



Jersey

## PRISON (AMENDMENT) (JERSEY) RULES 2008

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*Coming into force* 29th October 2008

**THE MINISTER FOR HOME AFFAIRS**, in pursuance of Article 29 of the Prison (Jersey) Law 1957<sup>1</sup>, has made the following Rules –

### 1 Interpretation

In these Rules, “principal Rules” means the Prison (Jersey) Rules 2007<sup>2</sup>.

### 2 Rule 1 amended

In Rule 1(1) of the principal Rules –

- (a) before the definition “cell” there shall be inserted the following definition –

“ ‘authorized employee’ means an employee authorized by the Governor for the purposes of Article 13C(1) and (2) of the Law;”;

- (b) for the definition “employee” there shall be substituted the following definition –

“ ‘employee’ means a person, other than a prison officer, who is employed within the prison, under the Employment of States of Jersey Employees (Jersey) Law 2005<sup>3</sup>;”.

### 3 Rule 7 substituted

For Rule 7 of the principal Rules there shall be substituted the following Rules –

#### “7 Record of prisoner

- (1) The Governor shall ensure that, as soon as is practicable after a prisoner is received into the prison, a record (the ‘prisoner’s record’) shall be made of so many of the following particulars as

the Governor considers to be relevant to the identification and management of the prisoner –

- (a) the prisoner's full name and date of birth;
  - (b) the prisoner's religious denomination, if any;
  - (c) the prisoner's occupation and profession, if any;
  - (d) any distinctive marks on the prisoner's body or other identifying characteristics of the prisoner;
  - (e) the prisoner's physical measurements; and
  - (f) any other personal particulars.
- (2) The Governor shall ensure that a prisoner's record is maintained and updated as necessary whilst the prisoner is detained in the prison.
  - (3) The Governor may, at any time whilst a prisoner is detained in the prison, cause the prisoner to be photographed and his or her fingerprints taken.
  - (4) A photograph and its negative (if any) or an imprint of the prisoner's fingerprints shall be kept with the prisoner's record.

#### **7A Keeping and destruction of prisoners' records**

- (1) Except as required under or by Rule 7B, Governor shall ensure that a prisoner's record and any matter kept with it –
  - (a) are used only for the purposes of identification and management of the prisoner whilst in custody; and
  - (b) are kept confidential.
- (2) The Governor shall cause a record for an untried prisoner to be destroyed, without delay, following –
  - (a) in the case of a person remanded in custody in the prison pending or in the course of the hearing of a charge for an offence, the person's release from custody in the prison upon the withdrawal of all charges in respect of which the prisoner was remanded in custody, the withdrawal or dismissal of proceedings for all such charges or the prisoner's acquittal of all such charges;
  - (b) in the case of a person detained under the Immigration Act 1971 of the United Kingdom as extended to Jersey by the Immigration (Jersey) Order 1993<sup>4</sup>, the person's release from custody in the prison upon the prisoner's successful defence of proceedings brought under that Act;
  - (c) in the case of a person detained pending his or her removal from Jersey for the purposes of the investigation of or proceedings in respect of a suspected service disciplinary offence, the person's release from custody in the prison upon the conclusion, without charge, of any investigation of all suspected service disciplinary offences in respect of which the prisoner was detained in the prison, the withdrawal or

dismissal of proceedings for all such offences or the prisoner's acquittal of all such offences.

- (3) The Governor shall cause a record for a civil prisoner to be destroyed, without delay, following the prisoner's release from custody in the prison.
- (4) Where a photograph or an imprint of the fingerprints of a prisoner kept with the prisoner's record is stored in any electronic form, the Governor shall cause the image to be deleted or otherwise made inaccessible at the same time as the photograph or imprint is destroyed, or as soon as is practicable after that.

#### **7B Attorney General's powers in relation to records**

- (1) The Attorney General may require the Governor to release any information in or matter kept with a prisoner's record for the purposes of a criminal investigation or criminal proceedings.
- (2) The Governor shall not destroy a prisoner's record or any matter kept with it if the Attorney General requests its retention in connection with any other criminal investigation or criminal proceedings."

#### **4 Rule 46 amended**

In Rule 46 of the principal Rules –

- (a) for paragraph (1) there shall be substituted the following paragraph –
  - "(1) A civil prisoner or an untried prisoner shall be entitled to receive, in every week, one visit of 30 minutes' duration on each of 3 days, other than on Sunday, Christmas Day, New Year's Day or Good Friday.";
- (b) in paragraph (2), after the words "Christmas Day" there shall be inserted the words ", New Year's Day";
- (c) in paragraph (4), for the words "the visit" there shall be substituted the words "a visit".

#### **5 Rule 73 amended**

In Rule 73 of the principal Rules –

- (a) after paragraph (1) there shall be inserted the following paragraph –
  - "(1A) A request under this Rule may be made by an officer or by an employee authorized by the Governor for the purposes of this Rule.";
- (b) in paragraph (2), for the words "An officer may ask a person seeking to enter the prison as a visitor" there shall be substituted the words "A person seeking to enter the prison as a visitor may be requested";

- (c) in paragraph (3) for the words “An officer may ask a visitor” there shall be substituted the words “A visitor may be requested”;
- (d) in paragraph (6) after the words “an officer” there shall be inserted the words “, or an employee authorized by the Governor for the purposes of this Rule,”;
- (e) in paragraph (7)(a), after the words “female officer” there shall be added the words “or female employee authorized by the Governor for the purposes of this Rule”;
- (f) in paragraph (7)(b) after the word “officer” there shall be inserted the words “, or an employee authorized by the Governor for the purposes of this Rule,”;
- (g) in paragraph (11) after the words “An officer” there shall be inserted the words “or employee authorized by the Governor for the purposes of this Rule”.

## **6 Rule 75 amended**

In Rule 75 of the principal Rules –

- (a) in paragraph (3), after the words “any officer” there shall be inserted the words “or employee”;
- (b) in paragraph (4), after the words “An officer” there shall be inserted the words “or employee”;
- (c) in paragraph (5)(a) for the words “2 officers” there shall be substituted the words “2 persons who are officers or employees”.

## **7 Rule 77 amended**

In Rule 77 of the principal Rules –

- (a) after paragraph (1) there shall be inserted the following paragraph –
  - “(1A) Every prisoner may be searched by an authorized employee, in accordance with this Rule, for the purpose of ascertaining whether the prisoner has any unauthorized property on his or her person.”;
- (b) for paragraph (2) there shall be substituted the following paragraphs –
  - “(2) A search of a prisoner by an officer or authorized employee may take the form of –
    - (a) the examination of the prisoner’s person and clothing, but without the removal of the clothing;
    - (b) the removal and examination of the prisoner’s outer coat, jacket, headgear, gloves and footwear and the visual examination of the external parts of the prisoner’s body following the removal of those items;
    - (c) the visual examination of the prisoner’s open mouth, without the use of force or any instrument.
  - (2A) A search of a prisoner by an officer may further take the form of the removal and examination of the prisoner’s clothing and the

- visual examination of the external parts of the prisoner's body following removal of the prisoner's clothing.”;
- (c) in paragraph (5) after the word “officer” there shall be inserted the words “or authorized employee”;
  - (d) for paragraph (6) there shall be substituted the following paragraph –  
“(6) Any other search described in paragraph (2) or (2A) shall be carried out, as the case requires, by an officer or authorized employee of the same sex as the prisoner, except that a female officer or female authorized employee may, unless the prisoner objects, carry out a search of a male prisoner.”.
  - (e) in paragraph (8) for the words “paragraph (2)(d)” there shall be substituted the words “paragraph (2)(c)”.

## 8 Rules 78A to 78C inserted

After Rule 78 of the principal Rules there shall be inserted the following Rules –

### “78A Compulsory testing for controlled drugs

- (1) The Governor may, for the purpose of ascertaining whether the prisoner has any controlled drug in his or her body, authorize officers to require any prisoner at the prison to provide –
  - (a) a sample of urine;
  - (b) subject to paragraph (2), any other description of sample specified in the authorization.
- (2) The Governor may not, under this Rule, authorize the taking of an intimate sample, within the meaning of the Police Procedures and Criminal Evidence (Jersey) Law 2003<sup>5</sup>.
- (3) Where an authorization is in force, an officer may require a prisoner to provide a sample of urine and any other description of sample specified in the authorization.
- (4) When requiring a prisoner to provide a sample an officer shall, so far as is reasonably practicable, inform the prisoner –
  - (a) that the prisoner is being required to provide a sample in accordance with an authorization under this Rule; and
  - (b) that a refusal to provide a sample may lead to disciplinary proceedings being brought against the prisoner.
- (5) An officer shall require a prisoner to provide a fresh sample, free from any adulteration.
- (6) An officer requiring a prisoner to provide a sample shall make such arrangements and give the prisoner such instructions for its provision as may be reasonably necessary in order to prevent or detect its adulteration or falsification.

- (7) A prisoner who is required to provide a sample may be kept apart from other prisoners for a period not exceeding one hour to enable arrangements to be made for the provision of the sample.
- (8) A prisoner who is unable to provide a sample of urine when required to do so may be kept apart from other prisoners until the prisoner has provided the required sample.
- (9) A prisoner shall not, in any event, be kept apart under paragraph (8) for more than 5 hours.
- (10) A prisoner required to provide a sample of urine –
  - (a) shall not be required to do so in the sight of a person of the opposite sex; and
  - (b) shall otherwise be afforded such degree of privacy for the purposes of providing the sample as may be compatible with the need to prevent or detect any adulteration or falsification of the sample.

#### **78B Compulsory testing for alcoholic liquor**

- (1) The Governor may, for the purpose of ascertaining whether the prisoner has any alcohol in his or her body, authorize officers to require any prisoner at the prison to provide –
  - (a) a sample of breath;
  - (b) subject to paragraph (2), any other description of sample specified in the authorization.
- (2) The Governor may not, under this Rule, authorize the taking of an intimate sample within the meaning of the Police Procedures and Criminal Evidence (Jersey) Law 2003.
- (3) Where an authorization is in force, an officer may require a prisoner to provide a sample of breath and any other description of sample specified in the authorization.
- (4) Paragraphs (4) to (7) of Rule 78A shall apply for the purposes of this Rule with the necessary modifications.
- (5) Where an authorization under this Rule empowers an officer to require a prisoner to provide a sample of urine, paragraphs (8) to (10) of Rule 78A shall also apply for the purposes of this Rule.

#### **78C Use and destruction of samples**

- (1) A sample taken under Rule 78A or 78B shall be used only for purposes related to the prevention, detection or investigation of a breach of discipline or the conduct of a disciplinary charge.
- (2) A sample taken under Rule 78A or 78B shall be destroyed as soon as it has fulfilled the purposes for which it may be used.
- (3) Information derived from a sample taken from a prisoner under Rule 78A or 78B –



- (a) may be retained in the medical record kept for the prisoner under Rule 22, for the purpose of the better medical treatment of the prisoner whilst in custody in the prison; and
- (b) shall be retained with the prisoner's record maintained under Rule 7, but shall not be liable to release or retention under Rule 7B."

#### 9 Rule 88 amended

After paragraph (2) of Rule 88 of the principal Rules there shall be inserted the following paragraph –

“(2A) In an inquiry into a charge for a breach of discipline under paragraph (25) of Part 1 of the Schedule, the person inquiring into the charge may take into account the written evidence of a person who is not an officer or employee regarding an analysis of a sample obtained in accordance with these Rules and carried out by that person, without requiring the attendance of that person if, despite an objection from the prisoner –

- (a) the person inquiring into the charge has given the prisoner the opportunity to make representations about why the person giving evidence should be present; and
- (b) having heard the prisoner, the person inquiring into the charge is satisfied that there is not sufficient reason for the evidence to be given orally and that it is appropriate to admit the evidence in writing.”.

#### 10 Rule 89 amended

At the end of the heading to Rule 89 of the principal Rules there shall be added the words “: **controlled drugs**”.

#### 11 Rule 89A inserted

After Rule 89 of the principal Rules there shall be inserted the following Rule –

##### **“89A Defence to a charge under paragraph (25) of Part 1 of the Schedule: alcohol**

- (1) It shall be a defence for a prisoner charged with a breach of discipline under paragraph (25) of Part 1 of the Schedule in respect of any alcoholic liquor to show that –
  - (a) the alcoholic liquor was consumed by the prisoner in circumstances in which the prisoner did not know and had no reason to suspect that he or she was consuming alcoholic liquor; or

- (b) the alcoholic liquor was consumed by the prisoner without his or her consent in circumstances where it was not reasonable for the prisoner to have resisted.
- (2) Where, for the purposes of paragraph (1), a prisoner adduces evidence which is sufficient to raise an issue with respect to either of the matters in sub-paragraph (a) or (b) of that paragraph, the person inquiring into the charge shall assume that the defence is satisfied unless the person presenting the charge proves beyond reasonable doubt that it is not.”.

## **12 Rule 94 amended**

In Rule 94(6)(a) of the principal Rules, for the words “to be represented by” there shall be substituted the words “to arrange for his or her representation, and be represented, by”.

## **13 Citation and commencement**

These Rules may be cited as the Prison (Amendment) (Jersey) Rules 2008 and shall come into force on the same day as the Prison (Amendment No. 6) (Jersey) Law 2007.

**DEPUTY A.D. LEWIS OF ST. JOHN**

*Minister for Home Affairs*

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- <sup>1</sup> *chapter 23.775*
  - <sup>2</sup> *chapter 23.775.30*
  - <sup>3</sup> *chapter 16.325*
  - <sup>4</sup> *chapter 21.700*
  - <sup>5</sup> *chapter 23.750*