

Criminal Justice Committee

7th Meeting, 2022 (Session 6), Wednesday

23 February 2022

Photocopying of prisoners' mail

Note by the clerk

Introduction

1. At its meetings of 12 and 19 January, the Committee discussed the [Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2021](#) (SSI 2021/446).
2. According to the Scottish Prison Service, the SSI – now in force – changes prison rules to mitigate against the risks of illicit substances, particularly psychoactive substances, being introduced via the prisoner mail system and thus reducing the risk of such substances causing harm to those in the care of Scottish Prison Service and those working in or visiting its prisons.
3. Subsequent to the meetings, the Committee wrote to Police Scotland, the Scottish Government and the Scottish Prison Service, requesting additional information. Responses have now been received (see **Annex**).

Decision

4. **Members are asked what, if any, follow-up action is required. Members will recall that the Cabinet Secretary for Justice and Veterans indicated he would update the Committee about the on-going review of the regulations after a period of 3 months.**

Clerks to the Criminal Justice Committee
February 2022

Letter from Police Scotland

27 January 2022

Dear Convener,

Interaction between the Scottish Prison Service (SPS) and the Police Service

Many thanks for your letter dated 13 January 2022 regarding the ongoing work between Police Scotland and the Scottish Prison Service (SPS) in relation to the recovery of drugs in prisons and the statutory instrument allowing the photocopying of prisoners mail.

In response to the questions posed, please find the responses below:

- 1. What volumes of mail or packages which are contaminated with drugs are being sent on to Police Scotland by the SPS as part of the new procedures put in place in response to the statutory instrument? What are your estimates for this, once procedures are fully operational and the Memorandum of understanding between Police Scotland and the SPS has been updated?**

The current reporting/recording process for contaminated mail is under review as part of the Memorandum of Understanding between the SPS, Police Scotland and Crown Office and Procurator Fiscal Service (COPFS). It is anticipated that the statutory instrument will act as a deterrent to persons attempting to introduce contaminated mail into the prison estate as original documents will no longer reach their intended recipient. As a result, it is believed the number of reports to police of this nature will reduce. Once the review is concluded, Police Scotland should be in a better position to estimate volumes.

- 2. What are the procedures within Police Scotland for investigating who sent any such material?**

All items recovered entering the prison estate reported to police which have presumptively tested positive for the presence of a controlled drug are assessed for investigative opportunities. If opportunities are identified, and it is deemed proportionate, a criminal investigation will commence in an effort to identify the sender of the article. If the sender is identified and there is a sufficiency of evidence, a report will be sent to COPFS for their consideration of prosecution under the Misuse of Drugs Act 1971 or Prisons (Scotland) Act 1989.

- 3. Is contaminated mail destroyed once no longer needed for any criminal investigation or prosecution? If not, how do the police service manage the storage of contaminated items, what happens to these once a prisoner is eligible for release?**

Once a criminal investigation is initiated, all contaminated mail/items are lodged as productions and evidentially examined in the same manner as in any other criminal enquiry. If, at the conclusion of an investigation, a report is sent to COPFS for consideration of prosecution, the contaminated letter is retained for court purposes until authorisation for its release is provided by COPFS.

CJ/S6/22/7/X

If the Procurator Fiscal (PF) requires the retention of such items, then production staff should be advised of this, in order to make arrangements for the storing of such productions. Consultation should be made with the Police Scotland Health and Safety Team as to the most suitable method of storage and subsequent transportation if relevant.

The PF will advise of cases that have been subject to non-court disposals such as no proceedings, fines and warning letters. If, at the conclusion of a criminal investigation, no sender/suspect is identified, the item will be destroyed. No item suspected of being contaminated with controlled drugs will ever be returned to either its sender or intended recipient.

I trust this is helpful to the Committee.

Yours sincerely,

Tim Mairs
Assistant Chief Constable
Organised Crime, Counter Terrorism & Intelligence Support

Letter from the Scottish Government

3 February 2022

Dear Audrey,

Thank you for your letter of 13 January 2022 regarding the statutory instrument allowing the photocopying of prisoners' mail.

You asked how the Scottish Government plans to ensure that there is proper oversight and governance processes within the Scottish Prison Service for the operation of procedures surrounding the copying of prisoner's mail. As an operational matter that centres on the security of prisons and the care and treatment of prisoners, this falls within the operational responsibility of the Interim Chief Executive of the Scottish Prison Service. However, I am aware that individual Governors-in-Charge have been asked to record the decisions they are taking around the photocopying of mail within their establishment's monthly Tactical Assessment decision log. This practice is being reviewed by Senior SPS staff on a monthly basis and application of the Prisoner Correspondence Policy is subject to local and SPS internal auditing.

All prisons, as you will be aware, are subject to independent scrutiny through the processes of formal inspection by HM Inspectorate of Prisons for Scotland and monitoring conducted by Independent Prison Monitors. HM Inspectorate of Prisons for Scotland has published standards for inspecting and monitoring prisons that are rooted in human rights laws and which are used by inspection teams and monitors when they are carrying out their functions. HM Chief inspector of Prisons for Scotland is able visit any prison, speak in private with any prisoner or person working at the prison and examine any prison records apart from personnel records.

You also asked about the steps that the Scottish Government is taking, and what resources will be provided, for a greater roll out of in-cell telephony systems across the prison estate and for prisoners to have access to email, thereby reducing the need to receive mail through the post.

We have committed an additional £16.2m to SPS's resource budget and we are also allocating £72.8m in capital funding to continue the improvements across the prison estate. An additional £2m will be provided through the justice recovery fund for prisons.

Both the Scottish Government and the Scottish Prison Service are committed to building on digital capabilities to support family links and enhance rehabilitation goals and objectives. As part of its response to the pandemic the Scottish Prison Service took steps to extend the operation of the "E-mail a Prisoner" scheme so that individuals in custody were able to both receive and reply to emails. As part of its wider Digital Strategy, the Scottish Prison Service is undertaking work to look at what is required across the prison estate in relation to fixed point in-cell telephony. A specification is being developed that will inform the costings, resource requirements and procurement processes. This is part of the wider SPS Digital Strategy for a longer term solution for in-cell communication.

CJ/S6/22/7/X

Finally, you asked for details of the review of these measures and their impact. As I indicated to the Committee on 12 January, we have not planned a formal review of the new processes but after 3 months of operation we should be in a better position to assess progress. We will then update the Committee.

Keith Brown

Letter from the Scottish Prison Service

4 February 2022

Dear Ms Nicoll

CRIMINAL JUSTICE COMMITTEE – PHOTOCOPYING OF MAIL

Thank you for your recent correspondence received on 17 January 2021, where you seek further information on the above SSI, following the Criminal Justice Committee Evidence Session on 12 January 2022.

If I may, I will address each of your questions in the order you have raised them.

Oversight and Governance

1. How will you ensure that there are proper oversight and governance processes within SPS for the operation of these new procedures?

Scottish Prison Service (SPS) Governors-in-Charge are responsible for ensuring all decisions relating to the photocopying of mail, and the rationale for doing so, are recorded in each establishment's monthly Tactical Assessment decision log. These assessments will then be independently reviewed internally by Senior SPS staff on a monthly basis. The application of the Prisoner Correspondence Policy, which has been updated to include the new process and requirements for photocopying general correspondence, will also be subject to local and SPS wide auditing. HM Inspectorate of Prisons (Scotland) (HMIPS) can also review the application of this process as part of any future establishment visit/inspection.

Volumes of Mail Checked

2. (Even if you are not able to provide exact figures) (a) what proportion of mail is opened and photocopied; (b) what proportion of that is tested for drugs; and (c) what proportion of tested mail is found to contain drugs?

In the 4 weeks following the changes to Prison Rules on 13 December 2021, SPS has photocopied approximately 48% of all general correspondence (14,769 mail items received and 7,160 photocopied). This figures reflects the fact that there are 2 establishments who do not currently photocopy mail as there is no identified risk in those areas, some establishments did not implement the powers immediately and some establishments are issuing original cards following testing and a negative result. Please also bear in mind that the number of cards received over the festive period was significantly higher than normal.

In addition to this, 13% (1,975) of mail items were tested using the Rapiscan machine. 12% (242) of these tested positive for an illicit substance. The number of items testing positive on the Rapiscan machine has significantly reduced since the implementation of the photocopying of mail. In the 12 months preceding the implementation of these powers, the number of items testing positive on a monthly basis was approximately 739. This represents approximately a 72% reduction in the

number of mail items being received into SPS establishments which are testing positive for an illicit substance.

3. How do you deal with items of particular sentimental value? Are any items of this nature, as identified by a prisoner, provided to them automatically and, if not, are they tested and then provided if they are shown not to be contaminated?

All Governors-in-Charge are being asked to consider undertaking tests on all items of sentimental value (cards, photographs, and drawings) with a view to issuing the original where tests return a negative result. This approach is being taken in a variety of establishments however, decisions to carry out this process, will be based on local risk assessments. Where a risk has been identified in relation to sentimental items, Governors can order that these items are photocopied to manage the risk appropriately.

The process for handling items of sentimental value will be kept under review, and I can advise SPS is considering exploring alternative secure options to allow those in our care to receive photographs and cards directly whilst reducing the risk of these items being contaminated.

Interaction with the Police

4. What proportion of any contaminated mail is passed on to Police Scotland? What happens to any contaminated mail which is not passed to the police?

SPS is unable to provide data on the proportion of contaminated mail passed to Police Scotland. The current SPS Incident Reporting Policy, requires establishments to report 'significant drug finds' and single items of contaminated mail would not fall within this category.

Contaminated mail received by SPS is dealt with by one of three means:

- 1) uplifted by Police Scotland as a production for further investigation/criminal proceedings;
- 2) uplifted by Police Scotland for safe disposal where it has been deemed that no further investigation is appropriate; or
- 3) sent to Dundee University for further analysis for the purpose of prevalence testing and identifying new and emerging substances (un-attributable finds only).

5. What are the procedures between the SPS and Police Scotland from that point forward, particularly when the prisoner is then eligible for release?

As the individual in SPS care is not the person who has posted the contaminated correspondence, and has therefore not committed an act that is either illegal, nor breaches Prison Rules, there would be no immediate consequences for that individual, apart from them not receiving the original correspondence. Police Scotland may choose to investigate the matter further and SPS would always provide as much information as possible to support their investigations.

6. Could you please provide a copy of the MoU referred to between the SPS and Police Scotland.

A copy of the current MOU, which is in the process of being reviewed and updated, has been attached to this correspondence.

In-cell Telephony and Prisoner Email

7. What further steps will the SPS take, and what resources are required, for a greater roll out of in-cell telephony systems across the prison estate and for prisoners to have access to email, thereby reducing the need to receive mail through the post?

There is currently collaborative work ongoing to compile a detailed specification of what is required across the prison estate in relation to fixed point in-cell telephony. This specification will inform the procurement process, which in turn will inform costings and resource requirements for the project moving forward. This is part of the wider SPS Digital Strategy for a longer term solution for in-cell communication.

The Digital Strategy also includes the aspiration of e-mail access for those in SPS care through a 'kiosk' system. However, it should also be noted that SPS do currently facilitate the 'E-mail a prisoner scheme' whereby individuals can receive and send e-mail communications.

I hope this information is helpful.

Yours sincerely

TERESA MEDHURST
Interim Chief Executive

MEMORANDUM OF UNDERSTANDING (MOU)

BETWEEN

SCOTTISH POLICE SERVICE

SCOTTISH PRISON SERVICE

PROCURATOR FISCAL SERVICE

THE RECOVERY OF DRUGS IN PRISON

The purpose of this MOU is to provide officers of the Scottish Police Service and the Scottish Prison Service with a generic standard enabling them to fulfil the policy on the recovery of controlled drugs in prison. This memorandum takes cognisance of prisons managed by the private sector.

The Association of Chief Police Officers in Scotland (ACPOS), the Scottish Prison Service (SPS) and the Procurator Fiscal Service will review this memorandum and corresponding documentation on an annual basis.

It will be the responsibility of **SCDEA (or SPS)** to initiate the review process for this memorandum and corresponding documentation on behalf of the Group and to ensure that it is completed within the relevant time frame agreed by the Group.

Signatory	Signatory	Signatory
_____	_____	_____
Date	Date	Date
_____	_____	_____
Ms Angela Wilson Assistant Chief Constable Chair ACPOS/SPS Liaison Group	Ms Rona Sweeney Director of Prisons Scottish Prison Service	XXXXXXX XXXXXXX COPFS



THE RECOVERY OF DRUGS IN PRISON

GUIDELINES

Version No.	
Date activated	
Review Date	
Review Organisation	

The Lord Advocate has decided that it is no longer appropriate or necessary for all cases involving prisoners found in possession of a controlled drug, within the meaning of the Misuse of Drugs Act 1971, to be reported to the Procurator Fiscal. Accordingly, the Lord Advocate has agreed that subject to the conditions specified below Governors or Controllers in Private Prisons may deal with, as a matter of internal discipline and without report to the Procurator Fiscal, prisoners tried or untried, who have been found to be in possession of small quantities of Class B or C drugs (possessed for personal use). It is necessary that this policy operates consistently throughout Scotland.

DRUG FINDS

All prisoners found in possession of illegal drugs are in breach of Prison Rules and will be subject to the SPS internal discipline process. In cases where drugs are reported to the Police the prison adjudicator should refer the case for Police investigation. If the Police or the PF decide not to progress with criminal proceedings this should be notified to the Prison as soon as possible to enable the prison to conclude internal discipline procedures. Procedures and mechanisms relating to the security, recording, packaging, testing and transferring of controlled drugs will be agreed between the Governor/Controller and the appropriate Police Force. All drugs found in the prison and dealt with through the internal disciplinary process – must ultimately be passed to the relevant Police Force for the area for disposal. In addition all drugs found where there is insufficient evidence to connect the drug with an individual i.e. drugs found within a perimeter fence must also be passed to the relevant Police Force for further enquiry and/or disposal.

CLASSIFICATION OF DRUGS UNDER THE MISUSE OF DRUGS ACT 1971

Class A Drugs – Action to be taken.

All finds of Class A drugs must be reported to the police

- **Class A Drugs** includes Heroin, Ecstasy (MDMA), Cocaine, Methadone, Fluroamphetamine and LSD.

Class B Drugs – Action to be taken.

- **Class B Drugs** include Cannabis, Cannabis Resin, Amphetamine, Mephedrone, Barbiturates and Dihydrocodeine.

Cases involving the possession of small amounts of Class B drugs, in the absence of any factor indicating supply; being concerned in the supplying or possession with intent to supply may be dealt with by Governors/Controllers as a matter of internal discipline. Where a prisoner is found in simple possession of 5 grams or more of cannabis or cannabis resin or in simple possession of more than 5 tablets of any Class B drug, the case must be reported to the police.

Class C Drugs – Action to be taken.

- **Class C Drugs** include Temgesic, Temazepam and Diazepam. Cases involving the possession of small amounts of Class C drugs (less than 5 tablets) may be dealt with by Governors/Controllers as a matter of internal discipline, and need not be reported to the police.
- Where the nature of the substance is unknown, the case must be reported to the police.
- All drugs in liquid form must be reported to the Police
- Thereafter, Police to inform prisons of weights and nature of substances recovered and handed over to the police for action.

Crime Recording Standards – The above procedures have been agreed with due consideration been given to crime recording standards.

SUPPLY

Any offence which involves the offer to supply, actual supply, being concerned in the supplying or possession with intent to supply **any** class of controlled drugs must be reported to the police and ultimately the Procurator Fiscal. Circumstances from which supply or being concerned in the supply may be inferred include:

- The possession of quantities which exceed that for personal use;
- Possession of large sums of money;
- Tick lists and paraphernalia of drug dealing; and/or
- The manner in which the drugs were divided and/or packaged.

Where there is doubt or difficulty in relation to whether supply is involved, the case must be reported to the police.

VISITORS

Any offence by a visitor visiting a prison or involving both a visitor and a prisoner must be reported to the police.

MANAGEMENT OF SUSPECTED DRUG FINDS IN SCOTTISH PRISONS

To ensure consistency of approach in every SPS establishment the following procedures must be adhered to at all times.

Training

It will be the responsibility of Chief Constables and Governors, Directors for Private Prisons to provide appropriate training and direction for their officers with regards to the recovery, packaging, recording, testing and retention of suspected controlled drugs.

Prison Production Officers

Governors have identified and should maintain sufficient numbers of trained staff who perform the role of Prison Production Officers.

Packaging of Productions

Procedures are in place to ensure that when a substance suspected of being a controlled drug is recovered within the confines of a prison it will, as soon as practicable, be placed and sealed within the recognised Production Bag which has been approved by the Scottish Prison Service. The recovery, packaging and movement of productions must be corroborated to ensure no break in the chain of custody and therefore should always be witnessed by another member of staff.

Recording of Productions

All such productions found in prisons are recorded in a standardised Productions Register as approved by the Scottish Prison Service.

Storage of Productions

All drug productions recovered in prisons will be stored in a lockable cabinet/safe in the Intelligence Management Unit

Weighing of Suspected Substances

Appropriate weighing equipment approved by the Scottish Prison Service is used in prison establishments for weighing suspected substances.

Presumptive Testing of Suspected Drugs

Presumptive Testing Kits approved by the Scottish Prison Service are held within prison establishments for testing suspected substances and adequate numbers of prison staff are trained in their use. ***Refer to SPS Presumptive Testing Protocol.***

Production Bag Sealing

All prisons are provided with Scottish Prison Service approved sealing equipment for re-sealing Production Bags following the weighing and presumptive testing of suspected substances.

Uplifting / Disposal of Suspected Substances

The police will undertake to uplift/dispose of all suspected substances retained by Prison Service staff. The regularity of uplifting these productions should be determined at local level within the terms of the agreed lines of communication. A signature should be obtained from the Police on receipt of any production.

Note: On no account will Prison Service staff convey suspected substances from a prison establishment to a police officer or any other location out with a prison establishment.

Drugs Paraphernalia

Governors may destroy as appropriate any drug paraphernalia found in isolation and not capable of leading to criminal charges. There must be no such destruction if found with associated substances, or along with other types of paraphernalia which in aggregate could infer criminality.

Note: Paraphernalia may include: syringes, cling film, foil or any article made or adapted for drug abuse.

Police Procedures as Regards Prison Productions

The police will only accept productions from the Prison which are contained in the approved Prison Production Bag.

Police officers on receiving Prison Production Bags will record and dispose of same in line with local force procedures.

Summary of Working Practices

When in the course of their duties, a member of the Scottish Prison Service or contracted out prisons recovers a substance which they suspect to be drugs, the preservation of this substance is essential to prevent contamination and the following procedures should be adhered to.

It is imperative that 2 staff are involved through the whole process to ensure corroboration of the chain of custody at all times.

The suspected substance should be placed in a Scottish Prison Service approved production bag which should then be sealed. The officer should thereafter complete the proforma displayed on each production bag and convey same to the designated Prison Production Officer.

The designated Prison Production Officer will, upon receipt of the production, enter all relevant information in to the Scottish Prison Service approved Production Register, and thereafter place the production in the secure Production Cabinet.

Where the circumstances indicate involvement of possession of small amounts of Class B drugs or Class C Drugs, in the absence of any factor indicating supply, being concerned in the supply, or possession with intent to supply, the case may be dealt with by Governors/Controllers as a matter of internal discipline. (as aforementioned on page 3)

The suspected substance in these cases should be subjected to weighing and presumptive testing by the designated prison officer using the Scottish Prison Service approved weighing and testing kit.

Once tested, the remaining substance should be returned to the production bag which should be re-sealed and returned to the Prison Production Officer for secure storage. The weight and test result should be recorded on the Production Bag and Production Register.

When dealing with all other circumstances then reference should be made to pages 3 and 4 of this document on guidance for appropriate action.