

EXPLANATORY MEMORANDUM TO
THE PRISON AND YOUNG OFFENDER INSTITUTION (ADJUDICATION)
(AMENDMENT) RULES 2024

2024 No. 212

1. Introduction

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

2. Purpose of the instrument

2.1 The purpose of the Prison and Young Offender Institution (Adjudication) (Amendment) Rules 2024 ('the Amendment Rules') is to make changes to the Prison Rules 1999 (S.I. 1999/728) and the Young Offender Institution Rules 2000 (S.I. 2000/3371) ('the Prison and YOI Rules').

2.2 References in this Explanatory Memorandum to 'prisons' and 'prisoners' include reference to Young Offender Institutions and their inmates.

2.3 These changes are intended to improve behaviour management in prisons by ensuring serious offences against discipline are appropriately charged and providing governors with more options for dealing with offences against discipline. Improving prison safety through behaviour management is a priority for the Government.

2.4 Firstly, the Amendment Rules amend the offences against discipline in the Prison and YOI Rules. They replace the existing offences against discipline relating to race with charges that relate to all protected characteristics (including race) in line with the Equality Act 2010. They also introduce new offences against discipline for sexually inappropriate behaviours. This ensures victims of offences against discipline related to one or more protected characteristics are treated equally and that the experiences of victims of sexual offences are recognised and recorded within the adjudications system to combat sexually inappropriate behaviour in prisons.

2.5 Secondly, the Amendment Rules give prison governors two new options when adjudicating: firstly, they provide for a payback punishment where a prisoner makes amends for their wrongdoing by engaging in rehabilitative or reparative work that is unpaid, to give back to the prison community; and secondly, they allow for the suspension of an existing punishment on the condition that a prisoner completes a rehabilitative activity. These options will allow prisons to better address the root causes of rule breaking to support prisoners to break patterns of repeated misbehaviour.

2.6 Thirdly, the Amendment Rules give the governor or Independent Adjudicator statutory discretion as to whether to impose compensation requirement (and the amount that they impose) where a prisoner has destroyed or damaged any part of a prison or any other property belonging to a prison to take account of whether repayment of the full cost would exacerbate financial hardship or cause other negative indirect consequences.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 Section 47(1) of the Prison Act 1952 allows for the Secretary of State to make rules for the regulation and management of prisons and Young Offender Institutions ('YOIs'), and the Prison and YOI Rules are made using this power. The Prison and YOI Rules set out a range of powers, duties, and obligations that govern how prisons and YOIs are run on a day-to-day basis, including an internal system of offences against discipline, for which prisoners can be punished if found guilty in an adjudication.
- 6.2 The offences against discipline are listed under Prison Rule 51 and YOI Rule 55, each comprising of 29 offences. The punishments which a governor can impose are listed under Prison Rule 55 and YOI Rule 60, comprising of seven and eight punishments respectively. These punishments (with the exception of a caution) may be suspended by virtue of Prison Rule 60 and YOI Rule 63. Each list of punishments and offences is exhaustive. Additionally, Prison Rule 55AB and YOI Rule 60AB require governors and Independent Adjudicators to impose a requirement for prisoners to pay for the full cost (up to £2,000) of making good damage to a prison or its property from a relevant offence.
- 6.3 The Amendment Rules amend the Prison and YOI Rules to maintain effective operation of the prison discipline system. The Government has determined that the Prison and YOI Rules should be modified to amend existing rules: Prison Rule 2 and YOI Rule 2; Prison Rule 51 and YOI Rule 55; Prison Rule 51A and YOI Rule 57; Prison Rule 55 and YOI Rule 60; Prison Rule 55A and 60A; Prison Rule 55AB and YOI Rule 60AB; and Prison Rule 60 and YOI Rule 63. This will mean that staff will be able to lay a charge that specifies where an offence was motivated by, or demonstrated hostility towards, particular protected characteristic and will be able to lay charges for specific sexually inappropriate behaviour(s); that governors will be able to impose a payback punishment, or a rehabilitative activity condition (attached to a suspended punishment), in response to a proven adjudication; and that governors and Independent Adjudicator will have statutory discretion as whether to impose compensation requirement (and the amount that they impose) where a prisoner has destroyed or damaged any part of a prison or any other property belonging to a prison.
- 6.4 Specifically, Prison Rule 51(1A), (17A), (20A) and (24A), and YOI Rule 55(2), (19), (23) and (28) have been amended to include offences against discipline motivated by or demonstrating hostility towards any protected characteristic including age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation, as defined by the Equality Act 2010. Additionally, Prison Rule 51(1B), (1C) and (1D) and YOI Rule 55 (2A), (2B) and (2C) have been added to introduce new offences against discipline of sexual assault, sexual harassment, exposure and other indecent or obscene acts, and Prison Rule 51(23A), and

YOI Rule 55(26A) have been added so that staff can lay a charge if a prisoner fails to adequately comply with any payback punishment.

- 6.5 Prison Rule 51A(2) and YOI Rule 57 have been amended to define and interpret terms used in the amended and new paragraphs in Prison Rule 51 and YOI Rule 55.
- 6.6 Prison Rule 55(1)(i) and YOI Rule 60(1)(i) have been added to include payback punishment as defined under Prison Rule 2 and YOI Rule 2, as a potential punishment for convicted prisoners with a proven adjudication.
- 6.7 Prison Rule 55A(1)(a) and YOI Rule 60A(1)(a) have been amended to provide that payback punishment will not be made available to Independent Adjudicators. This is because Independent Adjudicators will not have the requisite information regarding the facilities and activities available at each establishment in order to direct a prisoner to engage in payback punishment.
- 6.8 Prison Rule 55AB and YOI Rule 60AB have been amended to give the governor or Independent Adjudicator discretion over whether to impose a requirement to pay for damage to the prison or its property, and what proportion of the cost to set the requirement at, where an offender has committed a relevant offence.
- 6.9 Prison Rule 60 and YOI Rule 63 have been replaced with new versions which ensure that a payback punishment cannot be suspended and provide for a new condition of a suspended punishment as an alternative to a condition of not committing another offence against discipline: complying with or completing a rehabilitative activity. This will allow governors to direct prisoners to engage with a rehabilitative activity which addresses the root causes of their rule breaking as an alternative to a punishment. The attached punishment will be suspended on the condition that the rehabilitative activity is adequately completed during a specified period otherwise the governor may activate the suspended punishment, in full or in part. A suspended punishment may only carry one type of condition, i.e., either one or more new rehabilitative activity conditions or the existing non-offending condition; they may not both be applied to the same suspended punishment.

7. Policy background

What is being done and why?

- 7.1 The current Prison and YOI Rules do allow for charges to be laid against a prisoner for committing racially aggravated offences. However, the charges were not updated when the Equality Act 2010 was introduced to reflect offences aggravated by other protected characteristics, specifically, age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, religion or belief, sex, and sexual orientation. This is resulting in unequal treatment of victims who are subjected to hostility and abuse by prisoners on the basis of one or more protected characteristics, other than race, which reduces confidence in the disciplinary system.
- 7.2 In addition, there is no specific provision within the current Prison and YOI Rules to charge prisoners who commit sexually inappropriate offences. For example, prisoners can currently only be charged under Prison Rule 51(1) / YOI Rule 55(1) under the generic offence of “*commits any assault*”, irrespective of whether the offence is, for example, a sexual assault. This means that the disciplinary system cannot deal with sexual offences in a way which acknowledges their sexual nature or the experience of the victim. It also prevents an understanding of the true extent of the problem for the purposes of managing risk. There is a need to specify sexually inappropriate behaviours

in the list of offences in a way which mirrors sexual crimes recorded by the police so that the scale of sexual offending crimes is understood throughout the Criminal Justice System.

- 7.3 Currently, governors can only impose the existing punishments set out in the Prison and YOI Rules which include the removal of privileges and cellular confinement, for example. Evidence suggests that punishment alone is not effective at changing behaviour or reducing impulsivity so there is a need to provide governors with more flexibility to include rehabilitative options to assist prisoners to change their behaviour and desist from future rule breaking. This will contribute towards making prisons safer and more stable.
- 7.4 The existing Prison and YOI Rules mandate that where a prisoner is found guilty of destroying or damaging prison property, the governor or Independent Adjudicator must impose a compensation requirement for the cost of the damage caused, subject to a £2000 cap. A lack of discretion to take account of a prisoner's individual circumstances when deciding the amount of compensation owed prevents consideration of important issues such as the need to maintain contact with family and friends, to purchase necessary items, any needs on release, caring responsibilities, and the safeguarding and welfare of the prisoners.

7.5 **Explanations**

What did any law do before the changes to be made by this instrument?

- 7.6 For offences motivated by or demonstrating hostility towards a person's race, staff can lay a charge in accordance with Prison Rule 51(1A), (17A), (20A) and (24A) and YOI Rule 55(2), (19), (23) and (28). Where an offence is motivated by or demonstrates hostility towards any other protected characteristic as outlined in the Equality Act, PSI 05/2018 sets out that Governors should lay a charge for the non-aggravated version of the offence, adjust their local punishment guidelines to provide for more severe punishments, while the seriousness test for a referral to an Independent Adjudicator states that if there are such aggravating factors, they may be referred to an Independent Adjudicator, who considers more serious cases for a punishment of additional time in custody.
- 7.7 Incidents of sexual assault are charged under Prison Rule 51(1) / YOI Rule 55(1) ("*commits any assault*") and are referred to the police. Other sexually inappropriate behaviours such as sexual harassment, exposure or any other indecent or obscene act are charged under either Prison Rule 51(20) / YOI Rule 55(22) ("*uses threatening, abusive or insulting words or behaviour*") or Prison Rule 51(19) / YOI Rule 55(21) ("*is disrespectful to any officer, or any person*"). PSI 05/2018 sets out that offences of threatening, abusive or insulting words or behaviour may be referred to an Independent Adjudicator if there are aggravating factors, but not normally otherwise.
- 7.8 Governors have statutory powers to punish prisoners where they are found guilty at adjudication of committing offences against discipline. There is an exhaustive list of punishments which a governor can impose under Prison Rule 55 / YOI Rule 60. These range from a caution, to having privileges removed and having earnings stopped, and punishments can be suspended (other than a caution). Governors cannot impose any other punishments beyond these statutory lists. Prison Service Instruction (PSI) 05/2018, Prisoner Discipline Procedures (Adjudications) sets out that staff have the discretion whether to lay a charge in the first place which must be exercised fairly and

proportionately. They can also consider alternative, less formal measures for dealing with minor infringements of the Prison and YOI Rules.

- 7.9 Prison Rule 55AB and YOI Rule 60AB mandate that governors and Independent Adjudicators must impose a requirement for prisoners to pay the cost of destroying or damaging part of a prison or prison property, subject to a £2,000 cap.

Why is it being changed?

- 7.10 Replacing the racial charges with charges explicitly covering all protected characteristics (including race) would mirror the Equality Act 2010. The absence of specific charges (both for behaviour aggravated by protected characteristics other than race, and for sexually inappropriate behaviour) prevents an understanding of the true extent of the problem because there is no accurate data. The Government wants to be able to demonstrate how seriously these offences are taken to ensure safety through better risk assessments data. Not changing the Prison and YOI Rules undermines the integrity of the discipline system, sends a message of impunity to prisoners and risks employee relations.
- 7.11 The inclusion of payback punishment and rehabilitative activity conditions in the Prison and YOI Rules reflects a more evidence-based approach to behaviour management. This approach focuses on providing opportunities for rehabilitation and reparation to encourage prisoners to take personal responsibility and make amends for their behaviour. This approach will support desistance from rule breaking resulting in good order and safer custody. Prison misconduct has also been shown to be a reliable predictor of recidivism, therefore increasing compliance with the Prison and YOI Rules by targeting rule-breaking behaviour, could also contribute to reduced reoffending upon release.
- 7.12 Amending the Prison and YOI Rules on compensation requirements will avoid an inadvertent detriment to family contact which supports rehabilitation and financial hardship which can fuel poor safety outcomes, potentially leading to bullying, debt and violence.

What will it now do?

- 7.13 The amendments to Prison Rule 51(1A), (17A), (20A) and (24A), and YOI Rule 55(2), (19), (23) and (28) will enable staff to specify in the wording of the charge the particular protected characteristic that a relevant offence demonstrated or was motivated by hostility towards. The relevant offences are assault; causing damage or destruction to any part of the prison/YOI or any other property; using threatening, abusive, or insulting words or behaviour; and displaying, attaching or drawing on any part of the prison/YOI or any other property threatening, abusive or insulting words, drawings, symbols or other material.
- 7.14 The new Prison Rule 51(1B), (1C) and (1D) and YOI Rule 55(2A), (2B) and (2C) will enable staff to lay a charge for sexual assault, exposure or any other indecent or obscene acts, and sexual harassment. The amended Prison Rule 51A(2) and YOI Rule 57 provides updated provisions on how terms in the new offences against discipline should be interpreted. These amendments are designed to allow staff to lay the most appropriate charge following an incident, so that governors can accurately record incidents of these serious behaviours and assist in combatting offence paralleling behaviour.

- 7.15 The amendments to Prison Rules 55(1) and 55A(1)(a), and YOI Rules 60(1) and 60A(1)(a), will enable governors to direct only convicted prisoners to undertake payback punishment as a result of a guilty finding at an adjudication. Under Prison Rule 2 and YOI Rule 2, any work imposed under this punishment will be rehabilitative or reparative in nature and will encourage them to take responsibility and make amends. Under the amended Prison Rule 60(1) and YOI Rule 63(1), the payback punishment cannot be suspended, as it is necessary for the prisoner to complete the punishment in order for the rehabilitative and/or reparative benefits to be realised.
- 7.16 The amended Prison Rule 51(23A) and YOI Rule 55(26A) will enable staff to charge prisoners with a new disciplinary offence when they do not adequately comply with a payback punishment that was imposed at a prior adjudication. This will mean the prisoner will be subject to a separate adjudication in which they will receive a punishment for their failure to comply with the payback punishment only, but not for the disciplinary offence for which the payback punishment was given.
- 7.17 The existing Prison Rule 60 and YOI Rule 63 have been replaced with versions allowing adjudicating governors to suspend a punishment on the condition that a prisoner complies with, or completes, a specified rehabilitative activity, as set out at the new paragraph (3)(b) of both Rules. This will include engagement in services or with another rehabilitative activity, which will help address causes of the offending behaviour. If the prisoner fails to adequately comply with, or complete, the rehabilitative activity, the governor may activate the suspended punishment, in full or in part, under the new paragraph (10) of both Rules. Adequate compliance with, or completion of, the rehabilitative condition will result in the suspended punishment lapsing and therefore not being imposed, as a reflection of the prisoner's engagement. Paragraph (1) of both Rules will ensure that payback punishment cannot be suspended.
- 7.18 The amended Prison Rule 55AB and YOI Rule 60AB allows adjudicators to impose a compensation requirement but no longer requires them to do so. It also allows them to impose a requirement that the prisoner pays towards the cost of the damage but not necessarily the full cost, where appropriate.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 There are no plans to consolidate the Prison Rules 1999 at this time.

10. Consultation outcome

- 10.1 Staff networks, governors, prison staff and prisoners are supportive of the amendments. The police and Crown Prosecution Service are supportive of the introduction of new sexual offences.

11. Guidance

- 11.1 Policy instructions and guidance will be given to prisons to advise governors and staff of the changes to the Rules and the new processes to follow.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities, or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector. Establishments and staff will continue to lay disciplinary charges as before with occasional changes in handling due to the modifications created by this instrument.
- 12.3 A full Equalities Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the [legislation.gov.uk](https://www.legislation.gov.uk) website.

13. Regulating small business

- 13.1 The instrument does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The changes set out in this legislation will be kept under review. Governors are required to regularly review the conduct of adjudications within their establishments to ensure that the required outcomes are being achieved.
- 14.2 The instrument does not include a statutory review clause.

15. Contact

- 15.1 Cassie Anderson and Abigail Tonkin at the Ministry of Justice, cassie.anderson2@justice.gov.uk and abigail.tonkin@justice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Rachel Pascual, Deputy Director for Counter Terrorism, Prison Operational Policy, Safety and Security, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Argar at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.