

EXPLANATORY MEMORANDUM TO
THE PRISON AND YOUNG OFFENDER INSTITUTION (AMENDMENT) RULES
2009

2009 No. 3082

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

2. **Purpose of the instrument**

These Rules amend the Prison Rules 1999 (“the Prison Rules”) and the Young Offender Institution Rules 2000 (“the YOI Rules”) for a number of purposes.

2.1.1 They make provision in relation to the provision of healthcare in prisons and young offender institutions following the removal by the Offender Management Act 2007 of the requirement for a prison or young offender institution to have a medical officer. They also provide for confidential communications between a prisoner or inmate and their own registered medical practitioner in specific circumstances.

2.1.2 They provide that communications (whether by telephone or otherwise) between prisoner or inmate and his legal adviser in legal proceedings or between a prisoner and certain other organizations (such as the Prisons and Probation Ombudsman), cannot be intercepted without reasonable cause and then only following an authorisation by the Chief Operating Officer of the prison service.

2.1.3 They amend and clarify Rules 38 and 39 of the Prison Rules 1999 and Rules 16 and 17 of the YOI Rules 2000. These rules relate to the confidentiality of legally privileged materials received or delivered during a legal visit or in correspondence.

2.1.4 They reduce the period that a prisoner’s or young offender’s unclaimed property will be stored after they have died or left the prison from 3 years to 1 year.

2.1.5 They remove the power of a member of the independent monitoring board to make a direction in relation to the restraint of a prison or a young offender.

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

3.1 None

4. **Legislative Context**

4.1 Under section 47 of the Prison Act 1952 the Secretary of State has power to make the rules for the regulation and management of prisons, remand centres, young offender institutions or secure centres, as well as for the classification, treatment, employment, discipline and control of those detained within. The rules being

amended by this instrument are the Prison Rules 1999 and the Young Offender Institution Rules 2000.

4.2 The Offender Management Act 2007 removed the requirement in the Prison Act 1952 for a prison to have a medical officer. Healthcare in prisons and young offender institutions is now normally provided by the National Health Service (and in some contracted-out prisons by private healthcare providers) to ensure that prisoners have the same access to medical treatment as those in the community. These Rules introduce amendments to bring the Prison Rules and YOI Rules into line with the Prison Act 1952.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

- *What is being done and why*

7.1 This instrument removes references to a medical officer in a prison following the removal by the Offender Management Act 2007 of the requirement for a prison or young offender institution to have a medical officer. Since April 2006, all public sector prisons have transferred the responsibility for commissioning health services in custody from the Prison Service to NHS Primary Care Trusts. Prior to this health services were organised by individual establishments led by the Governing Governor. The Rule as to health care is set out afresh. Minor amendments are made to other Rules consequential upon this change.

7.2 Following the decision on 2 June 2009 of the European Court of Human Rights in Szuluk v. United Kingdom (Application no. 36936/05), the rule adds provision for confidential medical communications between a prisoner or inmate and a registered medical practitioner who previously treated them for a life threatening condition.

7.3 This instrument also provides that communications between a prisoner or inmate and his legal adviser or a confidential access organisation cannot be intercepted without reasonable cause to believe that the communication is being made with the intention of furthering a criminal purpose and then only following an authorisation by the Chief Operating Officer of the prison service. Although it has been prison service policy that potentially legally privileged communications should not be intercepted except where there was such cause, given public concern about this issue the Ministry of Justice wish to make that clear on the face of the Prison Rules and YOI Rules.

7.4 The current Prison Rule 38 concerns the conditions in which prisoners may receive visits from their legal adviser. Rule 39 sets out the conditions under which

prisoners may send and receive legally privileged correspondence in that it will not be opened, read or stopped unless there is a reasonable suspicion that its contents endanger prison security; the safety of others or is otherwise criminal in nature. The amendments clarify Rules 38 and 39 of the Prison Rules and Rules 16 and 17 of the YOI Rules to make plain that a prisoner or inmate and their legal adviser may also transmit legally privileged material on a visit and that the contents are equally protected from viewing by staff.

7.5 This instrument also reduce from 3 years to 1 year the period that a prisoner or young offender's unclaimed property will be stored after the prisoner or young offender has died or left the prison or institution.

7.6 Finally, the instrument removes the power of a member of the independent monitoring board to make a direction in relation to the restraint of a prisoner or a young offender. This no longer reflects the practice of members of the independent monitoring board and the National Council of Independent Monitoring Boards has asked that the powers be removed from the Rules.

- ***Consolidation***

7.7 The Ministry of Justice recognises that both the Prison Rules and YOI Rules have now been subject to a number of amendments. There are no current plans to consolidate either set of Rules, but the Ministry remains mindful of the need to keep this matter under review.

8. Consultation outcome

8.1 Operational colleagues and the Law Society have been informally consulted about the clarification of the Rules on legally privileged material. NOMS operational colleagues and other stakeholders have also been consulted in respect of the changes to the storage of prisoners' property.

9. Guidance

9.1 The current supporting policy and guidance to prisons on telecommunications is contained in Prison Service Order Prisoner Communications: Prisoners' Use of Telephones (PSO 4400, Chapter 4). The current policy on correspondence is published in Prison Service Order Prisoner Communications: Correspondence (PSO 4411) and will be updated by way of Prison Service Instruction to ensure that all operational staff are instructed to comply with the updated Rule. We will also inform the Law Society of these changes.

9.2 Policy and guidance on prisoners property is contained in Prison Service Order Prisoners Property (PSO 1250). Guidance will also be used to ensure that in the case of prisoners or inmates who have died before these Rules come into force or who have left the prison or institution without being notified of the reduced retention period, any unclaimed property will be retained for three years as a transitional measure.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The operation of these amending Rules will be monitored by governors and directors of prisons and in audit of performance standards in accordance with directions in policy.

13. Contact

13.1 Contact points - Richard Sutherland or Patrick Hunter of the National Offender Management Service (NOMS) telephone 0207 217 0744 or 0207 217 0748. Email: Richard.Sutherland@noms.gsi.gov.uk or Patrick.Hunter@noms.gsi.gov.uk can answer any queries regarding the instrument.