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## DIRECTIONS

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# Scottish Prison Rules (Authorised Personal Communication Devices) Direction 2020

Made - - - -

15th June 2020

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 62A 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 (Authorised Personal Communication Devices) Direction 2020 and comes into force at 15:30 hours on 15th June 2020.

(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 sub-paragraphs (2) and (3), words and expressions used in this Direction have the same meaning as they have in rule 2(1).

(2) In this Direction—

“authorised device” means an authorised personal communication device as defined in rule 2(1).

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

“logging” means the automatic storage of the information specified in paragraph 6(2), and “logged” is to be read accordingly;

“monitoring” means listening to a call made from an authorised device (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 an authorised device subject to any restrictions imposed by the Governor under rule 62A(3)(b);

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(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 and S.S.I. 2020/175.

“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 the Scottish Prison Rules (Communal and In-Cell Telephones) Direction 2020;

“recording” means the recording and storage of a call made from an authorised device, and “recorded” is to be read accordingly.

### **Conditions applicable to the use of an authorised device by a prisoner**

3.—(1) The use of an authorised device is subject to the conditions in sub-paragraphs (2) to (6).

(2) A prisoner must not receive a call on an authorised device.

(3) A prisoner must not use an authorised device for a purpose other than—

- (a) making calls; and
- (b) charging the device.

(4) A prisoner may only make a call on an authorised device during the permitted calling periods.

(5) A prisoner may only make a call to—

- (a) a relative or friend of the prisoner whose number is included in the prisoner’s approved list of numbers;
- (b) the Samaritans; or
- (c) such other person as the Governor may authorise.

(6) A prisoner is prohibited from using an authorised device to make a call—

- (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 a court or a legal adviser who is representing the prisoner;
- (e) to any person 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;
- (f) to any person to whom a prisoner is prohibited from sending any letters or packages as specified in a direction under rule 55;
- (g) which, in the opinion of the Governor, involves the use of behaviour or words which are threatening, abusive or insulting;
- (h) which the Governor has reason to believe may be in connection with a criminal activity or attempted criminal activity;
- (i) 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);
- (j) 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 prison 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.

#### **The restriction or removal of the entitlement to use an authorised device**

4.—(1) The Governor may restrict or remove the entitlement of a prisoner to use an authorised device where the Governor has reasonable grounds to suspect that a prisoner is breaching, or has breached—

- (a) any of the conditions specified in paragraph 3(2) to (6);
- (b) any restrictions on the possession or use of authorised devices imposed by the Governor under rule 62A(3);
- (c) the requirements in rule 62A(8), (9) or (10).

(2) The Governor may, under sub-paragraph (1), temporarily restrict or remove the entitlement of a prisoner to use an authorised device 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 use an authorised device 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 authorised device or the telecommunications systems within the prison.

(4) Where the Governor removes a prisoner's entitlement to use an authorised device, the Governor must order the prisoner to return the authorised device to the Governor.

(5) Any decision to restrict or remove a prisoner's entitlement to use an authorised device under sub-paragraph (1), (2) or (3)—

- (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.

#### **Logging, monitoring and recording of calls made from an authorised device**

5.—(1) The Governor must make arrangements for the logging, monitoring and recording of calls from an authorised device.

(2) The following information must be logged in respect of all calls made from an authorised device—

- (a) the telephone numbers dialled in each period of 24 hours;
- (b) the date, time, duration and cost of each call made; and
- (c) the identification number of the prisoner using the authorised device.

(3) Subject to sub-paragraph (4), a call made from an authorised device must be recorded and may be monitored by an officer.

(4) A call made from an authorised device to the Samaritans must not be recorded or monitored.

(5) A call made from an authorised device, other than a call to the Samaritans, 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 authorised device from which the call was made;

- (b) the time and date of the monitoring;
- (c) the prisoner number of the prisoner making 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 (10), 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.

This direction consisting of this and the preceding four pages 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 15:30 hours on 15th June 2020 by Teresa Medhurst, Chief Executive, before this witness, Pauline Oliver

For the Scottish Prison Service: 

Witness: 