



HMIPS

HM INSPECTORATE OF
PRISONS FOR SCOTLAND

INSPECTING AND MONITORING

STANDARD 1

LAWFUL AND TRANSPARENT CUSTODY

1

INTRODUCTION TO STANDARD 1: LAWFUL AND TRANSPARENT CUSTODY

Questions which may be helpful in monitoring and inspecting the PANEL principles:

P

PARTICIPATION:

- Are prisoners able to seek clarification at any point during the admission or release process?
- Is confidentiality a paramount consideration of prison staff?
- Do staff understand the importance of prisoner participation in the process?
- Is there an open environment in which prisoners are able to raise any potential risk factors or needs that require to be addressed?

A

ACCOUNTABILITY:

- Is each stage of the admission and release process completed with a focus on the individual prisoner's needs and requirements?
- Is the admission and release process monitored and reviewed to ensure it is operating appropriately with regard to entitlements and rights of prisoners?
- Are the entitlements of prisoners in the admission and release process identified along with the corresponding obligation of the prison to secure them?
- Are remedies provided in the event that rights are infringed upon?

N

NON-DISCRIMINATION AND EQUALITY:

- Are those prisoners who are most vulnerable, marginalised or who have a protected characteristic identified?
- Is the prison proactive in engaging with and supporting prisoners who face barriers to full participation in the admission and release process?
- Are reasonable adjustments made to the admission and release process for the most vulnerable and marginalised prisoners?
- What is the experience in admission and release of prisoners with protected characteristics or other vulnerable groups?

E

EMPOWERMENT:

- Do prisoners receive all the information they are entitled to so they can know their rights?
- Are staff proactive in identifying prisoners with additional needs?
- Is the prison proactive in supplying information in a variety of formats to cater for prisoners with additional needs?
- Are prisoners supported to ensure they understand each stage of the admission and release process?

L

LEGALITY:

HM Inspectorate of Prisons for Scotland (HMIPS) expect that all procedures for admission and release are grounded in human rights law and in conformity with the Scottish Prison Rules. Standard 1 is a check on the Right to Liberty and Security (Article 5 ECHR) and it allows HMIPS to verify that everyone has been lawfully detained and afforded due process. Rights to Confidentiality and Privacy (Article 8 ECHR) also form part of the assessment of this standard.

PROTECTED CHARACTERISTICS MUST BE CONSIDERED AND REFERENCED THROUGHOUT

The prison complies with administrative and procedural requirements of the law, ensuring that all prisoners are legally detained and provides each prisoner with information required to adapt to prison life.

The prison ensures that all prisoners are lawfully detained. Each prisoner's time in custody is accurately calculated; they are properly classified, allocated and accommodated appropriately. Information is provided to all prisoners regarding various aspects of the prison regime, their rights and their entitlements. The release process is carried out appropriately and positively to assist prisoners in their transition back into the community.

QUALITY INDICATORS (QI)

- 1.1 Upon arrival, all prisoners are assessed regarding their ability to understand and engage with the admission process.
- 1.2 On admission, all prisoners are provided with information about the prison regime, routine, rules and entitlements in a form that enables the prisoner to understand.
- 1.3 Statutory procedures for identification and registration of prisoners are fully complied with.
- 1.4 All prisoners are classified and this is recorded on the prisoner's electronic record.
- 1.5 All prisoners are allocated to a prison or to a location within a prison dependent on their classification, gender, vulnerability, security risk or personal medical condition.
- 1.6 A cell sharing risk assessment is carried out prior to a prisoner's allocation to cellular accommodation.
- 1.7 Release and conditional release eligibility dates are calculated correctly and communicated to the prisoner without delay.
- 1.8 All prisoners attend an induction session as soon as practicable, but no later than one week after arrival, which provides a thorough explanation of how the prison operates and what the prisoners can expect, including their rights and obligations.
- 1.9 The procedures for the release of prisoners are implemented effectively with provision for assistance and basic practical arrangements in place.

1.1

UPON ARRIVAL, ALL PRISONERS ARE ASSESSED REGARDING THEIR ABILITY TO UNDERSTAND AND ENGAGE WITH THE ADMISSION PROCESS.

FEATURES

- Proactivity to ensure understanding
- Provision of support
- Courteous interactions
- Information sharing

SPECIFICATION

The prisoner’s ability to understand is a paramount consideration as soon as they enter the prison establishment.

The prison is proactive in assessing the prisoner’s understanding, their needs and whether they require further support in order to understand basic information.

Information prisoners are to understand includes the reasons for admission into custody, the length of sentence, the date of release and the information provided to them in terms of the prison regime, routine and rules covered in QI 1.2.

The support may include advocacy, independently verified translation services or other speech, language and communication assistance.

Prisoners may not self-identify as requiring additional support but the prison must make its own assessment as to their needs and provide assistance where necessary.

Legal Standards

Section

CPT Standards 2015	Page 92(130)
Mandela Rules 2015	Rule 55
European Prison Rules 2006	Rule 30.1
Havana Rules 1990	Section 25
Bangkok Rules 2010	Rule 2
Scottish Prison Rules	Rule 11(8)

1.2

ON ADMISSION ALL PRISONERS ARE PROVIDED WITH INFORMATION ABOUT THE PRISON REGIME, ROUTINE, RULES AND ENTITLEMENTS IN A FORM THAT ENABLES THE PRISONER TO UNDERSTAND.

FEATURES

- Information provision
- Accessibility of information
- Prisoner understanding
- Provision of support

SPECIFICATION

Information provided to prisoners will include rules and directions of the prison, the prison routine and regime, how to make requests and complaints, how to access legal assistance and how to maintain contact with relatives and friends.

The information will be provided in a manner that the prisoner can understand. This may require it being available in a number of different formats to cater for specific prisoner needs.

These may include foreign language translation and other speech, language and communication deficits as well as extra time taken to explain the material provided.

Prison staff satisfy themselves that the prisoner understands the information provided before leaving to the residential area, as far as this is possible.

Legal Standards

Section

CPT Standards 2015	Page 92(130)
Mandela Rules 2015	Rule 54
European Prison Rules 2006	Rule 30.1-30.3
Havana Rules 1990	Section 24; 25
Bangkok Rules 2010	Rule 2
Scottish Prison Rules	Rule 11

1.3

STATUTORY PROCEDURES FOR IDENTIFICATION AND REGISTRATION OF PRISONERS ARE FULLY COMPLIED WITH.

FEATURES

- Information transfer
- Identification process
- Staff awareness of relevant information

SPECIFICATION

Prisoner warrant identification takes place to ensure lawful detention and advice is taken regarding any complications.

The prisoner is informed as to why they have been admitted to custody.

Information is transferred from escort to prison staff including the prisoner escort record.

Medical or special needs, including relevant risk factors, are identified, and information is provided from appropriate third parties.

Staff are proactive at taking into account changes of circumstances for prisoners who have just been admitted e.g. when a prisoner receives a custodial sentence but was expecting to be released.

Legal Standards

Section

Mandela Rules 2015	Rule 7
European Prison Rules 2006	Rule 14; 15
Havana Rules 1990	Section 21
Scottish Prison Rules	Rule 8; 9

1.4

ALL PRISONERS ARE CLASSIFIED AND THIS IS RECORDED ON THE PRISONER'S ELECTRONIC RECORD.

FEATURES

- Assessment of needs and risk
- Interviews with staff and nurse
- Courteous interactions

SPECIFICATION

Initial interviews with staff and the nurse take place in a private setting to encourage openness. Circumstances are explained courteously to the prisoner and the prisoner is able to contribute, explain and articulate their needs and concerns freely.

Prisoners are initially allocated appropriately according to their needs.

The prisoner's electronic record is updated and maintained including their most recent photograph.

Information is provided to the prisoner in a manner which enables the prisoner to understand the process and their admission.

Legal Standards

Section

Mandela Rules 2015	Rule 6; 8
European Prison Rules 2006	Rule 16
Havana Rules 1990	Section 21(e)
Bangkok Rules 2010	Rule 40; 41
Scottish Prison Rules	Rule 10; 12; 14

1.5

ALL PRISONERS ARE ALLOCATED TO A PRISON OR TO A LOCATION WITHIN A PRISON DEPENDENT ON THEIR CLASSIFICATION, GENDER, VULNERABILITY, SECURITY RISK OR PERSONAL MEDICAL CONDITION.

FEATURES

- Awareness of relevant factors
- Courteous interactions

SPECIFICATION

The assessment of any prisoner takes place to ensure that relevant factors are known for the allocation process.

Allocation of any prisoner is made with regard to their classification, gender, vulnerability, security risk or personal medical condition.

Prisoners are informed of their allocation courteously and are able to communicate freely any needs or concerns they may have.

Legal Standards

Section

CPT Standards 2015	Page 86(103)
Mandela Rules 2015	Rule 11; 93
European Prison Rules 2006	Rule 17.1 – 17.3
Bangkok Rules 2010	Rule 4
Scottish Prison Rules	Rule 15; 16; 18

1.6

A CELL SHARING RISK ASSESSMENT IS CARRIED OUT PRIOR TO A PRISONER'S ALLOCATION TO CELLULAR ACCOMMODATION.

FEATURES

- Individualised procedure
- Responsive process
- Review system in place

SPECIFICATION

Codes on the warrant are appropriately identified and vulnerabilities are recognised by the staff.

The approach taken is individualised and takes into account preferences of the prisoner where possible.

Historical records are well organised and appropriately maintained.

The process and paperwork are regularly reviewed by management to ensure that the system is operating effectively to minimise risk and take this into account.

Legal Standards

Section

Mandela Rules 2015	Rule 12(2)
European Prison Rules 2006	Rule 18.6; 18.7
Scottish Prison Rules	Rule 28

1.7

RELEASE AND CONDITIONAL RELEASE ELIGIBILITY DATES ARE CALCULATED CORRECTLY AND COMMUNICATED TO THE PRISONER WITHOUT DELAY.

FEATURES

- Courteous and timely communication
- Staff training
- Procedure implemented properly
- Process in place for review
- Links with outside agencies

SPECIFICATION

Key dates are communicated to the prisoner in reception. If this is not possible then there is a process in place to pass the information to the prisoner with a minimal delay. This process is adhered to at the weekend too.

Staff are trained and competent in warrant identification so as to be able to communicate information about dates accurately. The mandatory courses are completed.

Recent detainees or liberations in error are reviewed to understand where the error was made and make changes where necessary.

Links with outside agencies like the Crown Office and Procurator Fiscal Service are in place so as to provide assistance with calculation of dates or warrant identification if necessary.

Legal Standards

Section

Havana Rules 1990
Scottish Prison Rules

Section 21(c)
Rule 11(7)

1.8

ALL PRISONERS ATTEND AN INDUCTION SESSION AS SOON AS PRACTICABLE, BUT NO LATER THAN ONE WEEK AFTER ARRIVAL, WHICH PROVIDES A THOROUGH EXPLANATION OF HOW THE PRISON OPERATES AND WHAT THE PRISONERS CAN EXPECT, INCLUDING THEIR RIGHTS AND OBLIGATIONS.

FEATURES

- Thorough explanation of prison operation
- Information sharing
- Prisoner understanding and empowerment

SPECIFICATION

The prison induction session is thorough and comprehensive in the information it conveys to prisoners about the prison.

A key element of the information provided is how prisoners can influence decisions which affect their lives. The session should explain clearly how prisoners are able to give feedback, make requests and challenge decisions.

The induction session conveys information in a variety of formats where necessary, for prisoners who are unable to engage with particular presentations of information. This may include an independently verified translation service and other speech, language and communication methods or extra time taken to explain the information verbally.

The prison is proactive in identifying needs and supporting prisoners where required.

Legal Standards

Section

Mandela Rules 2015	Rule 54; 55
European Prison Rules 2006	Rule 30.1-30.3
Havana Rules 1990	Section 21(c)
Scottish Prison Rules	Rule 11(7)

1.9

THE PROCEDURES FOR THE RELEASE OF PRISONERS ARE IMPLEMENTED EFFECTIVELY WITH PROVISION FOR ASSISTANCE AND BASIC PRACTICAL ARRANGEMENTS IN PLACE.

FEATURES

- Practical assistance
- Return of property
- Positive facilitation of transition

SPECIFICATION

The prison is proactive in ensuring that the release process positively facilitates the prisoner’s transition back into the community.

Released prisoners are provided with immediate means of subsistence, are suitably and adequately clothed with regard to the climate and season, and have sufficient means to reach their destination.

All articles and money stored on behalf of the prisoner are returned on release.

All property and money belonging to the prisoner are returned in an opaque bag to maintain privacy on release.

Timings of release occur taking into account the appointments which are pre-planned for the prisoner and the timetables of further transport required.

Legal Standards

Section

Mandela Rules 2015	Rule 108(1)
European Prison Rules 2006	Rule 33.1-33.8
Scottish Prison Rules	Rule 132
Prisoners (Control of Release) (Scotland) Act 2015	Section 26C

QI ADDITIONAL LEGAL STANDARDS SECTION

1.1	Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment 1988	Principle 14
1.2	Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment 1988	Principle 17
1.3	CoE Guidelines Regarding Radicalisation and Violent Extremism 2016	Section 19
1.4	No additional rules	
1.5	CoE Recommendation on the Management by Prison Administrations of Life Sentence and other Long-Term Prisoners 2003	Section 19(b)
	CoE Recommendation Concerning Foreign Prisoners 2012	Section 16.2
1.6	CoE Recommendation on Juvenile Offenders Subject to Sanctions or Measures 2008	Section 63.2
1.7	CoE Recommendation on Conditional Release 2003	Section 5
1.8	Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment 1988	Principle 14; 16
1.9	CoE Recommendation Concerning Foreign Prisoners 2012	Section 37.1; 37.2



HM Inspectorate of Prisons for Scotland is a member of the UK's National Preventive Mechanism, a group of organisations which independently monitor all places of detention to meet the requirements of international human rights law.

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