

**EXPLANATORY MEMORANDUM TO**  
**THE PRISON (AMENDMENT) RULES 2017**

**2017 No. 576**

**1. Introduction**

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

**2. Purpose of the instrument**

- 2.1 This instrument inserts a new rule 46A into the Prison Rules 1999 that will provide a statutory basis for the separation from the mainstream prison population of certain prisoners who are assessed to pose particularly serious risks (relating to national security, planning of terrorism, disseminating views encouraging terrorism, or using harmful views to undermine good order and discipline) by removing them from the mainstream population. This will assist in the effective management of prisons and prisoners, to ensure the maintenance of control, security and discipline within prison and to manage terrorism related risks posed by certain prisoners.

**3. Matters of special interest to Parliament**

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

- 3.1 None

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 The Prison Rules 1999 are made under section 47 of the Prison Act 1952. They set out a range of powers, duties and obligations that govern how prisons are run on a day to day basis. They include rules that allow prisoners to be placed into segregation (Rule 45) and into small units known as close supervision centres (Rule 46). This instrument adds a new Rule 46A to the Prison Rules to allow for prisoners to be placed into separation centres. The wording of new Rule 46A is similar to that of Rules 45 and 46 and the policies and processes that will support the new Rule are also similar to those Her Majesty's Prison and Probation Service uses when taking decisions under Rules 45 and 46.

**5. Extent and Territorial Application**

- 5.1 The extent of this instrument is England and Wales only.  
5.2 The territorial application of this instrument is England and Wales only.

## **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**

### *What is being done and why*

7.1 On 22 August 2016 the Government announced in its response to a report into Islamist Extremism in prisons, commissioned by the Ministry of Justice, that ‘planning is under way to create specialist units within the high security estate to allow greater separation and specialised management of extremists who pose the highest risk to other prisoners’. The amendments made by this instrument are necessary to support this policy change. On 3 November 2016 the Ministry of Justice published its white paper ‘Prison Safety and Reform’ setting out the steps it is taking to make prisons a place of safety and reform. The white paper explained that ‘Extremism is a danger to society and a threat to public safety. In prison, it endangers prisoners and staff, encourages criminal behaviour and terrorism, and undermines the proper functioning of the justice system. Tackling extremism in prison requires dealing with a wide range of offenders, from highly motivated terrorists convicted of extremely serious offences, to prisoners who may be vulnerable or susceptible to extremist ideology. Prisons can provide an atmosphere in which individuals are particularly vulnerable to the full spectrum of extremist ideologies, whether Islamist or extreme right wing’.

7.2 The primary aims of this policy is to:

- prevent and disrupt terrorist activity by separating those who present a significant threat to national security by actively seeking, whilst in custody, to build their capabilities to plan or perpetrate terrorist acts;
- safeguard the mainstream prisoner population from being encouraged or induced to commit terrorist acts;
- separate and disrupt prisoners who may be attempting to radicalise others, influence peers to adopt identities in prison that challenge our fundamental values, and/or use criminal dominance to enforce the power of groups who seek to challenge these values;
- safely manage those prisoners whose actions pose a significant threat to the safety of others and/or the good order or discipline of a prison; and
- provide separated prisoners with the opportunity to reduce their risks through desistance, disengagement and de-radicalisation in the long term.

7.3 This policy is set against a backdrop of the conviction of offenders for an act of terrorism, a terrorist offence or an offence with a terrorist connection as defined in section 1 of the Terrorism Act 2000(a), section 41 of the Counter Terrorism Act 2008(b) and section 30 of the Counter-Terrorism Act 2008, and the Government’s CONTEST and Counter Extremism strategies. The broader context is the need for appropriate management of these high risk prisoners within our High Security prisons.

7.4 The government is legislating so that there is a clear statutory underpinning for the power to separate prisoners, clear criteria governing who is eligible for transfer into the centres.

- 7.5 The purpose of this statutory instrument is to provide a new Prison Rule that sets out the specified grounds for assessment and removal of prisoners presenting the highest risk to the mainstream prison population. The target cohort for those to be separated is those extremist prisoners presenting a threat, either in person or by influencing others, who cannot be managed within the mainstream population. The decision to separate will be non-discriminatory, proportionate, transparent and legally defensible. The regime for those affected will be comparable to the mainstream prisoner population, with any constraints or restrictions imposed reflecting their individual risk
- 7.6 It is believed that separation is only required for a very narrow cohort and the success of our management of terrorist and extremist prisoners, including within High Security Prisons, obviates the need for separation of larger numbers. For this small cohort they will be held in dedicated Separation Centres. Subject to risk assessment, separated prisoners will have access to a regime that is broadly comparable to those in mainstream location. Our intention is to provide a small number of Separation Centres (initially 3) within High Security Prisons to accommodate those prisoners who have been assessed as presenting a risk which cannot be managed in the mainstream prisoner population. Our intention is that each Separation Centre will hold a small population of no more than 12 individuals to ensure intensive intervention and management of individuals in high security conditions. This number will be kept under review.
- 7.7 Certain prisoners assessed as presenting the highest risk and who meet the criteria in new Rule 46A will be referred for assessment and consideration for placement in a Separation Centre. A Prison Service Instruction, setting out the detail of the referral and selection process will be published on gov.uk. All prisoners held in a centre will be reviewed on a quarterly basis from the date of the decision to select. The decision to retain the prisoner in the centre or to de-select them and return to the mainstream population will be taken by the Separation Centre Management Committee. Any representations made by prisoners will be fully considered at each review.
- 7.8 Prisoners within Separation Centres will not be segregated or isolated as they will be free to associate with other prisoners (subject to risk assessment) within the centre and will be provided with a regime comparable with the mainstream population.

### ***Consolidation***

- 7.9 The Ministry of Justice has no immediate plans to consolidate the Prison Rules 1999. The position will remain under review as the Prisons and Courts Bill passes through Parliament.

## **8. Consultation outcome**

- 8.1 Following the Government's announcement in August 2016, we have undertaken a comprehensive evidence gathering and consultation process which included cross-Government workshops with a range of stakeholders (including, but not limited to prison governors, chaplaincy, police, security service, probation trusts, trade unions etc.), engagement with leading academics, University of Cambridge and visits to other domestic and international jurisdictions (France, Netherlands and Northern Ireland), to learn lessons from previous and current strategies for managing challenging offender groups. In addition, we have ensured that this policy reflects the government's organisational experience in the management and operation of small units in the past. This has included the management of terrorists in Northern Ireland

and how we currently manage small groups of prisoners who present the highest risk of violence in prisons (in Close Supervision Centres).

- 8.2 Given the demographics of the anticipated initial cohort, some concerns centre on perceived discrimination, notably toward Muslim prisoners since the main cohort of Terrorism Act offenders that present an ongoing risk are Islamists. We have addressed this issue throughout the development of this policy, ensuring that the policy and overriding Rule amendment are non-discriminatory and applicable to any prisoner exhibiting one or more of the behaviours set out in the Rule. Whilst the majority of the initial cohort are likely to be Islamist extremist, we have ensured that the policy we have developed is applicable across all faiths/political groups and ideologies. This ensures the policy is non-discriminatory and represents a step forward from the report the MoJ responded to in 2016, which only considered Islamist extremism.
- 8.3 We have also addressed concerns that were raised about the centres providing meaningful regimes that are secure and underpinned by just and fair procedures. In developing the policy we have made sure that the regime in centres is comparable with the mainstream population and that the process of referral, assessment and making representations about any part of the policy is transparent and accessible to prisoners and staff.
- 8.4 A full equality assessment has been carried out to support this policy and will be subject to regular review and amendment, throughout the life of the policy, ensuring considerations of equality go beyond the policy development into more everyday practices.

## **9. Guidance**

- 9.1 The amending Rules will be published and made available on the Ministry of Justice website.
- 9.2 Separation Centres will be run by specially trained staff in High Security Prisons. This is supported by an established staff recruitment and selection model that ensures selected staff have the required skills and resilience.
- 9.3 A new Prison Service Instruction (PSI), outlining the aims and objectives of the centres and the process for referral and selection, supported by an Operating Manual (OM), detailing the regime, staff training and support, case management, interventions, review and de-selection processes, is being developed in support of the new provisions and will be issued to all appropriate prison establishments prior to implementation. The PSI is a public document and will be available via gov.uk. The OM is an internal document and will be available to all prison staff prior to opening of the first Separation Centre. This will also be available to relevant prisoners within the centres. In addition, a specialist enhanced training package has been developed for staff working on the centres. Guidance and specialised training will be subject to ongoing internal review and evaluation.

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is expected to be minimal.
- 10.2 The impact on the public sector is expected to be minimal.
- 10.3 An Impact Assessment has not been prepared for this instrument as a) the cost impact is already known and planned within HMPPS/MOJ of which HMT are fully

appraised, and b) there has been full cross government engagement throughout the development of this Rule amendment and supporting policy.

- 10.4 Review and Evaluation The process study which will commence within the first year of the first centre opening will be completed in-house by HMPPS/MOJ researchers and costs will be minimum. The research is a priority for HMPPS/MOJ and has already been included in the 2017/18 business plan.

## **11. Regulating small business**

- 11.1 The legislation does not meet the definition of a qualifying regulatory provision under the Small Business, Enterprise and Employment Act 2015

## **12. Monitoring & review**

- 12.1 A process study will be conducted by researchers in HMPPS/MoJ within the first year of the opening of the first centre to explore their set up and implementation. The study will include obtaining feedback from separated prisoners, centre staff and a wide range of other key stakeholders along with analysis of performance, monitoring and behavioural data from a number of different sources. The study will look at whether the centres have been set up and are operating as intended, that the decision to separate is non-discriminatory, proportionate, and transparent. It will also consider whether the centres are providing a secure, safe and decent environment as well as looking for early indicators that they are achieving their intended outcomes and whether these can be measured, for example, are there any indicators to suggest whether the centres are containing the risks that they are intended to manage. It will also seek to inform the design of a future impact evaluation. The process study has been approved by the HMPPS National Research Committee.
- 12.2 The centres will, as with any other part of the prison estate, be open to inspection by Her Majesty's Inspector for Prisons, and monitored by Independent Monitoring Boards.

## **13. Contact**

- 13.1 Please direct any queries regarding the Prison Rules 1999 amendment for the provision of Separation Centres to Telephone: 0203 193 6031 or email: [separationcentres@noms.gsi.gov.uk](mailto:separationcentres@noms.gsi.gov.uk)