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A REPORT BY JUSTICE

JUSTICE IN PRISON

CHAIRMAN OF COMMITTEE

SIR BRIAN MacKENNA

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This report has been endorsed and approved for publication by the Council of JUSTICE.

The Council wishes to record its gratitude to the Rt. Hon. Lord Gardiner, C.H., a former Chairman of Council, for bearing the costs of publishing this report.

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Preface

This Committee was set up by the Council of JUSTICE to consider prisoners' rights and to make recommendations. Because of the width of the subject, we decided to consider it through sub-committees, under three heads: General Rights, Complaints and Discipline. The three sub-committees held monthly meetings in 1981/82. Each sub-committee prepared a report dealing with its division of the subject, and each report was considered, amended and approved at meetings of the full Committee. Finally, these reports, combined in the present report, were considered and approved by the Council of JUSTICE.

Acknowledgements

We have been greatly assisted in our work by the Prison Department of the Home Office, the late Mr. William Pearce (the first to hold the office of H.M. Chief Inspector), the office of the Parliamentary Commissioner, the Council of Europe and the Greater Manchester Legal Services Committee. The readers of our Report will be able to judge how much we have depended on Mr. Pearce, whose 1981 Annual Report to the Home Secretary was a notable document. We also had a useful meeting with Mr. Pearce's successor, Sir James Hennessy. We are also grateful to Miss Margriet Houben, a public prosecutor and trainee judge from the Netherlands, who attended our meetings for some months, told us about the administration of prisons in her country, and made us aware, from time to time, how far we in England have fallen behind the Dutch.

Our deepest debt of gratitude is owed to one of our own members, Professor Graham Zellick. His immense knowledge of penal matters, and his patience in guiding and instructing us, were our greatest asset. We are also grateful to our Secretary, Peter Ashman, whose pains-taking efforts were a notable contribution to bringing our labours to fruition.

INTRODUCTION

1 Every society needs to defend itself against criminals, especially those who commit the more serious offences. One way of doing that is to send them to prison: as a punishment, as a deterrent to others, to keep them out of harm's way while they are there, and with at least the hope that they will come out sufficiently deterred not to offend again – or even be reformed.

2 When an offender has been convicted and sentenced to imprisonment, the tasks of the police, the prosecution and the courts are at an end – and those of the prison administration begin. They are exceptionally difficult. Many prisoners are social misfits of one sort or another; some are highly dangerous, in prison as much as outside. Prison discipline has therefore to be effective. The prisoners must be kept secure. Their contacts with the outside world are necessarily limited. Even in good conditions these necessary constraints would breed suspicions, tensions and violence between the prisoners themselves and between them and their custodians. But the conditions in our prisons are not good; in many of them they are appalling.[1] This is to the grave detriment not only of the prisoners but of the prison staff who are responsible for maintaining discipline. We believe it to be wrong.

3 Thus at the outset of our inquiry the question arises: what rights has a prisoner in captivity? He loses his right to liberty, and his other rights are diminished so far as they are incompatible with that loss and with his obligation to live in a prison subject to its discipline. That is obvious. It is hardly less obvious that he retains other rights, subject only to that necessary diminution, and acquires new rights against the State which imprisons him. These include the right to be protected by the prison authorities against the violence of other prisoners, and to be provided with adequate food and decent accommodation and with the means of living as full and normal a life as is compatible with imprisonment.

The denial of these other rights could be justified only if the loss of liberty were an insufficient punishment. But no law says that prisoners may be subjected to any additional punishment and those who hold, as we do, that they are sent to prison *as* a punishment, and not *for* punishment, would deny the right to inflict it.

1 In Part I of our report we make good this point by quotations from the 1981 Report of the Chief Inspector of Prisons.

4 Rule 58 of the Council of Europe's Standard Minimum Rules for the Treatment of Prisoners[1] supports this view:

> "Imprisonment and other means which result in cutting-off an offender from the outside world are, by the deprivation of liberty, a punishment in themselves. Therefore, the prison system will not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.
>
> "The regime of the institution shall seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings."

5 Article 10 (1) and (3) of the International Covenant on Civil and Political Rights (by which the United Kingdom has been bound for the last seven years) gives further support to the view that our prisoners have the right to decent treatment in prison:

> "(1) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
>
> "(3) The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation."

6 The provisions we have just cited are legal reasons for treating prisoners decently. There are also practical reasons. To treat them otherwise is to deprive them of the dignity and respect due to them as human beings, and may further degrade and brutalize them, diminish their self-respect and sense of responsibility, and make them even less fit than before to live in a civilized society. These are indeed the likely effects of the primitive, overcrowded and insanitary conditions now prevailing in many of our prisons.

7 Since prisoners have rights, it is essential that these should be recognised, and that the system should provide the prisoners with the means of asserting them. This requires adequate procedures for the determination of disputes between prisoners and their custodians. The standards of open and impartial justice required by the rule of law are specially needed by prisoners because of their vulnerability, in the closed world in which they live, to abuse of power, humiliation

1 These are reproduced in Appendix 3. They are derived from the Rules adopted at the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in August 1955 and were adopted in January 1973 by the Committee of Ministers of the Council of Europe. They are recommendations made in pursuance of the objectives expressed in Article 1 of the Statute of the Council of Europe:

"To achieve a greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage."

The Rules are intended as a guide for the internal legislation and practice of member States with a view to their progressive implementation. They have no binding effect, unlike the provision of the European Convention of Human Rights.

and degradation. We shall show in Part II of this Report that our system fails to provide satisfactory procedures. That failure increases the tensions of prison life. It creates an atmosphere of greater uncertainty, arbitrariness, unfairness and resentment. Condemned for infringing the law, the prisoner finds himself in a society ruled not by law, but by arbitrary power. It is small wonder if at the time of his release his contempt for law, justice and the rights of others is greater than it was before he was imprisoned.

8. Therefore we argue in this Report for greater certainty of the powers, rights, duties and privileges of all parties within the prison system and for independence, openness and fairness in the procedures used for the resolution of disputes between them.

9 In making our recommendations we have had prison officers constantly in mind, recognizing as we do that no substantial improvement of the system is likely without their co-operation. We believe that many of these recommendations will be for their benefit directly and indirectly. Better living conditions for the prisoners should mean better working conditions for the staff. Fairer complaints and disciplinary procedures, by helping to relieve the prisoners' suspicions and to reduce their tensions, should make the officers' job easier and even safer. It is desirable that prison officers should have a more positive part to play in the prison system, increased responsibilities, and with them an improved professional status. If our recommendations were accepted, these improvements would in our opinion be likely to follow.

10 Our discussion of these matters is divided into three parts. In the first, we recommend changes in the Prison Act and Rules to protect the rights to which we consider prisoners are entitled, particularly in the matters of their accommodation and of the provision of facilities for occupying their time. In the second, we consider the existing machinery for dealing with prisoners' complaints and for supervising the prisons. In the third, we examine the definitions of offences against discipline in the Prison Rules and recommend changes. We also consider the procedures for inquiring into charges of indiscipline and the provisions for punishing offenders.

PART I

GENERAL RIGHTS

1 The following are the principles to which we think effect should be given in the Prison Act and in the Prison Rules:

(i) Prisoners retain all their existing rights as members of society, limited only to the extent necessarily required by a prison sentence which deprives them of their freedom of movement and obliges them to live in a disciplined community with other prisoners. Their custodians have the duty to respect these rights, subject only to those limitations.

(ii) The authorities have the power to make such regulations as are necessary for keeping the prisoners in safe custody and for the maintenance of discipline, and the custodians can give orders to the prisoners for these purposes. The prisoners have the duty to comply with such regulations and to obey such orders. Restrictions not needed for the segregation of the prisoners or the maintenance of discipline aggravate their suffering and are unjustifiable.

(iii) By the fact of being imprisoned, prisoners acquire the right to be provided by the authorities with adequate accommodation in hygienic conditions and with the means of living a reasonably full and normal life so far as that is possible in a prison. These means include facilities for work, education and recreation. Inadequate accommodation or the failure to provide these means unjustifiably increases the difference between prison life and life at liberty and tends to lessen the prisoners' responsibility and their dignity as human beings.

2 The Prison Rules should give effect to these principles. They should –

(a) clearly specify the rights which the prisoner forfeits by being imprisoned;

(b) state precisely the restrictions which are, or may be, imposed on the exercise of the rights which he retains;

(c) prescribe in detail the duties of the authorities in the matter of housing him and of providing him with the necessaries for a tolerable life and facilities for work, education and recreation;

(d) provide adequate means by which he may seek redress if his rights are contravened, giving him, in the case of his more important rights, access to an independent tribunal;

(e) define with the precision of a criminal statute the offences for which he may be punished, the procedures for inquiring into his guilt if he is charged with an offence, and the punishments which may be imposed if he is found guilty; and lastly

(f) provide for his being properly informed of his rights, privileges, duties and liabilities under the Rules.

3 Our Prison Rules fall far short of these requirements.

(a) They make no reference to any rights of the prisoner except those which they confer on him.

(b) There are important matters for which no provision is made. Rule 28, dealing with "work", provides no minimum period for which facilities shall be provided. Except for the requirement of Rule 30 that there shall be libraries, there is no obligation under the Rules to provide facilities for recreation.

(c) In some cases where the Rules should recognize the prisoner's unconditional right to some benefit, they empower the Secretary of State to withhold that benefit if he thinks fit. Rule 23 (dealing with accommodation) is an example. It was clearly the intention of Parliament that every prisoner should have adequate accommodation (night and day) in hygienic conditions. This appears from section 14 of the Prison Act 1952:

> "(1) The Secretary of State shall satisfy himself from time to time that in every prison sufficient accommodation is provided for all prisoners.
>
> (2) No cell shall be used for the confinement of a prisoner unless it is certified by an officer (not being an officer of a prison) acting on behalf of the Secretary of State that its size, lighting, heating, ventilation and fittings are adequate for health . . ."

But Rule 23 of the Prison Rules is in these terms:

> "(1) No room or cell shall be used as sleeping accommodation for a prisoner unless it has been certified in the manner required by section 14 of the Prison Act 1952 in the case of a cell used for the confinement of a prisoner.
>
> (2) A certificate given under that section or this Rule shall specify the maximum number of prisoners who may sleep or be confined at one time in the room or cell to which it relates, and the number so specified shall not be exceeded without the leave of the Secretary of State."

In other words, the officer of the Secretary of State may certify a cell as adequate in respect of its size etc. for the accommodation of one prisoner, but the authority may house in it two or three prisoners if the Secretary of State gives them leave. The exercise of this discretion has in fact made section 14 a dead letter.

(d) The Rules provide no means by which a prisoner can obtain redress from an independent tribunal if he is denied a right to which he is entitled under them, or is treated inconsistently with them.

4 A revision of the Rules is now much overdue. We recommend that it should be undertaken as soon as possible. We would hope that it will give effect to the views expressed in paragraph 2 above.

In examining the Rules in this part of our report, we have considered only those topics which seemed to us to be important and on which we had something positive to say.

Information to Prisoners

5 Rule 7(1) provides as follows:

> "(1) Every prisoner shall be provided in his cell or room with information in writing about those provisions of these Rules and other matters which it is necessary that he should know . . ."

In addition to the Prison Rules, there are a very large number of Standing Orders containing detailed provisions about the treatment of prisoners prepared by the Prison Department and distributed to prison staff. Until recently these have not been regarded as containing information which it is necessary that prisoners should know or have the means of knowing. They have been regarded by the authorities as restricted documents. Then the European Court of Human Rights ruled[1] that, because of this restriction on their publication, the Government could not rely on the provisions of S.O.5 as justifying restrictions which it had imposed on prisoners' letters, so as to bring its case within Article 8(2) of the European Convention on Human Rights. So that it might be able to rely on these provisions in future, the Government has amended S.O.5 and made the amended provisions available to prisoners. The other Standing Orders are still regarded as restricted documents which the prisoners are not allowed to see. We are strongly of the opinion that the whole of the Standing Orders should be made available to them, omitting only those sections, if any, which for reasons of security or of discipline need to be kept secret. The Home Office has indicated that the Standing Orders are being revised, and that when the revision has been completed, which may be many years hence, the revised version will be made available. We see no reason why in the meantime the existing Orders should not be published. This could be done by placing a copy in every prison library, with such omissions as are necessary.

1 *Silver* v. *the United Kingdom*, March 25, 1983, Series A, No. 61.

Accommodation

6 The first Report of the Chief Inspector of Prisons for England and Wales covering 1981 (Cmnd. 8532) shows that thousands of prisoners at the present time are inadequately housed in unhygienic conditions and are denied the facilities for work, education and recreation to which, if our view be right, they are entitled. As the following quotations show, it constitutes a damning indictment of the conditions in our prisons.

7 ". . . in May 1981 about 4,900 prisoners were living three and 11,000 were living two to cells certified as suitable for one man. The cells which three prisoners share are by and large *not* [our italics] pleasant, warm, well lit and ventilated rooms, but spartan, gloomy and stagnant. Although they are reasonably large for one man, by the time two or three beds are installed there is little room for other furniture and the cells are extremely cramped: it is quite common for there to be insufficient room for the inmates to pass one another, nor is an inmate easily able to leave his cell: in some locals, prisoners are locked up for 22 hours or more each day. There is, of course, no integral sanitation in the great majority of local prisons. Therefore, an inmate wishing to urinate or defecate at a time when the cell is locked must use a chamber pot within six or eight feet of his companions, and either retain the contents until 'slopping out' is possible, which may be many hours later, or, an alternative sometimes resorted to, throw them out of the window." (para. 3.04)

"Overcrowding of these proportions also places an intolerable burden upon the essential services of the prison. Drainage systems become blocked so that sewage washes back upon the wings; the water supply is no longer sufficient and runs out in some parts of the prison for a few hours each day; the recesses and baths available, not provided on a generous scale by the Victorian architects, become wholly inadequate . . ." (para. 3.05)

". . . The improvised association and recreation areas would be swamped if all inmates used them, so a prisoner must wait until it is his turn on a roster . . . The opportunities to work are rare, because there are few workshops: those that exist are often shut because the staff have been reallocated to deal with some more pressing duty. Education and physical education opportunities have to be eked out and both activities are conducted in wholly inappropriate rooms. There is no pretence of an organised regime." (para. 3.06)

"By no stretch of the imagination can these conditions be regarded as humane or proper. They are unacceptable. They certainly fall short of the standards suggested by Rule 5.3 of the European Standard Minimum Rules, which says that deprivation of liberty should be effected in material and moral conditions which ensure respect for human dignity. Indeed we doubt if this standard can be said to have been realised in any of our local prisons . . ." (para. 3.08)

"The case for eliminating overcrowding in order to improve conditions in local prisons is, in our view, overwhelming. We believe the aim should be to reduce the prison population to a level slightly below the total certified normal recommendations: with the present estate and building plans, that is to about 37,000."[1] (para. 3.26)

8 That these conditions are not "humane", "proper", or "acceptable", and that the case for eliminating overcrowding is "overwhelming", is our opinion too. The short-term problem, which we regard as one of great urgency, is to reduce the population of the existing prisons from its present figure of 44,000 plus to 37,000; the long-term one is to keep the prison population at the level of the certified accommodation, whatever that may be, less the necessary margin.

9 There are, at least in theory, seven different means by which overcrowding could be reduced:

(i) By the sentencers passing fewer or shorter prison sentences. But the experience of recent years has shown that it is unlikely that they will do much to help. They have been exhorted many times; yet the overcrowding continues.

(ii) More prisons than those already planned might be built. But this is not a short-term solution. Even if the money were available, which it is not, the operation would take years, during which the overcrowding would continue, and might even increase.

(iii) Some prisoners – those least likely to escape or, if they did escape, to commit other crimes – could be rehoused in converted army camps, as was done recently during the prison officers' industrial action.

(iv) The Parole Board's powers could be enlarged to enable them to recommend the release of prisoners before they have served the present minimum term of 12 months following the date of sentence.[2]

(v) The period of remission could be raised from one-third to a half.

(vi) Provision could be made for the compulsory release on bail of remand prisoners who had not been brought to trial

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1 The Chief Inspector had referred earlier in Chapter 3 to the Government's Estate and Building Programme, which included five new prisons to be started in the financial years 1981–85, and which will provide 5,000 new places. These will be sufficient to make good the decay of the existing prisons, but will not, in the Inspector's opinion, increase the certified accommodation, which is 39,000. Spare capacity of 2,000 places is required to cope with emergencies and to provide for variations in the size of groups which must be held separately. So he considers that the system with the present plans will be capable of supporting, in reasonable circumstances, a population of 37,000 inmates. This is the figure of 37,000 referred to in the Conclusion.

From an article in *The Times* of February 2, 1983 reviewing the Public Expenditure Estimates, it appears that the Government expect overcrowding to get worse. It stated: "The gap between places available and the daily average inmate population will grow. The shortfall in places is assumed to increase from 3,850 in 1982–83 to 4,393 in 1985–86."

2 Power to do this is contained in section 33 of the Criminal Justice Act 1982.

within a specified period, say three months.[1]

(vii) Statutory power could be given to the Home Secretary to release prisoners before their sentences had expired, coupled with an obligation to exercise the power if he could not otherwise prevent overcrowding.

10 The first of these does not require the consent of Parliament, and it is hoped that the Lord Chancellor and the Lord Chief Justice by their exhortations, and the Court of Appeal by its example, will encourage the sentencers to use their powers of imprisonment more moderately and that the sentencers will heed them.

It is unclear whether (ii) to (vi), even if all of them were adopted, would eliminate overcrowding. The only certain way of ensuring its elimination is to give the Secretary of State the power to release prisoners *and* to impose on him an obligation to use that power to the extent required to prevent overcrowding if he cannot otherwise do so. We recommend that he should be given this power with an obligation to use it if necessary.

11 To every proposal for the release of prisoners before their sentences have expired, two objections are always made, which we shall briefly consider. It is objected that their release –

(i) would enable some of them to commit crimes which they could not have committed if they had been kept in prison; and

(ii) would be an improper, even an unconstitutional, interference with the sentencing power of the judges.

As to (i), it is certain that some crimes will be committed which would not have been committed so soon, or perhaps not at all, but for the early release of the prisoners. But it is not certain that this addition to the total number of crimes committed (which is of course a very large figure) would be appreciable, and to offset this detriment, whatever its extent, there would be the great benefits which the relief of overcrowding would bring to all who live in the prisons, including the prison staff. To those who believe that we have a duty to house our prisoners adequately, it would bring the satisfaction of discharging it.

As to (ii), Parliament has the power (and we would say the duty) to regulate the condition of the country's prisons, and if there is no other way of putting an end to overcrowding than by releasing prisoners, it may provide for their release without infringing any principle of the constitution. No principle, constitutional or otherwise, requires that a sentence shall not be terminated before the date fixed by the sentencer.

1 This is currently the position in Scotland, West Germany and Austria.

12 If the Secretary of State were given the suggested power with the obligation to use it if necessary, the extent to which he used it would depend on whether the sentencers were more moderate and whether Parliament took any of the other measures ((ii) to (iv) above) to reduce overcrowding. Thus, his obligation to use the power to modify overcrowding if it existed would be an incentive to the courts to be more moderate and to Parliament to take those other measures.[1]

13 So much for the short-term problem. The long-term problem of keeping the prison population permanently down to the required level brings into question the present sentencing system in which some would say fundamental changes are required. To consider that question is beyond the scope of our enquiry, and we leave it to others.

Work and Recreation

The Need to Occupy the Inmates' Time

14 In Chapter 4 of the Chief Inspector's report, "Occupying Inmates' Time", he says this:

> "The alternative to occupying inmates during the day is to oblige them to spend long hours locked in their cells. For all but a few sufficiently gifted or motivated to absorb themselves in hobbies or study, this is a dispiriting experience which deadens intellect, paralyses initiative and promotes bitterness and depression . . . (para. 4.01)
>
> ". . . we are convinced that a worthwhile occupation, whether it be in a workshop, classroom or some other location, tends to enhance a prisoner's self-respect and self-confidence . . ." (para. 4.02)

After drawing attention to the provisions of Rule 28(I) which provide for a maximum working day but not for a minimum, the Chief Inspector continues:

> "However, European Standard Minimum Rule 72(3) says that 'sufficient work of a useful nature should be provided to keep prisoners actively employed for a normal working day' . . . (para. 4.05)
>
> ". . . so we feel there is an obligation upon Prison Department to strive to occupy inmates for eight hours a day, five days a week . . . We have been much influenced by what the May Committee had to say in Chapter 4 of their Report. They expressed the view that Prison Department's target should be to occupy inmates for at least eight hours a day . . . (para. 4.06)
>
> "The actual employment pattern revealed by our inspections has been profoundly depressing. In the local prisons we found very substantial numbers of convicted prisoners with nothing to do all day. Leeds and Birmingham, for example, each had 300 men idle. In addition, there was scarcely any question of offering work to the remand population. Many prisoners recorded as at work in practice enjoyed a working day as short as two or three hours. Other inmates were engaged on work of very poor quality, and domestic work in particular was occupying so many at some

1 Section 32 of the Criminal Justice Act 1982 gives the Secretary of State a very limited power to release from prison, subject to many exclusions.

establishments that there was very little for any individual to do. (para. 4.08)

"... One training prison with a population of 745 had 200 men locked in their cells all day because of lack of work. (para. 4.09)

"... The position in local prisons, in particular, is little short of disgraceful." (para 4.10)

15 To remedy these conditions, the Chief Inspector makes recommendations that we wholeheartedly support. These include the re-establishment of workshops in local prisons and the expansion of education:

"... we believe," he says, "that there is a very strong case for considerable expansion of the education budget at local prisons to establish daytime education classes on a much larger scale, in order to balance the regime. The case is, in our view, particularly strong in any local prison in which industry is reduced." (para 4.34)

This recommendation would give effect to Rule 78(1) of the Standard Minimum Rules:

" Provision shall be made for the further education of all prisoners capable of profiting thereby including religious instruction. Special attention shall be given by the administration to the education of illiterates and young prisoners."

It is consistent with our own Rule 29, which provides that every prisoner able to profit from the educational facilities provided shall be encouraged to do so. But the facilities which they are to be encouraged to use must first be provided.

16 To these recommendations of the Chief Inspector we would add another, that facilities for recreation should be provided. They are a necessity, and the need for them is greatest if there is no work to do or too little. This recommendation accords with Rule 79 of the Standard Minimum Rules, which requires that recreational and cultural facilities shall be provided in all institutions for the benefit of the mental and physical health of prisoners.

17 In providing facilities for work and recreation, the needs of remand prisoners should not be overlooked. Rule 28(5) provides:

"An unconvicted prisoner shall be permitted, if he wishes, to work as if he were a convicted prisoner."

This provision should be made effective. It would be wrong if an unconvicted prisoner were worse off in any respect than one who has been convicted. He has at least an equal right to have his time occupied while he is being detained against his will.

18 It is not within our remit to make recommendations about the working conditions and staff facilities of prison officers. We wish nevertheless to endorse the view of H.M. Chief Inspector of Prisons that a substantial effort should be made to improve them. We share his hope that the staff needs will be "catered for within proposals designed to meet the needs of inmates" (para. 2.27).

Communications

19 The prisoner's right to communicate with those outside his prison, by letters or by visits, is a valuable one. These communications relieve the anxieties and depressions inseparable from prison life; they make his adjustment to the outside world, on his release from prison, easier. So it is important that this right should not be unreasonably restricted. It is in fact regulated, and severely restricted, by Prison Rules 33–34, which we shall next consider, taking first the restrictions on letters.

Letters

20 (a) A convicted prisoner may not send or receive more than one letter a week, unless this allowance is increased by the Secretary of State (R.34(2)(a) and (7)). It is in practice increased to two letters.

(b) The governor has power (which may be exercised by prison officers) to read or examine incoming and outgoing letters and to stop any whose contents are "objectionable" or which are inordinately long (R.33(3)). The power is exercised in open prisons with some relaxations. The shortage of staff available for reading the letters is the only reason for limiting their number and their length.

(c) The Rules do not indicate in what respects a letter will be considered "objectionable". The standing orders, which guide officers in their administration of the prisons, list 15 types of objectionable material (R.34(8) and S.O.5B34).

(d) Unconvicted prisoners are not restricted in the number of letters which they may send or receive, but are subject to the other restrictions (R.34(11)).

(e) There are special provisions in cases where the prisoner is a party to any legal proceedings, including an appeal against conviction or sentence. In these cases he may freely correspond with his legal adviser and his communications in connection with the proceedings or the appeal are not liable to be read or stopped unless the governor has reason to suspect that the facility is being abused (R.37A)

21 The reading of the prisoner's letters is, we think, a very questionable restriction. To read them is a grave infringement of privacy, and the writer's uncertainty whether the censor may object to the contents of his letter and stop it must be an additional cause of unhappiness. In our opinion, the infringement of privacy can be justified only if there is reason to suppose that the prisoner whose letters may be read is abusing his right by sending or receiving objectionable material.

We recommend that as a general rule prisoners' letters should not be read, but that there should be an exceptional power of reading them in suspicious cases. Suspicion that a prisoner may be planning to escape or that he is attempting to interfere with witnesses would be obvious cases for the exercise of this power. Rules 37A and 60 show the kind of provision which we have in mind. We quote Rule 37A(i):

> "A person who is a party to any legal proceedings may correspond with his legal adviser in connection with the proceedings and unless the governor has reason to suppose that any correspondence contains matter not related to the proceedings it shall not be read or stopped under Rule 33(3) of these Rules."

It should be a condition of the rule conferring the exceptional power that the governor's reason for suspicion should be recorded at the time. Letters to persons and bodies of official standing, such as Members of Parliament, government departments, the Commission for Racial Equality, and so forth, should not be read in any event.

22 It may be objected that if our proposal were adopted, authorised letters might be written for the purpose of planning escapes or offences which need outside help and would escape detection for want of a censor. That is true, but we doubt whether its adoption would mean that more of these offences would be committed. The present censorship can be evaded (and often is) by smuggled letters and messages conveyed orally.

23 Incoming letters sometimes contain bad news. We were told that it is a benefit of the present system that the officer receiving such letters has the opportunity of breaking the news gently to the prisoner. We recognised that this is a benefit to the prisoner, but this is a small price to pay for the benefits flowing from the abolition of censorship.[1]

24 Rule 33(3) which gives the power of reading letters also gives the power of "examining" them. The examination of letters, especially of those coming into the prison, is obviously necessary to see that there is no contraband inside the envelope. But the rule giving this power should make it clear that the letters inside are not to be read.

25 Until recently, Rule 34(8) imposed a requirement of leave for communications by a prisoner with any person, other than a relative or friend, or in connection with any legal or other business. Following the Report of the European Commission of Human Rights in the *Silver* case,[2] a new Standing Order was issued which granted general leave to correspond with lawyers and others, but subject to the restriction on content set out in Standing Order 5B34. We welcome

1 One of our members, Duncan Fairn, dissents from this recommendation. In his view, the price would be too high.

2 *Silver & Ors v. The United Kingdom* (1981) 3 E.H.R.R. 475. See now the judgment of the European Court of Human Rights, March 25,1983, Series A, No. 61.

the relaxation in the restrictions on communications. However, this created an incompatability between the Rule and the Standing Order. The Standing Order, moreover, is only a management guideline which can be altered at any time by the Home Secretary without reference to Parliament. We therefore welcome the recent amendment to the Rules which removes this incompatability.[1]

26 If the general power of reading letters were abolished, the limitation on their number and length necessitated by the shortage of staff available for censoring could also go. This is a strong argument in favour of the abolition. Even without the power of censorship, it would not be absurd that the Rules should prohibit the writing of objectionable letters, and the suspicion that a person was likely to infringe that prohibition might be a good reason for reading his letters. But it is, we think, essential that the various grounds of objection should be stated in the Rules themselves. It is not good enough that they should be stated only in the Standing Orders.

27 The existing restrictions (except those on the number of letters) apply to unconvicted prisoners as well as to the convicted. We see no reason why the restrictions which we recommend in their place should not continue to apply to them, in particular the prohibition against writing objectionable letters. One of the types of objectionable material listed in the Standing Orders is the concoction or suppression of evidence, and letters of this sort are more likely to be written before than after conviction.

28. We believe that our recommendations in this and the following section of our report are consistent with Rule 37 of the Standard Minimum Rules, which deals as follows with letters and visits:

> "Prisoners shall be allowed to communicate with their family and all persons or representatives of organisations and to receive visits from these persons at regular intervals subject only to such restrictions and supervision as are necessary in the interest of their treatment and the security and good order of the institution."

Visits

29 We shall deal separately with Ordinary Visits and Legal Visits.

Ordinary Visits

(a) Under Rule 34(2)(*b*), convicted prisoners are allowed a minimum of one visit in four weeks. S.O.5A6 provides that "the minimum duration" is 30 minutes. Under Rule 34(7), the Secretary of State has power to allow additional visits. S.O.5A5 provides that the additional visits shall be allowed "as frequently as circumstances at establishments permit". We understand that the practice varies from one prison to

1 Prison (Amendment) Rules 1983, SI 1983 No. 568, r.4.

another and that at most prisons it is found possible, through flexible visiting hours and the use of portakabins, to increase the allowance to one visit a fortnight.

(b) Under Rule 34(8), prisoners are not allowed to receive a visit from any person other than a relative or friend without the leave of the Secretary of State. S.0.5A32 delegates the Secretary of State's discretion to governors in these terms:

> "governors have discretion to allow visits from other persons not known personally to the inmate before he came into custody, but such visits may be refused on the ground of security, good order and discipline, for the prevention of crime or in the interests of any person."

S.0.5A35 provides:

> "Visits to inmates by journalists or authors in their professional capacity should in general not be allowed, and the governor has authority to refuse them without reference to headquarters."

(c) Under Rule 33(4), every visit to a prisoner shall take place *within the sight of* an officer, unless the Secretary of State otherwise directs, and under Rule 33(5) it shall take place *in the hearing of an* officer unless the Secretary of State otherwise directs. S.0.5A25 regulates the two matters in this way:

> "All visits will be in the sight of a prison officer. Except when otherwise expressly stated in the order it is for the governor to decide what further measures of supervision are appropriate for the visit. For the majority of domestic visits it should be sufficient for officers to be present in the room where visists are taking place, but for some visits the governor may decide that it is necessary for the visit to be in the hearing of an officer."

30 We shall consider these three restrictions which we have lettered above (a), (b) and (c):

(a)

(i) The Standing Orders state the right principle: prisoners should be allowed as many visits as the circumstances of the prison permit. This principle should be stated in the Rules.

(ii) We consider that the minimum entitlement should be increased to one visit a fortnight, which is the practice in most prisons and could, we believe, with a full use of flexible hours, be made the rule at all of them. In fixing a minimum, it is reasonable to take account of the fact that many prisoners who are visited less often than one a month would not take advantage of the more generous entitlement.

(b)

We recommend that prisoners should be entitled to receive visits from any person, including journalists, unless the governor considers in particular cases that a restriction is necessary. We recognise that the inclusion of journalists is controversial and add a few words in its defence. A lively and *well-informed* public interest in penal questions, including the state of the prisons and the conditions of life within them, is desirable. It exists in other countries, notably in Holland and in Scandinavia. It is needed in England. The press have a part to play in informing the public, in creating its interest and sustaining it. It cannot be right, in this state of things, to exclude them from contact with prisoners. There is of course the risk that they may be told lies, but this should not happen often, and, set against the benefits of publicity in deserving cases, the risk is well worth running. After all, the press know the consequences to themselves of publishing untrue defamatory statements, and are likely to be specially cautious, bearing in mind that their informant is a convicted criminal.

A necessary consequence of giving the prisoner the right of choosing his visitors would be that he would have the duty of giving the governor the information he needed in considering whether to exclude his visitor. The Rules should provide for this.

(c)

We recommend that Rule 33(4) should be amended to provide that visits should be within the hearing of an officer only if the governor considers, in particular cases and on grounds clearly specified by him, that this restriction is necessary. In this way the Rule would be brought into line with the existing practice. The change would give effect to the principle, by which we have been guided in other cases, that where a general restriction is unnecessary, its place should be taken by a power to impose it where it is needed.

31 To facilitate the prisoner's communications, we make the following recommendations:

(a) His right to be visited by his family may be ineffectual if he is kept at a prison too remote for them to visit. The Rules should, we think, provide for taking this matter into consideration in the allocation of prisoners. In fairness to the prison service it should be said that they do what they can to mitigate this hardship by moving the prisoner from time to time to a more convenient prison where he can receive the visits which he has accumulated.

(b) Under the present system, the Department of Health and Social Security issue travel warrants to wives in receipt of social security to enable them to make their monthly visits to the prison. If the prisoner's entitlement were to be increased from monthly to fortnightly visits, it would be reasonable that these warrants should be issued for the additional visits. We are told that at present a wife who chooses to work instead of going on social security is refused these warrants, however low her wages. This seems unfair. We would hope that this practice might be changed.

(c) Neither the Prison Rules nor the Standing Orders make any provision for the use by prisoners of telephones. We understand that unconvicted prisoners are allowed to use them more or less as they wish, subject to the usual proviso "that no hindrance is likely to the investigation or the administration of justice", and that convicted prisoners are allowed to use them at the discretion of the Welfare Officer, presumably in emergencies. We think it desirable that the matter should be covered by the Rules, preserving (if that seems proper) the discretion of the Welfare Officer, but giving the prisoner the right to substitute a telephone call for an allotted visit if he wishes to do so. The prisoner who is unable to write letters, because he is illiterate or for any other reason, is a special case whose need to use the telephone should be recognised by the Rules.

Legal Visits

32 Rule 37 makes provision for interviews between the prisoner and his legal adviser:

> "(1) The legal adviser of a prisoner in any legal proceedings, civil or criminal, to which the prisoner is a party shall be afforded reasonable facilities for interviewing him in connection with those proceedings, and may do so out of hearing but in sight of an officer.
>
> (2) A prisoner's legal adviser may, with the leave of the Secretary of State, interview the prisoner in connection with any other legal business in the sight and hearing of an officer."

We do not see any reasonable ground for distinguishing between the two kinds of interview. We think that each should be held out of the hearing of an officer.

33 A lawyer is sometimes permitted by the governor to visit a prisoner who is not his client to discuss a legal matter on behalf of some other person. No provision is made in the Rules for this kind of interview. We think that there should be a Rule and that it should provide that such interviews take place out of hearing.

Legal Advice

34 The Royal Commission on Legal Services were told about the difficulty of prisoners receiving legal advice. One of the suggestions put to them was that prisoners' access to solicitors should be unrestricted. They passed this suggestion on to the Home Secretary with a question about the feasibility of establishing duty solicitors' schemes. The Home Office reply, quoted in the Report, turned down the suggestion of unrestricted access but stated:

> ". . . the Home Office would not object in principle to lawyers' surgeries or duty solicitor schemes within prisons, provided that prisoners' access to them was subject to the existing controls, and that they were subject to supervision in accordance with the Prison Rules."

35 The Commission, rightly recognising the disadvantage which prisoners suffer when seeking legal advice, reported in favour of duty solicitor schemes:

> "We recommend, therefore, that a rota of duty solicitors drawn from private practitioners in the locality should be set up in each prison. The rotas should operate on the same basis as rotas in the courts, in that they should be administered by the local Law Society in accordance with the guidelines laid down by the Law Society and the solicitors should be paid on a sessional basis out of the legal aid fund."[1]

36 The Greater Manchester Legal Services Committee acted on this recommendation. They obtained the agreement of the Prison Department's northern office in Manchester to the introduction of experimental schemes at the Manchester prisons. They visited the authorities at these prisons, who promised them co-operation. The scheme was drafted on the lines recommended by the Commission and was submitted to the Home Office. The 1980/81 Report of the Greater Manchester Legal Services Committee tells of its fate. We quote from page 12 of that Report:

> "In the Third Annual Report the Committee expresssed the hope that within twelve months there would be a duty solicitor scheme in operation in one or more of the prisons in the Greater Manchester area. Unfortunately, this is not the position. After a considerable delay due to the industrial action by the Prison Officers' Association and the consultation between the Home Office and the Lord Chancellor's Department the former wrote saying 'due to considerable finance and resource restrictions which currently restrict us . . . this is not a good time to take the duty solicitor proposal further'."

37 It appears that the Home Office has since re-considered the matter, is now of the opinion that the costs would be small, has sought Treasury approval, and if that approval is given will establish a pilot scheme.[2]. We hope that approval will be given. The idea of duty solicitor schemes is an excellent one. If it is eventually decided to

1 Cmnd. 7648, p.97.
2 *The Times*, February 26, 1983.

introduce such schemes generally, we think that provision should be made for them in the Rules in terms which would give prisoners a right to the benefit of them.

Medical Attention

38 Rule 17 contains the principal provisions:

> "(1) The medical officer of a prison shall have the care of the health, mental and physical, of the prisoners in that prison.
>
> (2) Every request by a prisoner to see the medical officer shall be recorded by the officer to whom it is made and promptly passed on to the medical officer.
>
> (3) The medical officer may call another medical practitioner into consultation at his discretion, and shall do so if time permits before performing any serious operation.
>
> (4) If an unconvicted prisoner desires the attendance of a registered medical practitioner or dentist, and will pay any expense incurred, the governor shall, if he is satisfied that there are reasonable grounds for the request and unless the Secretary of State otherwise directs, allow him to be visited and treated by that practitioner or dentist in consultation with the medical officer."

39 Rule 21(1) of the Standard Minimum Rules provides that prison medical services "should be organised in close relation with the general health and administration of the community or nation." Although compliance with this Rule may not require a complete integration of the Prison Medical Service with the National Health Service, there are, we believe, arguments in favour of that integration (which was in fact proposed by the National Association of Probation Officers in 1981) and arguments against it. We have not examined this question sufficiently to make any recommendation upon it. Obviously it is a very important one and deserves further consideration.

40 Under Rule 17(3), the medical officer *may* call another medical practitioner into consultation *at his discretion*, but if he refuses to do so the convicted prisoner has no redress. If he is dissatisfied with the medical officer's diagnosis, or with his treatment (if any), there is nothing he can do about it. This often happens, and when it does it is a cause of anxiety and great unhappiness to the prisoner and often to his family. The Rules, we think, should make provision for these cases. A possible solution would be to establish panels of two or three doctors on a regional basis to whom a prisoner's case might be referred at his request for a second opinion. If this, or any similar scheme, were thought impracticable, a convicted prisoner might as an alternative be given similar rights to those of unconvicted prisoners under Rule 17 (iv). This minimum might be achieved by the addition of a sub-rule in these terms:

> "If a convicted prisoner desires the attendance of a registered medical practitioner who is willing to attend him in prison, the governor shall, if he is satisfied that there are reasonable grounds for the request, and unless the Secretary of State otherwise directs, allow him to be visited and treated by the medical practitioner in consultation with the medical officer. If the medical practitioner requires the payment of a fee for his attendance, which the National Health Service will not pay, it shall be the prisoner's responsibility to make his own arrangements for payment of the fee."

This alternative has the disadvantage that many prisoners would not know another doctor outside the prison for whose attendance they could ask, and even if they did might be unable to arrange for the payment of his fee.

41 A prisoner sometimes needs treatment for a condition which was treated by his own doctor before his imprisonment. We think it reasonable that the Rules should make provision for these cases. We suggest the following:

> "If a prisoner needs medical attention for a condition for which he had been previously treated by a registered medical practitioner, and he makes this fact known to the medical officer and gives him the name and address of the practitioner, it shall be the duty of the medical officer, if reasonably practicable, to communicate with the practitioner and obtain from him the prisoner's previous medical history and information about the treatment he was given."

42 The British Medical Association's *Handbook of Medical Ethics* has this to say about prison medical officers:

> "A prisoner cannot usually choose his doctor. Apart from this single restriction a prisoner has a right to the same medical attendance as any other member of society, and a prison medical officer's responsibility to, and professional relationship with, his patient, is the same as that of any doctor working outside prison."[1]

This seems to us to overlook the very real ethical and professional difficulties arising from the fact that the medical officer is part of the prison administration. We have not ourselves explored these difficulties but recommend that they should be fully examined by the medical profession and prison authorities.

Rule 43 – Segregation

43 This Rule empowers the governor to arrange for the removal of particular prisoners from association with the others in two cases:

(a) if it is in the prisoner's own interest; and

(b) if it is necessary for the maintenance of good order and discipline.

In each case the removal enables the authority to perform a duty, in the first case of protecting prisoners against the unlawful violence of other prisoners (a difficult duty), in the second of maintaining good order and discipline. It is not meant as a punishment in either case.

1 Para. 2.10 (B.M.A., 1980).

A power of this kind is essential, though it must be properly exercised. We comment here on the consequences of removal, particularly in relation to prisoners segregated for their own protection. In paras. 126–131, we make detailed proposals on how the power is to be exercised when the prisoner is not a willing party, chiefly for the purpose of maintaining good order and discipline.

Because of his removal, many of the prisoner's rights and privileges cannot be exercised or enjoyed in the ordinary way. Ordinarily, work is done and exercise taken in association. Prisoners visit the library and attend films and educational classes at the same time. They read the communal newspapers and journals together. Compensatory arrangements should be made for prisoners out of association, so far as practicable. They should be given work to do in their cells. They should be allowed to take exercise and to visit the library at special hours, and be given a newspaper to read. The prisoners' possessions such as personal radios, newspapers and magazines should not be affected, nor should extra letters and visits. The basic entitlement to letters and visits should not, in any event, be affected. These matters should be fully covered in Standing Orders, so that everyone responsible for implementing the Rule would know what was expected of him and his failure to observe prescribed conditions could be censured.

The ideal solution would be to house those prisoners who need protection in a special prison. If there were not enough of them to fill their own prison, an alternative would be to provide special wings or landings at the ordinary prisons. The Thanet wing at Maidstone Prison is an example which might be extended.

The Right to Vote

44 Before 1967, persons convicted of felony and sentenced to a term of imprisonment exceeding 12 months were incapable of exercising any right of suffrage in England, Wales or Northern Ireland until they had suffered their punishment. Those convicted of misdemeanour were not subject to this qualification. The Criminal Law Act 1967 abolished the distinction between felony and misdemeanour and provided that the law and practice in relation to all offences should be that applicable at the commencement of the Act in relation to misdemeanours. For the next two years, prisoners, whatever the nature of their offences or the length of their sentences, were capable of voting. Then in 1969 the Representation of the People Act disfranchised all of them. Section 4 of the Act (now re-enacted by section 3 of the Representation of the People Act 1983) provides that a convicted

person during the time that he is in prison shall be legally incapable of voting in any parliamentary or local government election. We think it wrong that this should be so.[1] Disfranchisement is not a necessary incident of imprisonment. The postal ballot gives prisoners the means of voting while in custody. To deprive them of the right to vote as a punishment additional to the loss of liberty offends against the principle for which we are contending in this Report. Moreover, it diminishes their self-respect and encourages in them the mistaken belief that they are no longer members of the community. We therefore recommend that the right to vote should be restored to prisoners.

Privileges and Property

45 None of the present Rules recognises that a convicted prisoner has any right to have property of his own for use in prison. If he is allowed to have such property, it must be as a privilege under Rule 4, or because of an exercise of the governor's discretion in his favour, under Rule 41 (2) or Rule 42(4).

Rule 4 provides:

> "There shall be established at every prison systems of privileges approved by the Secretary of State and appropriate to the classes of prisoners there, which shall include arrangements under which money earned by prisoners in prison may be spent by them within the prison."

Rule 41(2) provides:

> "Anything, other than cash, which a prisoner has at a prison and which he is not allowed to retain for his own use shall be taken into the governor's custody . . ."

Rule 42(4) (dealing with money and articles received by post) states:

> "Any other article [than cash or a security for money] to which this Rule applies shall, at the discretion of the governor, be –
> (a) delivered to the prisoner or placed with his property at the prison; or
> (b) returned to the sender . . ."

We think it wrong that the convicted prisoner should not be allowed to have any property of his own for use in prison except as a privilege or by favour of the governor. We think that he should have a right under the Rules to possess and use some things of his own, such as photographs, books, writing and drawing materials, a radio, a musical instrument and other similar means of occupation. Rule 41 (1) gives a right of this kind to unconvicted prisoners with power in the Board of Visitors to keep things out which appear to them to be objectionable. We recommend that convicted prisoners should have a similar right with such modifications (if any) as are thought appro-

1 There does not appear to have been any discussion on this section during the debates on the Bill in Parliament.

priate to their status. Whatever modifications are made, we think that the Rules should give them the right to possess and use the particular things we have specified above, namely photographs, books, etc.

We have three further observations to make on the question of privileges:

(i) The system of privileges referred to in Rule 4 should be examined to see whether any other matters now treated as privileges might more reasonably be classified as rights, in which case they should be given that status by the Rules.

(ii) We do not suggest that everything now enjoyed as a privilege should have the status of a right. It may be reasonable, because of scarcity of resources or for any similar reason, that some facilities should be provided as a privilege which the authorities are free to discontinue if they see fit.

(iii) A paragraph should be added to Rule 4 in these terms:

> "In every prison, there shall be drawn up and distributed to every prisoner a list of the matters to which he is for the time being entitled as privileges. This list shall contain a warning that some or all of these privileges may be forfeited or postponed as a punishment for a breach of discipline, in the case of governors' awards for 28 days, and in the case of boards' awards for 56 days."

If some of the existing privileges were to be given the status of rights, there could be no objection in principle to suspending them temporarily as a prescribed punishment for an offence against discipline.

PART II

COMPLAINTS AND SUPERVISION

Introduction

46 Every civilised community is provided with machinery for the remedying of grievances. It is known that without it there will be abuse of power and injustice, suspicion and resentment. Prison communities need that machinery, more perhaps than any others. Prison officers, working behind closed doors, have great powers, against whose misuse the prisoner's principal protection is his right to complain. The value of that right depends on the adequacy of the procedure for investigating the complaints. That procedure must be considered inadequate if it does not provide for the investigation of the more serious complaints, in the last resort, by an independent person.

47 The prisoner's right to seek redress of his grievances upon a complaint made to someone designated to receive it is not the only means of protecting him against maladministration and the abuse of power. He may also be protected by a proper system of supervision and inspection. Such a system will detect and remove the causes of grievances, which may or may not be the subject of complaint.

We shall examine the existing procedures under these two headings, Complaints Procedures and Supervision and Inspection, making in each case proposals for their improvement.

COMPLAINTS PROCEDURES

48 The Prison Rules designate the persons authorised to receive complaints:

> "7.(1) Every prisoner shall be provided . . . with information . . . about . . . the proper method of making requests and complaints and of petitioning the Secretary of State."
>
> "8.(1) Every request by a prisoner to see the governor, a visiting officer of the Secretary of State, or a member of the board of visitors shall be recorded by the officer to whom it is made and promptly passed on to the governor.
>
> " (2) On any day, other than a Sunday or public holiday, the governor shall hear applications of prisoners who have asked to see him.
>
> " (3) Where a prisoner has asked to see any other such person as aforesaid, the governor shall ensure that that person is told of his request on his next visit to the prison."
>
> "95.(1) The board of visitors for a prison and any member of the board

shall hear any complaint or request which a prisoner wishes to make to them or him."

49 Thus, there are four persons to whom, according to the Rules, complaints may be made:

(i) governors;
(ii) boards of visitors (or their members);
(iii) visiting officers of the Secretary of State; and
(iv) the Secretary of State himself.

The Rules do not provide how the complaints shall be dealt with. They impose no special duty on the person receiving the complaint. What action he takes is left to his discretion. They give him no special powers of investigation or of taking remedial action. He must use whatever powers he has by virtue of his office. We shall say a little about the way in which complaints are dealt with, according to our understanding of the practice.

Governors

50 Complaints are made orally at the governor's daily session. As the chief officer responsible for the management of the prison, he has all the powers needed to investigate the complaint, and in many cases to remedy the grievance it he thinks fit. He suffers the disadvantage, in a case where the conduct of his subordinate officers is in question, of not being, or not seeming to the prisoner to be, a truly independent tribunal. If he dismisses the complaint, he may be suspected of taking sides with the officers. If he upholds it, his officers may feel that he is undermining their authority.

Boards of Visitors and their Members

51 The individual members receive complaints on their periodic visits to the prison. At some prisons, members, either one or more, make themselves available at the fixed time each week for the receipt of complaints (this is the 'clinic system' praised in the Jellicoe Report at pp. 52–53). Complaints may also be made to the full board at their monthly meetings, but these, according to Jellicoe, are "comparatively rare". Boards have a valuable role to play in the prison complaints system. It is useful to have an arrangement within the institution under which a prisoner may present his complaint to an independent body with some degree of formality but without delay or expense. The governor or another member of staff will be called upon to explain the situation and, although the board can only make recommendations[1] – if necessary to the Home Secretary himself – this may

1 Boards may also receive requests, and have power in two cases to grant them: they may allow the prisoner to send additional letters, and to receive additional or extended visits.

lead to a revision of the original decision or some other suitable redress or at least afford an opportunity for the reasons for the decision to be outlined to the prisoner by someone other than a member of the prison staff. And the fact that the governor and other staff members know that they may be called to account in this way is likely to promote better decision-making in the first instance. We are anxious to see no diminution in the facilities available to prisoners to ventilate their grievances locally and speedily, and the board is ideal for this purpose. It would, as we argue later, be better fitted for this task if its independence from the prison authorities were strengthened by ending its disciplinary function.

52 But boards of visitors have their limitations. Board members have only a limited investigative capacity. They have access to all the papers of the prison, but will normally go no further than seeking an official account from the governor or other officer. It is not for board members to track down files, go laboriously through correspondence or conduct painstaking interviews. Moreover, they are not professionals, but laymen operating in a complicated system with elaborate rules, orders, circulars and so on. In our view, despite their obvious value, they are not a sufficient independent authority for the handling of complaints.

Visiting Officers of the Secretary of State

53 A visiting officer is usually one of the four Regional Directors. His visits to each prison are occasional. The prisoners do not know when he is coming. If a prisoner has asked to see him, he must be told (Rule 8(3)), but if for any reason the officer does not wish to see the prisoner, he need not. It is not his duty to enquire into the complaints he receives.

The Secretary of State

54 The right of petitioning the Secretary of State is, it seems, an incident of the subject's right at common law to petition the Crown to remedy injustice, which dates from medieval times and is referred to in the Bill of Rights 1688. 12,000 or so the these petitions are made by prisoners each year. They are drafted without legal assistance, and submitted through the governor, who attaches a report to each of them giving such information as he thinks proper and stating his recommendations. The Prison Department deals with them. Normally we understand, it relies on the information supplied by the governor and makes no independent investigation. On average, it takes the Department six to nine months to decide each petition. While one of his petitions is pending, the prisoner may not submit another unless a month has elapsed since the first was submitted, or unless the gover-

nor considers that an exception should be made in one of the cases specified in Standing Order 5C10. Reasons are not normally given for the decision (a practice criticised by the Ombudsman). In 1977, the latest year for which information is available, about 18 per cent of the petitions were granted. Joint petitions are forbidden.

55 The Expenditure Committee of the House of Commons dealt with this matter of petitions in para. 177 of their 15th Report.[1] They referred to the opinion of a Member of Parliament "that basically petitioning the Home Secretary or Home Office is an absolute waste of time". They quoted the evidence of the Howard League: "One means of redress which has been devalued by excessive use is the petition to the Home Secretary; this should be an exceptional and serious safeguard, not a formality used thousands of times a year, and the whole system should be examined." The Committee added this statement of their own views: "We are disturbed by these comments and feel that they reflect the case for an addition to the machinery for the ventilation of grievances which will command wider trust and respect among prisoners than at present."

56 We agree with the Expenditure Committee that an addition to the existing machinery is needed. If the new authoirty is to command that "wider trust and respect" of which the Committee speak, it must be more independent than the governors, more effective than the boards of visitors, and its procedure must be simple and more expeditious than that of petitioning the Home Secretary. We note that as long ago as 1979 the May Committee of Inquiry[2] supported the Expenditure Committee's plea for an examination of the present system, saying (at para. 5.57 of their report):

> "We also understand that consideration is being given within the Home Office to the form which the review of grievance procedures recommended in the Expenditure Sub-Committee's report might take. We certainly think that there should be one. A number of important issues are involved. We have not, for example, been impressed by the length of time taken to answer petitions."

External Complaints

57 A prisoner may write to those outside, complaining about his treatment in prison, provided that he makes his complaint known to the authorities at the time he writes, if he has not done so already. But there is not much that they can do to help him. Too little is known about the prison system, the policies of the administration or its criteria of management, for any outsider to be able to comment usefully on individual grievances or to influence the authorities' decisions. MPs, raising a complaint with the Home Office, can sometimes help the prisoner, especially in compassionate cases, and are more likely than others to obtain information and explanations. But they have no powers of investigation, and in most cases must accept what they are told.

1 H.C. 6621–1 (1987).
2 Cmnd. 7673.

The Ombudsman

58 The Parliamentary Commissioner for Administration (the Ombudsman) provides a means outside the prison system of investigating prisoners' complaints. Under the 1967 Act by which his office is established, he may –

> "investigate any action taken by or on behalf of a government department ... being action taken in the exercise of administrative functions of that department ... in any case where:
> (*a*) a written complaint is duly made to a member of the House of Commons by a member of the public who claims to have sustained injustice in consequence of maladministration in connexion with the action so taken; and,
> (*b*) the complaint is referred to the Commissioner, with the consent of the person who made it, by a member of that House with the request to conduct an investigation thereon (s.5(1))".

Section 12(3) of the Act is in these terms:

> "It is hereby declared that nothing in this Act authorises or requires the Commissioner to question the merits of a decision taken without maladministration by a government department or other authority in the exercise of a discretion vested in that department or authority."

The Home Office, as the government department administering the prisons, is within the Commissioner's jurisdiction and any complaint by a prisoner of injustice sustained by him through maladministration in that department, if referred to the Commissioner by a member of the House of Commons, may be investigated by him.

59 Mr. McKenzie-Johnson, the Commissioner's Deputy, very kindly attended one of our meetings and gave us information about the complaints of prisoners received by the Commissioner either from the prisoners directly or through Members of Parliament (excluding complaints about tax, social security or other matters unconnected with their conditions of imprisonment). They were very few indeed. In the five years 1976–80, 90 complaints reached him. 26 of these came to him from prisoners direct. As he has no power to investigate complaints which have not been referred to him by a Member of Parliament, he passed on these complaints to the prisoners' MPs for them to consider whether they wished him (the Commissioner) to conduct an

investigation. None of them asked him to do so. Of the remaining 64, 16 were rejected without investigation (we presume because they did not come within the Commissioner's jurisdiction); in eight others investigations were begun but for various reasons discontinued; and in 40, investigations were completed.

60 The Commissioner did not find maladministration in any of them. In one or two cases there had been breaches of the Rules, but only technical. In some there had been an overstrict application of the Rules. In none had there been any injustice.

The question arises whether the Commissioner's jurisdiction provides a suitable means of redressing prisoners' grievances. In considering that question, these seem to us to be the important facts:

- The average daily prison population is over 40,000.
- The lives of these prisoners are subject to the complete control of prison authorities, so that the opportunities for grievances are likely to be numerous.
- They live in the appalling conditions described in the Chief Inspector's report quoted above.
- Over 11,000 prisoners a year go to the trouble of drafting a petition to the Secretary of State for redress of grievances.
- Only 18 a year on average brought their cases to the notice of the Commissioner, and he found no maladministration in any he investigated.

From these facts we conclude that the jurisdiction of the Commissioner, as established by the 1967 Act, does not provide a suitable means of redressing the grievances of prisoners. We shall return to this subject at para. 77 with proposals for the establishment of a new officer, a Prisons Ombudsman, with a jurisdiction limited to penal establishments.

Courts

61 Next we shall consider the prisoner's right to obtain redress by civil proceedings against the authorities or their officers. He has that right in certain cases. The authorities owe him a duty at common law to take reasonable care for his health and his safety while he is in their custody, and if they neglect that duty (for example by failing to provide him with the necessaries of life or by housing him in dangerous conditions) and thereby his health is impaired or he suffers injury, he will have a cause of action. So he will if they use violence against him in circumstances where it is unauthorised by law, or fail to take reasonable care to protect him against the forseeable violence of

fellow prisoners.[1] If a board of visitors fail to observe the rules of natural justice when inquiring into the charge of an offence against discipline, he can apply to the court to quash the board's decision.[2] If the authorities hinder or obstruct him in his access to the courts, he can initiate proceedings against them for contempt.[3]

62 These are cases in which the law is clear. There are others where it is not. In particular, there is uncertainty about the extent to which a prisoner can obtain relief from the courts if there has been a failure by his custodians to observe the Prison Rules and he has suffered thereby. The Prison Act does not expressly provide that a prisoner shall, or shall not, have a right of action in such cases. It has in effect been left to the courts to decide whether he should have it and, if he should, in which particular cases. Until recently the courts were not prepared to give a right of action in any of them. In an unreported case in 1977, Mr. Justice Cantley, summarising the effect of the earlier judgments, said:

> "The Prison Rules provide in very considerable detail for the humane and constructive treatment of prisoners and for giving them various privileges, but they do not confer rights on them. The prisoner's safeguards against abuse are provided by complaint to the governor or by petition to the Secretary of State."[4]

There are signs that judicial thinking on this is changing, but it is uncertain how far the judges are prepared to go.[5] This is unsatisfactory. The law should be certain and positive in its protection of prisoners.

63 There are, we think, some cases in which the prisoner should have a right of action; and the Prison Act should make it clear in general terms what kinds of case these are to be. Rules which provide that a prisoner shall not be punished unless the conditions prescribed in the Rules have been satisfied are a clear case for enforcement by the courts. So are rules which provide that unconvicted prisoners shall not be treated as if they had been convicted. There are others. In our view, all those rules which confer specific protection on prisoners or accord them specific rights, in the absence of a broad discretion, are suitable for judicial enforcement and should be subject to it. Rules of general policy or of broad, undefined scope are not apt for judicial supervision. It is not, in our view, difficult to distinguish between

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1 *Halsbury's Laws of England* (4th ed., 1982), Vol. 37, paras. 1140, 1153, 1163.
2 *R.* v. *Board of Visitors of Hull Prison, ex parte St. Germain* [1979] Q.B. 425; *Halsbury, op. cit.*, para. 1172.
3 *Raymond* v. *Honey* [1982] 2 W.L.R. 465.
4 *Payne* v. *Home Office* (unreported, May 2, 1977, Q.B. London).
5 See *Halsbury, op. cit.*, para. 1139, where the numerous cases are listed and discussed.

these kinds of rules; and a general principle to this effect in the Prison Act should enable the courts to offer redress where appropriate. Indeed, it may be that the courts will reach this result without legislative assistance.

64 In what court should actions be brought for breaches of the Rules? We think that it would be reasonable to give the county courts jurisdiction, with power in exceptional cases to remove the action to the High Court. To avoid bringing prisoners to court unnecessarily, the County Court Rules could give the court extensive powers to try these cases on affidavit evidence. We see no reason for requiring all such actions to be brought in the High Court. Preliminary and interlocutory stages in the county court would not require the prisoner's attendance at court; and as with applications for judicial review under R.S.C. Order 53 in the High Court, most cases could be dealt with on affidavit evidence, with provision for discovery, oral evidence and cross-examination whenever necessary.

Private Prosecutions

65 The subject of private prosecution, though of small practical importance, is connected with some of the matters we have been discussing, and we shall say a few words about it here.

The Prison Rules make no provision for a prisoner's obtaining advice relating to a private prosecution, or for his initiating one. S.O. 5B34 provides that a prisoner's correspondence may not contain "material intended to initiate or instructions for the initiation of a private prosecution by or on behalf of the inmate against any person." We are not satisfied that this restriction is justified.[1] A private prosecution is the ultimate safeguard against official inaction, and as such it protects the interests of the prosecutor and of the State. Why should the interests of the State be disregarded because the person wishing to be a prosecutor is himself a prisoner? Why should his own interests be disregarded for that reason? In accordance with our general principle that prisoners ought not to suffer unnecessary restrictions, we recommend that this one be removed.

The European Convention on Human Rights

66 It remains to discuss briefly the European Convention on Human Rights and Fundamental Freedoms. Some of its provisions have particular reference to prisoners, for whatever crimes they have been imprisoned. Thus, Article 3 provides that 'no one shall be subjected to torture or to inhuman or degrading treatment or punishment', and Article 8 that 'everyone is entitled to respect for his correspondence'. These and other Articles of the Convention enable our prisoners to bring complaints against the Government about aspects of their treatment in prison before an independent tribunal, namely the European Commission of Human Rights, if they have exhausted their domestic remedies and have submitted their application within six months of the final domestic decision.

But these means for redressing grievances which the Convention provides are no substitute for effective domestic procedures. This is so for two principal reasons. In the first place, many matters of complaint which a prisoner may wish to make do not fall within the limited scope of the Convention. In the second place, even if they do, the time taken by the Convention organs to deal with its cases is very long – three to six years. The Convention, it seems to us, is chiefly useful as a means of making governments change their laws and practices when these are inconsistent with the Convention. It is no substitute for effective domestic remedies. It should be pointed out that the European Court of Human Rights has recently ruled that the failure of the United Kingdom to provide an effective remedy before a national authority in cases where a prisoner has suffered violations of his rights under the European Convention is itself a violation (see Article 13 of the Convention), the Ombudsman, the Home Secretary, the board of visitors and the courts not being adequate for the purpose. The Ombudsman and the board of visitors have no powers to order redress; the Home Secretary is not independent; and the courts have no jurisdiction in cases of alleged breaches of the Convention unless infringements of English law are also involved.[1] A strengthening of the complaints machinery is therefore necessary.

SUPERVISION AND INSPECTION

Board of Visitors

67 In addition to their particular duty of hearing complaints, boards have the general duty of supervising prisons imposed by Rule 94 (i):

> "The board of visitors for a prison shall satisfy themselves as to the state of prison premises, the administration of the prison and the treatment of the prisoners."

1 It would seem inconsistent with the decision in *Raymond* v. *Honey* [1982] 2 W.L.R. 465, H.L.

1 *Silver* v. *The United Kingdom, supra.*

The Jellicoe Committee, in their report on boards of visitors, described this duty as that of "independent outside supervision". They said that it was "The fundamental reason that justifies the existence of boards at all" (p. 32). Another of their duties is that of trying the more serious charges of indiscipline (Rules 51–52). The Committee heard evidence that this second duty interfered with the effective performance of what they considered to be their fundamental duty of supervision. They quoted a witness:

> "The most obvious function of the Board is to adjudicate on the more serious internal disciplinary cases. This is regarded by most prisoners as the board's primary role and they are therefore reluctant to approach them with complaints against the administration of the prison. This tacit identification of boards of visitors with governor and staff, creating yet another them and us situation, is reinforced by the way in which members of boards generally approach their task . . ." (p. 37).

68 The Committee apparently accepted this evidence:

> "In the end, however, the crucial factor is the need for the board . . . in its supervisory role to exhibit what we have termed conspicuous independence. The adjudication of serious offences is such a central function of the maintenance of discipline and therefore of the running of the institution, that to be involved in it is incompatible with the supervisory body's need to establish conspicuous independence. As our prime concern is to strengthen the supervisory functions we therefore *recommend that the body responsible for supervision should not have a disciplinary function.*" (p. 39).

69 Unless boards appear to the prisoners to be independent, prisoners will be reluctant to complain to them against the administration. In that case their supervision of the administration will suffer. But the boards will not appear to be independent so long as they are adjudicating in cases of indiscipline. Therefore this jurisdiction should be taken from them. So the Committee reasoned, and we think that the reasoning was sound. We regret that their recommendation has not been accepted.[1]

Staff and Prisoners' Committees

70 There are in some of our prisons informal committees of staff and prisoners set up to deal with grievances about the prisoners' food and the amenities provided for them. These committees serve the useful purpose of removing causes of discontent and also of breaking down the barriers which exist between prisoners and staff. They are encouraged by the Prison Department, but we understand that they work erratically, doubtless because of their informality. We would favour a more formal system of consultation, such as exists in some United States prisons. A few rules would be needed providing for the election of representatives of prisoners from the areas served by the committee, the wing or the landing, and for meetings of these representatives with members of the staff at regular intervals. We recommend that the Prison Department should take the necessary steps to formalise the procedures, where these committees already exist, and to cause committees to be established where they do not.

1 According to the May Committee, it met with widespread opposition from the boards (May Report, p. 105).

Allegations of Ill-treatment by Staff

71 Standing Orders make provision for the investigation of complaints by prisoners of ill-treatment by members of the prison staff. The governor normally asks the deputy governor to investigate the complaint, interview the witnesses and report. This procedure is no longer in operation, since the Prison Officers' Association refuse to co-operate but instead insist on the investigation being carried out by the police.

While investigation by the police is a thoroughly commendable practice, which we strongly endorse, in the case of serious allegations, it is disproportionate in respect of more minor allegations where insistence on a police inquiry is tantamount to obstructing the investigation. The police will understandably not want to be involved in these minor cases. In those cases, therefore, we are content with the internal investigation procedure laid down in the Standing Orders and would urge compliance by all parties concerned with these arrangements. Any deficiency in the internal inquiry or in the action following the report by the deputy governor would fall within the jurisdiction of the Prisons Ombudsman we recommend below.

The Chief Inspector

72 The May Committee recommended that "There should be a system of inspection of the prison service distanced as far as may be practicable from the Prison Department", and that "There should be constituted within the Home Office an independent department, to be called the prison inspectorate" (p. 279 of the Report). In 1980, the Home Secretary accepted this recommendation and appointed the late Mr. William Pearce (who had served for 30 years in the Probation Service) to be the first of the independent Chief Inspectors. The establishment of this new department and the appointment of Mr. Pearce were among the better things which have happened in the

prison system in recent years.

73 In 1980, there was no statute dealing with the Chief Inspector, and terms of reference were prescribed by the Home Secretary, setting out "the principles and some of the procedures which H.M. Chief Inspector of Prisons will adopt in inspecting prison service establishments and which the Prison Department will follow in providing facilities for him and in responding to his recommendations."[1]

Since then, statutory provision has been made for the Chief Inspector by section 57 of the Criminal Justice Act 1982, which adds a new section 5A to the Prison Act 1952, in these terms:

> "(1) Her Majesty may appoint a person to be Chief Inspector of Prisons.
> (2) It shall be the duty of the Chief Inspector to inspect or arrange for the inspection of prisons in England and Wales and to report to the Secretary of State on them.
> (3) The Chief Inspector shall in particular report to the Secretary of State on the treatment of prisoners and conditions in prisons.
> (4) The Secretary of State may refer specific matters connected with prisons in England and Wales and prisoners in them to the Chief Inspector and direct him to report on them.
> (5) The Chief Inspector shall in each year submit to the Secretary of State a report in such form as the Secretary of State may direct, and the Secretary of State shall lay a copy of that report before Parliament.
> (6) The Chief Inspector shall be paid such salary and allowances as the Secretary of State may with the consent of the Treasury determine."

Any provision in his terms of reference which might restrict the Chief Inspector in the performance of these duties are presumably no longer effective. We think it is a good thing that he should not be restricted.

74 Mr. Pearce came to one of our meetings. It may be helpful to summarise his account of how the inspectorate worked. It is part of the Home Office, but not part of the Prison Department, from which it is kept totally independent. Its purpose is to encourage and promote the observance of decent standards in prisons and detention centres (124 in England and Wales, six in Northern Ireland) with particular regard to the prisoners' conditions, their treatment and the facilities available to them. The Chief Inspector has the right of access to the Home Secretary, which Mr. Pearce considered important.

The Chief Inspector and his staff will make regular inspections of each of these establishments on a programme already commenced, which will take at least five years to complete. For the inspection, a week is allotted, which may not be enough sometimes for making an expert appraisal of the state of the buildings or for examining the content of educational programmes. The next week is spent

1 Reproduced in Appendix 1 to the Chief Inspector's 1981 Report, Cmnd. 8532.

writing up the results of the inspection.[1]

75 The Chief Inspector also makes occasional unannounced visits to prisons.[2] The Home Secretary has power to direct him to conduct special investigations. One of these was made into the treatment of ethnic minorities in prisons. Others were made into disturbances at particular prisons, one at Brixton, another at Wandsworth. An inquiry into suicides by prisoners is about to be launched. He has no power to deal with the grievances of individual prisoners. But when he inspects a prison, he examines the record of complaints in each wing to see if there is a general pattern of grievances which would point to some defect of administration.

Before going to a prison, Mr. Pearce always asked for a written report from the chairman of the board of visitors. At the prison he would meet the chairman and other members of the board who were present and discuss the state of the prison with them. The governor was always present on these occasions, which may have inhibited a completely frank expression of views. Mr. Pearce told us that to discharge these duties he had a staff of six full-time officers and two part-time specialists (one for buildings, the other a doctor).[3]

76 We make the following comments and suggestions:

(1) We attach great importance, as the May Committee did, to the Chief Inspector's being completely independent of the Prison Department. This independence seemed to be achieved by Mr. Pearce under the arrangements he described. He appeared to value it. In this matter much depends on the personality of the Chief Inspector, and sometimes too on his staff, which ought always to include *some* persons from outside the Prison Department and the Home Office. The Chief Inspector should never be drawn from the Prison Department or the Prison Service (in this respect we differ from the May Committee which considered that an ex-governor would be suitable for this office (p. 279).

(2) We agree that the Inspectorate ought not to investigate the individual prisoner's complaints. If it were to undertake these investigations, the performance of its real task, the mainten-

1 From 1983, the programme has been slowed down in order to maintain the standard of inspections: Chief Inspector's Report, 1982, para.1.09. HC 260, 1983.

2 It appears from the Chief Inspector's Reports that during 1981 he, or the Deputy Chief Inspector, made ten of these, and 23 in 1982.

3 It appears from Appendix 4 of the Chief Inspector's 1981 Report that this staff was subsequently enlarged and included (in addition to Central Services and Secretarial Support) eight full-time officers and three part-time specialists (one for buildings, the other two doctors).

ance of standards in the prisons, would be bound to suffer. We do not think that prisoners ought to have the right to see the Inspectorate when it visits a prison. To give them that right would very seriously encroach upon the time available to the Inspectorate for other things. The Inspectorate should have the right to see any prisoners in private and to talk with them, if it wishes and if the prisoners are willing to talk. We consider that prisoners should be able to write uncensored letters to the Chief Inspector. But it should be made plain to the writers that the Chief Inspector will not investigate their individual grievances. Such letters might be helpful to him if they disclose a pattern of grievances, and possibly in other ways.

(3) We think it good that all the Chief Inspector's reports should be published, those dealing with his inspection of individual prisons as well as his annual report. This is the present practice. Exclusions for security reasons should be those which are required in *his* opinion. Such publications are a means of sustaining the public's interest in their prisons, where that interest exists, and of creating it, where it does not. The concern of the public for the observance of proper standards, if it is strongly felt, will encourage Parliament to supply the money needed for this purpose. The fear of going beyond the wishes of an apathetic or ill-informed public might act as a restraint on Parliament.

(4) Under the provisions of the new section 5A of the Prison Act, the Chief Inspector is not limited to considering the way in which the Prison Department's policies are being administered. He can go further and criticise these policies themselves if he thinks that they are causing unnecessary problems. We would hope that in making his report he will use such power of criticism as he has to the full.

(5) When he discusses the manangement of the prison with the board of visitors or any of its members, the governor should not be present. Boards should be encouraged to communicate with the Chief Inspector on any matters within his jurisdiction, without necessarily waiting for him to visit their prisons. It would be reasonable for the Home Office to communicate with every member of a board, on his appointment, telling him of the Chief Inspector's functions, and informing him of his freedom to communicate with him. The Chief Inspector for his part should consider himself free to communicate with them.

(6) (a) Under section 5A of the Prison Act, the Chief Inspector has power to inspect a prison otherwise than in the regular course. This is a useful power. It enables him to make unannounced visits for spot checks,[1] and also to visit if he has reason to believe that an inspection is needed to deal with a deteriorating situation.

(b) If it were found difficult to make regular inspections every five years, it might be thought reasonable, after the first regular inspection, to make an interim inspection, less thorough than the regular one, and to postpone the next regular inspection for more than five years.

(7) It seems to us that the Chief Inspector's staff is very small indeed for the full discharge of his important duties.

A Prisons Ombudsman

77 It appears from our survey of the present arrangements that only two authorities, the governor and the Home Secretary, have effective powers to investigate and remedy grievances, but they are not independent. Neither the Visiting Officer nor the Chief Inspector has any duty of investigating individual complaints, and neither of them does so. Boards of visitors have no special powers of investigation. If their enquiries satisfy them that a prisoner has a genuine grievance, they must leave its redress to others. The Ombudsman has powers of investigation, but he can exercise them only in cases referred to him by a Member of Parliament, and few of these are prisoners' cases. When he does investigate, his jurisdiction is limited to cases of maladministration.[2] Our courts do not concern themselves with the administration of prisons or the treatment of prisoners except in those cases (of which there are few) where some common law duty of care has been neglected, through which a prisoner has suffered physically, or where the requirements of natural justice have not been observed by the board of visitors in the exercise of their disciplinary jurisdiction.

While some prisoners' grievances may be covered by the European Convention on Human Rights, and so fall within the jurisdiction of the European Commission of Human Rights, the vast majority of complaints do not. In any case, the Commission's enquiries take years to complete.

1 We understand that they can be particularly effective when carried out first thing in the morning at unlocking.

2 Sir Idwal Pugh, a former Parliamentary Commissioner of Administration, has taken the view the "maladministration" includes any action that the Commissioner considers "unreasonable, unjust or oppressive": Pugh, *The Ombudsman, Jurisdiction, Powers and Practice* (1978), p. 10.

78 The need is for an independent investigator, to whom prisoners will have unrestricted access, who will have the duty of investigating their complaints, and the power of recommending the appropriate remedy if he finds that they have been treated unfairly, unreasonably or unjustly. To meet this need there is a choice of two alternatives: *either* to enlarge the present Ombudsman's jurisdiction so as to enable prisoners to approach him direct and to enlarge his powers, beyond the investigation of maladministration, to whatever extent is needed to enable him to deal on its merits with any question which may arise concerning the treatment of any prisoner; *or* to create a new Ombudsman for prisoners only with that wider jurisdiction and those enlarged powers.

We have no hesitation in preferring the second alternative. We see administrative difficulties in giving these two very different jurisdictions to the same officer. Nor would there be any saving of expense from combining them: the present Ombudsman would need as many people to deal with the prisoners as a Prisons Ombudsman would employ. Therefore we recommend the establishment of another Parliamentary Commissioner, a Prisons Ombudsman.

79 These in outline are the functions, powers and duties of this officer as we envisage them:

(1) His principal function should be to investigate the individual prisoner's complaints about his treatment in prison and to make recommendations for dealing with them. We use the word "treatment" in a wide sense to include any act, omission, decision, order or practice of the authorities or their officers by which the prisoner is affected. He should have the right to receive these complaints either from the prisoner himself or from others.

(2) His object should be to ensure that the prisoner's rights, from whatever source they were derived – the common law, the Prison Act, or the Prison Rules – were fully implemented, and that such discretion as the authorities might have about his treatment was reasonably exercised, and in general that that treatment was fair, reasonable and just.

(3) His recommendations should deal with the merits of any decision giving rise to a complaint and not merely with the procedures by which it had been reached.

(4) For the purposes of his investigations, he should have access to all parts of the prison, the power to question officers and inmates, and the right to examine relevant papers.

(5) His functions ought not to be limited to the examination of complaints made by individual prisoners, but should include investigations of prison administration made either of his own motion or upon the representations of others. He should have the power, in connexion with such investigations, to make recommendations with the object of ensuring that the treatment of prisoners was fair, reasonable and just. His power should not go beyond the making of recommendations.

(6) His recommendations of whatever kind should be made to the authority concerned. He should have the duty of making annual reports to the House of Commons, and power to make interim and special reports in which he could, if he thought fit, draw attention to cases in which his recommendations had not been complied with. He should be supported by a Select Committee. It could be the Select Committee on the Parliamentary Commissioner or on Home Affairs, but both these Committees already have a heavy workload. We prefer a Select Committee on Penal Affairs.[1] Such a committee would be able to influence the Home Office in the running of the prisons in a way that MPs cannot do as individuals.

(7) He ought not, as a general rule, to investigate a prisoner's complaint unless that prisoner had already brought it to the notice of the authorities under the Prison Rules and had failed to obtain redress; but he should have power to waive this requirement if he thought it in a particular case unfair or impracticable to insist upon it. He should have the right to refuse to investigate a complaint on the grounds of its being frivolous, too trivial or too stale to justify investigation.

(8) Prisoners should not be subject to disciplinary measures under the Prison Rules in respect of any complaint or other communications made by them to the Commissioner. Their correspondence with him should not be censored, and his interviews with them should be out of the sight and hearing of prison staff. He should do what he can by visiting prisons to make himself or his staff available to prisoners to hear their complaints in person. This would be particularly helpful to the illiterate, of whom there are many in prison.

(9) Boards of visitors and prison officers should have the right to communicate with him about matters of administration affecting prisoners. They should have the right to meet him (or his staff) on their visits to the prisons.

(10) Inside the prison system we would expect him to have regu-

1 At present there is a Parliamentary All-Party Penal Affairs Group, but this is an unofficial body of MPs and Peers interested in the subject and it has no powers.

lar meetings with the Prison Department and the Inspectorate. Outside the system he should be free to meet members of the public and the press, so that the experience he gained from his work could make an impact on the public. It should be the concern of all of us that the standards of prison administration are what they should be in a civilised and democratic community. The establishment of a Prisons Ombudsman would be a major step towards the achievement of that object.[1]

1 The May Committee, discussing the appointment of a Prisons Ombudsman, noted "that an official rather like a Prisons Ombudsman has been appointed in Canada reporting to the Solicitor-General direct, and that there may be useful lessons to be learned from experience there although time has not allowed us to pursue the matter to a conclusion". We have collected some information about the Canadian experience, provincial as well as federal, which we have set out in Appendix 2 to this Report.

PART III

DISCIPLINE

Introduction

80 It is in the context of discipline that the sharpest conflicts between prisoner and prison staff are apt to occur. There is confrontation and perhaps fear, ill-will, apprehension and anxiety on both sides. The prison authorities have a formidable array of powers to invoke at such times and some severe sanctions they may impose. As with any power entrusted to public authorities or officials, principle demands that its exercise should be both lawful and fair. We recognise not only the overriding need to maintain order and discipline in our prisons – it is a fundamental right of prisoners to be protected so far as possible against the activities of fellow inmates – but also the very real difficulties that face prison officers and governors in coping with some prisoners. The disciplinary structure, therefore, needs to accomplish its objective without sacrificing the principles of legality or fairness. Similar difficulties confront the criminal justice system outside prison and the tensions are not always easy to resolve, but a more appropriate balance than the present in the prison disciplinary system can be struck without jeopardising the overriding requirement of "control", to which the prison authorities understandably attach such importance.

81 In our review of discipline, we have examined the formal disciplinary system under which prisoners may be punished for proved acts of indiscipline, the procedures, offences and punishments all being prescribed in the Rules, as well as other distinct powers under the Rules to respond to prisoners' indiscipline by removal from association, placing in special cells and using restraints. We deal first with the formal system of offences and punishments and the accompanying procedures.

A. THE FORMAL DISCIPLINARY SYSTEM

82 The Prison Rules create a disciplinary system which corresponds to the ordinary criminal justice system. They combine the substantive with the procedural and are in effect a code of penal law and procedure appropriate to prison life. There are 21 offences against discipline, divided into "especially grave offences", "graver offences" and the rest. There are pre-trial procedures, including the equivalent of a

remand in custody, and there are procedures to be observed at the hearing. The especially grave and graver offences are dealt with by the board of visitors; the remainder, unless serious or repeated, are within the governor's jurisdiction. A series of penalties may be imposed. Prisoners who complain of their conviction or punishment may petition the Home Secretary. There is also a limited power of judicial review, of doubtful extent. We turn first to the offences themselves.

The Offences Against Discipline

83 Rule 47 of the Prison Rules lists 21 offences against discipline as follows:

> "A prisoner shall be guilty of an offence against discipline if he–
> (1) mutinies or incites another prisoner to mutiny;
> (2) does gross personal violence to an officer;
> (3) does gross personal violence to any person not being an officer;
> (4) commits any assault;
> (5) escapes from prison or from legal custody;
> (6) absents himself without permission from any place where he is required to be, whether within or outside prison;
> (7) has in his cell or room or in his possession any unauthorised article, or attempts to obtain such an article;
> (8) delivers to or receives from any person any unauthorised article;
> (9) sells or delivers to any other person, without permission, anything he is allowed to have only for his own use;
> (10) takes improperly or is in unauthorised possession of any article belonging to another person or to a prison;
> (11) wilfully damages or disfigures any part of the prison or any property not his own;
> (12) makes any false and malicious allegation against an officer;
> (13) treats with disrespect an officer or any person visiting a prison;
> (14) uses any abusive, insolent, threatening or other improper language;
> (15) is indecent in language, act or gesture;
> (16) repeatedly makes groundless complaints;
> (17) is idle, careless or negligent at work or, being required to work, refuses to do so;
> (18) disobeys any lawful order or refuses or neglects to conform to any rule or regulation of the prison;
> (19) attempts to do any of the foregoing things;
> (20) in any way offends against good order and discipline; or
> (21) does not return to prison when he should have returned after being temporarily released from prison under Rule 6 of these Rules, or does not comply with any condition upon which he was so released."

We have specific comments to make on many of these offences and also some general comments. We shall make the specific comments first.

84 We have no comment to make on the offences in paragraphs 1, 4, 5, 9, 10, 11 and 16.

5, 9, 10, 11 and 16.

85 *Does gross personal violence to an officer (para. 2) or any person not an officer (para 3)*

There can be no reason for having two separate offences of gross personal violence, the first where the victim is an officer and the second where he is any other person, unless provision is made for a heavier punishment in the first case. The Rules did so provide in 1964. They provided that a prisoner guilty of gross personal violence against an officer could be flogged and made to forfeit remission without any limitation on the period of forfeiture. When the violence was used against any other person, there could be no flogging and the period of forfeiture was limited to 180 days. But in 1967 flogging was abolished by statute and, if the recommendation which we make in para. 101 is adopted, forfeiture of remission will not in future exceed 180 days in any case. In that event there will be no reason for preserving the two offences of gross personal violence. Even if the grounds for our recommendation in para. 101 are found insufficient, there would still, we think, be good reason for doing away with the separate offence of using gross personal violence against an officer. The fact that the person against whom it has been used is an officer is unquestionably an aggravating circumstance, but that is not in our opinion a sufficient reason for creating a separate offence to deal with it, graver than the already grave offence of using such violence against one who is not an officer. It is not as if the status of the victim is the only, or indeed the principal, aggravating circumstance which can be imagined. Special offences are not needed to deal with any of these circumstances.

86 Rule 47 provides for the punishment of two different kinds of assault (being in this respect much simpler than the criminal law), "gross personal violence" in (2) and (3), and "assault" without any further description in (4), which is doubtless meant to cover any conceivable kind of violence not being "gross personal violence". "Gross personal violence" is an ambiguous expression. The words no doubt include, but can hardly be limited to, the intentional infliction of serious injury; but what else they include is quite uncertain.

We consider that only two offences of violence are required. We would define the first as "intentionally or recklessly inflicting really serious injury[1] on any person," leaving the word "assault" in the statement of the second offence to cover any other form of personal violence, which in this context it would seem to do.

1 The expression "really serious injury" is the accepted meaning of "grievous bodily harm": see *D.P.P.* v. *Smith* [1961] A.C. 290, 334; *Hyam* v. *D.P.P.* [1975] A.C. 55, 68–69, 85.

87 *Absents himself without permission from any place where he is required to be (para. 6)*

No form of guilty mind is required by the definition of the offence in para. (6). We recommend that the definition should be re-worded to make it clear that it is an essential element of the offence that the prisoner should know, at the time he commits it, the limits which he is alleged to be under a duty to observe, and also that he should have no reasonable excuse for transgressing them. He might have a reasonable excuse even though he had not been given permission.

88 *Has in his cell or possession any unauthorised article (para. 7); or delivers or receives any unauthorised article (para. 8)*

It should be made clear in the definition of this offence that it is an essential element that the prisoner should be proved to have known at the time of the offence –

(1) that he had the article in his possession;
(2) that he was required to have authority for possessing it;
(3) that he did not have that authority.

The definition should also make it clear that it is a further essential element of the offence that the prisoner had no reasonable excuse for possessing the article in question.

The definition of the offence in para. (8) requires similar clarification.

89 *Makes any false and malicious allegation against an officer (para. 12)*

We are strongly of the opinion that this offence should be abolished.

Abuses of authority by prison officers do occur from time to time. Both justice and the proper administration of the prisons require that the prisoner who believes himself to be aggrieved by such an abuse should have an effective right of complaint. The difficulty of making good the allegation is in the nature of things inescapable and formidable. If to this difficulty there is added the risk that if he fails to make it good he may be proceeded against under this Rule and be punished, he may easily be discouraged from complaining, even though he believes his complaint to be justified, and may (rightly) regard the entire complaints system as biased in favour of the authorities. For this reason, the existence of this offence is incompatible with a just and effective complaints system. It is in any case an offence under para. (16) to make repeated complaints groundlessly, and we recommend the retention of this offence. It goes quite far enough to protect officers against the troublesome or vindictive prisoner.

90 *Treats with disrespect an officer or person visiting a prison (para. 13); uses any abusive, insolent, threatening or other improper language (para. 14); is indecent in language, act or gesture (para. 15)*

(a) *Para. 13*

The phrase "person visiting a prison" is wide enough to include the prisoner's relatives and friends when they come to see him. But it can hardly be intended that a prisoner should be punished for treating any of them disrespectfully. We suggest that the phrase should be re-worded: "person visiting a prison in the performance of his duties".

(b) *Para. 14*

Abusive or insolent language, if used to a prison officer or any other person in authority, would be punishable under para. 13, and if used to anybody else, ought not to be an offence. So we would strike these words out. The words "other improper language" are too uncertain in their meaning to be used in a penal provision. They too should go. That leaves only "threatening language". To threaten others, whether officers or fellow prisoners, with unlawful harm ought, we think, to be an offence. If para. 14 were re-worded to make it clear that this is what is meant by "threatening language", we would favour retaining it to this limited extent.

(c) *Para. 15*

From the context, we infer that the mischief aimed at is the deliberate showing of disrespect to others by indecency of words or behaviour. If this is right, then (i) in the case of officers, does para. 15 add anything useful to para. 13, and (ii) should the showing of disrespect to fellow-prisoners be an offence? If, as we believe, the answer to each of these questions is 'no', then para. 15 should be omitted.

91 *Is idle, careless or negligent at work or, being required to work, refuses to do so (para. 17)*

We do not think it appropriate to treat a prisoner's inability to attain a certain standard in his work as a disciplinary matter. This offence should aim at the prisoner who deliberately fails to work or work properly and we accordingly recommend the following formulation: "is idle, deliberately fails to work properly, or, being required to work, refuses to do so."

92 *Disobeys any lawful order or refuses or neglects to conform to any rule or regulation of the prison (para. 18)*

As it stands, the last part of this rule gives the governor an extensive rule-making power, backed by disciplinary sanctions, which in our view is in need of some restriction. We should like to see a provision in the Rules which expressly confers on governors the power to make internal regulations which are necessary or reasonable for the proper

running of the prison, each regulation to be subject to annulment by the Home Secretary. Such regulations would be valid only if given adequate publicity in the prison and no prisoner could be punished under para. 18 unless this requirement had been observed and the failure to conform was a wilful one.

93 *In any way offends against good order and discipline (para. 20)*

The statement of offences against discipline in Rule 47 is introduced by the words: "A prisoner shall be guilty of an offence against discipline if he . . ." Read with these introductory words, para. 20 provides:

> "A prisoner shall be guilty of an offence against discipline if he . . . in any way offends against . . . discipline"

– meaning, in effect, if he does any act which, in the opinion of the tribunal which tries him, ought to be an offence.

A provision of this kind is manifestly inconsistent with the principle that a person ought not to be punished for an act not known to be punishable at the time of its commission. In this respect, para. 20 differs from all the other paragraphs of Rule 47, each of which describes the forbidden act, so that the person who reads the Rule knows what he must not do. Para. 20 does not give that information. It is for this reason an unfair provision which ought to be deleted.

If experience shows that the offences specified in paras. (1) to (19), including the widely framed para. (18), are insufficient, and that forms of conduct other than those forbidden by these paragraphs should be punishable, the remedy is to add those forms of conduct specifically to the Rules as new offences. Under the Prison Act 1952, the Home Secretary has power to make such amendments when he thinks fit.

94 *Does not return to prison after temporary release (para. 21)*

We recommend the insertion of "knowingly" here in relation to a failure to comply with any conditions on which the prisoner was released.

95 *General Defences and Mental Element*

We have already endeavoured to take account of appropriate defences and the mental element, but we think it right to provide generally for these in the Rules. We therefore recommend that the following provisions should be added to or inserted immediately after Rule 47:

> "(1)(*a*) A prisoner is not guilty of any of these offences unless he has acted either intentionally or recklessly with respect to each material element of the offence.
>
> (*b*) Where the act charged is an offence only if it is done in special circumstances, it must be proved that the prisoner, at the time that he did the act, knew that those circumstances existed or was reckless as to their existence.
>
> (2) In respect of offences involving the use of force, no offence shall be committed where the prisoner honestly believes that its use is necessary for the purpose of protecting himself or another against unlawful force.
>
> (3) No offence shall be committed where the prisoner did the act constituting the offence because he was coerced to do it by the use of, or a threat to use, unlawful force against his person, or the person of another, which a person of reasonable firmness in his situation would have been unable to resist."

Para. 1 requires that the prisoner should have acted intentionally, recklessly or with knowledge, as appropriate. Paras. 2 and 3 introduce the defences of self-defence and duress which must, in our judgment, be recognised in the prison context as they are outside. Indeed, the occasions for raising such defences are more likely to arise in prison than outside. If it were objected that such provisions would overcomplicate the issue, inject niceties into the proceedings or lead to unwarranted acquittals, we would answer that the objections do not justify a refusal to admit these defences. They are well-established in the criminal law and it would require very strong reasons indeed for denying them to prisoners. It is not as if the penalties provided by the Rules were so negligible that a stricter substantive law might be tolerable. It will be seen in our next section that these penalties can be severe.

The Penalties

96 The following table sets out the principal penalties, or "awards", that may be imposed under Rules 50–52:

Award	*Maximum Period (days)*	
	Governor	*Board of Visitors*
(i) Caution	–	–
(ii) Forfeiture of privileges	28	No limit
(iii) Exclusion from associated work	14	56
(iv) Stoppage of earnings	28	56
(v) Cellular confinement	3	56
(vi) Forfeiture of remission	28	180(no limit in the "especially grave offences")

The "especially grave offences" are mutiny or incitement to mutiny and doing gross personal violence to an officer. The "graver offences", which must also be referred to the board of visitors, are escaping or attempting to escape, assaulting an officer and doing gross personal violence to anyone who is not an officer. We shall comment first on the maximum length of some of these periods under the headings "Governors' Awards" and "Boards' Awards". After this we shall offer

a few comments of a different kind on some of these powers, whether exercisable by a governor or by a board, under the heading "General Comments".

GOVERNORS' AWARDS

97 We accept that governors need disciplinary powers to deal with the less serious offences promptly and with less formality than is appropriate to the trial by some other tribunal of the more serious offences. Under the present Rules, most types of offence can be tried either by the governor or by the board of visitors, but the governor's powers of punishment under Rule 50 are naturally more limited than the board's powers under Rule 51. We have considered the governor's powers and in some instances recommend changes.

Cellular Confinement

98 Governors may order a prisoner to be kept in cellular confinement for only three days. This is a very short period compared with the maximum of 56 days which can be ordered by the board of visitors. We think that there is a case for extending it. Under other provisions of the Rules, the governor may make orders having a similar effect to one of cellular confinement but for much longer periods than three days. Thus, he has power –

(i) under Rule 50(*b*) to award forfeiture of privileges, including the privilege of recreational association, for 28 days;

(ii) under Rule 50(*c*) to exclude the prisoner from associated work for 14 days; and

(iii) under the introductory words of Rule 50 ("may make any one or more of the following awards") to combine (i) and (ii).

A prisoner excluded from associated work must work alone in his cell. If he is also deprived of recreational association, his state is hardly different from that of a prisoner in cellular confinement, except that in the latter case the deprivation cannot last for more than three days and in the former may continue for 14, being the maximum period under Rule 50(*c*). In our view, the governor's power of ordinary cellular confinement should be extended from three to seven days, but his power to making a combined order under Rule 50(*b*) and (*c*) should, for the avoidance of inconsistency, be reduced from 14 days to seven.

Loss of Remission

99 The governor may deprive prisoners of 28 days' remission, which is equivalent to a sentence by a court (before remission) of 42 days (42 less one-third = 28). This is a severe penalty. In our opinion, if the prisoner is exposed to the risk of being penalised to this extent, he is entitled to the protection given by the more formal procedure of the other disciplinary body. We recommend the reduction of this period

of 28 days to one of 14.

BOARDS' AWARDS

100 We recommend below (in paras. 113–115) the abolition of boards' adjudicatory powers, but the comments that follow apply whether the disciplinary body is the present board of visitors or our proposed panel of magistrates.

Loss of Remission

101 The *Prison Statistics* show that forfeiture of remission is the most commonly awarded penalty. They give no indication of the length of these awards. Though it appears from press and other reports that in some cases the periods of lost remission are very long indeed, running into years, we should suppose that in most cases they are fairly short. The first question is whether the power of ordering loss of remission without any upper limit for the "especially grave offences" (mutiny or incitement to mutiny and doing gross personal violence to an officer) should be retained, and if not, what should be the maximum period.

In our opinion the period of loss ought never to exceed 180 days. A loss of 180 days is a severe punishment, equivalent to a sentence of nine months' imprisonment passed by a criminal court. If the prisoner's conduct is thought to deserve a heavier punishment than that, he ought not to be proceeded against before a domestic tribunal for an offence against discipline. He should be brought before a criminal court on indictment. A penalty of 180 days for a purely disciplinary matter which is not also a criminal offence and which cannot therefore be brought before the criminal courts should suffice.

We see no sufficient reason for recommending a reduction of the period of 180 days in the case of the "graver offences".

If our recommendation for a maximum period of loss in the case of the "especially grave offences" is accepted, the reason for this special class will have gone, and Rule 52, which provides for it, can be repealed. We recommend that it should be.

Cellular Confinement

102 Cellular confinement means solitary confinement. The present maximum of 56 days for this most serious punishment is, we think, oppressive. Under the pre-1914 Rules, the maximum was 15 days. We recommend that the 56 days should be reduced to 28.

103 We pointed out in para. 98 that the effect of a combined award of forfeiture of the privilege of recreational association and of exclusion from associated work is hardly different from that of an award of cellular confinement. For this reason, we recommend that Rule 51 should be amended to provide that if a combined award of this kind is made, its period should not exceed 28 days.

Forfeiture of Privileges

104 To deprive a prisoner of his privileges is a heavy punishment. Prison life is bleak; the privileges relieve its grim monotony. But deprivation of privileges is the only punishment for which no limit of time is prescribed by Rule 51. This, we think, is indefensible. We recommend that there should be a maximum period of 56 days, which is that fixed by the Rule as the maximum for exclusion from associated work and for stoppage of earnings.

General Comments on Certain Penalties

Forfeiture of Privileges

105 In para. 45 we have recommended that the existing systems of privileges should be examined to see whether any matters now treated as privileges might more reasonably be classified as rights. If any are reclassified, it should be considered whether the Rules dealing with penalties should make provision for their temporary forfeiture.

In 1975, the Home Office Working Party on Adjudication Procedures stated in para. 83 of their Report (the Weiler Report) that it considered a blanket award of the forfeiture of *all* privileges inappropriate in view of the wide range of matters regarded as privileges. They stated their approval of the practice of the tribunal's announcing the particular privileges which should be forfeited and of its listing the forfeited privileges in its written record. We understand this to mean that if the tribunal wishes to order the loss of all privileges, it may not do so by using the words "all privileges" but must list each of the forfeited privileges individually. We agree with this view and recommend that the Rules should be amended to make the practice compulsory.

We also consider that only in exceptional circumstances should this punishment be awarded in addition to cellular confinement, and then for no more than seven days. To reprive a prisoner in solitary confinement of possessions like letters, photographs, books and a radio for a period longer than seven days is, in our view, inhumane.

Cellular Confinement

106 Rule 53(2) provides that an award of cellular confinement may not be made unless the medical officer has confirmed that the prisoner is in a fit state of health to be dealt with in this way. If this is right (as it clearly is), it must also be right that the Medical Officer should examine the prisoner during the course of the confinement to ascertain whether he is still in a fit state of health. If he finds that he is not, he should have the duty of certifying his unfitness, and on his doing so the award should be either suspended or determined (see in this connection Rule 43(3) dealing with arrangements for removal

from association). We recommend that the Rules should be amended to require that the Medical Officer should visit daily any prisoner undergoing cellular confinement with the duty of ascertaining whether he is still fit to undergo such confinement. We would think it right that a duty to visit prisoners in cellular confinement should be imposed by Rule 96 on members of boards of visitors when making their statutory visits to the prison.

Suspended Awards

107 Rule 55 permits awards to be suspended for up to six months, to be activated only in the event of a further offence against discipline and a direction to that effect by the adjudicating body. Around 10 per cent of awards in men's establishments are suspended and under 10 per cent of these are subsequently activated. The percentage of subsequently activated sentences is low. This suggests to us that the small number of suspended cases might reasonably be increased. The adjudicating bodies ought, therefore, to be encouraged to make greater use of this power. Further, we recommend that Rule 55 should be amended so as to allow the partial suspension of an award, the remainder to be effective forthwith. Such a power was enacted for the criminal courts by section 47 of the Criminal Law Act 1977 and was implemented in March 1982 and has now been extended by the Criminal Justice Act 1982.

Cumulative and Consecutive Awards

108 Rules 50 and 51 expressly permit the governor or board "to make *one or more* of the following awards" so that a prisoner may receive several different punishments for a single offence. There is a risk that the cumulative awards may in particular cases be too severe. We would not for that reason restrict or abolish the power of awarding more than one punishment for the same offence, which is in principle a reasonable one. The better solution, it seems to us, is to provide an effective review procedure which will ensure that excessive sentences are reduced. This is discussed below at paras. 123–124. We have already made recommendations for dealing with the problem caused by combining awards of loss of privileges and exclusion from associated work (see paras. 98 and 103 above).

109 The power of making consecutive awards which in their aggregate exceed the limits of the maximum penalty fixed for a single offence is more doubtful. Consecutive awards of loss of remission are sometimes made when the total loss greatly exceeds the maximum for a single offence of 180 days. This effect, which is particularly hard in cases where the offences arise out of the same transaction, can hardly have been intended by those who framed the Rule. We recommend that the Rule should be amended to provide that, when the offences arise out of the same transaction, the aggregate penalty shall not exceed the maximum for a single offence. Where the multiplicity of charges does

not arise from a single transaction, it is, we think, impracticable either to forbid consecutive awards or to limit the aggregate penalty to the maximum for a single offence. We are content to leave the correction of an excessive aggregate penalty to the review procedure recommended in paras. 123–124.

A small point concerns the means by which aggregate penalties can be kept within limits. Concurrent awards are one means. Another is by awarding no separate penalty in respect of one or more of the offences. This expedient, open to governors under Rule 50, is denied to the board under Rule 51, which makes the imposition of a penalty of some kind mandatory ('The Board . . . if they find the offence proved, *shall* make one or more of the following awards . . .'). This Rule should be appropriately amended.

Restoration of lost Remission

110 Remission which has been forfeited at an adjudication may later be restored, by the governor if the award was a governor's award and otherwise by the board of visitors (Rule 56(2)). This procedure was not intended to serve as an appeal or review mechanism, for which the Home Secretary has power under Rule 56(1), but to reward subsequent good behaviour.

111 We make the following recommendations:

(a) There should be an automatic review of all cases in which a prisoner has lost more than 28 days' remission.

(b) This review should be conducted by one of the panels of magistrates to whom we recommend transferring the penal jurisdiction of boards of visitors (see para. 115 below). It should be the panel which exercises that jurisdiction in the prison where the prisoner is detained at the time of the review.

(c) The review should take place at a special meeting of the panel held nine months after the date of the award. Where the loss awarded is a small one, and the prisoner's date of release, if the loss should be remitted, is imminent, the review cannot be postponed for so long a period and provision should be made for earlier review of these cases.

(d) The prisoner should have the right to be heard on the review.

(e) The panel should be under an obligation to remit at least part of the loss in cases where the prisoner, since the award, has behaved himself and committed no breaches of discipline for which he has been charged and convicted under the Rules. If the panel refuses to remit the whole of any loss, it should give its reasons for the refusal, and a record should be made of them and sent, with the other documents in the case, to the National Board recommended in para. 124 below, which should have the duty of considering the case and the power, if it sees fit, of ordering a larger restoration of remission. The prisoner should have the right of making representations in writing to the National Board.

(f) The panel ordering the loss should be under an obligation to explain to the prisoner at the time of making its order that the loss will be reviewed within a stated period and that, if during that period he has behaved himself and committed no breach of discipline for which he has been charged and convicted under the Rules, at least part of the loss will be remitted.

The Disciplinary Tribunal

112 We do not recommend any change in the adjudicating role of governors. It is right that the less serious offences should be dealt with promptly and effectively by the person responsible for managing the institution, as we have argued in para. 97 above.

113 There has been much discussion in recent years of the question whether boards of visitors should retain their disciplinary role in addition to their supervisory and welfare role. We have considered the question. No doubt their judicial functions give board members a better opportunity of seeing how the prison system works, and there may be other advantages. But, on balance, we share the conclusion of the Jellicoe Committee that it is preferable for the disciplinary function to be removed and transferred to some other body. It is not necessary to rehearse in full the arguments, which are cogently set out in the Jellicoe Report. Two arguments weighed particularly heavily with us:

(a) Adjudications are a judicial function which should not be entrusted to a body many of whose members have no judicial experience or training and have not been selected primarily for that purpose.

(b) The combination of functions impairs the appearance of 'conspicuous independence' that the Jellicoe Committee felt to be so important and thereby undermines the confidence which inmates have in the board as a complaints mechanism and general supervisor of the prison.

114 The European Commission of Human Rights[1] has recently come to the conclusion that an adjudication involving considerable loss of remission – it was 570 days in the case before it – ceases to be a purely disciplinary matter but enters the criminal sphere and there-

1 *Campbell and Fell* v. *The United Kingdom*, App. Nos. 7819/77 and 7878/77, Report of the Commission (1982) 5 E.H.R.R. 207.

fore attracts the procedural guarantees of Article 6 of the Convention, which provides:

> "1. In the determination . . . of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
> 3. Everyone charged with a criminal offence has the following minimum rights:
> (*a*) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
> (*b*) to have adequate time and facilities for the preparation of his defence;
> (*c*) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
> (*d*) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
> (*e*) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

In particular, the Commission found that boards of visitors were not independent of the prison administration and therefore of the Executive, that their proceedings and decisions were not public, and that the refusal to allow access to legal assistance and representation all involved breaches of Article 6.

The case has now been referred to the European Court of Human Rights for an authoritative ruling, but the Commission's reasoning and conclusions lend the greatest support to our argument for withdrawing the disciplinary function from the boards of visitors.

115 To whom, then, should the role of adjudicator be transferred? In our opinion, it should be to the local magistrates sitting at the prison in question as a disciplinary body under the Prison Rules,[1] with their legally qualified or trained clerk to advise them. We envisage that a panel of justices would be elected by the justices themselves at regular intervals, as they do at present in the case of the domestic panel and licensing committees, etc. The Rules should provide that no justice should be on the panel so long as he was serving as a member of the

1 Not as a court under the Magistrates' Courts Act 1980.

board of visitors for any prison within its jurisdiction. Justices (and their clerks) would need some training, not only as to the formal powers and procedures, but also, and no less important, as to the realities and conditions of institutional life. The form of this would be a matter for the Lord Chancellor's Department in consultation with the Prison Department of the Home Office. The panel would sit in threes. As there are only about 2,900 adjudications heard by the boards of visitors a year, we are satisfied that the burden of work can fairly easily be absorbed by the magistracy and their clerks.

116 Under Rule 51(5), it is open to the Home Secretary to refer a "graver offence" to one of his officials for adjudication instead of its being dealt with by the board of visitors. This is now quite obsolete and incompatible with the general scheme we recommend. We therefore recommend its abolition.

Representation at Adjudications

117 We have no doubt that many prisoners need assistance in preparing their cases and in presenting them before the board of visitors and would still need that assistance if local justices were to supersede the boards. But the Rules do not provide that they should be assisted in either respect, and the Court of Appeal has held that legal representation before the board is not required by the rules of natural justice (*Fraser* v. *Mudge* [1975] 1 W.L.R. 1132).

Our opinion on this point is supported by the following passage from the report by the Home Office Research Unit based on the experiment of interviewing a number of prisoners before and after the adjudication of their cases:

> "Some of the prisoners were poorly educated and not very intelligent. Furthermore, a few spoke poor English and a few appeared to have psychiatric problems. Unless they are given considerable assistance, it is unrealistic to expect such men to prepare an adequate written statement or to present their case effectively."[1]

118 Who should provide such assistance and representation? We do not think that it is appropriate for this task to be undertaken by members of the prison staff, of whatever grade. They are not trained to do this work. Conflicts of loyalty might arise; their relationship with the officers presenting the case against the prisoner whom they will be helping could sometimes be embarrassing. Nor do we favour the assumption of this role by a member of the board of visitors. Again, they are untrained and inexperienced in the techniques invol-

1 Smith, Austin and Ditchfield, *Board of Visitors Adjudications*, Research Unit Paper 3, Home Office, 1981, p. 31.

ved and similar conflicts would arise. Even if the board were no longer the adjudicating body, its members should not, in our view, be called upon to perform this task.

119 It is, we are certain, a task which only lawyers are equipped to discharge, a conclusion to which the Royal Commission on Legal Services came in 1979 as regards all adjudications involving loss of remission of seven days or more.[1] But we would not make the service quite so widely available. We would instead limit the provision to cases tried by the panels (or boards), and in these would make it available only if the case were unusually complex or the accused were handicapped by low intelligence, illiteracy, or some other disability, or where the case involved a serious charge likely to culminate in a lengthy period of loss of remission. Legal assistance and representation are, it appears, required by the European Convention on Human Rights in such circumstances.[2] It would be for the governor in the first instance to consider whether the prisoner should be represented, though the prisoner would be entitled to ask the governor that he be represented. If this were refused, the governor should record in writing his reasons for the refusal, which would be made available to the adjudicating panel (or board). The panel would then ascertain if the inmate wished to renew his application and, if so, would consider the matter afresh. If it seemed to the panel at any time during the hearing that an unrepresented inmate was unfit to conduct or incapable of conducting his own defence, the hearing would be adjourned to allow legal representation to be arranged. In our opinion, these procedures strike a reasonable balance and should ensure that representation was not denied in proper cases.

120 With only about 2,900 adjudications above the governor's level each year, we do not anticipate any major problem in finding lawyers willing to act. A rota of local solicitors, remunerated under the Green Form Scheme, is one possibility and we have recommended such an arrangement for more general purposes (see paras. 34–37 in Part I). Some briefing could be provided for solicitors' on the procedures and the background to prison disciplinary matters, though expertise will be acquired largely through experience.

Other Procedural Matters

121 The Weiler Report made a number of suggestions on such matters as lay-out of furniture and the positions of participants with which we agree. In particular, the common practice of the prisoner's having to stand throughout the hearing with two prison officers standing immediately in front of and facing him is indefensible and should be discontinued. The prisoner should be allowed to make notes and this requires that he be seated at a table.[1] This in itself, together with suitably placed officers, should suffice to offer protection to panel members from attack by the prisoner. We would wish to see, not so much a relaxed atmosphere as a businesslike one conducive to the work in hand.

We should also like to draw attention to the fact that, under Rule 48(2), a prisoner who is charged with an offence against discipline *may* be kept apart from other prisoners pending the adjudication. This is a discretionary power available to governors and there will be cases when it will be necessary to use it, but it is frequently applied automatically, which is improper. Where a prisoner has been segregated pending an adjudication and is subsequently found guilty, the fact and period of segregation should be drawn to the attention of the adjudicator and taken into account in fixing the penalty.

Review and Appeal

Governors' Awards

122 An effective *right of appeal* would entitle the convicted prisoner to call his award in question on the ground that he had been wrongly convicted, or that the proper procedure had not been followed, or that his sentence was excessive, and to require some authority (other than that making the award) to consider his objections, with the duty, if the objections were found to be sufficient, of setting the award aside or of revising it. The Rules give no right of appeal in this sense.

As effective *review procedure* would require the establishment of an authority obliged to consider, of its own motion, each disciplinary award, and having the duty, if justice so required, of setting it aside or of revising it. The Rules make no provision for a procedure of this kind either.

The Secretary of State has of course his powers under Rule 56(1) which enable him, if he thinks fit, to remit a disciplinary award or to mitigate it either by reducing it or by substituting another award which is, in his opinion, less severe; and prisoners have the right (recognised in Rule 7(1)) of petitioning him in respect of any matter by which they are aggrieved, including disciplinary awards. We understand that Regional Offices examine governors' and boards' awards as a matter of routine and that, as a result of this examination, action

1 *Final Report*, Vol. 1, para. 9.29, Cmnd. 7648.
2. See *Campbell and Fell* v. *The United Kingdom, supra.*

1 This could be fixed to the floor.

is sometimes taken under Rule 56(1). There are no statistics relating to the use of this Rule.[1] We suspect that the powers are seldom used.

In addition, the High Court has a common law jurisdiction, by way of certiorari, to review an award made by a board and to set it aside if the prisoner has not been given a fair hearing and an opportunity of calling relevant witnesses.[2] It has not yet been decided whether this supervisory jurisdiction extends to governors' adjudications.

Awards by the Panel (or Board)

123 We have considered whether the Secretary of State's power under Rule 56(1) is a sufficient safeguard against injustice arising from a disciplinary award or whether a more effective procedure is required, either by way of appeal or of review. We do not think that it is required in the case of governors' awards. There are a great number of these cases – over 61,000 a year in fact. None of them is very serious. The maximum punishments are – or should be – light. An undue burden might be imposed on the administration if there were to be a right of appeal in every one of them, or if each of them had to be effectively reviewed. We recognise that hardship and injustice can be caused in these cases and prisoners may feel strongly on the subject, but the use of the ordinary complaints machinery (including the Prisons Ombudsman we have recommended) should afford a satisfactory remedy.

124 Different considerations apply to the more serious cases, about 2,900 each year, now tried by the boards of visitors. For these we think that an effective review procedure is essential and we recommend that one should be established.

We have considered the form it should take, who should administer it, whether their jurisdiction should be local or national, and what the method of proceeding should be. We make the following recommendations:

(i) There should be a National Review Board appointed by the Lord Chancellor.

(ii) It should be presided over by a circuit judge or a lawyer with similar qualifications and experience.

(iii) Other members should be drawn from the judiciary, and legal profession and the magistracy.

(iv) All findings of guilt should automatically be subject to review.

(v) The Board should have the smae powers as the Secretary of State has under Rule 56(1).

(iv) The less important cases should be assigned to a single lawyer member of the Board who would have the power of dealing with them himself, or, if he thought it necessary, of referring them to a sub-committee of the Board.

(vii) The more serious cases (*e.g.* those in which the maximum loss of remission, or the maximum period of cellular confinement, had been awarded) should necessarily be assigned to a sub-committee.

The High Court's power of interfering by way of certiorari would, of course, be unaffected by this procedure. We see no reason why the Secretary of State should not retain his powers under Rule 56(1), though routine examination of boards' awards by Regional Offices would be come unnecessary.

We should add that if our recommendation that the jurisdiction of boards should be transferred to magistrates were not adopted, the case for an effective review procedure of the kind we recommend would be even stronger.

B. SPECIAL CONTROL: SEGREGATION, CONFINEMENT AND RESTRAINT

125 In addition to their powers of punishment under Rules 50 and 51, the authorities have means of dealing with difficult or recalcitrant prisoners, under Rule 43 by removing them from association, under Rule 45 by confining them in special cells, and under Rule 46 by the use of physical restraints such as handcuffs, ankle straps and body belts. We have considered these formidable provisions and discuss them in the paragraphs which follow, concluding in each case that the present arrangements for controlling their exercise are insufficient.

Removal from Association

126 Rule 43(1) provides:

> "Where it appears desirable, for the maintenance of good order or discipline or in his own interests, that a prisoner should not associate with other prisoners, either generally or for particular purposes, the governor may arrange for the prisoner's removal from association accordingly."

We are not concerned in this chapter with removal in the prisoner's own interest, usually at his request and for self-protection, which is discussed elsewhere (see para. 43 above).

127 This power of totally isolating a prisoner, though a drastic one, is clearly necessary in the interests of the other inmates. Our prisons house some persons of a dangerously violent disposition. At times

1 H.C. Deb., Vol. 5, 1 June 1981, *W.A. col. 246.*

2. *R. v. Hull Prison Board of Visitors, ex parte St. Germain* [1979]. Q.B. 425.

even normally well-controlled individuals may be driven beyond the limits of self-control by the pressures of prison life in the appalling conditions which prevail there. The authorities have a duty to protect the inmates from one another's violence,[1] and without this power they could not perform it. But because the consequences of his isolation are so very serious to the prisoner who is removed from association, it is imperative that the power should be used cautiously, only when its use is strictly necessary for the protection of the other inmates, and never as a means of punishment.

128 The governor makes the order of removal (thought it may be that the Home Secretary too has power to make an order).[2] If the order is to last for more than 24 hours, the governor must obtain the authority of a member of the board of visitors or of the Home Secretary (in practice the Regional Director). This authority may not be given for more than a month, but once given may be renewed from month to month.

In the case of removal "for good order or discipline", more than 1,000 cases are made each year (removals in the prisoner's own interests are additional). Regrettably, the *Prison Statistics* do not provide details of these orders, in particular of their duration. In answer to a recent parliamentary question, a Home Office Minister stated that in February 1981 some 14 male prisoners had been removed for periods of up to 12 months, six of them up to two years, and five of them for up to three years.[3] An answer to another question stated that in one recent case the removal had lasted for 1,478 days.[4]

129 We make the following recommendations for dealing with removals from association for the maintenance of good order or discipline:

(a) Where possible, facilities should be provided for dealing with some of the less serious cases by measures which fall short of total segregation. Rule 43 should be amended to state explicitly that a prisoner should be removed from association only if it is necessary for the maintenance of good order or discipline or in the prisoner's own interest *and no other arrangement is practicable in the circumstances.*

(b) No prisoner should be segregated unless the medical officer certifies that he is fit to be dealt with in this way (as he must do under Rule 53(2) before an award of cellular confinement may be made).

(c) The governor should have power to make an order, without further authority, for up to 48 hours. If should be his duty to record in writing his reasons for making the order stating *inter alia* why in his opinion no other arrangement was practicable. If at the time of making the order or during the first 24 hours he was of the opinion that segregation beyond 48 hours would be necessary, he should refer the case to the panel of magistrates whom we have recommended should adjudicate in disciplinary cases (see para. 115 above). It should be the duty of the panel to convene as soon as practicable. Pending their decision, segregation beyond 48 hours should be valid. The panel should have power to order segregation for up to 28 days. If before the end of this period the governor were of the opinion that continued segregation was necessary, he should again refer the case to the panel who should have the power on this and any subsequent occasion to order segregation for any period up to 90 days. If the segregation has continued for more than 180 days, a proposal by the governor for its further continuation should require the endorsement of the Home Secretary, and if such a proposal were accepted by the panel, their decision should be subject to automatic review by the National Board in the same way as any disciplinary award made by the panel (see our recommendations in para. 124 above).

(d) On any reference to the panel the prisoner should appear before them. On the first reference he should be entitled to know the governor's reasons for ordering segregation, why he thought that nothing short of segregation was practicable, and why he thought that segregation for more than 48 hours was needed. He should be entitled to make representations, to call witnesses, and, subject to the same conditions as a prisoner on a disciplinary charge, to be legally represented (see para. 119 above). The Rules should state that the burden of proving that segregation was necessary should be on the governor.

(e) The above procedures should apply whenever the removal is initiated by the governor, whether for the maintenance of good order and discipline or in the prisoner's own interest, but they should not apply where the prisoner himself had applied to be segregated and the governor had acceded to his request. These two situations are therefore clearly distinguished in our suggested revision of Rule 43 below.

(f) Fuller details than at present of the orders made under the new Rule 43 should be published in the *Prison Statistics*, stating the period of segregation.

1 *Ellis* v. *Home Office* [1959] 2 All E.R. 149, C.A.
2 *Williams* v. *Home Office (No. 2)* [1981] 1 All E.R. 1211, 1229.
3. H.C. Deb., Vol. 4, col. 52, May 6, 1981.
4 H.L. Deb., 25 June 1981, col. 1234.

(g) It is wrong and indeed unlawful to use Rule 43 as a means of punishment.[1] Segregation under this Rule is essentially a preventive device. It ought not to be open to a governor to order a prisoner's removal under Rule 43 on the ground that he has committed offences against discipline unless:
(i) he has been charged and found guilty in an adjudication;
(ii) the offences are serious; and
(iii) there are reasonable grounds for believing that segregation is necessary to prevent the commission of similar offences in the future.

These requirements should be reflected in the Rules. We recommend a re-drafting of Rule 43 in the following or similar terms:

"(1) The governor may arrange that a prisoner shall not associate with other prisoners either generally or for particular purposes –
(*a*) if the prisoner requests that such an arrangement should be made for his own protection and the governor is of the opinion that it is reasonable in the circumstances of the case that it should be made; or
(*b*) if it is necessary for the maintenance of good order or discipline or in the prisoner's own interest that such an arrangement should be made and in the circumstances of the case no other arrangement is practicable.
(2) Where any arrangement is made under this Rule, the governor shall record in writing his reasons for making this arrangement and, in the case of an arrangement made under paragraph (1)(*b*) of this Rule, the circumstances which make any other arrangement impractable.
(3) No arrangement shall be made under this Rule on the ground that the prisoner has committed offences against discipline unless –
(i) such offences were serious;
(ii) the prisoner has been charged with the offences under these Rules and the offences have been found proved; and
(iii) there are reasonable grounds for believing that the prisoner would be likely to commit similar offences in the future."

(h) The Prison Rules at one time provided that prisoners segregated under Rule 43 should be visited daily by the medical officer and by the member of the board of visitors on the occasion of his statutory visits between meetings of the board. This provision should, we think, be restored.

130 The Prison Department has from time to time made valuable suggestions about Rule 43 and how it should be administered.[2] We draw attention to these, without recommending that they should be embodied in the Rules:

1 *Williams* v. *Home Office (No. 2)* [1981] 1 All E.R. 1211, 1235.
2. Letter from the Liaison Officer, Boards of Visitors, to Chairmen of Boards, 27 November 1981.

(i) It is advisable, before an authorisation is given under Rule 43(2), that the member of the board giving it should see the prisoner in question.
(ii) After the segregation has begun, the prisoner should be visited by a member of the board as soon as practicable, at the latest within 14 days.
(iii) Members of the board should make a particular point of seeing, on each visit to the establishment, the cells in which the segregated prisoners are housed.
(iv) The board, at their monthly meetings, should review all cases of segregation under Rule 43.

131 We have made some general observations about the conditions in which segregated prisoners are kept in para. 43 of Part I above. Rule 43 was also considered by the Jellicoe Committee. They concluded that the existing procedure did not give sufficient protection to prisoners against abuse of authority and that further safeguards were required (see p. 73 of their Report). That is our opinion too.

Special Cells and Restraints

132 Rule 45 deals with special cells, that is, cells set apart for specific use where the prisoner cannot injure himself or damage either the fabric or property. Rule 46 deals with the use of restraints, that is handcuffs, ankle straps and body belts (straitjackets). It will be convenient to quote the two Rules before we discuss their provisions:

"45. *Temporary confinement.* The governor may order a refractory or violent prisoner to be confined temporarily in a special cell, but a prisoner shall not be so confined as a punishment, or after he has ceased to be refractory or violent."

"46. *Restraints.* (1) The governor may order a prisoner to be put under restraint where this is necessary to prevent the prisoner from injuring himself or others, damaging property or creating a disturbance.

(2) Notice of such an order shall be given without delay to a member of the board of visitors, and to the medical officer.

(3) On receipt of the notice the medical officer shall inform the governor whether he concurs in the order. The governor shall give effect to any recommendation which the medical officer may make.

(4) A prisoner shall not be kept under restraint longer than necessary, nor shall he be so kept for longer than 24 hours without a direction in writing given by a member of the board of visitors or by an officer of the Secretary of State (not being an officer of a prison). Such a direction shall state the grounds for the restraint and the time during which it may continue.

(5) Particulars of every case of restraint under the foregoing provisions of this Rule shall be forthwith recorded.

(6) Except as provided by this Rule no prisoner shall be put under restraint otherwise than for safe custody during removal, or on medical grounds by direction of the medical officer. No prisoner shall be put under

restraint as a punishment.

(7) Any means of restraint shall be of a pattern authorised by the Secretary of State, and shall be used in such manner and under such conditions as the Secretary of State may direct."

The purpose of these two Rules is the same, to provide means of preventing exceptionally dangerous prisoners from doing harm to themselves, to others or to property. The different means provided, in the one case confinement, in the other physical restraints, are each of a very special nature, and are meant for temporary use only. Though their purpose is the same, the form of the two Rules is different. Rule 45 describes the character of the person to be restrained, "a refractory or violent prisoner", leaving the purpose of the restraint to be inferred from that description. Rule 46 states the purpose, "to prevent the prisoner from injuring himself or others, damaging property or creating a disturbance", but does not describe the prisoner. We prefer this second form which defines the purpose. It will be observed that Rule 46 provides elaborate safeguards against abuse of the powers which it confers, and that Rule 45 (in our opinion indefensibly) provides none at all.

133 We recommend the following:

(i) The two Rules should be combined in a single Rule conferring separately –
  (a) the power of ordinary confinement in a special cell, and
  (b) the power of putting a prisoner under restraint.

(ii) The new Rule should state that each of these powers was given for temporary use where necessary to prevent the prisoner from injuring himself or others, damaging property or creating a disturbance.

(iii) A written record should be made of the exercise of either power, in which the governor should state the reason for its exercise, explaining why, in his opinion, no other means of dealing with the prisoner were available.

(iv) No use should be made of either power as a punishment.

(v) In the case of the power of confinement in a special cell, the governor should be able without further authority to order confinement for a period of up to 48 hours, but if he were of the opinion that the confinement should extend beyond that period, he should be required (as recommended in the case of orders under Rule 43) to seek the authority of the panel of magistrates, who would be able to authorise confinement of up to seven days (including the 48 hours). Again, as in the case of Rule 43, the prisoner should have the right to present his case to the panel in person, unless his condition or behaviour were thought to preclude his appearance, in which case he should have the right to make representations by other means.

(vi) In the case of the power of putting a prisoner under restraint –
  (a) The governor should be able without further authority to make an order or orders for a total period of up to 24 hours, but if he were of opinion that the restraint should continue beyond that period, he should be required to seek the authorisation of an officer of the Secretary of State (in practice the Regional Director) who should be able to authorise the continuance of the restraint for a period extending beyond the 24 hours but not exceeding another 36 hours. If any further extension were needed (which seems to us hardly conceivable), the governor should be required to refer the case to the panel of magistrates who should be under a duty, as a matter of urgency, to convene forthwith, and who should be able to authorise the continuance of the restraint for a further period of 72 hours. Further extensions could be made by the panel for a similar period on a renewed application by the governor. The prisoner should have the same right of making representations to this panel as in (v) above.
  (b) The governor should have the same duty of notifying the medical officer as in Rule 46(2) and the medical officer and the governor should have the same duties as in Rule 46(3).
  (c) There should be the same provisions as in Rule 46(6) and (7).

134 The Medical Officer has his own special powers under Rule 18(2):

"The medical officer shall pay special attention to any prisoner whose mental condition appears to require it, and make any special arrangements which appear necessary for his supervision or care."

These arrangements include putting a prisoner under restraint (see Rule 46(6) quoted above). They also include putting him in a padded room. We do not suggest that these powers should be subject to the safeguards recommended in the preceding paragraphs for the governor's powers under Rules 45 and 46. The panels we recommend in para. 40 of Part I could also review the work of medical officers under Rule 18(2).

C. OBLIQUE DISCIPLINARY DEVICES

135 The re-categorisation of prisoners or their transfer from one prison to another are sometimes used as means of punishing them for indiscipline. Should the use of these powers be made subject to a review of the kind we have recommended for removal from associa-

tion, temporary confinement and other disciplinary awards? We think not. It would not be practicable to distinguish decisions made by way of punishment from decisions made for other purposes, and it would, we believe, be wrong to subject all of them to the kind of review we have recommended as appropriate for the prevention of injustice. These decisions, however arising, are best controlled by the ordinary system for dealing with prisoners' grievances. Elsewhere in this report we have recommended improvements in that system (see Part II).

CONCLUSION

The foregoing paragraphs of this Report had been drafted, but not yet submitted to the Council of JUSTICE, when the 1982 Report of the Chief Inspector of Prisons (Sir James Hennessy) was published.[1] We conclude with these quotations from that document:

> "2.02 In our report last year we described the overcrowded conditions we had observed in a number of prisons and the practical consequences for the inmates of being locked up, two or three to a cell designed for one, for periods of up to 23 hours out of 24. We noted that the prisons were frequently short of facilities such as baths, toilets, visiting rooms and association areas, which might have ameliorated the cramped conditions. We noted, too, that education and work for prisoners were often lacking because supervisory staff were frequently transferred to other urgent duties. The daily routine consequently suffered badly. We concluded that these conditions were unacceptable.
>
> "2.03 This year we have visited other prisons where similar conditions obtain . . .
>
> "2.04 We were left with the impression that the prison system has obtained little relief from overcrowding during 1982. Although the highest number of prisoners to be accommodated on any one day was some 800 below the peak of 45,500 reached during 1981, the prison population seems to have remained above 44,000 for the greater part of the year . . .
>
> "2.05 Proof, if it were needed, that the slight reduction in the overall prison population had not ended the state of crisis in which the prison system found itself could be seen from the continuing need during 1982 to hold prisoners in police and court cells . . .
>
> "2.07. . . . The pressures upon the prison system do not seem likely to abate. The projections of recent prison population trends suggest that, unless new measures are adopted, the population could reach almost 50,000 by the end of the decade. Prison Department's building plans should, it is true, bring some relief; 5,000 new places are scheduled to be brought into the system over approximately the same period. But much of this will replace existing accommodation; and other losses through age and decay must be expected. The refurbishment programme will also remove cells from the system; and the installation of integral sanitation will further reduce the total number of cells available. The net result is therefore likely to be a worsening in overcrowding.
>
> "2.08. It requires little imagination to foresee the results of any significant increase in overcrowding. Governors and their staff are already concerned. If conditions continue to deteriorate the effect on inmates could be disturbing, and the morale of the Prison Service would be adversely affected.
>
> "2.10. Against this background we are brought to the conclusion that however one may view the long term development of penal policy – whether it be in the direction of new forms of non-custodial treatment or new forms of custody – there is an immediate problem which must be faced today . . ."

Will that "little imagination" be used by those who have the power to provide the remedy? Will they find at last that sense of urgency which this grim situation demands?

1 H.C. 260, 1983.

SUMMARY OF RECOMMENDATIONS

Part I. General Rights

1. The Prison Rules should be revised as soon as possible so that they state precisely and clearly the rights and obligations of prisoners and their custodians. Restrictions on the exercise of rights should be no greater than is necessary to maintain discipline and should, so far as possible, be of specific and not general application (paras. 1–4).
2. All Standing Orders, other than those whose publication would affect security or undermine discipline, should be made available to prisoners through prison libraries (para. 5).
3. In order to reduce overcrowding, the Home Secretary should be given power to release prisoners before the expiry of their sentences and should be under an obligation to use it if he cannot otherwise prevent overcrowding (paras. 6–13).
4. In order to occupy inmates' time, workshops should be re-established in local prisons, education expanded and recreation facilities provided (paras. 14–18).
5. Prisoners' letters should not be censored except on reasonable suspicion that they contain objectionable material (as specified in the Rules), but they may be examined for contraband (paras. 19–26).
6. The minimum entitlement to ordinary visits should be one per fortnight. This principle should be stated in the Rules. There should be no restriction on the type of person who may visit a prisoner, except for a necessary reason. In general, visits should be out of the hearing of prison officers (paras. 30 and 32).
7. Greater consideration should be given to facilitating communications between prisoners and their families – in their allocation, by the greater availability of travel warrants and the use of the telephone (para. 31).
8. Duty Solicitor Schemes should be introduced into prisons (paras. 34–37).
9. Prisoners should be able to obtain a second opinion on medical matters from outside the Prison Medical Service. Where possible, a prisoner's GP should be consulted about his medical condition (paras. 40–41).
10. The ethical problems involved in the prison medical officer's being part of the prison administration should be examined by the medical profession and the prison authorities (para. 42).
11. Compensatory arrangements should be made for prisoners segregated under Rule 43 in order that they do not suffer greater loss of rights and privileges than non-segregated prisoners (para. 43).

12. The right to vote should be restored to prisoners (para. 44).
13. The Rules should permit prisoners to retain certain personal possessions as a matter of right and not privilege. The system of privileges should be examined to see whether some of them can be re-classified as rights (para. 45).

Part II. Complaints and Supervision

14. The Prison Act should specify which of the Prison Rules are actionable in the courts (paras. 61–63).
15. In most instances, the county court should be given jurisdiction to try such cases on affidavit evidence (para. 64).
16. Prisoners should be entitled to initiate private prosecutions (para. 65).
17. The disciplinary and supervisory functions of boards of visitors should be separated (paras. 67–69).
18. The use of Staff and Prisoner Committees should be extended to all prisons and placed on a formal basis (para. 70).
19. Allegations of ill-treatment by staff should be dealt with by internal investigation in minor cases and by police investigation in the more serious ones (para. 71).
20. The Chief Inspector of Prisons should always be appointed from outside the Prison Department, as should some of his staff (para. 76(1).
21. Prisoners should not be entitled to see the Inspector on a visit but should be able to write uncensored letters to him (para. 76(2)).
22. The scope of the matters contained in his reports (all of which should continue to be published) ought to be at the discretion of the Chief Inspector (para. 76(3) and (4)).
23. Boards of visitors should have free communication with the Chief Inspector and, on his visits, should see him without the governor's being present (para. 76(5)).
24. Consideration should be given to varying the intervals between full inspections and to increasing the staff of the Inspectorate (para. 76(6) and (7)).
25. A Prisons Ombudsman should be established with power to investigate the complaints of individual prisoners about their treatment in prison with the object of ensuring that it was fair, reasonable and just. He should deal with the merits of any decision giving rise to complaint and have adequate powers of investigation. He should make recommendations in respect of each complaint to the appropriate authority and should report on his activities to the House of Commons. Prisoners should be able to communicate their complaints to

him uncensored and without fear of punishment for so doing. He should have discretion about which complaints to take up; he should not normally take up a complaint unless the prisoner has failed to obtain redress under the complaints procedure laid down in the Prison Rules. Boards of visitors and prison officers should also be able to communicate with him about administrative matters affecting prisoners (para. 77).

Part III. Discipline

26. The disciplinary system should strike a fairer balance between the need to control prisoners and the requirements of legality and fairness (para. 80).
27. A number of the prison disciplinary offences should be modified in order to make them more specific, to introduce the element of *mens rea*, to eliminate unnecessary duplication, to remove arbitrariness and to provide for the general defences available in the criminal law (paras. 85–95); and in particular, the offence of making false and malicious allegations against an officer should be abolished (para. 89).
28. The scale of penalties available to governors should be rationalised in order to make them consistent with each other and in the interests of fairness. His power to award cellular (*i.e.* solitary) confinement should be increased from three to seven days (para. 98). His power to order loss of remission should be reduced from 28 to 14 days (para. 99).
29. The maximum period of loss of remission which can be ordered for a disciplinary offence should be 180 days. If misconduct is thought to warrant a more serious penalty, it should be tried in the courts (para. 101).
30. The maximum period of cellular confinement should be reduced from 56 to 28 days; that should also be the maximum for a combined award of forfeiture of association at work and recreation (paras. 102 and 103).
31. The maximum period of deprivation of privileges should be 56 days (para. 104).
32. There should be no 'blanket' loss of privileges: each one lost should be specified individually. Only in exceptional circumstances should cellular confinement be combined with loss of privileges, and the maximum period should be for seven days (para. 105).
33. The medical officer should be required to pay a daily visit to a prisoner punished with cellular confinement to ascertain his continued fitness to undergo it (para. 106).

34. Greater use should be made of suspended awards of punishment, and the disciplinary body should have power to make a partially suspended award (para. 107).
35. The Rules should be amended so that the aggregate penalty for offences arising out of the same transaction does not exceed the maximum for a single offence (para. 109).
36. A procedure for considering subsequent restoration of lost remission should be instituted (paras. 110–111).
37. The adjudication of the more serious disciplinary charges should no longer be carried out by boards of visitors or a Home Office official but by a panel of local magistrates (paras. 112–116).
38. Legal representation should be available before such a panel in certain circumstances, *e.g.* that the prisoner faced serious charges possibly involving substantial loss of remission (para. 119).
39. Prisoners should be allowed to take notes and remain seated at adjudications, and time spent segregated pending the hearing should be taken into account in fixing the penalty (para. 121).
40. There should be no right of appeal or of review in the case of awards by governors, but a review procedure should be established in respect of awards by the adjudication panel (paras. 122–124).
41. Removal from association for the maintenance of good order and discipline should only be effected where it is necessary for that purpose and unavoidable in the circumstances. The medical officer should certify that a prisoner is fit for segregation and, if segregated, should visit him daily. The governor should have power to order segregation for up to 48 hours. Any longer period should require the approval of the adjudication panel. Over 180 days segregation should require the approval of the Home Secretary in addition. A prisoner should enjoy procedural safeguards where the governor initiates the segregation (which should never be used without more as a disciplinary measure). These requirements should be reflected in the Rules (para. 129).
42. The powers to impose temporary confinement in a special cell and to use physical restraints on refractory or violent prisoners should be combined in a single rule providing adequate safeguards in respect of procedures and time limits (paras. 132–134).
43. Oblique disciplinary devices, such as re-categorisation or transfer, should not fall within the procedure for disciplinary review, but that for general complaints (para. 135).

APPENDIX 1

References

Expenditure Committee. *The Reduction of Pressure on the Prison system*: Fifteenth Report of the House of Commons Expenditure Committee, H.C. 662–1, 1977–78.

Jellicoe Report. *Boards of Visitors of Penal Institutions:* Report of a Committee set up by JUSTICE, the Howard League for Penal Reform and NACRO (1975).

May Report. *Report of a Committee of Inquiry into the United Kingdom Prison Services*, Cmnd. 7673, 1979.

Report of Her Majesty's Chief Inspector of Prisons for England and Wales 1981, Cmnd. 8532, 1982.

Report of Her Majesty's Chief Inspector of Prisons 1982, H.C. 260, 1983.

Royal Commission on Legal Services, *Final Report*, Cmnd. 7648, 1979.

Smith, Austin and Ditchfield, *Board of Visitors Adjudications*, Research Unit Paper 3 (Home Office, 1981).

Weiler Report. Home Office, *Report of the Working Party on Adjudication Procedures in Prisons* (HMSO, 1975).

APPENDIX 2

Canadian Ombudsman

1. *Federal*

Canada has a Federal Prison Ombudsman called the Correctional Investigator, appointed by the Solicitor-General of Canada, the Minister responsible for the Federal prison system. The appointment is made under a general Act, the Inquiries Act (R.S.C. 154), which enables the Minister presiding over any department of the public service to appoint a commissioner to investigate and report upon the state and management of the business of his department. The Act gives the commissioner wide powers of investigation, of examining documents and taking evidence. He reports to the Minister appointing him.

In June 1973, the Solicitor-General appointed the first Correctional Investigator, Inger Hansen, Q.C. The appointment stated that she might:

> "Investigate on her own initiative or on complaint from or on behalf of inmates as defined in the Penitentiary Act, and report upon problems of inmates that come within the responsibility of the Solicitor-General . . ."

After the appointment, the Commissioner of Penitentiaries issued a directive which included the following directions:

> "(*a*) The Federal Correctional Investigator has the right of access, without limitation, to inmates in all Canadian penitentiaries. The Correctional Investigator will make regular announced visits to all institutions. These visits shall be publicised to the inmates upon receipt of notice of an intended visit from the Federal Correctional Investigator, and private interviews shall be arranged with inmates who wish to meet with the Correctional Investigator, or when the Correctional Investigator wishes to interview them.
>
> (*b*) The Federal Correctional Investigator shall also be permitted to visit penitentiaries unannounced, and at irregular times. The full co-operation of institutional directors and staff shall be provided to the Correctional Investigator in carrying out the investigations authorised under the Inquiries Act.
>
> (*c*) Inmate correspondence addressed to and from the Federal Correctional Investigator shall be forwarded unopened from the institution and delivered to the inmate unopened."[1]

We have seen the Correctional Investigator's first three annual reports. It appears that she received 782 complaints in the first year, 988 in the second and 1057 in the third. About the same time as the Correctional Investigator was appointed, the Commissioner of Penitentiaries instituted procedures for dealing with inmate grievances normally to

1 These quotations are made from the first Annual Report of the Correctional Investigator 1973–1974 at pp. 1–2.

be used by the inmates before presenting their grievances to the Correctional Investigator. Commissioner's Directive No. 241, dated December 10, 1973, states the procedures then in force. Para. 2 defines the purpose.

> "To establish a formal grievance procedure for inmates while under the jurisdiction of the Canadian Penitentiary Service. Inmates shall be entitled to present grievances in instances when it is felt that they have not been treated humanely and justly in accordance with the rules, regulations, directives, acts and other administrative procedures established for the maintenance of good order and discipline in the institution or for the best interest of inmates."

Complaints must be made in the first instance orally to the inmate's immediate supervisor. If he does not satisfy the inmate, he can refer his grievance to the Director of the Institution. He can appeal from him to the Regional Director, and from him to the Commissioner of Penitentiaries. After that his case can go to the Correctional Investigator.

2. *Provinces*

Most of the provinces, if not all, have their own Ombudsman. We have looked at the Ontario Ombudsman Act 1975. We quote some of its provisions:

> "15.(1) The function of the Ombudsman is to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a governmental organisation and affecting any person or body of persons in his or its personal capacity.
> (2) The Ombudsman may make any such investigation on a complaint made to him by any person affected, or any member of the Assembly to whom a complaint is made by any person affected, or on his own motion.
> 17.(1) Every complaint to the Ombudsman shall be made in writing.
> (2) Notwithstanding any provision in any Act, where any letter written by an inmate of any provincial correctional institution or training school or a patient in a provincial psychiatric facility is addressed to the Ombudsman it shall be immediately forwarded, unopened, to the Ombudsman by the person for the time being in charge of the institution, training school, or facility.
> 22.(1) This section applies in every case where, after making an investigation under this Act, the Ombudsman is of opinion that the decision, recommendation, act or omission which was the subject matter of the investigation,
> (*a*) appears to have been contrary to law;
> (*b*) was unreasonable, unjust, oppressive or improperly discriminatory or was in accordance with a rule of law in a provision of any Act or a practice that is or may be unreasonable, unjust, oppressive or unfairly discriminatory;
> (*c*) was based wholly or partly on a mistake of law or fact; or
> (*d*) was wrong.
> (2) The section also applies in any case where the Ombudsman is of opinion that in the making of the decision, recommendation act, or omission a discriminatory power has been exercised for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations, or that, in the case of a decision made in the exercise of any discretionary power, reasons should have been given for the decision.
> (3) If in any case to which this section applies the Ombudsman is of opinion
> (*a*) that the matter should be referred to the appropriate authority for further consideration;
> (*b*) that the omission should be rectified;
> (*c*) that the decision or recommendation should be cancelled or varied;
> (*d*) that any practice on which the decision, recommendation, act or omission was based should be altered;
> (*e*) that any law on which the decision recommendation, act or omission was based should be reconsidered;
> (*f*) that reasons should have been given for the decision or recommendation;
> (*g*) that any other step should be taken;
> the Ombudsman shall report his opinion, and the reasons therefor, to the appropriate government organisation, and may make such recommendations as he thinks fit, and he may request the government organisation to notify him, within a specified time, of the steps, if any, that it proposed to take to give effect to his recommendation, and the Ombudsman shall also send a copy of his report and recommendation to the Minister concerned.
> (4) If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman may, in his discretion, after considering the comments, if any, made by or on behalf of any governmental organisation affected, send a copy of the report and recommendationn to the Premier, and may thereafter make such report to the Assembly on the matter as he thinks fit.
> (5) The Ombudsman shall attach to any report sent or made under subsection (4) a copy of any comments made by or on behalf of the government organisation affected."

Prisons in Canada are either Federal or Provincial. In Ontario the Provincial prisons come under the Provincial Ministry of Correctional Services, "a governmental organization" within the meaning of section 15 of the Ombudsman Act 1975, cited above. Accordingly, the Ontario Ombudsman has in relation to these prisons the powers conferred by that section.

Arthur Maloney, Q.C., was the first Ontario Ombudsman. He was appointed in 1975. Soon after his appointment, he and his staff made a survey of the Ontario prisons, the results of which were published in a large volume (503 pages) entitled *A Report on Adult Correctional Institutions.* In his introduction to this report, Mr. Maloney deals with the complaints from within the prisons which he received on being appointed and explains how he came to make the survey:

> "Although I did not formally assume my duties as Ombudsman until the occasion of my swearing in on October 30th 1975, more than 100 letters of complaint had already been received from inmates of Ontario's many jails, detention centres and adult correctional institutions by that date.
> The complaints touched on every aspect of institutional life and, because

of their numbers, I had decided by that time that it would be necessary to establish within the office of the Ombudsman a special directorate to deal with certain unique grievances, including those of inmates.

One day after my official swearing in, Mr. Victor Cooper, then Director of the Correctional Services Division, Civil Service Association of Ontario (now the Ontario Public Service Employees Union), held a news conference and made a lengthy statement concerning the Ontario Correctional system."

He alleged, among other things, that the system bordered on being inhuman to both inmates and correctional staff, that it posed a threat to the lives and property of Ontario's citizens, and that the lives of correctional officers were in danger. He ended his statement by saying that '... there is a constant danger that a major riot will occur at almost any institution at almost any time'.

Mr. Maloney noted:

"Ontario's correctional system is ready to burst at the seams because the facilities currently in use have nowhere close to the capacity necessary to house the inmates being sent to the system from the courts ...

"Most jails in Ontario have seen the doubling up of beds in their cell areas, dramatically reducing the living space available for inmates, and nearly all of them have had occasion to sleep inmates on the floor when there were not enough beds available ...[1]

"Prior to my being sworn in as Ombudsman on October 30, 1975, I had already received – as already noted – more than 100 written complaints from inmates of jails and correctional centres located throughout the province. The allegations presented in these complaints concerned virtually every aspect of incarceration. There were complaints about physical facilities, fears for personal safety, overcrowding, and improper classification to various institutions. Some inmates complained about correctional officers, the quality and quantity of food, and alleged inadequate medical, dental and counselling services.

"I also received a large number of enquiries requesting clarification of the legal status and rights of inmates, as well as requests for information about the role and function of the office of Ombudsman.

"(I should point out that the Ministry of Correctional Services is responsible for all persons sentenced t a term of imprisonment up to and including terms of two years less one day. Those persons sentenced to terms of two years or more are the responsibility of the Federal Canadian Penitentiary Service.) Unlike most other complainants, inmates could not personally visit our office or attend any of our province-wide public and private hearings, and we were thus faced with the task of sending representatives from our office to investigate each of the inmate complaints."[2]

From our quotations under both headings, Federal and Provinces, it is

1 Mr. Cooper's criticisms are very like those made by our Chief Inspector in 1981 quoted at p. 8 of this Report.

2. *A Report on Adult Correctional Institutions* (Ministry of Correctional Services, Ontario, pp. 1–3). It appears from a passage in the report that during the survey many hundreds of complaints were received. Mr. Maloney writes at p. 104 of the "first 535 inmates complaint files opened by the office of the Ombudsman."

clear that the involvement in the prison system of the Correctional Investigator and of the Ontario Ombudsman is far greater than that of our Ombudsman. Doubtless one explanation is that *they* are able to receive complaints from the prisoners direct and to act on their own motion, while *he* can only investigate complaints received through Members of Parliament. A further explanation may be their wider powers of dealing with complaints: compare our Ombudsman's power of dealing only with "maladministration" with the wider powers of the Ontario Ombudsman under sections 15 and 22 of his Act cited above.

APPENDIX 3

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RESOLUTION (73) 5

STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

The Committee of Ministers,

Considering that it would be in the interest of Council of Europe member States to draw up common principles regarding penal policy;

Noting that where the treatment of offenders in general is concerned, there is a trend away from detention in an institution towards treatment at liberty or semi-liberty, replacing sentences involving deprivation of liberty, wherever, possible, by other penal measures which are equally effective and do not give rise to the drawbacks inherent in imprisonment;

Considering that detention in a penal institution nonetheless remains an indispensable penal sanction in certain cases, and is still often applied, and that it is therefore appropriate to provide for common rules regarding its execution;

Considering the importance for the prison system of the standard minimum rules for the treatment of prisoners adopted at the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders in its Resolution of 30 August 1955;

Aware that changes which have occurred since this text was adopted call for the adaptation of these rules to meet the requirements of modern penal policy;

Considering that the practical applications of these rules should be promoted in the European framework, bearing in mind that, viewed as a whole, they merely represent minimum conditions;

Having therefore considered it desirable to consider these rules in relation to the changing attitude towards treatment of offenders and to more advanced ideas already recognised in the legislation of a number of member States, and to proceed accordingly to a re-examination of these rules from a European viewpoint,

I. Recommends that governments of member States be guided in their internal legislation and practice by the principles set out in the text of the standard minimum rules on treatment of prisoners, appended to the present resolution, with a view to their progressive implementation;

II. Invites the governments of member States to report every five years to the Secretary General of the Council of Europe, informing him of the action they have taken on this resolution.

APPENDIX

STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

Preliminary observations

1. The following rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.

2. The minimum rules shall serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application.

3. These rules cover a field in which thought is constantly developing. They are not intended to preclude the use of new methods or practices, provided that these are compatible with the principle of protection of human dignity and the purposes which derive from the text of the rules as a whole. It will always be justifiable for the central prison administration to authorise departures from the rules in this spirit.

4. 1. Part I of the rules covers the general management of institutions, and is applicable to all prisoners, criminal or civil, untried or convicted, including prisoners subject to "security measures" (preventive detention) or corrective measures.

2. Part II contains rules applicable only to the special categories dealt with in each section. Nevertheless, the rules under Section A, applicable to prisoners under sentence, shall be equally applicable to categories of prisoners dealt with in Sections B, C and D, provided they do not conflict with the rules governing those categories and are for their benefit.

PART I

Rules of general application

Basic principle

5. 1. The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. On the other hand, it is necessary to respect the religious beliefs and moral precepts of the group to which a prisoner belongs.

3. Deprivation of liberty shall be effected in material and moral conditions which ensure respect for human dignity.

Reception arrangements for prisoners shall be based on the above principle and shall help prisoners to solve their urgent personal problems.

Registration

6. 1. No person shall be received in an institution without a valid commitment order. The details shall immediately be entered in an *ad hoc* register.

2. In every place where persons are imprisoned there shall be kept a register with numbered pages in which shall be entered in respect of each prisoner received:

(a) Information concerning his identity;

(b) The reasons for his commitment and the authority therefor;

(c) The day and hour of his admission and release.

Distribution of prisoners

7. When prisoners are being allocated to different institutions, due account shall be taken of their judicial and legal situation (untried or convicted prisoner, first offender or habitual offender, short sentence or long sentence), of their physical condition (young, adult, sick), their mental condition (normal or abnormal), their sex, age and, in the case of convicted prisoners, the special requirements of their treatment.

(a) Men and women shall in principle be detained separately; this principle shall be departed from only as part of an established treatment programme;

(b) Untried prisoners shall not be put in contact with convicted prisoners against their will;

(c) Young prisoners shall be detained under conditions which protect them from harmful influences and which take account of the needs peculiar to their age.

Accommodation

8. 1. Prisoners shall normally be lodged during the night in individual cells unless circumstances dictate otherwise.

2. Where dormitories are used, they shall be occupied by prisoners suitable to associate with one other in those conditions. There shall be supervision by night, in keeping with the nature of the institution.

9. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly cubic content of air, minimum floor space, lighting, heating and ventilation.

10. In all places where prisoners are required to live or work,

(a) The windows shall be large enough to enable the prisoners, *inter alia,* to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation. Moreover, the windows shall, with due regard to security requirements, present in their size, location and construction as normal an appearance as possible;

(b) Artificial light shall satisfy the recognised technical standards.

11. The sanitary installation shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in clean and decent conditions.

12. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

13. All parts of an institution used by prisoners shall be properly maintained and kept scrupulously clean at all times.

Personal hygiene

14. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.

15. In order that prisoners may maintain a good appearance and preserve their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be enabled to shave regularly.

Clothing and bedding

16. 1. Every prisoner who is not allowed to wear his own clothing shall be

provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.

2. All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.

3. Whenever a prisoner obtains permission to go outside the institution he shall be allowed to wear his own clothing or other inconspicuous clothing.

17. Arrangements shall be made on their admission to the institution to ensure that their personal clothing is kept in good condition and fit for use.

18. Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and appropriate bedding which shall be kept in good order and changed often enough to ensure its cleanliness.

Food

19. 1. In accordance with the standards laid down by the health authorities, the administration shall provide the prisoners at the normal times with food which is suitably prepared and presented, and which satisfies in quality and quantity the standards of dietetics and modern hygiene and takes into account their age, health, the nature of their work, and, far as possible, any requirements based on philosphical and religious beliefs.

2. Drinking water shall be available to every prisoner.

Exercise and sport

20. 1. Every prisoner who is not employed in outdoor work shall be entitled, if the weather permits, to at least one hour of walking or suitable exercise in the open air daily, as far as possible, sheltered from intemperate weather.

2. Physical and recreative education shall be organised during the exercise period for young prisoners, and others of suitable age and physique.

Medical services

21. 1. At every institution there shall be available the services of at least one general practitioner. The medical services should be organised in close relation with the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.

2. Sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be suitable for the medical care and treatment of sick prisoners, and there shall be a staff of suitably trained officers.

3. The services of a qualified dental officer shall be available to every prisoner.

22. The prisoners may not be submitted to medical or scientific experiments which may result in physical or moral injury to their person.

23. 1. In penal institutions there shall be special accommodation and the necessary staff for the treatment of pregnant women, their confinement and their post-natal care. Nevertheless, arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

2. Where nursing infants are allowed to remain in the institutions with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.

24. The medical officer shall see and examine every prisoner promptly after his

admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner to work.

25. 1. The medical officer shall have the care of the physical and mental health of the prisoners and shall see, under the conditions, and with a frequency consistent with hospital standards, all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.

2. The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

26. 1. The medical officer shall regularly inspect and advise the director upon:

(a) The quantity, quality, preparation and serving of food;

(b) The hygiene and cleanliness of the institution and prisoners;

(c) The sanitation, heating, lighting and ventilation of the institution;

(d) The suitability and cleanliness of the prisoners' clothing and bedding;

(e) The observance of the rules concerning physical education and sports.

2. The director shall take into consideration the reports and advice that the medical officer submits according to rules 25,2 and 26 and, where he concurs with the recommendations made, shall take immediate steps to give effect to those recommendations; if they are not within his competence or if he does not concur with them, he shall immediately submit his own report and the advice of the medical officer to higher authority.

Discipline and punishment

27. 1. Discipline and order shall be maintained in the interest of safe custody and well-ordered community life.

2. Collective punishments shall be prohibited.

28. 1. No prisoner shall be employed, in the service of the institution, in any disciplinary capacity.

2. This rule shall not, however, impede the proper functioning of systems based on self-government, under which specified social, educational or sports activities or responsibilities are entrusted, under supervision, to prisoners who are formed into groups for the purposes of treatment.

29. The following shall always be determined by the law or by the regulation of the competent administrative authority:

(a) Conduct constituting a disciplinary offence;

(b) The types and duration of punishment which may be imposed;

(c) The authority competent to impose such punishment.

30. 1. No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same act.

2. Reports of misconduct shall be presented promptly to the competent authority who shall decide on them without delay.

3. No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence.

4. Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.

31. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishment shall be completely prohibited as punishments for disciplinary offences.

32. 1. Punishment by disciplinary confinement and any other punishment

which might have an adverse effect on the physical or mental health of the prisoner, shall only be imposed if the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.

In no case may such punishment be contrary to or depart from the principle stated in Rule 31.

2. The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.

Instruments of restraint

33. The use of chains and irons shall be prohibited. Handcuffs, restraint-jackets and other body restraints shall never be applied as a punishment. They shall not be used except in the following circumstances:

(a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;

(b) On medical grounds by direction of the medical officer;

(c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.

34. The patterns and manner of use of the instruments of restraint authorised in the preceding paragraph shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.

Information to and complaints by prisoners

35. 1. Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorised methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.

2. If a prisoner is illiterate, or for any other reason cannot understand the written information provided, the aforesaid information shall be conveyed to him orally.

36. 1. Every prisoner shall have the opportunity each week-day of making requests or complaints to the director of the institution or the officer authorised to represent him.

2. It shall be possible to make requests or complaints to an inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other duly constituted authority entitled to visit the prison without the director or other members of the staff being present.

3. Every prisoner shall be allowed to make a request or complaint, under confidential cover, to the central prison administration, the judicial authority or other proper authorities.

4. Unless it is obviously frivolous or groundless, every request or complaint addressed or referred to a prison authority shall be promptly dealt with and replied to by this authority without undue delay.

Contact with the outside world

37. Prisoners shall be allowed to communicate with their family and all persons or representatives of organisations and to receive visits from these persons at regular intervals subject only to such restrictions and supervision as are neces-

sary in the interests of their treatment, and the security and good order of the institution.

38. 1. Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representative of the State to which they belong.

2. Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.

39. Prisoners shall be allowed to keep themselves informed regularly of the news by the reading of newspapers, periodicals or special institutional publications, by radio or television transmissions, by lectures or by any similar means as authorised or controlled by the administration.

Books

40. Every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and institutional books, and prisoners shall be encouraged to make full use of it.

Religious and moral assistance

41. So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious, spiritual and moral life by attending the services or meetings provided in the institution and having in his possession any necessary books.

42. 1. If the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.

2. A qualified representative appointed or approved under paragraph 1 shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his religion at proper times.

3. Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his attitude shall be fully respected.

Retention of prisoners' property

43. 1. All money, valuables, clothing and other effects belonging to a prisoner which under the regulations of the institution he is not allowed to retain shall on his admission to the institution be placed in safe custody. An inventory thereof shall be signed by the prisoner. Steps shall be taken to keep them in good condition. If it has been found necessary on hygienic grounds to destroy any article of clothing, this shall be recorded.

2. On the release of the prisoner all such articles and money shall be returned to him except in so far as there have been authorised withdrawals of money or the authorised sending of any such property out of the institution, or it has been found necessary on hygienic grounds to destroy any article of clothing. The prisoner shall sign a receipt for the articles and money returned to him.

3. Any money or effects received for a prisoner from outside shall be treated in the same way.

4. If a prisoner brings in any drugs or medicine, the medical officer shall decide what use shall be made of them.

Notification of death, illness, transfer etc.

44. 1. Upon the death or serious illness of or serious injury to a prisoner, or his removal to an institution for the treatment of mental illnesses or abnormalities, the director shall at once inform the spouse, if the prisoner is married, or the nearest relative and shall in any event inform any other person previously designated by the prisoner.

2. A prisoner shall be informed at once of the death or serious illness of any near relative. In these cases and whenever circumstances allow, the prisoner should be authorised to go to this sick relative or see the deceased either under escort or alone.

3. Every prisoner shall have the right to inform at once his family of his imprisonment or his transfer to another institution.

Removal of prisoners

45. 1. When prisoners are being removed to or from an institution they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.

2. The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited.

3. The transport of prisoners shall be carried out at the expense of the administration and in accordance with regulations which it shall draw up.

Institutional personnel

46. 1. The prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends.

2. The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used.

3. To secure the foregoing ends, personnel shall be appointed on a full-time basis as professional prison officers and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.

47. 1. The personnel shall possess an adequate standard of education and intelligence.

2. On recruitment, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.

3. During their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organised by the central administration at suitable intervals.

48. All members of the personnel shall at all times so conduct themselves and perform their duties as to influence the prisoners for good by their example and to command their respect.

49. 1. So far as possible the personnel shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors.

2. Social workers, teachers and trade instructors shall be employed on a permanent basis. This shall not preclude part-time or voluntary workers.

50. 1. The director of an institution should be adequately qualified for his task by character, administrative ability, suitable training and experience.

2. He shall devote his entire time to his official duties and shall not be appointed part-time.

3. He shall reside on the premises of the institution or in its vicinity.

4. When two or more institutions are under the authority of one director, he shall visit each of them at frequent intervals. A responsible official shall be in charge of each of these institutions.

51. The administration shall introduce forms of organisation to facilitate communication between the different categories of staff in an institution with a view to ensuring co-operation between the various services, in particular, with respect to the treatment of prisoners.

52. 1. The director, his deputy, and the majority of the other personnel of the institution shall be able to speak the language of the greatest number of prisoners, or a language understood by the greatest number of them.

2. Whenever necessary and practicable the services of an interpreter shall be used.

53. 1. In institutions which are large enough to require the services of one or more full-time medical officers, at least one of them shall reside in the vicinity of the establishment.

2. In other institutions the medical officer shall visit daily and shall reside near enough to be able to attend without delay in cases of urgency.

54. Special care should be taken in the appointment and supervision of staff in institutions or parts of institutions housing prisoners of the opposite sex.

55. 1. Officers of the institutions shall not use force against prisoners except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution.

2. Prison officers shall be given special physical training to enable them to restrain aggressive prisoners.

3. Except in special circumstances, staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use.

Inspection and control

56. 1. There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about objectives of penal services.

2. The protection of the individual rights of prisoners with special regard to the legality of the execution of detention measures shall be secured by means of a control carried out, according to national rules, by a judicial authority or other duly constituted body authorised to visit the prisoners and not belonging to the prison administration.

PART II

Rules applicable to special categories

A. Prisoners under sentence

Guiding principles

57. The guiding principles hereafter are intended to show the spirit in which penal institutions should be administered and the purposes at which they should aim, in accordance with the declaration made under Preliminary Observation 1 of the present text.

58. Imprisonment and other measures which result in cutting off an offender from the outside world are, by the deprivation of liberty, a punishment in themselves. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation. The regime of the institution should seek to minimise any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.

59. The purpose and justification of a sentence of imprisonment or a similar measure depriving a person of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.

60. 1. To this end, the institution should utilise all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them in accordance with the individual treatment needs of prisoners.

2. Communication between prisoners and staff shall be facilitated in order to prevent and cope with tensions which may occur in prison communities and to ensure the prisoner's acceptance of treatment programmes.

61. It is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, in particular, by a pre-release regime organised in the same institution or in another appropriate insitution, or by release on trial under some kind of supervision combined with effective social aid.

62. The treatment of prisoners should emphasise not their exclusion from the community but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners. There should be in connection with every institution social workers charged with the duty of maintaining and improving the relationship of a prisoner with his family, with other persons and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.

63. The medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner's rehabilitation. All necessary medical, surgical and psychiatric services shall be provided to that end.

64. 1. The fulfilment of these principles requires individualisation of treatment and, for this purpose, a flexible system of allocating prisoners; it is therefore desirable that prisoners be placed in separate institutions or sections where each can receive the appropriate treatment.

2. These institutions and units should be of various types. It is desirable

to provide varying degrees of security according to need. Open institutions, by the very fact that they provide no physical security against escape but rely on the self-discipline of the inmates, provide the conditions most favourable to rehabilitation for carefully selected prisoners.

3. It is desirable that the type, size, organisation and capacity of these institutions or units be determined essentially by the nature of the treatment to be provided.

65. The duty of society does not end with a prisoner's release. There should, therefore, be governmental and private agencies capable of providing efficient after-care for the released prisoner and directed towards lessening prejudice against him and towards his social rehabilitation.

Treatment

66. The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.

67. 1. To these ends, all appropriate means shall be used, including spiritual guidance in the countries where this is possible, education, vocational guidance and training, social case-work, group activities, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release.

2. For every prisoner with a sentence of suitable length, the director shall receive, as soon as possible after his admission, full reports on the various matters referred to in the foregoing paragraph. Such reports shall always include reports by a medical officer, and wherever possible by a psychiatrist.

3. Reports and other relevant information shall be collected in individual files. Files shall be kept up to date and be accessible to responsible persons.

4. Individual treatment programmes shall be drawn up after consultation between the various categories of personnel. Prisoners shall be involved in the drawing up of their individual treatment programmes. The programmes should be periodically reviewed.

Classification of prisoners and individualisation of treatment

68. The purposes of classification of prisoners shall be:

(a) to separate from others those prisoners who, by reason of their criminal records or their personality, are likely to exercise a bad influence;

(b) so to place the prisoners as to facilitate their treatment, taking into account the security requirements and their social rehabilitation.

69. So far as possible separate institutions or separate sections of an institution shall be used for the treatment of the different types of prisoners.

70. As soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment shall be prepared for him in the light of the knowledge obtained about his individual needs, his capacities and dispositions.

71. 1. Prisoners shall be given opportunity to participate in activities of the institution likely to develop their sense of responsibility and to stimulate interest in their own treatment.

2. Efforts should be made to develop methods of co-operating and participation of the prisoners in their treatment. To this end prisoners shall be encouraged to assume, within the limits specified in Article 28, responsibilities

in certain sectors of the institution's activity.

Work

72. 1. Prison labour must not be of a punitive nature. Prisoners shall not be asked to do any especially dangerous or unhealthy work.

2. Prisoners under sentence may be required to work, subject to their physical and mental fitness as determined by the medical officer and to the needs of education at all levels.

3. Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.

4. So far as possible the work provided shall be such as will maintain or increase the prisoner's ability to earn a normal living after release.

5. Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.

6. Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.

73. 1. The organisation and methods of work in the institutions shall resemble as closely as possible those of similar work outside institutions, so as to prepare prisoners for the conditions of normal occupational life.

2. The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the institution.

74. 1. Work for prisoners shall be assured by the Penal Administration in its own workshops and farms or with private contractors, where practicable.

2. Where prisoners are working for private contractors they shall always be under the supervision of the Penal Administration. The full normal wages for such work shall be paid by the persons to whom the labour is supplied, account being taken of the output of the prisoners.

75. 1. Safety and health precautions for prisoners shall be similar to those enjoyed by workers outside.

2. Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by law to workers outside.

76. 1. The maximum daily and weekly working hours of the prisoners shall be fixed in conformity with local rules or custom in regard to the employment of free workmen.

2. Prisoners should have at least one rest-day a week and sufficient time for education and other activities required as part of their treatment and rehabilitation.

77. 1. There shall be a system of equitable remuneration of the work of prisoners.

2. Under the system prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to allocate a part of their earnings to their family or for other approved uses.

3. The system may also provide that a part of the earnings be set aside by the administration so as to constitute a savings fund to be handed over to the prisoner on his release.

Education and recreation

78. 1. Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction. Special attention shall be given by the administration to the education of illiterates and young prisoners.

2. So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.

79. Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners.

70. From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with relatives, other persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation.

81. 1. Effective services and agencies shall be set up to assist released prisoners to re-establish themselves in society, in particular with regard to work.

2. Steps must be taken to ensure that on release prisoners are provided, as necessary, with appropriate documents and identification papers, have suitable homes and work to go to, be provided with immediate means of subsistence, are suitably and adequately clothed having regard to the climate and season, and have sufficient means to reach their destination.

3. The approved representatives of the agencies or services mentioned in paragraph 1 shall have all necessary access to the institution and to prisoners with a view to making a full contribution to the preparation for release and after-care programme of the prisoner.

4. The activities of all agencies and services concerned with the after-care of prisoners must be co-ordinated.

B. Insane and mentally abnormal prisoners

82. 1. Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to appropriate establishments for the mentally ill as soon as possible.

2. Specialised institutions or sections under medical management should be available for the observation and treatment of prisoners suffering gravely from other mental disease or abnormality.

3. The medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all prisoners who are in need of such treatment.

83. Steps should be taken, by arrangement with the appropriate agencies, to ensure where necessary the continuation of psychiatric treatment after release and the provision of social psychiatric after-care.

C. Prisoners under arrest or awaiting trial

84. 1. Persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as "untried prisoners" hereinafter in these rules.

2. Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners, who are presumed to be innocent until they are found guilty, shall be treated without restrictions other than those necessary for the penal procedure and the security of the institution.

85. 1. Untried prisoners shall not be put in contact with convicted prisoners against their will.

2. Young untried prisoners shall be detained under conditions which protect them from harmful influences and which take account of the needs peculiar to their age.

86. Untried prisoners shall be given the opportunity of having separate rooms, except where climatic conditions require otherwise.

87. In accordance with the standards laid down by the health authorities, the administration shall provide the untried prisoners at the normal times with food which is suitably prepared and presented, and which satisfies in quality and quantity the standards of dietetics and modern hygiene and takes into account their age, health, the nature of their work, and, as far as possible, any requirements based on philosophical and religious beliefs.

88. 1. An untried prisoner shall be given the opportunity of wearing his own clothing, if if is clean and suitable.

2. If he does not avail himself of this opportunity, he shall be supplied with suitable dress.

3. If he has no suitable clothing of his own, an untried prisoner shall be provided with civilian clothing in good condition in which to appear in court or on outings organised under the regulations.

89. An untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it.

90. An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party such books, newspapers, writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution.

91. An untried prisoner shall be given the opportunity of being visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay.

92. An untried prisoner shall be allowed to inform his family of his detention immediately, and shall be given all reasonable facilities for communicating with his family and friends and persons with whom it is to his legitimate interest to enter into contact and for receiving visits from them under conditions that are fully satisfactory from the humane point of view, subject only to such restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.

93. An untried prisoner shall be entitled, as soon as he is imprisoned, to choose his legal representative, or shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him, and to receive, confidential instructions. At his request he shall be given all necessary facilities for this purpose. In particular, he shall be given the free assistance of an interpreter for all essential contacts with the administration and for his defence. Interviews between the prisoner and his legal adviser may be within sight but not within hearing, either direct or indirect, of a police or institution official.

D. Civil prisoners

94. In countries where the law permits imprisonment for debt or by order of a court under any other non-criminal process, persons so imprisoned shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order. Their treatment shall not be less favourable than that of untried prisoners, with the reservation, however, that they may possibly be required to work.

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