

## **EXECUTIVE NOTE**

### **THE PRISONS AND YOUNG OFFENDERS INSTITUTIONS (SCOTLAND) AMENDMENT RULES 2008 SSI/2008/377**

This instrument is made in exercise of the powers conferred by section 39 of the Prisons (Scotland) Act 1989. The instrument is subject to negative resolution procedure.

The instrument amends the Prisons and Young Offenders Institutions (Scotland) Rules 2006 (SSI 2006/94) (“the Prison Rules”) by extending the definition of a prohibited article at rule 5(1) to include personal communication devices, including mobile telephones and component parts of mobile telephones and amending Schedule 2 to make provision for the constitution of a visiting committee for the new prison HMP Addiewell.

#### Policy Objectives

Rule 5(1) of the Prison Rules provides a definition of “prohibited article” for the purposes of the Rules. This does not at present include personal communication devices, such as mobile telephones and the component parts of mobile telephones.

Section 41 of the Prisons (Scotland) Act 1989 makes it an offence, to bring or introduce certain items in to a prison without reasonable excuse. The list of prohibited items includes, amongst other things drugs and offensive weapons. Section 41(1)(e) provides that the prohibited items include any article which is a “prohibited article” within the meaning of the Prison Rules. Amending the Prison Rules to provide that personal communication devices are “prohibited articles” means that the effect of section 41(1)(e) would be that a person who brought a mobile phone into a prison without reasonable excuse would be liable on conviction to a fine not exceeding level 3 of the standard scale or to imprisonment for a period not exceeding 30 days.

#### Visiting Committee - HMP Addiewell

The Prisons (Scotland) Act 1989 makes provision for the making of rules regarding the constitution of prison visiting committees. Each prison has a visiting committee and the details of their constitution and general duties are provided for in Part 17 of, and Schedule 2 to, the Prison Rules.

HMP Addiewell becomes operational on 12 December 2008 and requires a visiting committee. This instrument therefore amends Schedule 2 to the Prison Rules to provide for a visiting committee at HMP Addiewell.

## **Consultation**

The prohibition of mobile phones has been discussed by senior SPS colleagues and the Serious Organised Crime Taskforce, who fully supported the need to crack down on prisoners who make use of mobile phone technology to commit crimes whilst in prison.

So far as the visiting committee amendment is concerned consultation took place with the Chief Officers for the Criminal Justice Authorities for North and South Lanarkshire and Lothian and Borders. This was done through the Scottish Prison Service Criminal Justice Authorities Liaison Managers. Both Chief Officers advised that they were content with the proposed amendment.

## **Financial Effects**

Under this provision, any person found with a personal communication device, such as mobile telephones and/or a component part of mobile telephone shall be guilty of an offence and shall be liable on conviction by a court of summary jurisdiction to a fine not exceeding level 3 on the standard scale (£1000) or to imprisonment for any period not exceeding 30 days. It is anticipated, however, that the majority of such cases will be dealt with through internal disciplinary procedures that apply to prisoners under the Prisons Rules as possession of a prohibited article is a disciplinary offence. Offenders who are convicted of possession of a mobile phone under section 41(1)(e) of the Prisons (Scotland) Act 1989 may spend longer in custody, however, the overall impact on the prison population will be negligible and we do not anticipate any additional costs arising as a result of this change to the Prison Rules.

So far as the visiting committee amendment is concerned, the instrument has no financial effect.

Scottish Prison Service  
12 November 2008