Annex G

CURRENT PRISON RULES (WITHANNOTATIONS) RELATING TO ADJUDICATIONS

Laying of disciplinary charges

35. —(1) Where a prisoner is to be charged with an offences against prison discipline the charge shall be laid in writing before the governor within 48 hours of the discovery of the offence save in exceptional circumstances.

(2) The prisoner shall be informed of the charge and the grounds on which it has been made within 24 hours of the charge being laid before the governor and, in any case, before the inquiry by the governor, to enable him to consider any defence he may wish to make.

(3) Before any inquiry the prisoner who has been charged will be provided with information about the procedure and purpose of the inquiry and will be informed of the right to request legal representations at the inquiry.

(4) A prisoner who is to be charged with an offence against discipline may be kept apart from other prisoners pending adjudication, if the governor considers that it is necessary, but may not be held separately for more than 48 hours.

Inquiry into charge

36. —(1) The governor shall hold an inquiry into any charge that a prisoner has committed an offence against prison discipline.

(2) The governor shall first inquire into any charge not later, save in exceptional circumstances, than the next day after the laying of the charge unless that day is a Saturday, Sunday or public holiday, or is a day of religious observance for the prisoner in accordance with his religious denomination as recorded under rule 57.

(3) The governor may adjourn the inquiry, but must give reasons for doing so which shall be recorded in the record made under rule 37; any adjournment must not unfairly prejudice the interests of the prisoner.

(4) At any inquiry into a charge against a prisoner the governor shall satisfy himself that the prisoner has had sufficient time to prepare his defence; the prisoner shall be given a full opportunity of hearing what is alleged against him and of presenting his own case.

(5) 

(6) Every charge against a prisoner shall be dealt with by the governor or, in a prison where a deputy governor has been appointed, by the deputy governor, but where neither the governor nor the deputy governor is available the governor may delegate the inquiry to another governor authorised by the Secretary of State to deal with charges.
(7) A reference to the governor in paragraph (1) and rules 37 and 39 shall include a reference to a deputy governor or other officer authorised to deal with the charge under paragraph (6).

Annotation

Rule 36(3) and (5) - The 1995 Amendment Rules make provision for the extension of a governor’s adjournment powers through the deletions highlighted above.

Rule 36(7) - The 2000 Amendment Rules delete the reference to the BOV adjudication powers formerly contained in rule 40.

Findings

37. –(1) A record will be kept of every inquiry into an offence against prison discipline and shall include the charge preferred, the facts alleged, a summary of the evidence presented, the governor’s findings and, if the charge is upheld, any award made against the prisoner.

(2) The governor may find a prisoner guilty of a lesser charge if it appears to him appropriate to do so and if it would not unfairly prejudice the interests of the prisoner. If the governor does so he shall give his reasons in the record made under paragraph (1).

Offences against prison discipline

38. A prisoner shall be guilty of an offence against prison discipline, if he –
(1) mutinies or commits any act of collective indiscipline;
(2) assaults an officer or other member of staff;
(3) commits an assault causing injury against any other person including another prisoner;
(4) commits any other assault;
(5) fights or wrestles with any prisoner or other person;
(6) escapes or absconds from prison or legal custody;
(7) endangers the health or personal safety of any person or persons, including prisoners, through intentional or reckless conduct;
(8) detains any person against his will;
(9) intentionally obstructs an officer in the execution of his duty or any other person going about his authorised duties within the prison;
(10) denies access to any part of a prison to any officer or other authorised person;
(11) (a) fails to comply with a condition of temporary release under rule 27; (b) provides false information in an application for temporary release.
(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 unauthorised article, or sells, or without permission, delivers to any person any article which he is allowed to have only for his own use;
(13) takes improperly any article belonging to another person or to a prison;
(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.
(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;
(16) is disrespectful to any person or uses threatening, abusive, or insulting words or behaviour;
(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;
(18) commits an indecent or obscene act;
(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;
(20) bribes or attempts to influence any officer or other person going about authorised duties within a prison;
(21) being required to work refuses to do so, or intentionally fails to work properly;
(22) disobeys any lawful order;
(23) disobeys or fails to comply with any rule or regulation applying to him;
(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;
(23B) without reasonable excuse wears any hood, mask, or other article made, adapted or used for concealing his identity or features;
(24) in any other way offends against good order and discipline;
(25) attempt to commit, incites another prisoner to commit, or assists another prisoner to commit or attempt to commit any of the foregoing offences.

Annotation

Rule 38(11) (b) - The 1997 Amendment Rules introduce this new offence against discipline and this amendment should be read in conjunction with rule 27 (5), which allows fraudulent applications for temporary release to be taken into consideration when considering any temporary release application.

Rules 38(23A) and 38(23B) – The 2004 Amendment Rules create new prison disciplinary offences applicable to all prisoners.

Governor’s awards

39. – (1) The governor may, subject to rule <_____> 41, make one or more of the following awards for an offence against prison discipline-
(a) caution;
(b) <______________>;
(c) stoppage of earnings for a period not exceeding 56 days;
(d) stoppage of any or all privileges other than earnings, for a
period not exceeding 42 days or 90 days in the case of evening association;
(e) exclusion from associated work for a period not exceeding 14 days;
(f) cellular confinement for a period not exceeding 14 days.

(2) A prisoner found guilty of an offence against discipline under rule 38(14) may, in addition to or in lieu of an award of stoppage of earnings under paragraph (1)(c), be required to pay a sum out of earnings thereafter made by him.

(3) Such a sum shall not exceed 10 times the amount of the prisoner’s earnings for the week in which the offence was committed, and the rate of deduction from earnings shall not exceed one half of the prisoner’s earnings in any one week.

(4) If a prisoner 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 forfeiture of remission of sentence the total period forfeited shall not exceed 28 days and in the case of cellular confinement the total period shall not exceed 14 days.

Annotation
Rule 39(1) - The 2000 Amendment Rules delete the reference to rule 40 (the former BOV adjudication powers).

Rule 39(1) – The 2004 Amendment Rules increase the level of governor’s awards for all adult prisoners by deleting rule 39(1)(b) and revising the level of awards in rules 39(1)(c), 39(1)(d) and 39(1)(f). The amendments made to 39(1)(c), 39(1)(d) and 39(1)(f) only apply in respect of offences against prison discipline committed after 1 February 2004.

More serious offences – inquiry and awards by the Secretary of State or board of visitors

40. < >

Annotation
Rule 40 - The 2000 Amendment Rules remove the BOV disciplinary powers in respect of adjudications. This should be read in conjunction with the revocation of rule 125 (the BOV adjudication procedure).

Provisions in relation to particular awards
41. –(1) An award of stoppage of earnings may, instead of forfeiting all a prisoner’s earnings for a specified period not exceeding 28 days < >, be expressed so as to forfeit a proportion (not being less than one half) of his earnings for a specified period not exceeding a correspondingly greater number of days.

(2) No award of cellular confinement shall be given effect unless
the medical officer has certified that the prisoner is in a fit state of health to undergo it.

(3) The governor shall visit every prisoner undergoing cellular confinement at least once a day, and an appropriate officer shall visit such a prisoner at intervals of not more than 3 hours during the day.

Annotation

Rule 41(1) - The 2000 Amendment Rules delete the BOV power to award a period of 56 days.

Prospective loss of remission

42. <_______________>

Annotation

Rule 42 - is revoked by the 2004 Amendment Rules because that power is incompatible with Article 6 of the European Convention on Human Rights.

Suspended awards

43. –(1) Subject to any directions by the Secretary of State, the power to make a disciplinary award (other than a caution) shall include power to direct that the award is not to take effect unless, during a period specified in the direction (not being more than 6 months from the date of the direction), the prisoner commits another offence against discipline and a direction is given under paragraph (2).

(2) Where a prisoner commits an offence against prison discipline during the period specified in a direction given under paragraph (1) the governor dealing with that offence may-

(a) direct that the suspended award shall take effect; or
(b) reduce the period or amount of the suspended award and direct that it shall take effect as so reduced; or
(c) vary the original direction by substituting for the period specified therein a period expiring not later than 6 months from the period of variation; or
(a) give no direction in respect of the suspended award.

Annotation

Rule 43(2) - The 2000 Amendment Rules substitute the words “the governor” in place of the former words “the authority” as a collateral amendment resulting from the removal of the BOV adjudication powers.

Remission and mitigation of awards

44. –(1) The Secretary of State may quash any finding of guilt or remit any punishment or mitigate it.
(2) Subject to any directions of the Secretary of State, the governor may remit or mitigate any punishment imposed by a governor or a board of visitors.

(3) In this rule mitigate means reducing the punishment or substituting another punishment which is, in the opinion of the Secretary of State or the governor less severe.

Annotation

Rule 44 (2) and (3) - The 2000 Amendment Rules remove the BOV adjudication powers to remit or mitigate any punishment.

Petition against awards

45. –(1) A prisoner may petition the Secretary of State in respect of an award made by a governor.

(2) A petition will only be permitted under this section where it alleges that -
   (a) the facts established did not justify a finding of guilt;
   (b) the governor misapplied the prison rules or failed to follow the principles of natural justice;
   (c) the award was more severe than was merited by the findings; or
   (d) any combination of the above.

(3) The petition will be considered on its merits and a response in writing sent to the prisoner as soon as possible.

(4) Where a petition is upheld any of the remedies provided for under rule 44(1) may be applied as appropriate.

Annotation

Rules 45(1) and 45(2)(b) – The 2005 Amendment Rules removes references to the board of visitors as it is no longer possible for a BoV to make an award that might be subject of a petition under rule 45.