

**EXPLANATORY MEMORANDUM TO  
THE PRISON (AMENDMENT) RULES 2008**

**2008 No. 597**

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. **Description**

- 2.1 These Rules amend the Prison Rules 1999 (“the 1999 Rules”) to reflect and implement changes introduced by the Offender Management Act 2007 (“the 2007 Act”)(section 22) to the Prison Act 1952 (“the 1952 Act”).
- 2.2 These changes relate to restrictions on the conveyance of prohibited articles into or out of a prison and create a criminal offence of conveying such articles without authority.
- 2.3 These Rules also amend the 1999 Rules to change the name of ‘boards of visitors’ to ‘independent monitoring boards’ to reflect the amendment to the 1952 Act made by section 26 of the 2007 Act. They also remove the reference to ‘boards of visitors’ in rule 61(2) of the 1999 Rules, because boards of visitors, now independent monitoring boards, no longer have any role in imposing punishments for disciplinary offences.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None.

4. **Legislative and policy background**

- 4.1 Section 40A(6) of the 1952 Act (as inserted by the 2007 Act) allows for the specification of a ‘List C’ of articles or substances prescribed for the purposes of this subsection by prison rules.
- 4.2 A person who, without authorisation—
  - (a) brings, throws or otherwise conveys a List C article into a prison intending it to come into the possession of a prisoner,
  - (b) causes another person to bring, throw or otherwise convey a List C article into a prison intending it to come into the possession of a prisoner,
  - (c) brings, throws or otherwise conveys a List C article out of a prison on behalf of a prisoner,

- (d) causes another person to bring, throw or otherwise convey a List C article out of a prison on behalf of a prisoner,
- (e) leaves a List C article in any place (whether inside or outside a prison) intending it to come into the possession of a prisoner, or
- (f) while inside a prison, gives a List C article to a prisoner, is guilty of an offence.

4.3 In addition, the 2007 Act replaces section 40 of the 1952 Act with Sections 40A to 40F and Section 41 is revoked. Rule 70 of the 1999 Rules, which relied on sections 40 and 41, is amended to reflect these changes.

4.4 Section 6 of the 1952 Act provides that every prison shall have a board of visitors. These boards have in practice for some time been known as ‘independent monitoring boards’. This change has been given legal status by the change to the Prison Act 1952 introduced by section 26 of the 2007 Act.

## **5. Extent**

5.1 This instrument applies to England and Wales.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

## **7. Policy background**

7.1 It is vital to the security and safe operation of prison establishments that they are able to regulate articles being conveyed in or out of the prison.

7.2 The 2007 Act replaces section 40 of the 1952 Act with Sections 40A to 40F. Contained in these sections are a number of provisions which make for the first time the bringing in or taking out of prison of certain items, or the passing of those items to prisoners, a criminal offence.

7.3 Sections 40A to 40C of the 1952 Act define and grade prohibited articles according to their seriousness and their perceived threat to security and safety within a prison, classifying them as either “List A”, “List B”, or “List C” articles. List A articles pose the most serious threat and List C articles the least serious threat.

- (a) List A articles are drugs, explosives, firearms or ammunition and any other offensive weapon;
- (b) List B articles are alcohol, mobile telephones, cameras and sound recording devices (or constituent part of the latter three items); and

(c) List C articles, as prescribed in the 1999 Rules as amended by this instrument, are any tobacco, money, clothing, food, drink, letters, paper, books, tools, information technology equipment.

- 7.4 List A and B articles are defined in Section 40A of the 1952 Act. List C articles are prescribed in Prison Rules, made under section 47 of the 1952 Act, in accordance with section 40A(6) of the 1952 Act.
- 7.5 Those articles prescribed in List C are those that were previously contained in Rule 70 of the 1999 Rules with the addition of information technology equipment. Information technology equipment poses a new and growing risk to security in prison establishments as it may be used to circumvent existing restrictions on communication or to hide illegal or unauthorised items ranging from pornography to extremist material.
- 7.6 The new offences to which these rules relate were introduced as part of the Offender Management Act 2007 and as such were subject to full Parliamentary process. The local measures introducing these powers within prisons, including the contents of the “List C” of prohibited items, have been subject to widespread consultation both inside and outside the Prison Service.
- 7.7 ‘Boards of visitors’ have for some time been known as ‘independent monitoring boards’ and this has been recognised by amendments to the 1952 Act introduced by section 26 of the 2007 Act. These Rules now amend the 1999 Rules to change the name of ‘boards of visitors’ to ‘independent monitoring boards’. The IMB secretariat and the National Council for Independent Monitoring Boards were consulted on the previous equivalent Prison Rule amendment and agreed with it, and the IMB Secretariat have confirmed their agreement to this amendment, which is in identical terms.

## **8. Impact**

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

## **9. Contact**

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