

**CONSULTATION ON DRAFT PRISONS AND YOUNG OFFENDERS INSTITUTIONS
(SCOTLAND) RULES 2011**

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately.

1. Organisation/Name

Organisation Name

The Scottish Public Services Ombudsman

Title Mr *Please tick as appropriate*

Surname

McFadden

Forename

Paul

Title

Complaints Standards Authority Manager

2. Postal Address

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Email: PMcFadden@spsso.org.uk

Permissions - I am responding as...

Individual / Group/Organisation

Please tick as

(a) Do you agree to your response being made available to the public (the Scottish Prison Service website)?

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

OR

Yes, make my response available, but not my name and address

OR

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (the Scottish Prison Service web site).

Are you content for your **response** to be made available?

Please tick as appropriate

Yes No

(d) We will share your response internally with other Scottish Prison Service policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Prison Service to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No

CONSULTATION QUESTIONS

Do the Rules cover all necessary topics?

Yes

Does the sequencing of Sections flow logically?

Yes

Are there any unforeseen risks to the proposed changes?

No

Will prisoners find the Rules accessible and understandable?

Our experience suggests that prisoners do have ready access to the Prison Rules, and generally prisoners understand the contents. Perhaps the best target group to direct this question to would be the prisoner community.

Comments on the Consultation

1. We welcome the opportunity to provide comments on the Scottish Prison Service's (the SPS) Consultation on the Draft Prison Rules 2011. We recognise the wide range of stakeholders who will have varied and different interests in the Prison Rules. For our part our interest is derived primarily from the way in which the SPS handles complaints from prisoners. Given our experience in handling complaints across the public sector in Scotland and specifically from prisoners, we believe that we are also well placed to provide comment in a wider sense, specifically being mindful of circumstances where there is the potential for complaints to arise, and we have sought to do so in our response.

Prisons complaints and the SPSO

2. It may be helpful to first of all document the background to the SPSO's responsibility for considering complaints from prisoners. As part of the significant reforms made to public services in 2010, The Scottish Parliamentary Commissions and Commissioners etc Act 2010 led to the abolition of the Scottish Prisons Complaints Commission (SPCC) and transferred responsibility for complaints about Scottish prisons to the SPSO from 1 October 2010. We are, therefore, now the body with responsibility for reviewing prisons complaints, once they have completed the internal SPS complaints process. In the eight-month period from 1 October 2010 to 31 May 2011 we have considered in excess of 350 complaints from prisoners (compared to an annual average of c.400 under the SPCC). The most common types of complaint we have considered relate to issues such as Orderly Room (Disciplinary) decisions, prisoners' property, visits, access to work or education programmes, location, Home Detention Curfew and downgrading.
3. All prisoners can complain to the SPSO. We also accept complaints from prisoners' family or friends, either to complain on the prisoner's behalf (under certain circumstances) or to complain about the prison in their own right. If they want to complain on their own behalf, they must firstly write to the Governor in Charge of the prison, and their complaint will be dealt with in line with the SPS complaints procedures.

Streamlining complaints handling

4. The Public Services Reform (Scotland) Act 2010 provided the SPSO with a new role in ensuring that all public service providers, including the SPS, have appropriate complaints handling procedures in place following on from the recommendations in the Crerar and Sinclair reports. The SPSO's Complaints Standards Authority is working to develop streamlined, standardised model complaints handling procedures (model CHPs) across the public sector. The Ombudsman has recently published a [Statement of Complaints Handling Principles](#) and [Guidance on a Model Complaints Handling Procedure](#) which will form the basis of these model CHPs.
5. Underpinning our approach is the ethos of 'getting it right first time'. The emphasis is firmly on quicker, simpler and more streamlined complaints handling with local, early resolution by empowered and well trained staff. Staff should address dissatisfaction by providing a quick, fair and considered response to complaints, explaining clearly

the reasons for any disagreement with the service user's position, and using the lessons learned from complaints to improve service delivery.

Prison Rules - complaints

6. Our particular interest in this consultation is in the revision to the Prison Rules relating to complaints handling (Part 12 Requests and complaints).
7. We were also encouraged by the fact that, early in the process of redrafting the Rules, and certainly some time before the consultation exercise commenced, we were afforded the opportunity to work with the SPS in relation to the revised procedures for prisoner complaints. This allowed us to explain our approach to simplifying complaints handling procedures. We were encouraged by the fact that, from the outset, the SPS aimed to develop an approach to complaints handling in line with the Ombudsman's Guidance on Complaints Handling Procedures and, in particular, welcomed the development of a two stage internal complaint handling process within prescribed timescales.
8. The changes to the CP process reflected in the draft Rules (Part 12 Requests and complaints) reflect our discussions with the SPS, in particular with the removal of a number of stages in the complaints process. We consider the new two stage process - which seeks to resolve complaints within five days where possible, or within 20 days where a complaint has been referred to the Internal Complaints Committee (ICC) and signed off by the Governor - to be compliant with the Ombudsman's Guidance on Complaints Handling Procedures. We do, however, have a few additional comments to offer:
 - We would stress that the timescales as set out in the Rules (and in our Guidance) are intended to act as a maximum. Wherever possible, and in particular at Stage 1 (Residential First Line Manager) prison staff should seek to resolve the complaints in as quick a timescale as possible. We recognise that the issues involved in a complaint can often be of disproportionate importance to a prisoner compared to a non-prisoner. It should be made clear to staff that they should seek to resolve complaints as soon as is possible and not use the five or 20 day timescales as reason to delay any response or attempt to resolve;
 - The requirement to forward complaints to the ICC within two weeks (as set out in the process diagram contained in the consultation document) should be regarded as a guide only. Whilst we recognise the desire of the prison service to ensure that complaints progress as quickly as possible through the system, the two weeks should not be used as a time bar to prevent complainants taking their complaint further after that period of time. There are a number of reasons why a prisoner may delay taking their complaint to the next stage;
 - Guidance and training – it is important that frontline staff, particularly staff who regularly deal with complaints at the frontline, are provided with full training and guidance on the application of the new process. This should place strong emphasis on the value of resolving complaints early and of valuing the learning from complaints to help improve service provision. It should also provide a clear outline of the delegated authority within which prison staff are empowered to act.

9. We have also worked closely with the SPS to develop new complaints procedures for non-prisoner complaints about prisons (for example families, friends and other visitors). Again we have been encouraged by the approach of the SPS to developing a complaints handling procedure in line with the Ombudsman's Guidance and Principles.
10. Overall we support the revision of the CP process as outlined in the revised Rules. We believe that this will lead to a more focused and streamlined complaints process and will encourage the local, early resolution of complaints as close to the point of service provision as possible.

Prison Rules - general

11. Based on our handling of prison complaints we also have more detailed comments on the proposed revisions to the Prison Rules. In the following paragraphs we have made reference to the Prison Rules 2011 draft document and provided comments and/or observations as appropriate.

Part 2 – Reception, record, classification and allocation

12. Part 2 deals with the reception of prisoners, prisoner records, classification and location within prisons.

SPSO comments

13. We are encouraged that at paragraph 2.4 - 6(c) the Rules identify that on reception at the prison the prisoner should be provided with written information advising how they may make requests and complaints; we consider this to be valuable as part of the induction into prison and can state that prisoners have also stated this is helpful. We would ask if there should be a follow up session to remind prisoners of the complaint process at an agreed time, documented within the Prison Rules.

Part 4 – Accommodation, clothing, hygiene and food

14. Part 4 is about the physical accommodation and care of prisoners.

SPSO comments

15. There may be value in clarifying what the risk assessment (para 4.1 (5)) should consider; such clarification could minimise subsequent complaints.

PART 5 – Health and welfare

SPSO general comments

16. We note that the most significant changes to the Rules relate to the removal of many of the previous provisions for healthcare both within Part 5 of the Rules and elsewhere in the Rules where there were healthcare references.
17. The summary of key changes document advises that separate arrangements are being made to set out the healthcare arrangements for prisoners post October 2011 when responsibility for the healthcare of prisoners will pass to the NHS.
18. While not directly relevant to the Rules we would highlight the need to provide specific complaints-related information to prisoners regarding this change so as to ensure a seamless transfer in the handling of health-related complaints. Clear and consistent communications for prisoners in advance of the changes will hopefully help to manage their expectations and reduce the potential for complaints about the arrangements for managing the change.
19. Awareness of the right to bring health-related complaints to SPSO after exhausting the NHS complaints procedure may need to be raised within the prison estate; this is something we would be happy to provide further advice on.

Part 7 – Privileges and prisoners property

20. Part 7 is about the privileges that exist in prisons and about the regulation of property (and money) belonging to prisoners which is received or kept at the prison.

SPSO comments

21. Perhaps the Rules could clarify the criteria for prisoners to be provided with secure locking facilities for medication and for personal property, and confirm whether or not medication or property will be prioritised.

Part 8 – Communications

22. Part 8 deals with arrangements for prisoners to communicate with people outwith the prison and with prison visits arrangements.

SPSO comments

23. In relation to 8.7 Privileged correspondence (New Rule) we would ask the SPS to ensure that the SPSO is specified in a direction made by the Scottish Ministers in terms of paragraph (2) to ensure that all SPSO correspondence with a prisoner is classed as 'Privileged correspondence' and treated as such within the Rules.

Part 11 – Discipline

24. Part 11 relates to the disciplinary system in prisons including charges of breaches of discipline and the procedure to be followed. Rule 11 also regulates the imposition of punishments in relation to breaches of discipline.

SPSO comments

25. We see Rule 11.4 (14) as being potentially problematic to administer. The risk of inconsistency of approach may result in an increase of complaints being generated. We would ask that the Rules provide further clarity on how a Governor may consider this issue, what information will be used and how an 'element' will be defined, and how a Governor may prove that there was not an element of discrimination.

Part 12 – Requests and complaints

26. Part 12 makes provision in relation to requests and complaints by prisoners. It deals with the internal complaints procedures which a prisoner may invoke.

Changes to the 2006 Rules

27. The Rules reflect the transfer of the responsibilities for external scrutiny of complaints from the Scottish Prisons Complaints Commissioner to the SPSO in October 2010.

SPSO comments

28. Rule 12.1 (1) (b) relates to a requests to speak to a member of the visiting committee; Rule 12.1 (2) (b) states that on receipt of such a request, the officer must, without delay arrange for the request to be brought to the attention of the person with whom the prisoner wishes to speak.

29. Given the requirement for 'frontline' complaints to be resolved quickly (within five working days or less) it may be advisable to set a time requirement (as opposed to 'without delay') to bring the request to the attention of the person with whom the prisoner wishes to speak within this part of the Rules.

30. Rule 12.1 (3) also states that where a prisoner wishes to make a written request or complaint to the visiting committee, the Governor must ensure that the request is posted to the visiting committee 'without delay'.

31. Again, given the time limits within the complaints process it may be advisable to set a time requirement (as opposed to 'without delay') within which the Governor must ensure that the request is posted to the visiting committee.

32. Rule 12.3 (2) states that a prisoner who wishes to make a complaint must, in the first instance inform, and make the complaint orally to, the residential first line manager (RFLM).

33. While we encourage organisations to accept and consider oral complaints, as these can often be remedied at the point of contact, we do not support the requirements for all complaints in the first instance to be made orally. We would suggest that the rule

34. Rule 12.3 (5) (b) calls for a written response to be provided to the prisoner within five days of receiving the complaint. We welcome this time scale at the frontline stage of the complaints process. It should allow for a more meaningful examination of the complaint than the current procedure allows for. It also complies with the Ombudsman's Guidance on a Model Complaints Handling Procedure.
35. Rule 12.3 (6) (a) and (b) notes that in exceptional circumstances, where it is not possible to issue a response to the complaint the RFLM may inform the prisoner accordingly and provide a written response to the prisoner no later than five days after informing the prisoner.
36. This is also compliant with the Ombudsman's Guidance. We would comment however that such occurrences should very much be the exception and we would encourage the SPS to document what may constitute 'exceptional circumstances' within the guidance appropriate to complaints handling within the SPS.
37. Rule 12.4 99) – It would also be helpful to include at this section of the Rules, the requirement to advise complainants that should they remain dissatisfied with the outcome of the complaint they may ask SPSO to consider the matter. A suggested wording may be 'where the governor endorses the ICC's decision, and the prisoner remains dissatisfied with the decision, the prisoner should be advised that they have the right to ask the SPSO to consider the matter within 12 months of becoming dissatisfied'.
38. 12.5 (2) (c) - states that complaints to the Governor in relation to confidential matters should be given to the residential officer, who must convey the complaint to the Governor 'without delay'. We would suggest that 'without delay' is amended to specify a minimum time requirement.

General Comment

39. Once again we appreciate the opportunity to provide comments on the Draft Prison Rules 2011. We would be happy to provide further clarification on our response if required, and we look forward to working with the SPS to drive up standards of complaints handling when the new rules are introduced.

Please return to:

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Or by writing to:
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