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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No. 293**

**PRISONS**

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

*Made* - - - - 25th September 2018  
*Laid before the Scottish  
Parliament* - - - - 27th September 2018  
*Coming into force* - - 30th November 2018

The Scottish Ministers make the following Rules in exercise of the powers conferred by section 39 of the Prisons (Scotland) Act 1989<sup>(1)</sup> and all other powers enabling them to do so.

**Citation and commencement**

1. These Rules may be cited as the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2018 and come into force on 30th November 2018.

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

2.—(1) The Prisons and Young Offenders Institutions (Scotland) Rules 2011<sup>(2)</sup> 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<sup>(3)</sup>”;

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- (1) 1989 c.45; section 39 was amended by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9) (“the 1993 Act”), sections 24 and 25, schedule 5, paragraph 6(6)(b) and schedule 7, paragraph 1; the Criminal Justice and Public Order Act 1994 (c.33) (“the 1994 Act”), section 116(4); the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), schedule 4, paragraph 75(4)(a); and the Crime and Disorder Act 1998 (c.37), schedule 8, paragraph 71 and schedule 10, paragraph 1. Section 39 is to be read with the following sections of the Prisons (Scotland) Act 1989: 19 (as amended by S.S.I. 2015/39, article 2(8)), 20A (which was inserted by the 1993 Act, section 23); 41(2B) (which was inserted by the 1994 Act, section 153(3), and amended by the Criminal Justice and Licensing (Scotland) Act 2010, section 34(1)); 41B(1) (which was inserted by the 1994 Act, section 151(2), and amended by the Management of Offenders etc. (Scotland) Act 2005 (asp 14), section 16); and 41C(1) (which was inserted by the Crime and Punishment (Scotland) Act 1997 (c.48), section 42). The functions of the Secretary of State, insofar as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (c.46), section 53.
- (2) S.S.I. 2011/331; relevant amending instruments are S.S.I. 2016/131 and S.S.I. 2017/393.
- (3) 2010 asp 3. Section 35A was inserted by section 1 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 (asp 14).

- (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<sup>(4)</sup>;
  - (b) any firearm, or any ammunition, within the meaning given by section 57 of the Firearms Act 1968<sup>(5)</sup>;
  - (c) any offensive weapon within the meaning given by section 47(4) of the Criminal Law (Consolidation) (Scotland) Act 1995<sup>(6)</sup>;
  - (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<sup>(7)</sup>;
  - (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—

**“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.

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(4) 1971 c.38.

(5) 1968 c.27.

(6) 1995 c.39. Section 47(4) was substituted by section 37(2)(c) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13).

(7) 2005 asp 16. Section 2 was amended by section 54 of the Air Weapons and Licensing (Scotland) Act 2015 (asp 10).

- (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;”.

St Andrew’s House,  
Edinburgh  
25th September 2018

*H YOUSAF*  
A member of the Scottish Government

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Amendment Rules amend the Prisons and Young Offenders Institutions (Scotland) Rules 2011 (“the Prison Rules”) to make provision for a smoking ban in prisons and to enable the authorisation of the use of nicotine vapour products (NVPs) (for example, e-cigarettes).

Rule 2(2) of these Amendment Rules adds two new defined terms to rule 2 of the Prison Rules: “nicotine vapour product” and “tobacco product”. This is to enable NVPs to be authorised for use in prisons and to allow tobacco products to be prohibited. Rule 2(2) also substitutes a new definition of “prohibited article” so as to include tobacco and tobacco products. Finally, rule 2(2) revokes the definition of “smoke” as this definition is only required by reference to tobacco, and tobacco is to be prohibited in prisons.

Rule 36 of the Prison Rules currently regulates smoking in prisons. Rule 2(3) of these Amendment Rules replaces rule 36 so as to regulate the use of NVPs instead. The new rule 36 makes similar provision for NVPs as the previous rule made for smoking. Under the new rule 36, NVPs may only be used by prisoners: in a single cell; in a multi-occupancy cell which has not been designated as a cell in which NVPs are not to be used; or in the open air as specified in a direction by the Scottish Ministers. The Governor may order that NVPs are not to be used in a cell for a period of 30 minutes prior to a cell check being carried out by prison officers. NVPs cannot be used in the mother and baby unit in any prison.

Rule 45(3)(d) of the Prison Rules currently provides that the system of privileges that the Governor is obliged to establish under rule 45(1) may include provision in relation to the arrangements whereby a prisoner may have tobacco in his or her possession. Rule 2(4) of these Amendment Rules amends rule 45(3)(d) so as to replace the word “tobacco” with “a nicotine vapour product”. This means that the system of privileges established under rule 45 may include provision in relation to the arrangements whereby a prisoner may have a NVP in his or her possession.

Rule 2(5) of these Amendment Rules revokes rule 103(2) of the Prison Rules. Rule 103(2) states that tobacco may only be possessed by a prisoner where the prisoner has been authorised to possess it as a privilege under rule 45. This provision is no longer necessary as, by virtue of the definition of “unauthorised property” in rule 2(1) of the Prison Rules, any item which is possessed without the express authority of the Prison Rules or a prison officer, is unauthorised property and is therefore caught by rule 103.

Paragraph 26 of schedule 1 of the Prison Rules currently makes it a disciplinary offence to smoke in an area of the prison within which it is not permitted by virtue of rule 36. Rule 2(6) of these Amendment Rules replaces paragraph 26 of schedule 1 to make it a disciplinary offence to use NVPs in an area of the prison in which the use of NVPs is not permitted.