
DIRECTIONS

Scottish Prison Rules (Temporary Release) Direction 2021

Made - - - -

20 May 2021

The Scottish Ministers make the following Direction in exercise of the powers conferred by section 39 of the Prisons (Scotland) Act 1989(a) and rules 138 and 156 of the Prisons and Young Offenders Institutions (Scotland) Rules 2011(b) and all other powers enabling them to do so.

PART 1

Citation, commencement and application

1.—(1) This Direction may be cited as the Scottish Prison Rules (Temporary Release) Direction 2021 and comes into force on 20 May 2021.

(2) Any reference in this Direction to a rule is a reference to the rule in the Prison Rules bearing that number.

(3) References in this Direction to prisons and prisoners are to be construed as including young offenders institutions and young offenders respectively unless otherwise specified or the context otherwise requires.

Interpretation

2.—(1) In this Direction—

“application for temporary release” includes an oral or written application for temporary release made by a prisoner and an oral or written recommendation from an officer that a prisoner should be considered for temporary release,

“contracted out prison” has the same meaning as in rule 2(1),

“electronic communication” means faxes, text messages, e-mails or any other form of written communication using a personal computer or personal communication device,

“eligible prisoner” has the same meaning as in rule 134(2),

“healthcare professional” has the same meaning as in rule 2(1),

“home leave” has the same meaning as in rule 136,

“media representative” has the same meaning as in rule 2(1),

“personal communication device” has the same meaning as in section 41(9B) of the Prisons (Scotland) Act 1989(a),

(a) 1989 c.45; section 39 was amended by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9), section 24 and 25, schedule 5, paragraph 6(6)(b) and schedule 7, paragraph 1; by the Criminal Justice and Public Order Act 1994 (c.33), section 116(4); by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), schedule 4, paragraph 75(4)(a); and by the Crime and Disorder Act 1998 (c. 37), schedule 8, paragraph 71 and schedule 10, paragraph 1. Section 39 is to be read with the following sections of the 1989 Act: 19 (as amended by S.S.I. 2015/39, article 2(8)), 20A (which was added by the 1993 Act, section 23); 41(2B) (which was added by the 1994 Act section 153(3) and amended by the 2010 Act section 34(1)); 41B(1) (which was added by the 1994 Act, section 151(2) and amended by the 2005 Act, section 16); and 41C(1) (which was added by the Crime and Punishment (Scotland) Act 1997 (c.48), section 42). The functions of the Secretary of State, insofar as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (c.46), section 53.

(b) S.S.I. 2011/331, as amended by S.S.I. 2011/356; S.S.I. 2012/26; S.S.I. 2013/119; S.S.I. 2014/26; S.S.I. 2015/39; S.S.I. 2016/131 and 2017/393.

“placement” means a work placement, vocational training, educational class or counselling for which the prisoner has been, or wishes to be, granted temporary release,

“prison” is to be interpreted in accordance with rule 2(4),

“the Prison Rules” means the Prisons and Young Offenders Institutions (Scotland) Rules 2011,

“prisoner” is to be interpreted in accordance with rule 2(4),

“temporary release” has the same meaning as in rule 134(1),

“temporary release for work” has the same meaning as in rule 136,

“temporary release licence” means the licence issued to the prisoner in accordance with paragraph 4 of this Direction,

“unescorted day release” has the same meaning as in rule 136,

“unescorted day release for compassionate reasons” has the same meaning as in rule 136,

“unescorted release for health reasons” has the same meaning as in rule 136.

PART 2

Temporary release in general

Consideration of applications for temporary release

3.—(1) The Governor may consider both written and oral applications for temporary release but may only consider written applications for—

- (a) unescorted day release, and
- (b) unescorted day release for compassionate reasons.

(2) In considering whether or not to grant temporary release the Governor must—

- (a) check that the prisoner is an eligible prisoner,
- (b) obtain such reports on the prisoner as are necessary in order to consider whether it is appropriate to grant temporary release to the prisoner,
- (c) where the Governor considers it appropriate, obtain a report on the suitability of the premises at which the temporary release is proposed to be taken,
- (d) assess the risk that the prisoner may abscond or pose a danger, or cause harm, to the public, and
- (e) consider whether the relevant criteria applicable to the granting of temporary release are satisfied.

(3) Prior to granting any form of temporary release, the Governor must consider—

- (a) the views of any victims of that offence or offences, and
- (b) the views of persons residing in the community in which the prisoner will spend the temporary release,

where those views are made known to the Governor.

(4) The Governor must record the decision taken in relation to an application for temporary release made by a prisoner, together with the reasons for that decision, in writing.

(a) Section 41(9B) was added by the Criminal Justice and Licensing (Scotland) Act 2010, section 34.

Conditions applicable to temporary release

4.—(1) As a condition on any grant of temporary release the Governor may issue a temporary release licence to the prisoner which may specify any number of the following pieces of information—

- (a) the prisoner's personal details including the prisoner's name, prisoner number and photo,
- (b) the name and contact details of the prison where the prisoner is serving a sentence,
- (c) the nature of the temporary release granted,
- (d) the date of issue of the licence,
- (e) the date and time of expiry of the temporary release, and
- (f) the further conditions which have been imposed by the Governor in accordance with sub-paragraph (2).

(2) The conditions which the Governor may impose, under rule 135(4A)(a), on any grant of temporary release are those contained in sub-paragraph (1) and the Schedule and the Governor may impose any number of those conditions as the Governor considers appropriate.

Timing and duration of temporary release

5.—(1) The Governor must specify in the temporary release licence the duration of the temporary release having regard to the relevant maximum period specified in rule 136.

(2) The Governor may, in assessing whether it is appropriate to grant temporary release in accordance with rule 135(3), consider whether the proposed dates and times for temporary release are, in the Governor's opinion, convenient having regard to the routine of the prison.

PART 3

Home Leave

Availability of home leave

6. Home leave is available and, subject to the provisions of this Direction and of Part 15 of the Prison Rules, may be granted to eligible prisoners in—

- (a) the Independent Living Units in HMP and YOI Cornton Vale,
- (b) Aberlour, Banff and Level 3 of Cruden in HMP and YOI Grampian,
- (c) the female unit of HMP Inverness,
- (d) HMP Castle Huntly,
- (e) Level 3 East of Iona Hall in HMYOI Polmont, and
- (f) Arran House and Bute House in HMP Greenock.

Criteria applicable to home leave

7. The criteria about which the Governor must be satisfied before granting home leave are—

- (a) the reports obtained by the Governor under paragraph 3(2)(b) and (c) do not show any matter which makes it inappropriate to grant home leave; and
- (b) the prisoner's conduct in custody has been of a consistently high standard over an appropriate period.

PART 4

Unescorted day release

Availability of unescorted day release

8. Unescorted day release is available and, subject to the provisions of this Direction and of Part 15 of the Prison Rules, may be granted to eligible prisoners in all prisons.

Criteria applicable to unescorted day release

9. The criteria about which the Governor must be satisfied before granting unescorted day release are—

- (a) the reports obtained by the Governor under paragraph 3(2)(b) and (c) do not show any matter which makes it inappropriate to grant unescorted day release, and
- (b) the prisoner's conduct in custody has been of a consistently high standard over an appropriate period.

PART 5

Unescorted day release for compassionate reasons

Availability of unescorted day release for compassionate reasons

10. Unescorted day release for compassionate reasons is available and, subject to the provisions of this Direction and of Part 15 of the Prison Rules, may be granted to eligible prisoners in all prisons.

Criteria applicable to unescorted day release for compassionate reasons

11. The criteria about which the Governor must be satisfied before granting unescorted day release for compassionate reasons are—

- (a) the reports obtained by the Governor under paragraph 3(2)(b) and (c) do not show any matter which makes it inappropriate to grant unescorted day release for compassionate reasons,
- (b) the Governor is satisfied that unescorted day release for compassionate reasons is required for one of the purposes specified in rule 136, and
- (c) the prisoner's conduct in custody has been of a consistently high standard over an appropriate period.

Persons to be treated as a near relative of the prisoner

12. For the purposes of unescorted day release for compassionate reasons, the persons to be treated as a near relative of the prisoner are—

- (a) a spouse or a civil partner,
- (b) a parent,
- (c) any person who has or has had the care and custody of the prisoner,
- (d) a sibling,
- (e) a grandparent or great-grandparent,
- (f) a child, grandchild or great-grandchild,
- (g) any parent, grandparent or sibling of the prisoner's spouse or civil partner,
- (h) a stepchild or any person for whom the prisoner has, or has had, the care and custody, and

- (i) any person with whom the prisoner cohabited (whether of the same sex or not) prior to the prisoner's imprisonment.

PART 6

Temporary release for work

Availability of temporary release for work

13. Temporary release for work is available and, subject to the provisions of this Direction and of Part 15 of the Prison Rules, may be granted to eligible prisoners in all prisons.

Criteria applicable to temporary release for work

14. The criteria about which the Governor must be satisfied before granting temporary release for work are—

- (a) the reports obtained by the Governor under paragraph 3(2)(b) and (c) do not show any matter which makes it inappropriate to grant temporary release for work,
- (b) the prisoner's conduct in custody has been of a consistently high standard over an appropriate period,
- (c) the prisoner is allowed to undertake work placements in accordance with any Direction made under rule 84, and
- (d) the Governor is satisfied that the proposed placement is appropriate for the purposes of temporary release for work and is suitable to the prisoner's needs and capabilities.

PART 7

Unescorted release for health reasons

Availability of unescorted release for health reasons

15. Unescorted release for health reasons is available and, subject to the provisions of this Direction and of Part 15 of the Prison Rules, may be granted to eligible prisoners in all prisons.

Criteria applicable to unescorted release for health reasons

16. The criteria about which the Governor must be satisfied before granting unescorted release for health reasons are—

- (a) the reports obtained by the Governor under paragraph 3(2)(b) and (c) do not show any matter which makes it inappropriate to grant unescorted release for health reasons,
- (b) the prisoner's conduct in custody has been of a consistently high standard over an appropriate period,
- (c) in relation to unescorted release for health reasons which is in order to attend counselling, the Governor is satisfied that the proposed counselling is appropriate for the purposes of unescorted release for health reasons and is suitable to the prisoner's needs and capabilities, and
- (d) in relation to unescorted release for health reasons which is in order to attend for treatment at a medical facility outwith the prison—
 - (i) a healthcare professional has certified that the prisoner requires medical or surgical treatment of any description,
 - (ii) the treatment can be provided at a medical facility outside the prison, and

- (iii) the Governor is satisfied that it is appropriate for the prisoner to receive the treatment outside the prison.

PART 8

Revocation

Revocation of previous directions

17.—(1) The Scottish Prison Rules (Temporary Release) Direction (No. 4) 2019, made on 4 December 2019, is revoked but remains in force in relation to any grant of temporary release to a prisoner under Part 15 of the Prison Rules which is in effect immediately prior to the coming into force of this Direction until the period of temporary release expires or the Governor recalls the prisoner under rule 137 (whichever is the earlier).

This Direction consisting of this and the preceding five pages together with the Schedule annexed is subscribed as follows—

It is signed for and on behalf of the Scottish Prison Service, an executive agency of the Scottish Ministers, at Edinburgh on 20 May 2021 by Teresa Medhurst, Interim Chief Executive before this witness by way of video conference, Sharon Lawson, Executive Personal Assistant/Chief Executive at Edinburgh.

For the Scottish Prison Service:

A handwritten signature in black ink, appearing to read "Teresa Medhurst".A handwritten signature in black ink, appearing to read "Sharon Lawson".

Witness:

SCHEDULE 1

Temporary release conditions

The conditions which may be imposed by the Governor on any grant of temporary release are as follows:—

1. the prisoner must remain at a specified address either throughout the period of temporary release or between specified hours during the period of temporary release,
2. the prisoner must comply with any instructions given to them by a prison officer regarding the arrangements for the prisoner's temporary release or the prisoner's return to prison,
3. the prisoner must be of good behaviour throughout the period of temporary release,
4. the prisoner must not carry out any unlawful activity,
5. the prisoner must not consume any alcohol,
6. the prisoner must not take, inject or ingest any drug (other than drugs which have been prescribed for the prisoner by a healthcare professional),
7. the prisoner must return to the prison immediately upon being informed that the Governor has recalled the prisoner to prison under rule 137,
8. the prisoner must not introduce or attempt to introduce any prohibited article or unauthorised property into the prison on the prisoner's return to prison,
9. the prisoner must keep a copy of the temporary release licence (if issued) with them throughout the period of temporary release and must produce a copy of the licence if required to do so by a police constable or prison officer,
10. if the prisoner encounters any difficulties in complying with the conditions of his or her temporary release the prisoner must inform the prison immediately by telephone and may use a reverse-charge call to do so,
11. the prisoner must remain within a specified radius of a specified address either throughout the period of temporary release or between specified hours during the period of temporary release,
12. the prisoner must not travel outside Great Britain,
13. the prisoner must not visit specified addresses,
14. the prisoner must attend a work placement at a specified address at specified times,
15. the prisoner must attend any appointments arranged for the prisoner for the purposes of the prisoner's temporary release,
16. the prisoner must comply with any instructions given to them by a supervisor at any place the prisoner is required to attend for the purposes of work, training, education or counselling,
17. the prisoner must arrive at any placement on time,
18. the prisoner must not request or receive money from the provider of the prisoner's placement,
19. the prisoner must not leave the prisoner's placement without the prior approval of the Governor,
20. the prisoner must comply with all meal arrangements at the placement,
21. the prisoner must not leave the placement if it finishes early and must await transport back to the prison,
22. the prisoner must return to the prison immediately in the event of the placement finishing early,
23. the prisoner must not visit premises for which a betting premises licence under the Gambling Act 2005 is in force,
24. the prisoner must not meet with specified persons,

25. the prisoner must not use any personal communication device while on temporary release unless the prisoner has obtained the express permission of the Governor,
26. the prisoner must not make or receive any telephone calls or electronic communication without the prior authority of the Governor unless the prisoner is contacting the prison,
27. the prisoner must not send any letters or packages,
28. the prisoner must not make any contact with a victim, or the family of a victim, of an offence for which the prisoner is serving a sentence,
29. the prisoner must not make any contact with a media representative,
30. the prisoner must return to the prison on the date on which the grant of temporary release expires and by such time on that date as may be specified by the Governor,
31. in relation to unescorted day release for compassionate reasons, the prisoner may be permitted to attend any service or proceedings at a church, crematorium or cemetery which forms part of the funeral but the prisoner must not otherwise attend any family gathering in connection with the funeral.