



**Consultation Co-ordinator
Prison Law & Policy Branch
Northern Ireland Prison Service
Rm 308 Dundonald House
Upper Newtownards Road
Belfast
BT4 3SU**

6 November 2009

Dear Mr Moore,

Re Proposed Amendments to Prison Rules

Thank you for permitting the Committee on the Administration of Justice (CAJ) to partake in the consultation on the *Proposed Amendments to Prison Rules*.

As you will know, CAJ is an independent non-governmental human rights organisation that was established in 1981. The activities of CAJ include publishing reports, conducting research, holding conferences, monitoring, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws, criminal justice, equality and the protection of rights. The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

Whilst we commend the Prison Service for recently announcing a number of public consultations, it may be worth considering stepping back a little and scrutinising the prison system as a whole and making changes in a holistic rather than piecemeal fashion. Having said that, we will of course make comment on the consultation documents issued by the Prison Service.

As regards to the prison rules, we would have both general and specific concerns relating to the amendments that are proposed and that are not proposed. Due

consideration should be given to the *Standard Minimum Rules for the Treatment of Prisoners* and the *UN Basic Principles for the Treatment of Prisoners*.

General Concerns

A significant concern which cross-cuts various aspects of the Prison Rules but is neglected, is the specific requirements of prisoners with speech, language and communication needs (SLCN). A conference in Belfast during the summer of 2009, held by the Royal College of Speech and Language Therapists and the Youth Justice Agency, highlighted the gaps in the current provisions for offenders who have speech, language and communication needs (SLCN). It was noted several times that approximately 60% of offenders have significant communication disabilities or SLCN.¹ Similarly, the UK Parliamentary Joint Committee on Human Rights (JCHR) recently reported on the implications that having a learning disability has on a prisoner and observed that one serious consequence is not having equal access to parole. As noted by the JCHR, this falls foul of the *European Convention for Human Rights* (ECHR) guarantee to the right to liberty (article 5) and to the security that the rights and freedoms offered by the ECHR are applicable to all without discrimination (article 14). The JCHR further notes that ‘it is also an area that falls within the Prison Service’s responsibilities under the Disability Equality Duty.’²

As a minimum, this suggests that prisoners with SCLN should have access to appropriate and accessible documents such as easy-read versions of rules and complaints procedures and that this should be clearly stated in the Prison Rules. The particular needs of prisoners with SCLN require greater consideration by the Prison Service, both in relation to policy (including Prison Rules) and practice.

It is also of grave concern that the **mental health of prisoners, including those with a personality disorder, is not sufficiently addressed in the Prison Rules** (or applicable legislation, for that matter).

Part X – Women Prisoners

Although we recognise that the NIO and NIPS have recently held consultations in relation to women prisoners (*Strategy for the Management of Women Offenders* and *Gender Specific Standards for Working with Women Prisoners*, as well as the *Draft Family Strategy*), it seems that the actual Prison Rules are far too sparse in this area. Again, we are pleased with the efforts of the Northern Ireland Prison Service to engage with the wider community through public consultations on these issues. CAJ holds the view however, that the issue of women prisoners is clearly a matter where a holistic and linked-up approach is needed. The outcome of the above-mentioned consultations would surely recognise that there are specific needs of women prisoners and should result in significant changes to the Prison Rules, although none are proposed (apart from one small one).

¹ Presentations by Jane Mackenzie, Policy Officer, Royal College of Speech and Language Therapists and Professor Karen Bryan, University of Surrey at *Locked Up and Locked Out Communication is the key conference*. University of Ulster, Jordanstown. 23 June 2009.

² Joint Committee on Human Rights. *Seventh Report: A Life Like Any Other? Human Rights of Adults with Learning Disabilities*. 6 March 2008.

Part XI – Persons Ordered to be Detained in a Young Offenders Centre

Young people should be imprisoned only as a last resort. Given their particular vulnerability, they require appropriate treatment, protection and care. The specific needs and rights of young people are recognised by various international standards, including the *UN Convention on the Rights of the Child* and the *UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)*.

Although the Prison Rules relate to both prisons and the young offenders centre, there is very little indeed in relation to the applicable international standards for youths. This is significant considering that Hydebank Wood houses offenders as young as 15. As is the case with women prisoners, specific and holistic policy, procedure and rules relating to minors should be devised, bearing in mind the *UN Convention on the Rights of the Child* and the *UN Rules for the Protection of Juveniles Deprived of their Liberty*, both of which are applicable to every child under the age of 18. For example, further thought must be given to the proposed amendments to Rule 32 (Restriction of Association) and Rule 47 (Temporary Confinement). Similarly, no amendment is proposed for Rule 96(1), but should be considered. Rule 96(1) states that Rule 55 (which provides every prisoner with the right to at least one hour of association and exercise) does not apply to inmates of a young offenders centre, yet the minimum daily time for association and exercise for these prisoners is not specified.

Part XII – Untried Prisoners

CAJ is concerned that asylum seekers and immigration detainees may be detained within the prison estate yet specific and distinct rules and procedures are not given, even though such individuals should not be treated as convicted individuals.

Specific Concerns

Rule 32 (Restriction of association)

CAJ is wary about the proposal to extend the period of confinement to 72 hours (regardless of the fact that this is permitted in England and Wales). We note that the explanation given in the ‘Overview of Provisions’ is different than the wording of the actually proposed amendment. The ‘Overview of Provision’ states: ‘We propose to allow for the confinement a prisoner who is suspected of having any unauthorised or prohibited article secreted *within* his body’ which means that up to three days may be needed to retrieve something which the prisoner has swallowed. The ‘Overview of Provisions’ then explains that the increase to 72 hours is needed in order to facilitate ‘operation flexibility’. However, the actual wording of the amendment (paragraph 1A) is: ‘Where a prisoner’s association is restricted to ensure the safety of officers, prisoners or any other person, the prisoner may be accommodated in a cell equipped to aid the retrieval of any unauthorised or prohibited article which he may have in his possession’. This inconsistency raises questions about why this time extension is wanted by the Prison Service.

Moreover, although it is proposed (paragraph 4) that ‘the governor shall fully consider’ any recommendation by a registered GP, nurse or health care officer that the prisoner should resume full or increased association on health and well-being grounds, it is not explicit that the governor will confer with a medical professional in

relation to extended periods of confinement for any prisoner and this should be clearly stated. This is important given that the *Standard Minimum Rules for the Treatment of Prisoners* (Rule 32) states that any punishment which may be harmful to the physical or mental health of a prisoner must be approved by a medical officer. Whilst this rule refers specifically to punishment, it would hold that a medical officer should be made aware of and approve any *treatment* of a prisoner which may be detrimental to the prisoner's physical or mental health.

It is also worth noting that the UN *Basic Principles for the Treatment of Prisoners* (Principle 7) states that efforts should be made to restrict, if not abolish, the use of solitary confinement as a form of punishment. Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged

Rule 47 (Temporary confinement)

We welcome the move to distinguish, both in practice and policy, between prisoners who are confined as a mechanism of care and 'refractory or violent prisoners' who are confined 'for the purpose of preventing disturbance, damage or injury'. We note, however, that the 'Overview of Provisions' states that the amendment to Rule 47 in conjunction with the new Rule 88A 'will differentiate between confinement for (i) disciplinary; and (ii) care reasons'; a statement which seems to actually be at odds with Prison Rule 47 which explicitly states that 'a prisoner shall not be confined in a cell as punishment or after he has ceased to be refractory or violent.' There is clearly a difference between isolating prisoners as a measure of control and good order and as a means of punishment or discipline. The language of the 'Overview of Provisions' suggests, however, that this ethos (and international best practice and human rights standard) may not be adequately understood by all prison staff including the Prison Law and Policy Branch.

It is important that 'temporary confinement' (which is not specifically defined in the Prison Rules) is not perceived by prisoners to be form of punishment. As noted above, the UN *Basic Principles for the Treatment of Prisoners* (Principle 7) advocates that solitary confinement should not be used as a form of punishment.

CAJ also believes that 'violent and refractory prisoners' may be in need of support and that this should be acknowledged in the Prison Rules; set procedures should be in place for an appropriate person to assess such prisoners and subsequently implement care packages.

Rule 68A (Interception of communications)

It is understandable why on occasion it may be necessary for prison officers, as arranged by the governor, to intercept communications to or from a prisoner based on the grounds listed in paragraph 4 of Rule 68A. However, it is unclear why anyone other than a prison officer would need to hold this power; it would be helpful if the 'Overview of Provisions' explained this given that maintaining communication with family and friends is of great importance as imprisonment may fragment family relationships. Freedom from arbitrary interference with correspondence is noted in the *Universal Declaration for Human Rights* (article 12) as well as the *International Covenant on Civil and Political Rights* (article 17). More specifically, the *Body of Principles for the Protection of All Persons under Any Form of Detention or*

Imprisonment (principle 19) and the *Standard Minimum Rules for the Treatment of Prisoners* (rule 37) also provide prisoners with the right to communication with family members. That more people have the power to interfere with private correspondence leaves room for breach of prisoners' rights including the *European Convention on Human Rights* (article 8), particularly given that it appears that prisoners do not have the guarantee of being informed when interception has occurred, except in the circumstances outlined by Rule 68C(b).

Rule 69 (Police interviews)

Neither the rule as it is presently formulated nor the proposed amendment explicitly state that legal representation will be offered or permitted during such interviews. This is of concern given that it is not specified that the prisoner will be informed of the nature of the interview (i.e. the incident for which the person is convicted or something else). There is the risk of a breach of article 6 of the *European Convention on Human Rights* if the prisoner is not promptly informed of any charge against her/him

Moreover, prisoners should have the same rights as those who are not convicted in relation to having the right to not self-incriminate as the ECHR (article 6) has been interpreted as providing.

It is also of concern that the power to interview any 'willing' prisoner is further extended to SOCA, MI5 and HMRC officers particularly that, again, there is no guarantee that legal representation will be offered.

Rule 73 (Control of visitors to prisoners)

Given that there is now a procedure which allows visitors to make complaints, we see no problem with granting the governor (in place of the Secretary of State) with the authority to prohibit a visitor on the grounds specified in Rule 68A(4). However, the language used in the 'Overview of Provisions' is confusing. In addition to having the power to ban visitors, it says that the governor (in place of the Secretary of State) will be authorised to 'impose a closed visit on a prisoner or a visitor who is suspected of using or carrying drugs.' The term 'closed visit' is not in the original or the proposed Rule 73 and its meaning is not clear.

It is important that the implications of banning visitors be considered and that this power is used only when absolutely necessary and that the grounds for banning a visitor are explicitly stated. The UN *Standard Minimum Rules for the Treatment of Prisoners* (Rule 79) states that 'special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his family as are desirable in the best interests of both.' Maintaining contact with family and friends is vital for positive re-integration of prisoners into society.

Rule 75 (Complaints by prisoners: subject matter of complaints)

Given that the Prison Rules outline the procedure for complaining to the Prisoner Ombudsman which is an external and independent institution, it holds that more should be said about complaints dealing with health.

Although complaints about healthcare are now to be taken up directly with the South Eastern Health and Social Care Trust, it seems inadequate to modify the Prison Rules and simply omit 'health' from the applicable subject matter of complaints without explicitly directing (in the Overview of Provisions) readers to the new healthcare complaints process which would need to be reviewed and consulted on in parallel. This is of significant concern given that it is not explicitly stated whether complaints about self-harm and suicide attempts are considered 'health' concerns, which would also impact on whether such complaints would be considered an applicable complaint for the Prisoner Ombudsman (re Rule 79J (Complaints to the Ombudsman: subject matter of complaint)). This needs to be clarified in the Prison Rules.

Further guidelines for dealing with complaints which may appear at first instance to be about health (and are subsequently referred to the Health and Social Care Trust), but in fact relate to incidents about administration, for example, are needed.

It is worth re-iterating that the overall wellbeing of prisoners remains the duty of the Northern Ireland Prison Service.

Rule 76 (Complaints by prisoners: first stage)

CAJ commends NIPS for making the prisoners' complaints procedure more effective. However, there seems to be no stated provision for those prisoners who are illiterate and therefore cannot complete the required complaint form.

The same concern can be made in relation to those prisoners who do not have an adequate command of the English language, as there is an implied right to have access to the complaints mechanism which is provided for in the *Standard Minimum Rules for the Treatment of Prisoners*.

There also seems to be no explicit procedure for dealing with complaints about a prisoner's residential officer, given that the prisoner may not feel confident in submitting the complaint form to this same residential officer. It appears that the prisoner can go directly to the residential manager only if the residential officer has failed to deal adequately with the complaint, but not before.

Rule 79HA (Complaints by Visitors: subject matter of complaints)

CAJ is concerned about limiting aspects of this rule. A visitor should be able to complain about any treatment (including omission) s/he *witnesses* and not merely her/his treatment.

Moreover, 'visitor' means a person who is visiting or has visited a prisoner or former prisoner but excludes many individuals including academics, researchers, contracted personnel and staff. **Transparency and accountability are vital for ensuring public confidence in all aspects of government as such the definition needs to be extended.**

Rule 79I-79N (Complaints to the Ombudsman)

Given the importance of the duties of the Prisoner Ombudsman as outlined in the Prison Rules, the need for the power of the Ombudsman to be placed on statutory footing is apparent.

Rule 82 (Food)

We can see no reason why paragraph 5 (the medical officer shall satisfy himself that the nature, quality and quantity is appropriate to prisoners' health) is to be omitted, given that the *Standard Minimum Rules for the Treatment of Prisoners* (Rule 26(1)) requires that a 'medical officer shall regularly inspect and advise the director upon: (a) The quantity, quality, preparation and service of food.'

Rule 85 & 86 (Medical officer & Duties of a medical officer)

As with Rule 75, it is wholly inadequate that the Prison Rules relating to the medical officer and his/her duties is entirely deleted without the South Eastern Health and Social Care Trust having replacement rules in place (and publicly accessible). The

'Policy and Guidelines' page of the website of the South Eastern Health and Social Care Trust states that 'as the South Eastern Health & Social Care Trust has only been established from 1st April 2007, new policies have not yet been created under the new organisation name. This section of the site is currently being updated.'

Whilst CAJ supports the shift of responsibility of prisoner health to the South Eastern Health and Social Care Trust, we find it worrying that the necessary relevant policies and procedures have not been made accessible to the public for review.

We look forward to reading your analysis and response to the submissions to the consultation.

Your sincerely,

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Criminal Justice Programme Officer