
DIRECTIONS

Scottish Prison Rules (Communal and In-Cell Telephones) Direction 2021

Made - - - -

24 June 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 62 and 156 of the Prisons and Young Offenders Institution (Scotland) Rules 2011(b) (“the Prison Rules”) and all other powers enabling them to do so.

Citation, commencement and application

1.—(1) This Direction may be cited as the Scottish Prison Rules (Communal and In-Cell Telephones) Direction 2021 and comes into force at 0005 hours on 28 June 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) Subject to paragraph (2), words and expressions used in this Direction have the same meaning as they have in rule 2(1).

(2) In this Direction—

“court” is to be interpreted in accordance with rule 56(7),

“exempted call” means a call which is exempted from recording and monitoring, that is to say a call on a communal or in-cell telephone between a prisoner and—

- (a) a legal adviser who is included in the prisoner’s list of numbers,
- (b) a court which is included in the prisoner’s list of numbers,
- (c) the Samaritans,
- (d) the Scottish Public Services Ombudsman,
- (e) a healthcare professional for the purposes of conducting an assessment of the prisoner’s mental health or carrying out medical triage, or
- (f) such other person or body as specified by the Governor,

“incident command” means a response to an incident in the prison,

“logging” means the automatic storage of the information specified in paragraph 7(2), and

“logged” is to be read accordingly,

(a) 1989 c.45; section 39 was amended by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9), sections 24 and 25, schedule 5, paragraph 6(6)(b) and schedule 7, paragraph 1; the Criminal Justice and Public Order Act 1994 (c.33), section 116(4); the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), schedule 4, paragraph 75(4)(a); the Crime and Disorder Act 1998 (c.37), schedule 8, paragraph 71 and schedule 10, paragraph 1; and the Management of Offenders (Scotland) Act 2019 (asp 14), section 52(2). 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; 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; S.S.I. 2017/393; 2018/293; S.S.I. 2020/122; S.S.I. 2020/175; S.S.I. 2020/264 and S.S.I. 2021/80.

“medical triage” means the assignment of degrees of urgency to diseases, disorders or injuries in order to decide the order and place of treatment of patients,

“monitoring” means listening to a call made to or from a communal telephone or in-cell telephone (either when the call is made or subsequently listening to a recording of it), and “monitored” is to be read accordingly,

“officer” has the same meaning as in rule 2(1) but also includes any other person authorised by the Governor,

“permitted calling periods” means such periods during which a prisoner is permitted to use a communal telephone or in-cell telephone subject to any restrictions imposed by the Governor under rule 62(4),

“the prisoner’s approved list of numbers” means the list of the telephone numbers which a particular prisoner may call using a communal telephone or in-cell telephone, as provided for in paragraph 6,

“recording” means the recording and storage of a call made to or from a communal telephone or in-cell telephone, and “recorded” is to be read accordingly.

Prisons in which a prisoner may use an in-cell telephone

3. A prisoner may only use an in-cell telephone in HMP Kilmarnock and HMP Addiewell.

Conditions applicable to the use of a communal telephone or in-cell telephone

4.—(1) The use of a communal telephone or in-cell telephone is subject to the conditions in subparagraphs (2) to (6).

(2) A prisoner must not receive a call on a communal telephone.

(3) A prisoner may only receive a call on an in-cell telephone from—

- (a) a healthcare professional for the purposes of conducting an assessment of the prisoner’s mental health or carrying out medical triage,
- (b) a prison custody officer for the purpose of incident command.

(4) A prisoner may only make a call on a communal telephone or in-cell telephone during the permitted calling periods.

(5) A prisoner may only make a call on a communal telephone or in-cell telephone to—

- (a) a person or organisation whose number is included in the prisoner’s approved list of numbers,
- (b) the Scottish Public Services Ombudsman,
- (c) the Samaritans, or
- (d) such other person or organisation as the Governor may authorise.

(6) A prisoner is prohibited from making a call on a communal telephone or in-cell telephone—

- (a) without the prior approval of the Governor, to a telephone number beginning with “08”,
- (b) to a telephone number beginning with “1”,
- (c) to the telephone number “999”,
- (d) to any person or organisation who has requested that the prisoner be prevented from contacting them by telephone and where the Governor considers that it is appropriate to prevent such contact,
- (e) to any person or organisation to whom a prisoner is prohibited from sending any letters or packages as specified in a direction under rule 55,
- (f) which, in the opinion of the Governor, involves the use of behaviour or words which are threatening, abusive or insulting,
- (g) which the Governor has reason to believe may be in connection with a criminal activity or attempted criminal activity,

- (h) without the prior approval of the Governor, to any telephone number which is not the same telephone number as the intended call recipient (for example, a telephone number which provides a routing service to a different telephone number),
 - (i) which involves the provision of information by the prisoner to the recipient of the call which is intended (either by the prisoner or the recipient of the call) for publication or for use by radio or television and which—
 - (i) is likely to appear in a publication associated with a person, authority or organisation to whom the prisoner is prohibited from sending any letters or packages as specified in a direction under rule 55,
 - (ii) relates to the prisoner’s past offences or those of others unless that information consists of serious representations about the prisoner’s conviction or sentence or the criminal justice system in general, or
 - (iii) refers to individual officers or prisoners in such a way as might identify them.
- (7) The Governor may terminate a call where the Governor considers that—
- (a) the prisoner is breaching, or has breached, any of the conditions set out in sub-paragraphs (2) to (6), or
 - (b) it is otherwise necessary to do so to protect the interests of any party to the call or the good order of the prison.
- (8) The Governor must display beside each communal telephone a notice to prisoners in the terms set out in the Schedule to this Direction.

The restriction or removal of the entitlement to use a communal telephone or in-cell telephone

5.—(1) The Governor may restrict or remove the entitlement of a prisoner to make a call from a communal telephone or in-cell telephone where the Governor has reasonable grounds to suspect that a prisoner is breaching, or has breached—

- (a) any of the conditions specified in paragraph 4(2) to (6),
- (b) any restrictions on the use of communal telephones or in-cell telephones imposed by the Governor under rule 62(4),
- (c) the requirements in rule 62(9).

(2) The Governor may, under sub-paragraph (1), temporarily restrict or remove the entitlement of a prisoner to make a call from a communal telephone or in-cell telephone pending an investigation into the suspected breach of those conditions, restrictions or requirements.

(3) The Governor may restrict or remove the entitlement of a prisoner to make a call from a communal telephone or in-cell telephone where it is necessary in order to—

- (a) protect the security or good order of the prison,
- (b) protect the health, safety and welfare of prisoners and those working in the prison,
- (c) enable the maintenance or repair of the communal telephone, in-cell telephone or telecommunications systems within the prison.

(4) Any decision to restrict or remove a prisoner’s entitlement to make a call from a communal telephone or in-cell telephone under this paragraph—

- (a) is to have effect for an initial period of no more than one month, and
- (b) must be reviewed by the Governor at intervals of no more than one month thereafter.

A prisoner’s approved list of numbers

6.—(1) Prior to making a call from a communal telephone or in-cell telephone, a prisoner must provide the Governor with a list of no more than 20 persons or organisations whose telephone numbers the prisoner wishes to be included in the prisoner’s approved list of numbers.

(2) A prisoner may have more than 20 telephone numbers in the prisoner's approved list of numbers where the Governor considers that a greater number is justified having regard to the prisoner's circumstances.

(3) The Governor may, following a request from a prisoner, allow a change to be made to the prisoner's approved list of telephone numbers.

(4) The Governor may, where the Governor considers that it is appropriate to do so—

- (a) remove the telephone number of any person or organisation from the prisoner's approved list of telephone numbers,
- (b) require the prisoner to demonstrate that the prisoner has obtained the consent of a person or organisation for their telephone number to be included in the prisoner's list of numbers.

(5) The Governor must remove a telephone number from a prisoner's approved list of numbers where—

- (a) the Governor receives a request from an individual under rule 60 for their telephone number to be removed from the prisoner's approved list of numbers, and
- (b) the Governor considers that it is appropriate to do so.

(6) Where a prisoner is transferred to another prison, the prisoner's approved list of numbers continues to have effect in the prison to which the prisoner is transferred without prejudice to the ability of the Governor of that prison to exercise the powers under sub-paragraphs (4) and (5).

(7) A prisoner's approved list of numbers must be destroyed as soon as practicable after the prisoner is liberated.

Logging, monitoring and recording of calls made from a communal telephone or in-cell telephone

7.—(1) The Governor must make arrangements for the logging, monitoring and recording of calls to or from a communal telephone or in-cell telephone.

(2) The following information must be logged in respect of all calls made to or from a communal telephone or in-cell telephone—

- (a) the telephone numbers dialled in each period of 24 hours,
- (b) the date, time, duration and cost of each call made,
- (c) the identification number of the prisoner using the communal telephone or in-cell telephone, and
- (d) whether or not the call has been recorded.

(3) A call made to or from a communal telephone or in-cell telephone, other than an exempted call, must be recorded and may be monitored by an officer.

(4) An exempted call made from a communal telephone or in-cell telephone must be preceded by a recorded message which advises—

- (a) the recipient of the call that the call is coming from a Scottish prison, and
- (b) the parties to the call that the call will be logged but will not be recorded or monitored.

(5) A call made from a communal telephone or in-cell telephone, other than an exempted call, must be preceded by a recorded message which advises—

- (a) the recipient of the call that the call is coming from a Scottish prison, and
- (b) the parties to the call that the call will be logged and recorded and may be monitored.

(6) When a call is monitored the officer should make a record of the following information—

- (a) the communal telephone or in-cell telephone from which the call was made or received,
- (b) the time and date of the monitoring,
- (c) the prisoner number of the prisoner making or receiving the call,
- (d) details of any recording stored in accordance with sub-paragraph (7), and

(e) the reasons for the monitoring.

(7) Where a recorded call is to be stored for potential use as evidence in criminal or disciplinary proceedings, an officer must—

- (a) ensure that the recording is stored electronically on a portable storage device,
- (b) place the recording in a sealed envelope in the presence of one other officer,
- (c) sign the envelope, and arrange for the officer mentioned in (b) to sign it, and
- (d) store the envelope in a secure place.

(8) Where a recording has been stored in accordance with sub-paragraph (7), the recording may only be monitored with the authorisation of the Governor.

(9) Any information which is logged in terms of sub-paragraph (2) may only be retained for a period of 3 years from the date of logging.

(10) Subject to sub-paragraph (11), all recordings must be destroyed within 12 months of the date of the recording.

(11) The Governor may authorise recordings to be stored for a longer period than that specified in sub-paragraph (9), but must review the continued storage of a recording at least once every 6 months.

(12) If the Governor considers, from the content of a call made by a prisoner, that the prisoner may be involved in a criminal activity, the Governor must as soon as practicable—

- (a) notify a constable, and
- (b) make available to a constable a copy of any recording made of that call.

Revocation of previous directions

8. The Scottish Prison Rules (Communal and In-Cell Telephones) Direction 2020, made on 15th June 2020, is revoked.

This direction consisting of this and the preceding four pages, and 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 at 0930 hours on 24 June 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:



Witness:



SCHEDULE

Form of notice to be displayed beside communal telephones

Conditions of use of communal telephones

1. The use of communal telephones in this prison is subject to the conditions specified in the Direction made by the Scottish Ministers under rule 62 of the Prisons and Young Offenders Institutions (Scotland) Rules 2011.
2. All telephone calls from this communal telephone, other than exempted calls, will be preceded by a recorded message which—
 - (a) advises the recipient of the call that it is coming from a Scottish prison and that the recipient should stay on the line to accept the call or hang up to reject the call; and
 - (b) advises the parties to the call that it will be logged and recorded and may be monitored.
3. Telephone calls made from communal telephones will be logged automatically (i.e. details of the telephone number dialled, the date, time and duration of the call, the total cost of the call, the prisoner number of the prisoner making the call and whether or not the call has been recorded).
4. With the exception of exempted calls, calls from a communal telephone will also be recorded and may be monitored (i.e. listened to whilst they are being made or via the recording afterwards). You should not therefore use the communal telephone to discuss matters which you would wish to remain confidential unless the call is an exempted call.

Exempted calls

5. You should advise which telephone number(s) on your list of approved numbers is/are that of your legal adviser(s), giving details of the adviser(s) including name, firm and location. You should also advise if any number is that of a court.
6. All exempted calls will be preceded by a message which advises the recipient—
 - (a) that the call is coming from a Scottish prison; and
 - (b) that the call will be logged but will not be recorded or monitored.

Breach of discipline

7. Failure to comply with this Direction may result in any of the following—
 - (a) termination of the call;
 - (b) withdrawal of access to the communal telephone;
 - (c) disciplinary action under Part 11 of the Rules.
 8. It is a breach of discipline to remove this notice or damage it in any way.
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