By their nature, prisons are normally closed institutions in which large numbers of people are held against their will in confined spaces. It is inevitable that from time to time, some prisoners will breach the rules and regulations of the prison in various ways.

Regardless of the fact that these people have been incarcerated by the rule of law, they are still entitled to be treated like all citizens – according to the law. These adjudication procedures provide adjudicators with the relevant processes and procedures that must be followed, to ensure that those charged with alleged breaches of discipline are dealt with according to the requirements of the law and in a manner that does not breach any Statute or Convention that provides for a person’s Human Rights.

The awards available to adjudicators under Prison Rule 39(1) a-f, are likely to engage and/or interfere with various Articles of the European Convention on Human Rights (ECHR). The ECHR provides for the interruption of such circumstances according to proportionality and law. Adjudicators must therefore, have a thorough understanding of the various Articles that may be engaged or interfered with through the application of the adjudication process. A full breakdown of the possible implications of engaging/interfering with ECHR provisions is provided as an Annex to this manual.

It is the responsibility of all adjudicators, when pronouncing awards, to apply relevance and proportionality to the offence committed and to enquire into and fully consider the effect that an award may have on the rights of a prisoner according to his/her personal circumstances at that time.
Adjudicators must have a thorough understanding of a prisoner's rights in relation to the various Articles of the European Convention on Human Rights (EConv.HR). In particular, adjudicators must take into account the effect that awards may have on the rights of prisoners, according to their particular circumstances at the time an award is made.

The Human Rights implications of each of the awards individually are detailed below. However, adjudicators must consider the cumulative implications of collective awards when adjudicating. For example, removing a prisoner's privilege visits and telephone calls would have a significant impact on the prisoner's right to a private and family life (Article 8). This would be further exacerbated if the prisoner had literacy problems and could not read or write letters. Moreover, overly onerous collective awards may create conditions which could potentially have Article 2 (the right to life) or Article 3 (the prohibition of torture, inhuman or degrading treatment of punishment) implications.

In providing guidance to adjudicators, it is necessary to identify which Articles are engaged or interfered with in respect of each of the available awards available under Prison Rule 39(1) a-f. Therefore each award is listed and any effect/interpretation that the EConv.HR may have regarding each is shown.

**Awards under Prison Rule 39(1) a-f**

a - **caution** - no Article engaged;
b - **repealed**;
c - **stoppage of earnings**

Article 3 would potentially be engaged if the prisoner was not able to purchase basic hygiene items. However, the Prison Service will supply all such items to all prisoners regardless of any disciplinary awards free of charge.
Article 8 (in conjunction with Article 14) is potentially engaged where the stoppage of earnings would impact on the prisoner's right to a private and family life. For instance, in the case where a prisoner is solely dependant on these earnings to provide for telephone access, it could be interpreted as indirect discrimination on the part of the Prison Service, as he has not received the same access to the telephone as a prisoner who has family to leave money into his account. This would be particularly relevant to the Article 8 rights of a Foreign National Prisoner who has no other means of communicating with his family.

d - stoppage of any or all privileges

Privilege visits - Article 8 is engaged and potentially interfered with where a prisoner's contact with his/her family is interrupted. The award does, however, fulfil the legitimate aims of preventing disorder or crime and the protection of the rights and freedoms of others. The use of this award is proportionate because the prisoner retains their statutory right to one prison visit per four week period, and therefore is still able to maintain contact with family. In addition, the adjudicator should consider the individual circumstances of the prisoner before making an award of loss of privilege visits. Article 9 would potentially be engaged if the prisoner was not able to meet with their spiritual adviser as a result of an award. However, the Prison Service does not consider meetings with spiritual advisers to be a privilege visit, and so such meetings are not affected by the award.

Loss of in-cell television
Loss of books (other than a bible or equivalent)
Loss of newspapers and periodicals
Loss of radio

Article 10 (freedom of expression) includes the right to receive ideas and information. It could therefore potentially be engaged, interfered with or even breached if a loss of all of the above is awarded.
Loss of telephone access

Article 8 is engaged and potentially interfered with because of the impact which the loss of telephone access has on a prisoner's right to a private and family life. It is possible to limit the prisoner's rights under Article 8 in the interests of the prevention of disorder or crime and/or for the protection of the rights and freedoms of others. This is exercised proportionately by the Prison Service because the adjudicator considers the subjective implications of the award by, for example, taking into account the individual circumstances of the prisoner before making the award and the need to permit prisoners with emergency circumstances to avail of the use of the telephone.

Loss of Associated work or Evening association

Article 8 is engaged and potentially interfered with as the Prison Service is restricting the prisoner's interaction with others which forms part of their right to a private life. However, Article 8 is a limited right and it is possible to interfere with it in the interests of the prevention of disorder or crime and/or for the protection of the rights and freedoms of others. The use of this award is exercised proportionally by the Prison Service because the adjudicator considers the subjective implications of the award by taking into account the individual circumstances of the prisoner and the severity of the offence. Moreover, the loss of associated work or evening association is time bound by the legislation so the award will not remain in place for a disproportionate length of time.

e - Cellular Confinement

Article 2 could potentially be engaged where the prisoner posed a threat to their own life. However, the Prison Service has strict guidelines over when and for how long an award of cellular confinement may be made. This includes an initial medical assessment and ongoing observation of the confined prisoner, including daily visits that permit observations to be considered by the Governor and a member of Healthcare staff. Where a potential risk is identified, intervening action is taken. Prisoners undergoing
Cellular confinement continue to receive visits from family and friends and may continue to engage with Education staff and Offender Behaviour Programme providers.

Article 3 could potentially be engaged as an award of cellular confinement necessarily involves a degree of hardship. However, the Prison Service ensures that the award does not inadvertently result in the prisoner being treated in an inhuman or degrading manner by conducting a subjective analysis of the award on the prisoner and by normally allowing for the prisoner to retain their normal bedding and cellular equipment and privileges, except where specified privileges have been removed as part of an award. Prisoners under the age of 18 are not confined to a cell, but may be confined for a period in their own room. Prisoner undergoing Cellular Confinement will be visited daily by the Governor and a member of Healthcare and may also continue to engage with Education staff and Offender Behaviour Programme providers.

Article 8 is engaged and potentially interfered with through an award of cellular confinement. However, Article 8 is a limited right and legitimate interference is permitted in the interests of the prevention of disorder or crime and/or for the protection of the rights and freedoms of others, as long as this interference is proportionate.

**GENERAL AWARENESS OF PROPORTIONALITY**

When making an award, all adjudicators must be aware of the need to be proportionate. Awards should not be excessive or disproportionate to the offence committed.

Although several of the Convention rights are limited, in that a level of interference is permitted, this is only allowed where the interference is no more than is necessary than to achieve a legitimate aim.
EUROPEAN CONVENTION ON HUMAN RIGHTS

ARTICLE 2

Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- in defence of any person from unlawful violence;
- in order to effect a lawful arrest or to prevent escape of a person lawfully detained;
- in action lawfully taken for the purpose of quelling a riot or insurrection.

ARTICLE 3

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

ARTICLE 4

No one shall be held in slavery or servitude.

No one shall be required to perform forced or compulsory labour.

For the purpose of this article the term forced or compulsory labour\(^1\) shall not include:

- any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
any service of a military character or, in case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service;

any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

any work or service which forms part of normal civic obligations.

ARTICLE 5

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- the lawful detention of a person after conviction by a competent court;

- the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

- the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority of reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

- the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

- the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants;
• the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and the charge against him.

Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

ARTICLE 6

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private
life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

Everyone charged with a criminal offence has the following minimum rights:

- to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- to have adequate time and the facilities for the preparation of his defence;
- to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

**ARTICLE 7**

No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

This article shall not prejudice the trial and punishment of any person
for any act or omission which, at the time when it was committed, was criminal according the general principles of law recognized by civilized nations.

**ARTICLE 8**

Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

**ARTICLE 9**

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.

**ARTICLE 10**

Everyone has the right to freedom of expression, this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of
frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

**ARTICLE 11**

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others, this article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

**ARTICLE 12**

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

**ARTICLE 13**

Everyone whose rights and freedoms as set forth in this Convention are
violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

ARTICLE 14

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

ARTICLE 15

In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision,

Any High Contracting Party availing itself of this right of derogation shall keep the Secretary-General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary-General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

PROTOCOL 1

ARTICLE 1

Every natural or legal person is entitled to the peaceful enjoyment of his
possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

**ARTICLE 2**

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions.

**ARTICLE 3**

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.