

EXPLANATORY MEMORANDUM TO
THE YOUNG OFFENDER INSTITUTION (AMENDMENT) RULES 2008

2008 No. 599

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

2. **Description**

- 2.1 These Rules amend the Young Offender Institution Rules 2000 (“the 2000 Rules”) to reflect and implement changes introduced by the Offender Management Act 2007 (“the 2007 Act”)(section 22) to the Prison Act 1952.

- 2.2 These changes relate to restrictions on the conveyance of prohibited articles into or out of a prison and create a criminal offence of conveying such articles without authority.

- 2.3 These Rules also amend the 2000 Rules to change the name of ‘boards of visitors’ to ‘independent monitoring boards’ to reflect the amendment to the Prison Act 1952 made by section 26 of the 2007 Act. They also remove the reference to ‘boards of visitors’ in rule 64(2) of the 2000 Rules, because boards of visitors, now independent monitoring boards, no longer have any role in imposing punishments for disciplinary offences.

- 2.4 These Rules also provide that IMB members shall not have access to records related to Part 2 of the Regulation of Investigatory Powers Act 2000, which is concerned with surveillance and covert human intelligence source (CHIS).

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

- 3.1 None.

4. **Legislative background**

- 4.1 Section 40A(6) of the Prison Act 1952 (as inserted by the 2007 Act) allows for the specification of a ‘List C’ of articles or substances prescribed for the purposes of this subsection by prison rules.

- 4.2 A person who, without authorisation—
 - (a) brings, throws or otherwise conveys a List C article into a prison intending it to come into the possession of a prisoner,

- (b) causes another person to bring, throw or otherwise convey a List C article into a prison intending it to come into the possession of a prisoner,
 - (c) brings, throws or otherwise conveys a List C article out of a prison on behalf of a prisoner,
 - (d) causes another person to bring, throw or otherwise convey a List C article out of a prison on behalf of a prisoner,
 - (e) leaves a List C article in any place (whether inside or outside a prison) intending it to come into the possession of a prisoner, or
 - (f) while inside a prison, gives a List C article to a prisoner,
- is guilty of an offence.

4.3 In addition, the 2007 Act replaces section 40 of the Prison Act 1952 with Sections 40A to 40F and Section 41 is revoked.

4.4 Section 6 of the 1952 Act provides that every prison shall have a board of visitors. These boards have in practice for some time been known as 'independent monitoring boards'. This change has been given legal status by the change to the Prison Act 1952 introduced by section 26 of the 2007 Act.

4.5 Rule 83(3) of the 2000 Rules provides that members of the board of visitors (now independent monitoring boards) shall have access to the records of the prison. As it stands, this is likely to allow members to have access to records relating to surveillance and covert human intelligence source (CHIS) held for the purposes of or relating to conduct authorised in accordance with Part 2 of the Regulation of Investigatory Powers Act 2000. These Rules amend the 2000 Rules to ensure that such records remain protected.

5. Extent

5.1 This instrument applies to England and Wales.

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

7.1 It is vital to the security and safe operation of prison establishments that they are able to regulate articles being conveyed in or out of the prison.

7.2 The 2007 Act replaces section 40 of the Prison Act 1952 with Sections 40A to 40F. Contained in these sections are a number of provisions which make for the first time the bringing in or taking out of prison of

certain items, or the passing of those items to prisoners, a criminal offence.

- 7.3 Sections 40A to 40C of the Prison Act define and grade prohibited articles according to their seriousness and their perceived threat to security and safety within a prison, classifying them as either “List A”, “List B”, or “List C” articles. List A articles pose the most serious threat and List C articles the least serious threat.
- (a) List A articles are drugs, explosives, firearms or ammunition and any other offensive weapon;
 - (b) List B articles are alcohol, mobile telephones, cameras and sound recording devices (or constituent part of the latter three items); and
 - (c) List C articles, as prescribed in the 2000 Rules as amended by this instrument, are any tobacco, money, clothing, food, drink, letters, paper, books, tools, information technology equipment.
- 7.4 List A and B articles are defined in Section 40A of the Prison Act 1952. List C articles are prescribed in Prison Rules made under section 47 of the Prison Act in accordance with section 40A(6) of the Prison Act 1952.
- 7.5 The articles prescribed in List C mirror those that are prescribed in List C in the Prison Rules 1999, which articles were previously listed in Rule 70 of the Prison Rules 1999 as unauthorised articles, with the addition of information technology equipment. Information technology equipment poses a new and growing risk to security in prison establishments as it may be used to circumvent existing restrictions on communication or to hide illegal or unauthorised items ranging from pornography to extremist material.
- 7.6 The new offences to which these rules relate were introduced as part of the Offender Management Act 2007 and as such were subject to full Parliamentary process. The local measures introducing these powers within prisons, including the contents of the “List C” of prohibited items, have been subject to widespread consultation both inside and outside the Prison Service.
- 7.7 ‘Boards of visitors’ have for some time been known as ‘independent monitoring boards’ and this has been recognised by amendments to the 1952 Act introduced by section 26 of the 2007 Act. These Rules now amend the 2000 Rules to change the name of ‘boards of visitors’ to ‘independent monitoring boards’. The IMB secretariat and the National Council for Independent Monitoring Boards were consulted on the previous equivalent Prison Rule amendment and agreed with it, and the IMB Secretariat have confirmed their agreement to this amendment, which is in identical terms.
- 7.8 Rule 83(3) provides that members of the board of visitors (now independent monitoring board) shall have access to the records of the

prison. As it stands, this is likely to allow members to have access to records relating to surveillance and covert human intelligence source (CHIS) held for the purposes of or relating to conduct authorised in accordance with Part 2 of the Regulation of Investigatory Powers Act 2000.

7.9 These records are currently very tightly restricted within the prison and the requirement to maintain that is paramount. Disclosure of such records, either deliberate or inadvertent, risks compromising security and causing risk of harm to those sources. There are also concerns about pressure on, or risk to, members of boards should it be known that they had access to these records.

7.10 These Rules therefore provide that members of the board shall have access to the records of the prison other than those records held for the purposes of or relating to conduct authorised in accordance with Part 2 of the Regulation of Investigatory Powers Act 2000. This amendment mirrors amendments made to the corresponding provision of the Prison Rules 1999 by the Prison (Amendment) Rules 2007 (S.I. 2007/2954).

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

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