

POLICY NOTE

THE PRISONS AND YOUNG OFFENDERS INSTITUTIONS (CORONAVIRUS) (SCOTLAND) AMENDMENT RULES 2022

SSI 2022/73

1. The Prisons and Young Offenders Institutions (Coronavirus) (Scotland) Amendment Rules 2022 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 extend the application of certain amendments initially made to the Prison Rules by Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2020 (SSI 2020/122).

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 extend the application of certain amendments made to the Prison Rules by the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2020 (SSI 2020/122), which were extended and slightly amended by the Prisons and Young Offenders Institutions (Scotland) Amendment (No.2) Rules 2020 (SSI 2020/264), then extended by the Prisons and Young Offenders Institutions (Coronavirus) (Scotland) Amendment Rules 2021 (SSI 2021/80) and further extended and amended by the Prisons and Young Offenders Institutions (Coronavirus) (Scotland) Amendment (No.2) Rules 2021 (SSI 2021/289). Given the continuing uncertainty regarding the course of this pandemic and the uncertainty around the increasing spread of new variants of COVID-19, SPS considers it necessary to take steps to retain the current flexibility afforded by previous SSIs made during the pandemic, to ensure that we are prepared and able to focus on any immediate priorities that may arise.

4. The amendments to the Prison Rules are due to expire on 31 March 2022 and this instrument extends the application of the amendments detailed below until 30 September 2022, which are identical to the amendments extended by SSI 2021/289 and are as follows:

- Part 5 – Health & Welfare** - Rule 40A (Recommendation by healthcare professional – coronavirus) allows a Governor, on the recommendation of a Healthcare Professional (in response to the effects Coronavirus is having or is likely to have on the prison), to confine particular prisoners or 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) extends 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.
- Part 8 – Communications** - Rule 63A (Visits to prisoners – coronavirus) allows the Governor to suspend prison visits where it is a necessary and proportionate response to the effects coronavirus is having or is likely to have in relation to the prison. 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. The Governor must regularly review a suspension of visiting to assess whether it remains necessary and proportionate.
- Part 9 – Work, Education, Earnings and Recreation** - 84A (Purposeful activities – coronavirus), and 88A (Recreation – coronavirus) allows the Governor to suspend or curtail work, educational activities, counselling, other purposeful activities and recreation where it is necessary and proportionate to do so in response to the effects coronavirus is having or is likely to have in relation to the prison. The Governor must regularly review a suspension of work, educational activities, counselling and other purposeful activities to assess whether it remains necessary and proportionate
- Part 15 – Temporary Release** - Rule 136B (Extension of certain periods of temporary release – coronavirus). Scottish Ministers are 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 Coronavirus and in compliance with government advice they are required to self-isolate for a further period of time.

Consultation

5. In July 2021, SPS conducted a targeted consultation on SSI 2021/289. As this SSI extends the amendments of SSI 2021/289 for a further 6 months, SPS wrote to all those consulted with previously to advise them of this extension and to ask them to provide any additional views/comments. There was also further consultation with SPS operational managers and policy colleagues and Scottish Government.

Impact Assessment

6. An Equality and Human Rights Impact Assessment was carried out which determined that without the flexibility provided by 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 continue to engage the Article 8 rights (the right to respect for private and family life, home and correspondence) of prisoners.

Financial Effect

7. 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

February 2022