
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.