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OPEN-ENDED INTERGOVERNMENTAL EXPERT GROUP ON THE STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

VIENNA, AUSTRIA, 25 – 28 March 2014

RESPONSE OF THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND[1] TO NOTE VERBALE CU 2013/129/DO/JS

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UN Standard Minimum Rules for the Treatment of Prisoners (SMR)

Comments and amendments offered by the National Offender Management Service (NOMS) and the Ministry of Justice (MoJ) in response to the UN Standard Minimum Rules for Prisoners and the subsequent amendments to the rules as suggested by the intergovernmental expert group meeting held 11-13 December 2012. We have been asked to respond and offer related policy updates to the Rules and the suggested amendments which correspond to the nine areas of the Standard Minimum Rules as below.

(a) Respect for prisoners' inherent dignity and value as human beings (rules 6, para. 1; 57-59; and 60, para. 11);
(b) Medical and health services (rules 22-26; 52; 62; and 71, para. 2);
(c) Disciplinary action and punishment, including the role of medical staff, solitary confinement and reduction of diet (rules 27, 29, 31 and 32);
(d) Investigations of all deaths in custody, as well as of any signs or allegations of torture or inhuman or degrading treatment or punishment of prisoners (rules 7, 44 bis and 54 bis);
(e) Protection and special needs of vulnerable groups deprived of their liberty, taking into consideration countries in difficult circumstances (rules 6 and 7);
(f) The right of access to legal representation (rules 30; 35,para. 1; 37; and 93);
(g) Complaints and independent inspection (rules 36 and 55);
(h) The replacement of outdated terminology (rules 22-26, 62,82 and 83 and various others);
(i) Training of relevant staff to implement the Standard Minimum Rules (rule 47);

Amendments and Comments from NOMS and MoJ

NOMS has offered further comments or amendments relating to areas **(c), (d)** and **(f).**

Area (c) Disciplinary action and punishment, including the role of medical staff, solitary confinement and reduction of diet (rules 27, 29, 31 and 32);

> **Amendment as suggested by the UN expert group**
>
> **(v)** To add, in Rule 31, a prohibition on imposing solitary confinement as a disciplinary punishment for juveniles, pregnant women, women with infants, breastfeeding mothers, prisoners with mental disabilities; for life-sentenced prisoners and prisoners sentenced to death by virtue of their sentence; or to pre-trial detainees as an extortion technique;

Comments from NOMS in response to amendment (v)

NOMS does not place prisoners in solitary confinement. In cases where prisoners are removed from 'normal' accommodation, they are never left in an isolated state for long periods of time and cannot be considered to be subject to 'solitary confinement.'

NOMS would not support the prohibition on imposing cellular confinement as a disciplinary punishment for life-sentenced prisoners. Life-sentenced prisoners are not treated differently in relation to other prisoners with regards to cellular confinement. Our existing adjudication policy ensures that discipline procedures are carried out lawfully, fairly and justly, and contribute to the maintenance of order, control, discipline and a safe environment in prisons by investigating offences and punishing those responsible.

Area (d) Investigations of all deaths in custody, as well as of any signs or allegations of torture or inhuman or degrading treatment or punishment of prisoners (rules 7, 44 bis and 54 bis);

> **Amendment as suggested by the UN expert group (iii)**
>
> **(iii)** To add a new Rule 44bis. including an obligation of prison administrations to initiate and facilitate prompt, thorough and impartial investigation of all incidents of death in custody /incidents of unnatural, violent or unknown death, or shortly following release, including with independent forensic or post mortem examinations, as appropriate

Comment offered from the Coroner's Office, MoJ in response to (d) (iii)

As regards coroner law in England and Wales, on 25 July 2013 the Government implemented most of the provisions in Part 1 of the Coroners and Justice Act 2009, and coroners now have a duty to investigate all deaths in custody or otherwise in state detention. Coroners investigating deaths have a power to direct a post-mortem examination, and in a suspected suicide or homicide they would direct a forensic post-mortem in co-operation with the senior investigating police officer.

When someone dies shortly after being released from custody, the coroner has a duty to investigate if the death appears to be violent or unnatural or the cause of death is unknown.

Amendment as suggested by the UN expert group (vi)

(vi) To add a new paragraph to Rule 44 addressing the need of prison administrations to provide for / facilitate culturally appropriate burials in case of custodial deaths.

Suggested amendment from NOMS in response to UN expert group amendment (vi)

(vi) To add a new paragraph to Rule 44 addressing the need of prison administrations to ~~provide for~~ facilitate culturally appropriate burial **or other lawful disposal of the body in case** of custodial deaths.

<u>Area (f) The right of access to legal representation (rules 30; 35,para. 1; 37; and 93);</u>

General Comments from MoJ in response to Area (f) The right of access to legal representation (rules 30; 35,para. 1; 37; and 93)

Following a consultation on legal aid earlier this year, the scope of criminal legal aid advice and assistance for prison law will be narrowed to the following matters: (a) matters that involve a determination of a criminal charge for the purposes of Article 6(1) ECHR; (b) Parole Board proceedings where the Parole Board has power to direct release; (c) matters where the Tarrant criteria (R v Secretary of State for the Home Department and another, ex parte Tarrant [1985] 1 QB 251) are satisfied; and (d) sentence calculation matters where the date of release is disputed.

The key effects will be the removal of treatment matters from scope and the restriction of sentence-related issues in scope to sentence calculation matters where the date of release is disputed only (for example categorisation, segregation, licence conditions and arrangements and sentence planning will no longer be in scope of criminal legal aid for prison law). However, civil legal aid may be available for judicial review of decisions made by public authorities, subject to means and merits.

Amendments as suggested by the UN expert group to (i) and (ii) of Area (f) The right of access to legal representation (rules 30; 35,para. 1; 37; and 93);

(i) To add, in Rule 35(1), the right to access legal advice to the information with which every prisoner should be provided upon admission;

(ii) To provide, in Rule 30, for a qualified right to legal advice in the context of disciplinary proceedings, i.e. as far as breaches of discipline are prosecuted as crimes (or in serious disciplinary cases involving heavy penalties or complicated points of law);

Comments from MoJ in response to amendments (i) and (ii)

(i) *We have no objection to this addition, as long as it is not suggested that there should be a right to access publicly-funded legal advice.*

(ii) *In relation to the suggested change to Rule 30 (that there should be a right to legal aid "in serious disciplinary cases involving heavy penalties or complicated points of law"), the revised scope of criminal legal aid will mean that there is no "right" to publicly funded legal representation in such cases (and in any event even at the moment legal aid is subject to merits and means testing), although it is likely that the proposed scope criteria (in particular Article 6(1) and 'Tarrant' (R v Secretary of State for the Home Department and another, ex parte Tarrant [1985] 1 QB 251) would mean such matters are in scope, subject to means and merits testing.*

Amendments as suggested by the UN expert group to points (iii) of Area (f)

(iii) To grant, in Rule 37, the right to meet and consult with a legal advisor of own choice to all prisoners, at their own expense, on any legal matter, and under similar conditions as established in Rule 93, to be complemented by access of imprisoned persons to legal aid mechanisms to the maximum extent possible, including at the pre- and post-trial stages, in line with international standards and norms;

Comments from MoJ in response to (iii) of Area (f)

The current draft of rule 93 refers to "an untried prisoner shall be allowed to apply for free legal aid <u>where such aid is available</u>". Rule 37 should be similarly caveated.

Area (g) Complaints and independent inspection (rules 36 and 55);

General Comments from NOMS in response to Area (g) Complaints and independent inspection

Prisoners are statutorily entitled to make complaints under Rule 11 of Prison Rules 1999 and Rule 8 of Young Offender Institution Rules 2000. NOMS considers it important that all prisoners have the right to make a complaint and have access to an internal prison complaints system with a clear set of procedures.

The purpose of the complaints system is to ensure that all prisoners have an effective means of redress if they feel they have been unfairly treated. All complaints submitted must be given a response. It is not for NOMS to determine what constitutes a genuine grievance. Some complaints may seem relatively minor to many people, but are nevertheless significant to the complainant.

Under the Prisons and Probation Ombudsman's current Terms of Reference, the Ombudsman will investigate complaints submitted by prisoners who have failed to obtain satisfaction from the internal prison complaints system and whose complaints are eligible in other respects. NOMS would not want to deviate from this arrangement.