member of the IMB to be vacant, and must notify the person in such manner as the Department thinks fit.

- (5) Where the Department —
- (a) has reason to suspect that a member of the IMB may have conducted him or herself such that his or her appointment may be liable to be terminated under paragraph 4(c) to (e); and
 - (b) is of the opinion the suspected conduct is of such a serious nature that the member cannot be permitted to continue to perform his or her functions as a member of the IMB pending the completion of the Department's investigations into the matter and any decision as to whether the member's appointment should be terminated;

the Department may suspend the member from office for such a period as may reasonably be required in order to complete the investigations into the matter and determine whether or not the appointment of the member should be terminated.

- (6) A member suspended under paragraph (5) must not, during the period of suspension, be regarded as a member of the IMB, other than for the purposes of this rule.

84 Chair, Deputy Chair and Secretary of the IMB

- (1) The IMB must either —
 - (a) at its first meeting in each calendar year; or
 - (b) at the meeting following any casual vacancy arising in the office of Chair or Deputy Chair;elect one of its number to be Chair and another to be Deputy Chair of the IMB.
- (2) Every meeting of the IMB must be presided over by —
 - (a) the Chair;
 - (b) in the absence of the Chair, the Deputy Chair;
 - (c) in the absence of the Chair and the Deputy Chair, either —
 - (i) a member of the IMB appointed for that purpose by the Chair; or
 - (ii) in default of an appointment specified in sub-paragraph (a), or in the absence of the member so appointed, a member elected by those present at the meeting.
- (3) The Department must provide a member of its staff to act as Secretary to the IMB in order attend meetings of the IMB, to keep minutes of IMB meetings and to perform such other clerical duties as the IMB may require.

85 Meetings of the IMB

- (1) The IMB must meet monthly and all meetings must be minuted.
- (2) A meeting of the IMB may be held at any time at the request of the Chair of the IMB and a meeting must be held following the submission of a written request by 2 members of the IMB to the Secretary of the IMB.
- (3) The quorum necessary for the transaction of business at a meeting of the IMB is 4 members of the IMB.
- (4) The governor, or such other officer of the institution as the governor may assign for the purpose, must attend every meeting of the IMB if so requested by the IMB.

86 Particular duties

- (1) The IMB and any member of the IMB must hear any complaint or request which a detainee wishes to make to the IMB or a member of the IMB.
- (2) The IMB must arrange for the food of the detainees to be inspected by a member of the IMB at frequent intervals.
- (3) The IMB must inquire into any report made to the IMB, whether or not by a member of the IMB, that a detainee's mental or physical health is likely to be injuriously affected by any conditions of the detainee's detention.
- (4) Further to section 2 of the *Prisoner Escorts Act 2008*, the IMB must —
 - (a) keep prisoner escort arrangements under review and report on them to the Department;
 - (b) inspect the conditions in which prisoners are transported or held in pursuance of such arrangements and make recommendations to the Department; and
 - (c) investigate and report to the Department on —
 - (i) any allegations made against prisoner custody officers acting in pursuance of prisoner escort arrangements; and
 - (ii) any alleged breaches of discipline on the part of prisoners for whose delivery or custody such officers so acting are responsible.

87 Members visiting the institution

- (1) The members of the IMB for an institution must visit the institution frequently, and the IMB will arrange a rota whereby at least one of its members visits the institution between meetings of the IMB.
- (2) A member of the IMB must have access at any time to every part of the institution and to every detainee, and a member of the IMB may interview any detainee out of the sight and hearing of officers.
- (3) A member of the IMB must have access to the records of the institution.

88 Annual report

- (1) The IMB must in every financial year make a report in writing to the Department —
 - (a) concerning the state of the institution and its administration during the previous financial year; and
 - (b) giving such advice and making such recommendations as the IMB considers appropriate with regard to the administration, state of repair, facilities and operation of the institution.

- (2) The report must be made as soon as reasonably practicable following the commencement of the financial year.

PART 8

PAROLE COMMITTEE

89 Constitution

- (1) The Department must appoint a Parole Committee comprising of not fewer than 6 and not more than 9 members.
- (2) The following persons are not eligible to be members of the Parole Committee —
 - (a) a person who is, or, at any time in the 5 years preceding the proposed appointment has been —
 - (i) a member of the Isle of Man Constabulary;
 - (ii) in the service of the Department; or
 - (iii) a member of the IMB.
 - (b) a member of the Council or the Keys; or
 - (c) a justice of the peace.
- (3) At least one member of the Committee should have a legal qualification or background in criminal justice or experience in the treatment and resettlement of offenders.

90 Tenure of office

- (1) A member of the Parole Committee will hold office —
 - (a) for a term of 3 years from the date of his or her appointment; or
 - (b) if that person was appointed to fill a casual vacancy, until the person whose place that person was appointed would ordinarily have gone out of office.
- (2) A member of the Parole Committee may resign by notice in writing to the Department.
- (3) A member of the Parole Committee ceases to be a member of the Parole Committee if appointed to any of the positions specified in rule 89(2).
- (4) If the Department is satisfied that a member of the Parole Committee —
 - (a) has been absent from meetings of the Parole Committee for a period longer than 6 months without the permission of the Department;
 - (b) has become bankrupt or made an arrangement with creditors;

- (c) is incapacitated by physical or mental illness;
- (d) has been convicted of an offence, or that the member's conduct has been such, that is it is not in the Department's opinion that he or she should remain a member of the Parole Committee; or
- (e) holds, or appears to hold or could appear to hold, any conflict of interest between the member performing his or her duties as a member and any interest of that member, whether personal, financial or otherwise;

the Department may declare that person's office as a member of the Parole Committee to be vacant, and must notify the person in such manner as the Department thinks fit.

- (5) Where the Department —
 - (a) has reason to suspect that a member of the Parole Committee may have conducted himself or herself such that the member's appointment may be liable to be terminated under paragraph (4)(d) or (e); and
 - (b) is of the opinion that the suspected conduct is of such serious nature that the member cannot be permitted to continue to perform his or her functions as a member of the Parole Committee pending the completion of the Department's investigations into the matter and any decision as to whether the member's appointment should be terminated,

it may suspend the member from office for such period or periods as it may reasonably require in order to complete the investigations into the matter and determine whether or not the appointment of the member should be so terminated.

- (6) A member suspended under paragraph (5) must not, during the period of his or her suspension, be regarded as being a member of the Parole Committee, other than for the purposes of this rule.

91 Chair, Deputy-Chair and Secretary to the Parole Committee

- (1) The Department must provide a member of its staff to act as Secretary to the Parole Committee to attend meetings of the Parole Committee, to keep minutes of Parole Committee meetings and to perform such other clerical duties as the Parole Committee may require.
- (2) The Parole Committee must at its first meeting in each financial year appoint one of its number to be Chair and another to be Deputy-Chair of the Parole Committee.
- (3) Every meeting of the Parole Committee must be presided over by —
 - (a) the Chair;
 - (b) in the absence of the Chair, the Deputy Chair;

- (c) in the absence of the Chair and the Deputy Chair, either —
 - (i) a member of Parole Committee appointed for that purpose by the Chair; or
 - (ii) in default of an appointment specified in 91(3)(c)(i) or in the absence of the member so appointed, a member elected by those present at the meeting.

92 Meetings of the Parole Committee

- (1) The Parole Committee must meet at least once in every 3 months and all meetings must be minuted.
- (2) A meeting of the Parole Committee may be held at any time at the request of the Chair of the Parole Committee, and a meeting must be held following the submission of a written request by 2 members of the Parole Committee to the Secretary of the Parole Committee.
- (3) The quorum necessary for the transaction of business is 3 members of the Parole Committee.
- (4) The Parole Committee may appoint a sub-committee consisting of at least 3 members of the Parole Committee to exercise on behalf of the Parole Committee its functions with respect to juvenile detainees.
- (5) For the purposes of paragraph (3) and (4), at least 1 member of Parole Committee present must meet the criteria specified in rule 89(3).
- (6) Where the Parole Committee is to consider the case of any detainee at an institution at any meeting, the governor, or such other officer of the institution as he or she may assign for the purpose, must attend that meeting if requested.
- (7) If a member of the Parole Committee has any knowledge of the detainee, the victim or any other person connected with the application for parole, that member must declare his or her interest and take no further part in the proceedings.
- (8) For the purposes of this rule, a member may be “present” if they are able to be involved in the meeting by means of an arrangement by which the member is able to see and hear the proceedings of the meeting and is able to be seen and heard by any other person at the meeting. The extent (if any) to which a person is unable to see or hear by reason of any impairment of eyesight or hearing is to be disregarded for the purposes of this rule.

93 Detainee’s Parole Dossier

- (1) The Committee must, in dealing with cases as respects which it makes recommendations under Schedule 2 to the Act, consider —
 - (a) the detainee’s Parole Dossier;

- (b) any documents given to it by the Department; and
 - (c) any other oral or written information obtained by it;
- (2) Before the detainee's Parole Dossier is submitted to the Committee the detainee must be presented with a copy of the Parole Dossier and provided with an opportunity to include a statement of his or her own views in the Parole Dossier presented to the Committee.
- (3) If in any particular case the Committee thinks it is necessary to interview the detainee to whom the case related before reaching a decision, the Committee may –
- (a) authorise one of its members to interview that detainee and consider the report of the interview made by that member;
 - (b) authorise a sub-Committee of its members to interview that detainee and consider the report of the interview made by that sub-Committee; or
 - (c) interview the detainee.
- (4) A negative inference must not be taken in relation to detainee's refusal to be interviewed under paragraph (3).

94 Release on Licence

The decision of the Parole Committee in relation to a reference made to it under paragraph 10(4) of Schedule 2 to the Act must be recorded in a document which must contain a statement of the reasons for recommendation and a copy of the document must be sent to the detainee within 14 days after the date of the decision, or as soon as practicable after such date.

PART 9

REVOCATION

95 Revocation

The Custody Rules 2001⁴ are revoked.

⁴ SD 520/01

MADE 24 JUNE 2015

MICHAEL COLEMAN

Signed by authority of the Minister for Home Affairs



SCHEDULE

[rule 71]

PROHIBITED ARTICLES

- (1) For the purposes of rule 71 and section 19(5) of the *Custody Act 1995* the following articles are prescribed as “**prohibited articles**” —
 - (a) books;
 - (b) clothing;
 - (c) food;
 - (d) drink;
 - (e) drugs;
 - (f) explosives;
 - (g) firearms or ammunition;
 - (h) IT equipment;
 - (i) letters;
 - (j) liquid containing nicotine or any paraphernalia that may enable the inhalation of a vaporised liquid containing nicotine;
 - (k) money;
 - (l) offensive weapons;
 - (m) paper;
 - (n) tobacco or tobacco paraphernalia;
 - (o) toiletries; and
 - (p) tools.
- (2) For the purposes of this Schedule —
 - (a) “**drugs**” means —
 - (i) any controlled drug for the purposes of the *Misuse of Drugs Act 1976*;
 - (ii) any medicinal product for the purposes of the *Medicines Act 2003*; and
 - (iii) any chemical substance other than a controlled drug or a medicinal product, which is capable of being consumed, injected, inhaled or absorbed through the skin;
 - (b) “**offensive weapons**” means any article made or adapted for use for causing injury to the person, or intended by the person having it with him or her for such use by that person; and

- (c) “**IT equipment**” means —
- (i) cameras;
 - (ii) desktop computers;
 - (iii) gaming consoles;
 - (iv) handheld computing devices;
 - (v) laptop or notebook computers;
 - (vi) mobile telephones;
 - (vii) personal organisers;
 - (viii) sound recording devices; and
 - (ix) any electronic device containing a computer processor and capable of connecting to the internet.
- (3) For the purposes of this Schedule, IT equipment includes —
- (a) any component part of IT equipment; and
 - (b) any article designed or adapted for use with IT equipment (including any disk, film or other separate articles on which images, sounds, computer code or other information may be stored or recorded).

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules revoke and replace the Custody Rules 2001 to update the provisions relating to the regulation and management of the Isle of Man Prison and any other institutions designated under the *Custody Act 1995*. In particular –

- Part 1 provides for the title, commencement, interpretation and application of these Rules;
- Part 2 makes general provision for the management and treatment of detainees including, amongst other matters, arrangements for health care and the work that may be undertaken by detainees;
- Part 3 addresses the maintenance of order and discipline within an institution, with particular regard to testing for drugs and alcohol and the disciplinary process;
- Part 4 details the means by which detainees' communications and visitors may be controlled and managed;
- Part 5 sets out the controls and security measures that may be imposed upon persons visiting an institution, including the prohibition of the articles set out in the Schedule to the Rules;
- Part 6 prescribes the duties applicable to officers working within an institution;
- Part 7 provides for the establishment of an Independent Monitoring Board for an institution;
- Part 8 provides for the establishment of a Parole Committee to consider applications for parole; and
- Part 9 revokes the Custody Rules 2001.