GUIDANCE IN ASSESSING EVIDENCE THAT ESTABLISHES GUILT

The information in this annex is provided to assist adjudicators in assessing whether the accused is guilty of the charge laid, according to the evidence submitted. Adjudicators must be aware that proof beyond reasonable doubt is required to deliver a verdict of guilt in any case. In general, if the evidence satisfies the descriptions listed in this annex, and the accused was clearly involved or connected, a guilty finding can be returned.

Offences are listed as in Prison Rule 38. A brief interpretation of the law relating to each offence is given, followed by the evidence required to establish guilt.

Para 1 – Mutinies or commits any act of collective indiscipline.

Under the terms of the Prison Security Act 1992, Chapter 25, Para 1 (2), a prisoner shall be guilty of an offence of mutiny if he, with at least one other prisoner, while on the premises of any prison, engages in conduct which is intended to further a common purpose of overthrowing lawful authority in that prison. (While the Prison Security Act 1992 does not extend to Northern Ireland, the description of the offence of mutiny has been quoted from this Act.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The accused’s actions showed that he, along with others, intended to exert force or usurp authority from those persons with authority for the prison.

Para 2 – Assaults an Officer or other member of staff.

A prisoner will be guilty of assault if s/he applies unlawful force to another person. Under the criminal law, a person may also be guilty of assault if, without applying unlawful force, s/he causes another person to fear the application of immediate unlawful force to that person. This may be a suitable charge if say, a prisoner spat on an Officer. However, a charge under Prison Rule 38, Para 16 will generally be more appropriate where there is no actual physical contact.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The accused applied force to another person (or, subject to the guidance above, committed an act that caused another person to fear the immediate application of force to that person). It is not a defence to a charge of assault that the victim consented to be injured;
- The force was unlawful, in other words the accused did not use only that force which was reasonable in self defence or to prevent the commission of each offence as the
accused honestly believed them to be, and bearing in mind that in a moment of attack, an accused cannot always weigh exactly the amount of force required to resist.

Para 3 – Commits an assault causing injury against any other person including another prisoner.

A prisoner will be guilty of an offence under this paragraph if he commits an assault as outlined above and causes an injury to the other party that requires medical treatment, whether in the Healthcare Centre or an outside hospital.

**Evidence** – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The accused applied a level of force to the other person that caused injury which required some level of treatment by medical services.

- The force applied was unlawful. It is not a defence to this charge that the victim consented to be injured.

Para 4 – Commits any other assault.

See Para 2 above for general conditions. This charge is a ‘catch all’ alternative to the two separate charges listed above.

Para 5 – Fights or wrestles with any prisoner or other person.

**Evidence** – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The assault must have been committed in the context of a fight with the other person. It is for the adjudicator alone to decide whether the conduct did or did not amount to a fight. The incident must amount to a fight in the ordinary sense of the word. It is implicit in the idea of a fight that another person must also have been involved in events. This does not mean that the accused can be found guilty only if the other person is also found guilty. The other person may have a defence, for example, acting in self-defence. It does mean however, that the other person must have applied force, whether by one or more blows or forceful resistance, to the accused. It may sometimes be helpful for the adjudicator to ascertain who started the fight;

- Fighting is similar to assault or other like charges in that self-defence is a complete defence. If the accused acted only in self-defence, the force would not have been unlawful. It is however, a defence to a charge of fighting or assault that a prisoner consented to being injured.
Para 6 – Escapes or absconds from prison or legal custody.

Escaping or absconding refers to the act of getting clean away from the prison or legal custody. If the prisoner did not get beyond the boundary of the establishment in trying to escape, a charge under Prison Rule 38, Para 25 would be correct.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The prisoner was held in prison or legal custody. The latter includes being escorted to or from a prison by a prison officer or a prisoner custody officer, or working on an outside work party. A copy of the Committal Warrant should be produced in evidence together with details of the provisional release date at the time of the escape.

- The prisoner escaped or absconded. These terms are interchangeable since they are the same in law. It is for the adjudicator to decide whether the conduct alleged amounted to an escape, therefore the details of the charge should contain details of the events alleged and not merely “He escaped from HMP [name].”

Para 7 – Endangers the health or personal safety of any person or persons, including prisoners, through intentional or reckless conduct.

A charge under this paragraph may, on occasion, be correct when a prisoner is alleged to have intentionally, set a fire in his/her own cell or other area that other persons have access to. This should only be done when it is believed that the criteria set out below can be established.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The health and personal safety of at least one other person other than the accused was endangered. In other words there was a definite risk of harm to the health and safety of at least one specific person;

- The danger was caused by the accused’s conduct;

- The accused intended this to occur, or was reckless as to whether it would.

Para 8 – Detains any person against his will.

This charge is designed to deal with the hostage taker. It is important when laying and dealing with these charges to decide whether or not the victim colluded in events. Where collusion is suspected, it may be appropriate to lay a charge under Prison Rule 38 Para 10, either instead of or in addition to one under this paragraph, if the incident has also involved a
refusal to allow officers or anyone else working in the prison to enter a cell or other part of the establishment.

**Evidence** – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The victim was detained; this includes detention in the open. Freedom of movement must have been curtailed in some way by force or threat of force. Any item used as apparatus for restricting movement should be produced in evidence;

- The detention was against the victims will. If the incident was planned and executed as a joint venture freely entered into by all parties, and remained in that state throughout, it may be difficult to prove the detention was against the victim’s will. In this case, collusion would be a complete defence. Details of injuries sustained by the victim would tend to negate collusion, as would matters such as evidence of previous enmity between victim and accused. The adjudicator should investigate whether or not there has been any attempt by the accused to pressurise the victim into saying s/he was colluding. A hostage taking may begin with collusion, and yet develop into an unlawful detention where one party changes his/her mind and wishes to surrender, but is prevented from doing so by the other. The evidence of negotiators will be of importance in proving the lack of consent.

**Para 9 – Intentionally obstructs an officer in the execution of his duty or other person going about his authorised duties within the prison.**

This charge covers physical obstruction but not exclusively so. A prisoner who deliberately provides false information to an officer might be charged with this offence.

**Evidence** – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- There was an obstruction of some sort, physical or otherwise;

- The person obstructed was an officer of the Prison Service or anyone else (other than a prisoner) who was at the prison for the purpose of working there;

- The officer was attempting to carry out his or her duty, or the person was attempting to perform his or her work

- The accused intended such a person to be obstructed in such a way.

**Para 10 – Denies access to any part of a prison to any officer or other authorised person.**

This charge is designed to deal with barricades but is also appropriate, for instance, where the prisoner denies access without constructing a barrier;
Evidence — Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- Access was denied;
- The site was part of a prison or YOC;
- The person denied access was an officer of the Prison Service or anyone else (other than another prisoner) who was at the establishment for the purpose of working there.

Para 11a – Fails to comply with a condition of Temporary Release under Rule 27.

Where a prisoner is charged with failing to return from Temporary Release, a frequently used excuse is that s/he was not fit to travel due to illness. Such claims should be corroborated with the hospital/doctor that the accused claims s/he saw prior to returning to the prison. If a hospital doctor confirms such events occurred prior to the expiry date of the period of temporary release, the prisoner has a complete defence, though in such circumstances, a charge would not be laid in the first instance. The adjudicator must consider whether the statement of the hospital/doctor establishes that the prisoner was not well enough to be conveyed or travel to a prison healthcare centre. A prisoner who was physically prevented from returning due to circumstances that were genuinely beyond their control, would also have a defence to a charge of failure to return.

Evidence — Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- A form of temporary release, signed by a person with authority to do so, had been issued. Its terms were clear and unambiguous and the prisoner was made aware of the conditions and had signed to that effect. The original copy of this form should be produced as evidence;
- The accused clearly failed to comply with one or more of the conditions set out. This includes the condition as to time of return;
- There was no justification for the failure to comply with any condition.

Para 11b – Provides false information in an application for temporary release.

Evidence — Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The accused intentionally gave false information to further his/her application for release.
Para 12 – Has in his possession any unauthorised article, or a greater quantity of any article that he is authorised to have, or sells or delivers to or receives from any person an unauthorised article, or sells, or without permission, delivers to any person any article which he is allowed to have only for his own use.

This paragraph is intended to cover in the case of (a) the possession of an article (for example drugs), which is unauthorised in itself, an article which may be authorised (such as a radio) but which is, in the particular case, unauthorised (perhaps because it has been smuggled in), or (b), an article which may have been authorised to a certain prisoner but not to the one in whose possession the article is found. This may apply when a prisoner claims that the article is a gift from another prisoner. in the case of (b), the offence is intended to cover possession of more of certain articles than a prisoner is entitled to have.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- **Presence:** the article exists; it is what it is alleged to be and is found where it is so alleged;

- **Knowledge:** the accused knew of the presence of the article and its nature, for example, that a substance was a controlled drug. Knowledge of its nature can be properly inferred from all the circumstances, for instance, whether it was hidden or whether the prisoner attempted to dispose of it before it was found. It is good practice for a reporting officer to question the prisoner as soon as an article is found so that his/her immediate reaction to its presence can be presented in evidence;

- **Control:** the accused exercised sole or joint control over the article. A prisoner who drops or throws away an article simply because s/he believes that it is about to be discovered, may still be guilty of possession at an earlier stage, if there is sufficient evidence that it was in his/her control before it was abandoned. Care will be needed in specifying the time the offence is alleged to have occurred on such a case.

Para 13 – Takes improperly any article belonging to another person or a prison.

This charge covers exclusively articles belonging to people other than the accused and can be considered as similar to the criminal charge of theft.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- There was an article;

- The article belonged to another person or to a prison. This charge covers exclusively articles belonging to people other than the accused and in many cases the only way of proving the charge beyond reasonable doubt will be to show to whom the article does belong;
Northern Ireland Prison Service Adjudication Manual

- The accused assumed physical control of the article. Consequently, if an accused has signed for another prisoner’s tuck shop purchases but has not yet taken possession of them, s/he cannot be guilty of an offence under this paragraph. In these circumstances, a charge of attempt under Prison Rule 38, Para 25 might be appropriate;

- The article was taken improperly. This means that the accused did not have permission to take it;

- It will be a defence to a charge under this paragraph that the accused genuinely believed s/he owned the article or had permission to take it. Of course, where an accused gives evidence that s/he held such a belief, the reasonableness or otherwise of this statement will be a matter for the adjudicator to assess.

Para 14 – Intentionally or recklessly sets fire to any part of a prison or any property, whether or not his own, or, destroys or damages any part of a prison or other property not being his own.

**Evidence** – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The accused set fire to, or destroyed or damaged a part of an establishment or other property; property is to be taken as meaning property of a tangible nature, whether real (for example, land or buildings) or personal, including money, and also including creatures which are held in ownership;

- The accused intended to set fire to the property, or was reckless as to whether this would happen.

Para 15 – Absents himself from any place where he is required to be or is present at any place where he is not authorised to be.

This charge can apply to incidents within or outside the prison. If a prisoner on an outside work party absents themselves from the group without permission for a specific purpose, with every intention of returning to the prison, then a charge under this paragraph would apply.

**Evidence** – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The accused was required to be a particular place or was not authorised to be in the place where s/he was found. It will be important to be able to show that local instructions to prisoners relating to where they may or may not go are passed to them and to the accused in particular or that reasonable steps had been taken to pass instructions to the accused in respect of this information;

- The accused was in fact absent from the place s/he was required to be, or was in fact present at the place s/he was not authorised to be;

- The accused had no justification for his/her actions;
Northern Ireland Prison Service Adjudication Manual

- A genuine belief that the accused was not required to be somewhere, or was authorised to be in the place where s/he was found would be a defence. Where an accused states that s/he held such a belief, the reasonableness or otherwise of the belief is a matter which may affect the credibility of the accused’s evidence.

Para 16 – Is disrespectful to any person or uses threatening, abusive or insulting words or behaviour.

It is important that it is shown how the action was threatening, abusive or insulting, but it may not always be necessary to establish at whom the action was aimed and it is not necessary to name an individual in every charge.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The accused performed a specific act or adopted a general pattern of behaviour or said specific words. This need not be a single incident but may have continued over a period of time;

- The act, pattern of behaviour or words was either threatening, abusive or insulting. These terms should be given their ordinary meanings, taking account of the circumstances of the case. It should be borne in mind that words or behaviour might be annoying or rude without being abusive or insulting. To find guilt it is only necessary to be satisfied that a reasonable person at the scene would consider the words or behaviour threatening, abusive or insulting.

Para 17 – Pierces himself or another prisoner with a needle or other implement, or consents to another prisoner piercing him with a needle or other implement, for the purpose of making a tattoo, for bodily piercing (including ear piercing), or for any other purpose.

This charge is specifically designed to deal with the prisoner who intentionally attempts to engage in the act of tattooing himself or others, either on request of forcibly or, attempts to carry out an act of body piercing on himself or others, either on request or forcibly.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The accused had in his possession or, had direct access to the tools for committing such an offence;

- The accused or, the third party, has marks, scars or piercings on his person that were not recorded during the committal process, and that can reasonably be attributed to such an act having taken place.
Para 18 – Commits an indecent or obscene act.

This offence refers to any offence of a sexual or obscene nature as described in Part 1 (certain sections only) and Part 2 of the Sexual Offences Act 2003. Where it is considered that such an offence may have been committed, clarity of the framing of a charge under this paragraph and the evidence required should be sought from Prison Policy and Law Branch at PSHQ as soon as possible following the alleged offence occurring.

Para 19 – Prepares, manufactures, consumes, inhales or administers to himself or any other prisoner, with or without consent, any intoxicating substance or drug, or buys, sells, passes or possesses any such item.

This charge is specifically designed to deal with the prisoner who receives a controlled drug from a visitor during visits, or from another prisoner or any other person not authorised to provide such a drug. A prisoner found preparing, ingesting or preparing to ingest an unauthorised controlled drug to himself or another prisoner, or passes or is preparing to pass such an unauthorised controlled drug to another prisoner, may also be charged under this paragraph. Prisoners who are seen to discard an article, that when laboratory tested proves to be a controlled drug and that drug is unauthorised, (for instance during a search when leaving visits), may also be charged under this paragraph.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

• That the prisoner received a controlled drug (confirmed by a laboratory test), during the course of a visit or from another person;

• That the prisoner knew that it was an unauthorised controlled drug;

• That the prisoner knew that s/he was not authorised to possess that item.

• That in the case where a prisoner is charged with preparing or manufacturing, evidence is provided in the form of ‘the makings’ and/or the raw plant or substance.

Para 20 – Bribes or attempts to influence any officer or other person going about authorised duties within a prison.

Where it is alleged that an offence under this paragraph has occurred, clarity of the correct framing of the charge and the evidence required should be sought from Prison Policy and Law Branch at PSHQ as soon as possible following the alleged offence being reported.
Para 21 – Being required to work refuses to do so, or intentionally fails to work properly.

This charge covers two distinct offences under the one paragraph. Firstly that a prisoner who is required to work, refuses to do so and, a prisoner who is required to work, intentionally failed to work properly. The evidence required for each offence differs.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

In the first instance:

- The accused was lawfully required to work at the time and in the circumstances specified (for example, that s/he was an un-convicted prisoner who could not be required to work in the first instance);
- The accused refused to work. This may be either by an act or omission. The accused does not have to say “I refuse” but his/her actions may amount to such refusal;
- A genuine belief that s/he was not required to work there and at that time would be a defence to this charge. Where an accused states that s/he held such a belief, the reasonableness or otherwise of the belief is a matter which may affect the credibility of the accused’s evidence.

In the second instance:

- The accused was lawfully required to work at the time and in the circumstances specified (for example, that s/he was an un-convicted prisoner who could not be required to work in the first instance.);
- The accused failed to work properly. In other words the alleged failure should be measured against a standard;
- A genuine belief that the accused felt that the work was adequate would be a defence however, this belief should be measured against the standard normally expected.

If the prisoner claims to have been medically certified unfit to carry out the work s/he is required to do, care must be taken to investigate fully such a defence. If the prisoner claims to have been unfit to carry out such work, but has not been medically certified as unfit, the adjudicator may wish to seek evidence on the point.

Para 22 – Disobeys any lawful order.

A lawful order is one which is reasonable and which a member of staff has authority to give in the execution of his/her duties. This may be appropriate where a prisoner declares an intention to commit any act, such as dirty protest, and staff order that the prisoner does not commit the act or that s/he desists from doing it.
Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The action of the member of staff amounted to an order. An order is a clear indication by word and/or action given in the course of his/her duties by a member of prison staff, requiring a prisoner to do or refrain from doing something. Whilst it is desirable that such an instruction should be given verbally, it need not be so to amount to an order. What is necessary is that there is a clear indication of what is required of the prisoner concerned. “This is an order,” or “I am giving you a direct order” or the like;

- The order was lawful;

- The accused did not comply with the order. The prisoner need not have said “I refuse” but it is important to be satisfied that s/he did not comply with the order within a reasonable period of time. Even if a prisoner eventually complies with an order, there may nevertheless, be sufficient evidence to find him/her guilty under this charge where the adjudicator can be satisfied that the accused deliberately delayed compliance. This will depend on the particular circumstances of any case;

- The accused must have understood what was being required of him/her.

Para 23 – Disobeys or fails to comply with any rule or regulation applying to him/her

Rules or regulations of the prison can range from the requirements of Prison Rules to a local instruction of that particular establishment or wing. For example, this is the recommended charge to bring when a prisoner is alleged unlawfully to have abstracted electricity by tampering with the mains supply to power up a radio or other electrical item. In such an instance, there must be a local rule/instruction stating that prisoners must not:

- Tamper with cell electrical fittings, mains supply or circuitry;
- Wire up any equipment or article to cell electrical fittings, mains supply or circuitry;
- Allow their property to be or continue to be so connected, or use any equipment or article so connected.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The rule or regulation applied to the accused. The accused must have been aware of the rule or regulation or reasonable steps must have been taken to make him/her aware. The latter may be shown, for example, by evidence from an induction unit or a member of wing staff that the rule in question has been explained or pointed out to the prisoner at some time in the past, or that the rule or regulation was displayed in such a fashion that it should have been clear to a prisoner passing it. In the latter case, the burden of proof will obviously be greater in the case of an illiterate or non-English speaking prisoner. It may be proven (perhaps in the case of kitchen workers) who had been given training and that the rules or regulations had been explained to him/her during this training. Evidence that the prisoner had complied with the rule or regulation on previous occasions might be sufficient in any given case. However, a genuine belief, reasonably held that the rule or regulation did not apply to the prisoner in
question would be a defence to this charge. A breach of compact is not, in itself, a breach of a rule;

- The rule or regulation was lawful. As is the case with paragraphs 21 and 22, it is important to show that the rule or regulation was lawful in respect of the particular prisoner concerned. Lawful has the same meaning as it does in relation to orders. A lawful rule or regulation is one which prison staff have authority to impose in keeping prisoners in custody or one contained in Prison Rules or in any national or local instruction;

- The accused did not comply with the rule or regulation.

Para 23a – Wears an item of clothing, or wears, carries or displays an article in such a way or in such circumstances as to arouse reasonable suspicion that he is a member or a supporter of a proscribed organisation within the meaning of Section 3 of the Terrorism Act 2000.

This charge refers to an offence where it is alleged that a prisoner has worn any item that would constitute as being representative of a uniform or regalia of any proscribed organisation or, where a prisoner visibly carries or displays any item that would constitute as being representative of any proscribed organisation or group.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The item of clothing or disguise was there;

- The actions and demeanour of the prisoner at that time gave sufficient cause for suspicion that he was/is a member or supporter of a proscribed organisation.

Para 23b – Without reasonable excuse, wears any hood, mask, or other article made, adapted or used for concealing his/her identity or features.

This charge refers to any incident where a prisoner wears any item that can assist in his identity being disguised or from preventing him from being clearly identified. This may be as an individual action or as a member of a group.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- See above

Para 24 – In any other way offends against good order and discipline.

This is a catch all charge that can be applied in circumstances where the alleged offence fails to correctly ‘fit’ any of the listed charges.
Para 25 – Attempt to commit, incites another prisoner to commit, or assists another prisoner to commit or attempt to commit any of the foregoing offences.

When laying this charge, the details of the alleged offence should relate to the paragraph of Prison Rule 38 that would have been breached, had the action been successful. For example, That on [date], you attempted to escape from lawful custody by climbing up the perimeter fence. Escaping from lawful custody is an offence under paragraph 6 of this Rule.

Evidence of attempting to commit: – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

• The accused committed an act, which was more than merely preparatory to the commission of the intended offence. An example might be that the manufacture of a short rope out of knotted sheets would not constitute an attempted escape but where the rope was long enough to descend into the grounds, might well do so;

• The accused intended to commit the full offence. It is not necessary to show that it was one that s/he would be able to carry out (because for example, the level of security in place was such that an attempted escape from that area could not possibly have succeeded)

Evidence of inciting to commit: - Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

• The accused's actions were communicated to other prisoners. It is necessary to show that the other prisoner’s were sufficiently near to be able to react to the incitement;

• The act was capable of inciting other prisoners to commit the full offence. Incitement in this context means seeking to persuade another prisoner to commit a disciplinary offence, whether this is done by suggestion, persuasion, threats, pressure, words or implication. It does not matter that nobody in fact attempted to commit the full offence. It is for the adjudicator to decide whether the act was capable of inciting other prisoners and s/he should take into account the nature of the prisoners involved in deciding this;

• The offence was either the subject of the incitement or the consequence of it.

Evidence of assisting - Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

• Another prisoner committed an offence. This may include an attempt. However, since this charge is one of assisting another to commit an offence, it would be a defence of this charge if the other prisoner was found not guilty of committing the substantive offence;

• The accused actively assisted in the commission of the offence. It is not sufficient that the accused was aware of and did not prevent the offence occurring. It is important that s/he did an act, which made the commission of the offence easier;

• The accused intended to assist the other prisoner.