

## **POLICY NOTE**

### **THE PRISONS AND YOUNG OFFENDERS INSTITUTIONS (SCOTLAND) AMENDMENT RULES 2016**

#### **SSI 2016/131**

1. The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2016 (“the Amendment Rules”) were made in the exercise of the powers conferred by Section 39 of the Prisons (Scotland) Act 1989. These Rules amend The Prisons and Young Offenders Institutions (Scotland) Rules 2011 (“the Prison Rules”) and they are subject to negative procedure.

#### **Policy Objective**

2. The Prison Rules set out provisions relating to the regulation and management of Prisons and Young Offenders Institutions and various matters concerning those who are required to be detained in these institutions (such as their classification, treatment, discipline, employment and control).

3. The majority of the amendments proposed are technical amendments designed to clarify points in the Prison Rules. The amendments to Rule 2 clarify the definition of “constable” in light of the Police and Fire Reform (Scotland) Act 2012, adds a definition of “medical facility” as this term is used in Rules 39, 42 and 136 and corrects an incorrect cross reference in Rule 4(1) (d).

4. The majority of Rule 13 is being moved to Part 6 (Religion) of the Prison Rules as it is considered more appropriate to have these provisions in this part. New provisions are being added which clarify that prisoners can declare their religion, belief or non-belief at any time and can change their declaration. Further, that prisoners should be referred to the relevant member of the chaplaincy team when they make a declaration or change it. Prisoners will still have the freedom to change religion and refuse to speak to the relevant chaplaincy team member.

5. Rule 39 is being replaced with a new Rule which will clarify the arrangements which a Governor is required to make on receipt of a recommendation from a healthcare professional

that a prisoner requires medical advice or treatment. Under the new Rule 39, the Governor must either grant unescorted temporary release to the prisoner (in accordance with Rules 134 and 135) or arrange for the prisoner to be escorted to the medical practitioner, specialist or medical facility as appropriate.

6. Rules 55 to 59 are being replaced with three new Rules regulating the sending, receiving, opening and reading of prisoners' correspondence. New Rule 55 clarifies the provisions of the existing Rule 55. New Rule 56 merges the provisions of existing Rules 56 to 59 into one Rule covering confidential correspondence – “confidential correspondence” being defined as “court correspondence”, “legal correspondence”, “medical correspondence” and “privileged correspondence”. This ensures that the same restrictions on opening and reading the correspondence apply to every form of confidential correspondence. In addition these restrictions will only apply where the confidential correspondence is clearly marked as such on the outer face of the envelope or packaging. A new Rule is being added, Rule 57, to cater for the situation where correspondence is not clearly marked on the face of the letter or package as confidential correspondence. New Rule 57 ensures that confidential correspondence which is not clearly marked is still treated as confidential from the moment it is identified as such. These three new rules on correspondence are designed to provide greater clarity for prisoners, prison officers and employees on what letters and packages can be sent and received by prisoners and when those letters and packages can be opened and read by officers and employees.

7. The reference to “Chief Constable” in Rule 68 (2) (a) (b) is being changed to ‘Chief Inspector’. This is to reflect the appropriate level of written authorisation required for a visit by a police constable for the purpose of an interview with a prisoner.

8. The definition of purposeful activity as detailed in Rule 84(2) is being amended to provide flexibility in the definition and a wide discretion over which activities a Governor can provide for prisoners.

9. The Amendments to Rule 92 (Searching of prisoners), Rule 106 (Searching of visitors), Rule 108 (Searching of Specified Persons) and Rule 142 (Searching of officers and employees) are required by the Scottish Prison Service as part of their ongoing programme of

improving front line security, which will include the introduction of stationary body scanners.

10. The amendment to Rule 96 (The use of restraints) extends the rule to include a restraint backboard system which may be used for the restraint and subsequent transportation of prisoners to hospital (or relocation within an establishment). The use of a restraint backboard system is to mitigate against the risks associated in dealing with a medical emergency where the individual's behaviour has become violent.

11. Allowing prisoners subject to a deportation order access to temporary release (unescorted access to the community) has proved to be a very difficult and complex area for the Scottish Prison Service. This change means that where the United Kingdom Border Agency has made the decision that a prisoner is to be deported, they will be disqualified from obtaining temporary release unless they have been granted temporary release in the three months prior to the order being made. Prisoners granted temporary release in the 3 month period before the deportation order is made will be able to continue to access temporary release as they have already been tested in the community. However, any future grants of temporary release will still be subject to the Governor's discretion in the normal manner taking into account, amongst other things, the risk of the prisoner absconding. Rule 134 is being amended to reflect the above.

12. The definition and scope of 'unescorted day release for health reasons' in Rule 136 is being amended, to provide more flexibility to allow eligible prisoners to be released for longer than one day to a hospital. The period is being changed to seven days which is consistent with the period such prisoners can currently be released for home leave. A new rule is being added which will allow Scottish Ministers to extend this for an additional period of seven days.

13. Currently a prisoner cannot be reprimanded when they fail to comply with any condition imposed by the Governor in relation to a grant of special escorted leave. Paragraph 30 of Schedule 1 to the Prison Rules is being amended to make it a disciplinary offence to fail to comply with such a condition.

### **Impact Assessment**

14. An Equality and Human Rights Impact Assessment was carried out and no potential for unlawful discrimination or adverse impact or breach of human rights articles has been identified.

### **Consultation**

15. There has been consultation with operational managers and policy colleagues within the Scottish Prison Service, Police Scotland in relation to the proposed change to Rule 68 (2) (a) (b) and NHS colleagues in relation to the amendment to Rule 96.

### **Financial Effect**

16. The Cabinet Secretary for Justice confirms that no Business and Regulatory Impact Assessment is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Prison Service  
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