

POLICY NOTE

THE PRISONS AND YOUNG OFFENDERS INSTITUTIONS (SCOTLAND) AMENDMENT RULES 2021

SSI 2021/446

1. The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2021 are 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.

The purpose of this instrument is to add psychoactive substances (within the meaning of section 2 of the Psychoactive Substances Act 2016) to the list of prohibited articles in the Prison Rules and to provide Prison Governors with powers that will enable them to mitigate against the risk of illicit substances being introduced through general correspondence sent to prisoners via the prisoner mail system.

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. Drug misuse in Scottish Prisons has evolved over the last few years, shifting from well-known and readily identifiable controlled substances such as heroin, cocaine, cannabis and prescribed medication(s) to Psychoactive Substances (PS) including synthetic cannabinoids. Synthetic cannabinoids are very potent drugs which can be soaked into paper at low concentrations but still have a significant psychoactive effect. Easy access to PS within the community, the low cost and the ability to introduce these relatively easily and with minimal risk into the prison system in large quantities has resulted in the use of PS becoming the preferred drug of choice in prisons. The most common method of introducing this substance into prisons is to spray the substance onto sheets of paper which are then posted in via the prisoner mail system.

4. It is an offence under the Psychoactive Substances Act 2016 to supply psychoactive substances for the purpose of consumption. It is also an offence under that Act to possess psychoactive substances in a custodial institution such as a prison.

5. Over the course of the 12-month period August 2020 – July 2021 there have been 9 deaths in SPS custody linked to suspected drug overdoses. Recent information indicates that the number of emergency escorts to hospital which were drug related and incidents of prisoners being found suspected to be under the influence of drugs has escalated.

6. There is no way of directly evidencing that the deaths in custody, emergency escorts and the incidences of prisoners being found under the influence of drugs are as a direct result of substances that have been introduced exclusively via the prisoner mail system. However, given the high number of positive mail indications and the intelligence suggesting that this is the most commonly used method, SPS have assessed that there is a high probability that the substances used in these instances have been introduced via this method.

7. The amendments add psychoactive substances (within the meaning of section 2 of the Psychoactive Substances Act 2016) to the list of items that are included in the definition of “prohibited articles”. Prohibited articles are items which prisoners are not allowed to possess in prison and currently include controlled drugs, alcohol, offensive weapons and other items. The amendments also provide prison officers and employees with powers that will allow them to: photocopy prisoner’s general correspondence; provide the prisoner with the photocopy of the correspondence; and retain the original correspondence for return to the prisoner upon his or her release. The prison officers and employees will also be provided with the power to test general correspondence for the purposes of investigating if it contains a prohibited article or unauthorised property.

8. The Scottish Prison Service and Police Scotland are reviewing the current Memorandum of Understanding concerning the management of illicit substances found in prisons, including the investigation, collection and destruction of such substances.

9. These amendments mitigate against the risks of illicit substances, particularly PS, being introduced via the prisoner mail system and thus reduce the risk of such substances causing harm to those in the care of SPS, and those working in or visiting our prisons. It is also

hoped that the amendments will have a positive impact on the NHS and Scottish Ambulance Service, by reducing the incidences of prisoners requiring to utilise these services as a result of taking drugs introduced via the prisoner mail system.

10. The amendments will only effect general correspondence sent to prisoners, not confidential correspondence such as privileged correspondence, court correspondence and medical correspondence (all of which are defined in rule 56 of the Prison Rules (opening and reading of confidential correspondence)).

Consultation

11. There has been consultation with operational managers and policy colleagues within the SPS and Scottish Government, the Prisoner Officers Association and those in the care of SPS.

Impact Assessment

12. Impact Assessments have not been prepared for this instrument because of the need to make and lay the instrument urgently. SPS recognise that prohibiting prisoners from receiving general correspondence interferes with Article 8 rights (the right to respect for private and family life, home and correspondence) of prisoners. SPS however consider that these rule amendments are a necessary and proportionate means by which to maintain the good order of prisons, reduce the risk of harm to prisoners and those working in prisons being caused by drugs, particularly PS, being sent into prisons via prisoner's general correspondence, and to prevent crime in prisons.

Financial Effect

13. The Cabinet Secretary for Justice and Veterans 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
November 2021**