

EXPLANATORY MEMORANDUM TO
THE PRISON AND YOUNG OFFENDER INSTITUTION (AMENDMENT) RULES 2013

2013 No. 2462

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

2.1 The Prison and Young Offender Institution (Amendment) Rules 2013 (“the Amendment Rules”) amend the Prison Rules 1999 (“the 1999 Rules”) and the Young Offender Institution Rules 2000 (“the 2000 Rules”) to allow for:

- i) prisoners to be required to pay for the cost of damage to or destruction of prison property where they have been found guilty of the prison disciplinary offence of destroying or damaging such property (hereafter referred to as a compensation requirement);
- ii) prisoners to seek a review of the amount imposed as a compensation requirement; and
- iii) Governors of public sector prisons and Directors of contracted prisons to deduct amounts from the money held by the prison for the prisoner to satisfy a compensation requirement.

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

3.1 None.

4. Legislative Context

4.1 The 1999 Rules and 2000 Rules set out disciplinary offences and punishments which may be imposed if the prisoner is found guilty of an offence. There is currently no power within the 1999 Rules or the 2000 Rules to require a prisoner to pay for the loss or damage caused to prison property following a finding of guilt for this offence. The Amendment Rules create such a power.

5. Territorial Extent and Application

5.1 The Amendment Rules apply to England and Wales.

6. European Convention on Human Rights

As the Amendment Rules are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 On 30th April 2013, as part of a wider announcement concerning the outcome of a review of the National Offender Management Service's Incentives and Earned Privilege policy, the Lord Chancellor and Secretary of State for Justice announced the intention to require prisoners to pay for the damage that they cause to prisons and prison property.

7.2 It was subsequently decided that prisoners should only be required to pay for the damage caused to prisons and prison property if they have first been found guilty of the disciplinary offence of causing such damage or destruction. The overriding principle is that the requirement for prisoners to pay for damage to prisons or prison property is not imposed as a punishment but to ensure that prisoners take responsibility for the harm they have caused and "put right" the loss.

7.3 The Amendment Rules will be supplemented with a statement of prison service policy (set out in a Prison Service Instruction). This will contain detailed guidance about implementation of the Amendment Rules and emphasises the safeguards that must be applied when imposing a compensation requirement. The safeguards include:

- i) The total amount of the compensation requirement must not exceed 100% of the cost of the damage caused and must not exceed £2,000;
- ii) Any outstanding compensation requirement for a single incident of damage will cease to have effect after 2 years or when the prisoner has reached his/her Sentence Expiry Date, whichever occurs first.
- iii) Deductions can be made from the money held by the prison for the prisoner to satisfy the compensation requirement but the prisoner must be left with a minimum amount each week to purchase necessary items and remain in contact with their family/friends. The minimum amount will be subject to assessment of the prisoner's individual circumstances but will be no less than £5 per week.
- iv) If a prisoner has insufficient monies to contribute even a small amount to the compensation requirement whilst still allowing at least £5 per week in their accounts, then no money towards the compensation requirement will be taken from them.
- v) Governors of public sector prisons and Directors of contracted prisons must ensure that recovery of monies does not adversely impact on the National Offender Management Service's aim to reduce reoffending. Discharge grants will be exempt from recovery.
- vi) Recovery will cease on release from prison custody (excluding Release on Temporary Licence) but the compensation requirement will remain in place until the time limit expires.

- Consolidation

7.4 The Ministry of Justice recognises that both the 1999 Rules and 2000 Rules have 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 The policy to require prisoners to pay for the damage they cause to prisons and prison property has been the subject of wide internal consultation since May 2013. As part of that process policy, operational and legal colleagues have had the opportunity to comment on the proposal. Formal consultation with key external stakeholders took place in August/September and the feedback has been generally supportive. The external stakeholders are as follows:

Her Majesty's Chief Inspector of Prisons
The Prisons and Probation Ombudsman
The Independent Monitoring Board National Council
The Prison Reform Trust
The Prison Governors Association
The Prison Officers Association
The Chief Magistrate

9. Guidance

9.1 A Prison Service Instruction has been issued to all prison establishments, Headquarter groups and stakeholders to provide detailed guidance in relation to the exercise of the power to require prisoners to pay for the loss of or damage to prison property. The policy will take effect at the same time as the amendments to the Prison Rules and YOI Rules, on 1st November 2013.

10. Impact

10.1 The Statutory Instrument will impact only on prisoners and inmates held in prison and young offender institutions in England and Wales. An Equalities Impact Assessment has been conducted and has concluded that the policy is non-discriminatory.

10.2 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 exercise of the power to require prisoners to pay for the loss of or damage to prison property will be reviewed by the National Offender Management Service. A review of the policy will take place within 12 months.

13. Contact

Louise Moreland at the Ministry of Justice's Legal Directorate Tel: 020 3334 4774 or email: louise.moreland@justice.gsi.gov.uk can answer any legal queries regarding the Instrument.

Simon Greenwood of the National Offender Management Service's Equality, Rights and Decency Group is able to answer any policy queries regarding the Instrument. He can be contacted on: 0300 047 5686 or at Simon.greenwood@noms.gsi.gov.uk.