



**Policy & Procedures
for the application of
Prison Rules 32 and 35(4)**

June 2023

POLICY STATEMENT

This document sets out the policy and procedures for those required to make decisions concerning the application of Rule 32 and Rule 35(4) of the Prison and Young Offenders Centre Rules (Northern Ireland) 1995 (hereafter referred to as 'the Prison Rules'), which respectively concern (i) the 'Restriction of Association' (Rule 32) and (ii) the 'Laying of Disciplinary Charges' (specifically in relation to Rule 35(4)).

The Northern Ireland Prison Service (NIPS) takes its responsibility for the safety and well-being of all prisoners in its care very seriously.

Section 13 of the Prison Act (Northern Ireland) 1953, as extended by Section 2 of the Treatment of Offenders Act (Northern Ireland) 1968, makes provision for rules for the management of prisons. The Prison Rules are the statutory rules produced for the Northern Ireland Prison Service.

Where it is necessary for the maintenance of good order or discipline, or to ensure the safety of officers, prisoners or any other person or in the interests of the individual prisoner, the governor may arrange for the restriction of their association from other prisoners using Prison Rule 32.

NIPS will ensure that the application of the provisions under Rule 32 is entirely separate from the prison disciplinary process.

Any restrictions imposed pursuant to Rule 32 will be monitored and reviewed within the required timescales and a prisoner will not be subjected to these arrangements for longer than is necessary.

Where a prisoner has been charged with an offence against prison discipline, and the governor considers it necessary, they may be kept apart from other prisoners under Prison Rule 35(4). However, they may not be held separately for more than 48 hours. Time spent on Rule 35(4) does not count towards time spent subsequently on Rule 32.

Prison Rules extend to all prisoners in lawful custody including those being held solely for immigration purposes pursuant to an IS91 (Authority to Detain).

RULE 32

32. Restriction of association

(1) Where it is necessary for the maintenance of good order or discipline, or to ensure the safety of officers, prisoners or any other person or in their own interests that the association permitted to a prisoner should be restricted, either generally or for particular purposes, the governor may arrange for the restriction of their association.

(1A) Where a prisoner's association is restricted to ensure the safety of officers, prisoners or any other person, the prisoner may be accommodated in a cell equipped to aid the retrieval of any unauthorized or prohibited article which they may have in their possession.

(2) A prisoner's association under this rule may not be restricted under this rule for a period of more than 72 hours without the agreement of the *Department of Justice*.

(2A) The governor shall inform a member of the independent monitoring board:

- (a) that they have arranged for the restriction of the association of the prisoner, and
- (b) of the date, time and location of the first review of the restriction of the prisoner's association.

(2B) The governor shall inform a member of the independent monitoring board of the matters in paragraph (2A) as soon as practicable and in any event no later than 24 hours after the prisoner's association is restricted.

(2C) The governor shall keep a written record of all contact and attempted contact with members of the independent monitoring board under this rule.

(2D) Unless it is not reasonably practicable, a member of the independent monitoring board shall be present at all reviews of the restriction of the association of the prisoner.

(2E) The governor shall as soon as reasonably practicable inform a member of the independent monitoring board:

(a) of any changes to the date, time or location of the first review of the restriction of the association of the prisoner,

(b) the date, time and location of any subsequent reviews of the restriction of association of the prisoner, and

(c) any changes to the date, time or location of any subsequent reviews.

(2F) The independent monitoring board shall satisfy itself that:

(a) the procedure in this rule for arranging and reviewing the restriction of the association of the prisoner has been followed, and

(b) the decision of the governor to restrict the association of the prisoner is reasonable in all the circumstances of the case.

(2G) In order to satisfy itself of the matters in paragraph (2F) the independent monitoring board shall be entitled to inspect the evidence on which the governor's decision was based, unless such evidence falls within para (2H).

(2H) Evidence falls within this paragraph if:

(a) it should not be inspected by the independent monitoring board for the purpose of safeguarding national security;

(b) its inspection by the independent monitoring board would, or would be likely to prejudice the administration of justice;

(c) its inspection by the independent monitoring board would, or would be likely to endanger the physical or mental health of any individual; or

(d) its inspection by the independent monitoring board would, or would be likely to endanger the safety of any individual.

(2I) If the independent monitoring board is not satisfied of any of the matters set out in paragraph (2F) it shall draw this to the attention of the governor, in

writing, who must, review the procedure for arranging and reviewing the restriction of the association of the prisoner, review their decision to restrict the association of the prisoner and take such other steps as are reasonable in all the circumstances of the case.

(2J) The governor must take the steps in paragraph (2I) promptly and in any event within seven days and the independent monitoring board shall not refer a matter to the Department of Justice under paragraph (2K) until the governor has taken the steps in paragraph (2I) or the end of the seven days which ever is earlier.

(2K) If after drawing a matter to the attention of the governor under paragraph (2I) the independent monitoring board is still not satisfied of any of the matters set out in paragraph (2F) it shall draw this to the attention of the Department of Justice in writing.

(2L) If a matter is referred to the Department of Justice under paragraph (2K) it must consider the matter and take such steps as are reasonable in all the circumstances of the case.

(3) An extension of the period of restriction under paragraph (2) shall be for a period not exceeding one month, but may be renewed for further periods each not exceeding one month.

(4) The governor may arrange at their discretion for a prisoner who is subject to restriction of association to resume full or increased association with other prisoners at any time, and in exercising that discretion the governor shall fully consider any recommendation that the prisoner resumes full or increased association on health and well-being grounds made by a registered general practitioner or a health care officer.

(5) Rule 55(1) shall not apply to a prisoner who is subject to restriction of association under this rule but such a prisoner shall be entitled to one hour of exercise each day which shall be taken in the open air, weather permitting.

RULE 35(4)

35. *Laying of disciplinary charges*

(4) A prisoner who is to be charged with an offence against prison discipline may be kept apart from other prisoners pending adjudication, if the governor considers that it is necessary, but may not be held separately for more than 48 hours.

1 Introduction

1.1 The earlier edition of NIPS Rule 32 policy of 2016 is replaced in its entirety by this updated edition.

1.2 This update follows a review of the earlier Rule 32 policy that was recommended by the Criminal Justice Inspection (NI) in its report 'A Review of Care & Supervision Units in the Northern Ireland Prison Service' published in February 2022.

1.3 This policy and procedures includes guidance to decision makers on the application of Rule 32 and Rule 35(4). In relation to Rule 32 in particular, it includes the procedure to be adopted prior to authorising a restriction of association; the steps to be taken once such a decision is made; the procedure to be adopted if there are any subsequent applications to extend the period of restriction; and how such restrictions are brought to an end.

1.4 In addition to setting out the procedure to follow, this document provides general guidance on the type of considerations to take into account before arriving at a decision to restrict association under Rule 32. However, every case is different and the appropriate considerations will depend on the particular facts of each case.

1.5 This policy:

- (i) has been equality screened as per schedule 9(4)(2)(b) of the Northern Ireland Act 1998;
- (ii) is deemed to be Human Rights compliant in line with the Human Rights Act 1998; and
- (iii) is suitable for Public Disclosure in accordance with the Freedom of Information Act 2000.

2. Decision Makers

2.1 There are two potential stages to Rule 32 decision making:

- (i) the initial decision on whether to restrict association for a prisoner;
- (ii) if that initial decision is to restrict association, there may be an application to extend the period of restriction beyond 72 hours.

2.2 The initial decision must be taken by a prison governor. In this policy document 'prison governor' is a governor to whom the governor in charge has delegated local functions under Rule 32 to in their respective prison or establishment.

2.3 Consideration of any subsequent extensions is undertaken by governors in NIPS Headquarters on behalf of the Department. Article 4(3) (b) of the Departments Order (NI) 1999 provides for any functions of a department to be exercised by a senior officer of the department. Article 2(3) of the 1999 Order states that a senior officer is,

“a member of the Northern Ireland Civil Service designated by the Department as a senior officer for the purposes of this Order.”

2.4 The Director of Prisons has been designated as such a senior officer. For the purposes of Rule 32(2) this Director has delegated the agreement by the Department of Justice to an extension of restriction beyond 72 hours to any governor within NIPS Headquarters. For the purposes of decision-making regarding the application of Rule 32, prison based governors are quite distinct from governors based in NIPS Headquarters. The latter exercise their duties in relation to the application of Rule 32 on behalf of the Department of Justice.

2.5 There is only one stage to Rule 35(4) decision making. This is whether, when a prisoner is to be charged with an offence against discipline, the prison

governor considers it is necessary for them to be kept apart from other prisoners pending adjudication. There is no role for a headquarters governor.

3. Use of Rule 32 and Rule 35(4)

Rule 32

3.1 Rule 32 may only be imposed where it is necessary:

- (i) for the maintenance of good order or discipline or
- (ii) to ensure the safety of officers, prisoners or any other person; or
- (iii) in the interests of the prisoner that their association should be restricted, either generally or for particular purposes.

3.2 Rule 32 must not be viewed as a disciplinary tool. Prison discipline is governed by the adjudications process.

3.3 If at any stage either during the 72-hour period of restriction of association imposed by the prison governor or thereafter during a further period agreed to by the HQ governor, the prison governor concludes that the restriction is no longer necessary, they must bring it to an end forthwith. (See also paragraphs 7.1 and 8.12)

Rule 35(4)

3.4 Rule 35(4) may be imposed if the prison governor considers it necessary to keep a prisoner who is to be charged with an offence against discipline apart from other prisoners pending adjudication. There is no provision under Prison Rules to extend this period beyond 48 hours.

3.5 All decisions to keep prisoners apart from other prisoners in the CSU under Rule 35(4) must be recorded in full on the Rule 35(4) digital platform. This record will document the considerations taken into account by the prison governor and the reasons for their decision.

4. Matters to be considered before making a first decision on Rule 32

4.1 As stated earlier in this guidance, every case is different. The prison governor must consider the following in each case:

- (i) Whether there is a viable alternative option short of restriction of association for the prisoner. Examples may include a cell, wing, house or prison move within the general prison accommodation or a referral to another support service provider. It is important to consider whether another option falling short of Rule 32 restriction is viable.
- (ii) Any relevant history. This may include whether any alternative has been successfully employed in the past.
- (iii) Any risks associated with not imposing restriction of association on the prisoner.
- (iv) The likely impact of restriction on the welfare of the prisoner.
- (v) The prisoner's rights under the Human Rights Act 1998.

4.2 Circumstances in a particular case may demand that a decision on Rule 32 has to be made quickly. In such cases, the decision may have to be made on incomplete information. If that is so, the additional information should be sought as soon as reasonably practicable thereafter.

4.3 All decisions to impose restrictions of association under Rule 32 must be recorded in full on the Rule 32 digital platform. This record will document the considerations taken into account by the prison governor and the reasons for their decisions at each stage of the process.

4.4 This digital record or documentation will form part of the overall record that must be included in the materials presented or accessible to the

Department of Justice representative in the event that there is a request for an extension of the restriction period (see section 8 below).

5. Actions to be taken if Rule 32 is employed

5.1 If a prison governor decides to restrict a prisoner's association under Rule 32, the following actions **must** be taken as soon as is reasonably practicable:

- (i) Inform the prisoner that the governor has taken a decision to restrict their association under Rule 32.
- (ii) Inform the prisoner of the reasons for that decision. Prison Rule 2(g) states, "*where a decision is taken which affects the conditions of imprisonment of a prisoner... the reasons for that decision will be made available.*" Procedural fairness requires that the information provided to the prisoner must be of sufficient detail to allow them to make meaningful representations as to whether the restriction should continue.
- (iii) If security intelligence has formed part of the reason the restriction was imposed the prisoner must be given that information. In some cases there may be reasons which make it necessary to restrict the amount of such information provided. Where the full information cannot be given, a gist should be provided. The maximum amount of information that can safely be provided must be provided.
- (iv) The Healthcare partners in the South Eastern Health and Social Care Trust must be informed that the prisoner has had their association restricted.
- (v) A member of the Independent Monitoring Board (IMB) must be informed that a prisoner has been placed on Rule 32 restriction of association as soon as possible and no later than 24 hours after the restriction being imposed (Rule 32(2B)).

- (vi) A member of the IMB must be informed of the date of the first case conference and invited to attend (Rule 32(2A) & (B)), as well as all case conferences thereafter (Rule 32(2E)), with the prison governor adhering to requirements specified in Rule 32 (A – L).

- (vii) The prisoner must be provided with an indicative pathway that will signal what they must achieve and/or change in order to bring their period of restriction of association to an end.

5.2 If the prisoner does not understand the English language, arrangements will have to be made to relay the above information through an interpreter. That may be via a telephone interpreting service.

6. Prisoners on Prison Rule 32

6.1 Restriction of association under Rule 32 **must not be viewed as a punishment.**

6.2 The prisoner should not suffer any detriment to their privileges while accommodated under this Rule unless their physical environment precludes the provision of equipment that would be considered part of their regime package, or it has been removed following adjudication or they have damaged such property while they have been placed under Rule 32.

6.3 An individual whose association has been restricted under Rule 32 is entitled to one hour of exercise a day in the open air, weather permitting. Those in a Young Offenders Centre will have physical recreation, training and exercise as provided for under Rule 96.

6.4 A prisoner, who is subject to Rule 32, who has been released temporarily for a period of time where the chain of custody has not been broken will remain on Rule 32 on return to the prison. The application of Rule 32 will continue unless the governor decides otherwise.

6.5 When a prisoner is placed on Rule 32 restriction of association following an indication that they are concealing drugs, arrangements described in IG 1/19 must be considered.

7. Rule 32 Review Process

7.1 If at any stage the prison governor concludes a restriction of association is no longer necessary, they must bring it to an end forthwith.

7.2 All prisoners managed under the provisions of Rule 32 **must** have their restriction of association reviewed prior to the expiration of the 72 hours from its invocation but only if consideration is being given to extending this restriction beyond this time period. This is done by way of a case conference, chaired by a prison governor.

7.3 Representatives of the IMB and the South Eastern Health and Social Care Trust must be informed of a case conference and invited to attend so they can contribute. A member of the IMB should be present at the first and all subsequent case conferences unless it is not reasonably practicable (Rule 32(2D)).

7.4 The prison governor must keep a record of the contact and attempted contact with IMB (Rule 32(2C)). This information will be generated and recorded automatically on the digital platform if the prisoner is subject to Rule 32.

7.5 The purpose of a case conference is to determine whether the restriction of association remains necessary and if so, to manage the conditions of the restriction generally.

7.6 At the case conference the following should be considered:

- (i) The current situation generally;
- (ii) What risks remain, including risks to the prisoner (including but not restricted to healthcare concerns), prison staff and others;

- (iii) Any change to the circumstances which resulted in the original decision to restrict association;
- (iv) Any additional intelligence made available since the original decision;
- (v) Any representations from and/or on behalf of the prisoner;
- (vi) Any other relevant information;
- (vii) Alternatives to restriction of association;
- (viii) The exit pathway, including whether it has been agreed with the prisoner;
- (ix) The level of engagement in the process by the prisoner.

7.7 If the prison governor decides, based on the information available at the case conference that restriction of association remains necessary, an application must be made to Northern Ireland Prison Service Headquarters (Department of Justice) for a period of extension. The prison governor's reasons for this request must be recorded on the Rule 32 digital platform.

7.8 Records of what is discussed at the case conference must be recorded on the digital platform.

7.9 Failure to follow the above review process is very likely to result in any application for an extension being refused.

8. Extension of Restriction of Association by Department of Justice

8.1 Under Rule 32(2) an extension of restriction beyond 72 hours can only be obtained if the prison governor requests and secures the agreement of the Department of Justice.

8.2 Requests for such extensions must be recorded on the Rule 32 digital platform.

8.3 As outlined earlier in this policy document, the Director of Prisons has delegated this extension decision making function to all governors at Prison Service Headquarters (henceforth referred to as the “headquarters governor”). The delegation to headquarters governors is appropriate because the extension decision making process requires expertise in managing prisoners that other Department of Justice senior officials will not possess. The headquarters governors do not work within prison establishments and are therefore sufficiently removed to provide the necessary level of independent oversight, while at the same time possessing the necessary expertise. The headquarters governors also need to have contact with the prisoners when considering a request to extend a Rule 32 restriction.

8.4 The maximum individual period of extension that can be applied for by the prison governor and agreed by the headquarters governor is “one month” (Rule 32(3)), which shall be interpreted as 28 days under the said Rules.

8.5 Consideration should be given to what period of extension is necessary in the particular circumstances of each case.

8.6 The headquarters governor must be satisfied that an extension is necessary for one of the reasons specified within Rule 32(1), otherwise the application must be refused.

8.7 The prison governor may later apply for further extensions beyond the first. The maximum period of any subsequent extension is 28 days (Rule 32(3))

and again the headquarters governor must be satisfied they are necessary for one of the reasons in Rule 32(1) otherwise the application must be refused.

8.8 The headquarters governor should interview the prisoner before making their decision on the request for an extension, if reasonably practicable. At interview the headquarters governor must satisfy themselves that the prison governor has consulted with the prisoner and has discussed the options available. Any comments/representations made by the prisoner should be noted and considered.

8.9 The headquarters governor should also consult with the prison governor before their interview with the prisoner. This will provide an opportunity to seek clarification on any matter raised in the request for an extension or any other questions that the headquarters governor may have.

8.10 When considering the application for an extension and whether continued restriction of association is necessary, the headquarters governor will consider all relevant information. The headquarters governor should consider the guidance provided in this policy document to prison governors, including but not limited to the prisoner's rights under the Human Rights Act 1998 and consideration of whether there is any viable alternative to restriction of association under Rule 32. If the headquarters governor concludes that a viable alternative is available, the extension should be refused. The headquarters governor may also recommend an action or series of actions that they want to see undertaken during the period of extension they have granted.

8.11 The longer a prisoner remains on restriction of association, the greater the potential of it having a negative impact on their welfare. This should be considered when examining requests for extensions and in particular when there are repeated applications for extensions.

8.12 If at any time during the period of an extension agreed by the headquarters governor the prison governor considers the restriction of association is no longer necessary, they shall bring it to an end. There is no

requirement to secure the agreement of the headquarters governor to terminate a restriction of association.

9. Assurance

9.1 The Residential Functional Head at Maghaberry and the Deputy Governors of Magilligan and Hydebank Wood Women's Prison and Secure College will undertake weekly oversight of all ongoing Rule 32 restrictions in their establishments. In the absence of a Deputy Governor this oversight role must be undertaken by a Functional Head Governor.

9.2 These oversight reviews will consider prisoners' welfare, how they are presenting and what opportunities each individual has been given to have their restriction of association ended. In addition, they may, if they consider it appropriate, end a Rule 32 restriction.

9.3 Separately, a monthly oversight committee chaired by the Deputy Governor in each prison will review all Rule 32 restrictions for the previous month to ensure that each key decision has been subject to due diligence, that these policy and procedures have been followed, that key risks have been identified, monitored and mitigated; and that any developing areas of concern have been addressed. Membership should include relevant Functional Heads and others as required.

9.4 The Deputy Director (Security & Operations), Prisons, will conduct a monthly 10% dip sample of those Rule 32 extensions granted by headquarters governors to ensure that decisions are consistent and compliant with the objectives of this document.

10. Strategic oversight

10.1 The NIPS Operational Management Board will be provided with a six monthly report on the application of Rule 32. This will enable the Board to identify trends and areas of concern and to provide direction where this is required.