

POLICY NOTE

THE PRISONS AND YOUNG OFFENDERS INSTITUTIONS (SCOTLAND) AMENDMENT RULES 2023

SSI 2023/366

1. The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2023 (“the Amendment Rules”) 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 are subject to negative procedure.

<p>The purpose of this instrument is to support the implementation of the SPS Policy for ‘The Management of Transgender People in custody’</p>
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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. The Amendment Rules will make changes to Rule 92 (Searching of Prisoners). This Rule currently requires prisoners to be searched by an Officer who is the same gender as them. While this may be overridden by a Governor where there are concerns about the searching Officer’s safety or, in the case of a transgender prisoner, that they would prefer to be searched in accordance with their birth sex, the Rules do not currently expressly provide for that. The Amendment Rules will make clear on the face of the Rule 92 that Governors have a discretion to allow a transgender person to be searched by an Officer of their birth sex if it is necessary and proportionate to do so. While the Amendment Rules will provide a discretion in relation to all prisoners, their purpose is to apply only to transgender prisoners. This will be underpinned by the Scottish Prison Service’s policies on searching, including under the policy for the Management of Transgender People in Custody. Prisoners who are not transgender will continue to be searched only by officers of the same gender as them.

4. Rule 93 (compulsory testing for controlled drugs) and Rule 94 (compulsory testing for alcohol), will also be amended to make clear on the face of the Prison Rules that Governors

may allow a transgender person to be observed by an Officer of their birth sex whilst providing a sample for drug or alcohol if it is necessary and proportionate to do so. Again, while the Amendment Rules will provide a discretion in relation to all prisoners, their purpose is to apply only to transgender prisoners. This will be underpinned by the Scottish Prison Service's policies on sample taking, including under the Policy for 'The Management of Transgender People in custody'. Prisoners who are not transgender will not provide samples in the sight of a person who is not the same gender as them.

5. The Amendment Rules will also make consequential changes to: Rule 106 (searching of visitors); Rule 108 (searching of specified persons) and Rule 142 (searching of officers and employees), to ensure that a consistent approach to searching is taken throughout the Prison Rules.

Consultation

6. There has been an extensive consultation with internal and external stakeholders in regard to the SPS Policy for 'The Management of Transgender People in custody'. A full list of the organisations and groups consulted can be found in the Equalities Human Rights Impact Assessment. There was also a public engagement exercise published on SPS' website which sought views on the existing policy.

Impact Assessment

7. An Equality and Human Rights Impact Assessment has been completed for the SPS Policy for 'The Management of Transgender People in custody' which these Rule Amendments will support the implementation of. The assessment identified no potential for unlawful discrimination or adverse impact or breach of Human Rights articles.

8. A Child Rights and Wellbeing Impact Assessment (CRWIA) has also been completed, it identified issues and risks with two articles in the UNCRC (Article 16 Right to privacy and Article 19 - Protection from violence, abuse and neglect) and the actions SPS can take to mitigate against any potential negative impact.

EU Alignment Consideration

9. This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Financial Effect

10. The Cabinet Secretary for Justice and Home Affairs 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
December 2023