
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 293

**The Prisons and Young Offenders Institutions
(Scotland) Amendment Rules 2018**

Amendment of the Prisons and Young Offenders Institutions (Scotland) Rules 2011

2.—(1) The Prisons and Young Offenders Institutions (Scotland) Rules 2011(1) are amended in accordance with paragraphs (2) to (6).

(2) In rule 2(1) (interpretation)—

(a) after the definition of “medical facility” insert—

““nicotine vapour product” has the meaning given by section 35A of the Tobacco and Primary Medical Services (Scotland) Act 2010(2);”;

(b) for the definition of “prohibited article” substitute—

““prohibited article” means—

- (a) any drug which is a controlled drug within the meaning given by section 2 of the Misuse of Drugs Act 1971(3);
- (b) any firearm, or any ammunition, within the meaning given by section 57 of the Firearms Act 1968(4);
- (c) any offensive weapon within the meaning given by section 47(4) of the Criminal Law (Consolidation) (Scotland) Act 1995(5);
- (d) any article to which section 49 of the Criminal Law (Consolidation) (Scotland) Act 1995 applies;
- (e) alcohol, within the meaning given by section 2 of the Licensing (Scotland) Act 2005(6);
- (f) any personal communication device; or
- (g) tobacco or any tobacco product.”;

(c) the definition of “smoke” is revoked; and

(d) after the definition of “temporary release” insert—

““tobacco product” has the meaning given by section 35 of the Tobacco and Primary Medical Services (Scotland) Act 2010;”.

(3) For rule 36 (smoking), substitute—

(1) [S.S.I. 2011/331](#); relevant amending instruments are [S.S.I. 2016/131](#) and [S.S.I. 2017/393](#).

(2) [2010 asp 3](#). Section 35A was inserted by section 1 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 ([asp 14](#)).

(3) [1971 c.38](#).

(4) [1968 c.27](#).

(5) [1995 c.39](#). Section 47(4) was substituted by section 37(2)(c) of the Criminal Justice and Licensing (Scotland) Act 2010 ([asp 13](#)).

(6) [2005 asp 16](#). Section 2 was amended by section 54 of the Air Weapons and Licensing (Scotland) Act 2015 ([asp 10](#)).

“Use of nicotine vapour products

36.—(1) Subject to paragraph (3), prisoners may only use a nicotine vapour product in the following areas of a prison—

- (a) in a cell or room in which a single prisoner is accommodated;
- (b) subject to paragraph (2), in a cell or room in which two or more prisoners are accommodated; or
- (c) in the open air, in any place specified in a direction by the Scottish Ministers.

(2) Prisoners must not use a nicotine vapour product in a cell or room which—

- (a) accommodates two or more prisoners; and
- (b) has been designated by the Governor, in accordance with any direction given by the Scottish Ministers, as a cell in which nicotine vapour products are not to be used.

(3) Before commencing a check of a cell or a room the Governor may instruct a prisoner that, for a period starting 30 minutes before the check is to proceed and ending when the check is complete, the prisoner must—

- (a) not use a nicotine vapour product in the cell or room; and
- (b) open any windows or vents in the cell or room.

(4) No person may use a nicotine vapour product in the facilities provided in a prison for mothers and babies.

(5) In this rule, and in paragraph 26 of schedule 1, to “use a nicotine vapour product” means to inhale the vapour from a nicotine vapour product.”.

(4) In paragraph (3)(d) of rule 45, for “tobacco” substitute “a nicotine vapour product”.

(5) In rule 103, paragraph (2) is revoked.

(6) In schedule 1, for paragraph 26 substitute—

“**26.** uses a nicotine vapour product in an area of the prison where it is not permitted by virtue of rule 36 to use a nicotine vapour product;”.