

POLICY NOTE

THE PRISONS AND YOUNG OFFENDERS INSTITUTIONS (SCOTLAND) AMENDMENT RULES 2020

SSI 2020/122

1. The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2020 (“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. These amendments are designed to support the Scottish Prison Service’ (SPS) response to the exceptional pressures facing prisons during the current Coronavirus outbreak and the impact that staff shortages within prisons will have as prison staff require to self-isolate to prevent the spread of the virus. The amendments generally provide Governors with flexibility in regards to compliance with timescales and the provision of those services, which although important, are not critical to the security and health of SPS staff and prisoners. The amendments will enable SPS staff to focus on key functions and to help protect the health and safety of staff and prisoners. The amendments will only be in force for the duration of a Coronavirus outbreak.

4. An overview of the amendments is provided below:

- **Part 3 – Supervision Levels** - Rules 19A (Assignment of supervision levels on review– coronavirus), 20A (Maintaining or lowering a supervision level on review– coronavirus), 21A (Assigning certain supervision levels on review – coronavirus), provide SPS staff with flexibility in regards to the timescales for completing reviews of supervision levels

and the administrative requirements to provide summary information to prisoners regarding the assignment and review of supervision levels.

- **Part 4 – Accommodation of Prisoners** – Rule 33A (Provision of clothing to prisoners – coronavirus) & 35A (Prisoners’ food and drink – coronavirus) will allow for Directions made by Scottish Ministers under these rules to be extended on a monthly basis. Currently Scottish Ministers can only make one Direction for a period of month, in regard to removing some requirements on the Governor concerning the provision of clothing or requiring them to taste and check samples of food and drink prepared for prisoners. Rule 34A (Personal hygiene – coronavirus) provides SPS with some flexibility in regards to prisoner’s access to bathe or shower. Currently prisoners are provided with an opportunity to bathe or shower at a minimum every other day, this will be changed to twice weekly, this is consistent with minimum requirements of the European Prison Rules. SPS only intends using this flexibility where necessary. Not all prisoners will be impacted by this change, as recently built prisons and accommodation blocks have in-cell showers.
- **Part 5 – Health & Welfare**, Rule 40A (Recommendation by healthcare professional – coronavirus) will allow a Governor, on the recommendation of a Healthcare Professional, to confine groups of prisoners to their cells or prohibit them from participating in activities such as exercise or recreational activities for a period of up to 14 days. The Governor may subsequently apply to Scottish Ministers for an extension of this 14 day period on the advice of a healthcare professional. In response to such a request, senior SPS HQ staff on the advice of a Healthcare Professional will be able to authorise, on behalf of Scottish Ministers, that the 14-day period be extended for further periods of up to 14 days. Rule 41A (Accommodation in specified conditions – coronavirus) will extend the time scales in Rule 41 (Accommodation in specified conditions) from 72 hours to a maximum of 14 days with regard to the length of time a prisoner can be accommodated in specified conditions on the advice of a healthcare professional. These changes will provide a more effective means for SPS and NHS to ensure the compliance of prisoners with government advice regarding self-isolation for those who are symptomatic or who have been in contact with a person who is symptomatic. Rule 43A (Prisoners’ welfare – coronavirus) provides some flexibility to Governors in regards to their duties to provide

assistance and facilities for prisoners to maintain and develop relationships with family, friends.

- **Part 7 – Privileges and Prisoners Personal Property**, Rule 52A (Supplies of books, newspapers, etc to prisoners – coronavirus) provides some flexibility in relation to the entitlement of prisoners to receive books, newspapers etc under rule 52 (Supplies of books, newspapers, etc to prisoners). This is to be subject to such arrangements as the Governor considers is safe and reasonably practicable.
- **Part 8 – Communications** Rule 63A (Visits to prisoners – coronavirus) will allow the Governor to suspend prison visits. In doing so, the Governor may make different provision for different purposes including by reference to different types of prisoner and different types of visit. This means that provision can, for example be made by the Governor for prisoners to continue to be entitled to receive a visit from a legal advisor.
- **Part 9 – Work, Education, Earnings and Recreation** Rules 81A (Arrangements for work, education and counselling – coronavirus), 84A (Purposeful activities – coronavirus), and 88A (Recreation – coronavirus) will allow the Governor to suspend or curtail work, educational activities, counselling, purposeful activities and recreation where it is necessary and proportionate to do so. The Governor must regularly review a suspension of visiting, work, educational activities, counselling and purposeful activities to assess whether it remains necessary and proportionate.
- **Part 11 – Discipline**, Rules 111A (Reporting breaches of discipline – coronavirus) to 118A (Disciplinary appeals – coronavirus) will provide SPS Staff with flexibility in relation to deadlines for reporting breaches of discipline charging for an alleged breach of discipline committed in another prison or during transfer and for dealing with appeals for findings of a breach of discipline.
- **Part 12 – Requests and Complaints**, Rules 120A (Requests to speak to certain persons – coronavirus) to 123A (Referral of complaints to the Internal Complaints Committee – coronavirus) provides flexibility in regards to the administrative requirements and timescales that SPS in normal circumstances is required to adhere to when dealing with prisoner complaints.

- **Part 14 -Transfer and Release of Prisoners, Rule 131A** (Healthcare assessment prior to transfer – coronavirus) provides the Governor with discretion as to when he or she must seek advice from a healthcare professional when proposing to transfer a prisoner to another prison such that this is to be done where it is appropriate in the circumstances.
- **Part 15 – Temporary Release, Rule 136B** (Extension of certain periods of temporary release – coronavirus). Scottish Ministers will be able to extend the period a prisoner is on home leave for up to 14 days from the normal 7 days. It is anticipated that this could be used where prisoners advise that they or someone in their home has developed symptoms of the Coronavirus and in compliance with government advice they are required to self-isolate for 14 days.

Impact Assessment

5. An Equality and Human Rights Impact Assessment was carried out which determined that without these measures the article 3 rights (Prohibition of torture, or of inhumane or degrading treatment or punishment) of the prisoners in the care of SPS could be engaged. The assessment also recognised that the changes will engage the article 8 rights (the right to respect for private and family life, home and correspondence) of prisoners. SPS consider that these rule amendments are necessary for the protection of the health, safety and security of SPS Staff, NHS staff and prisoners during this current coronavirus outbreak. It is the view of the SPS that the amendment rules can be applied in a proportionate way to have the least impact possible upon prisoners’ article 8 rights.

Consultation

6. In normal circumstances SPS would have consulted with operational managers and policy colleagues within the Scottish Prison Service, Trade Union partners and other stakeholders such as Police Scotland and NHS colleagues, when making changes to the prison rules. On this occasion this has not been possible. There has however been a limited consultation with senior SPS operational managers.

Financial Effect

7. 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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