

EXPLANATORY MEMORANDUM TO
THE PRISON AND YOUNG OFFENDER INSTITUTION (AMENDMENT) RULES 2014

2014 No. 2169

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 2014 (“the Amendment Rules”) amend the Prison Rules 1999 (“the 1999 Rules”) and the Young Offender Institution Rules 2000 (“the 2000 Rules”). The purpose is to provide that prisoners against whom a deportation order has been made, and who have no further appeal rights within the UK in relation to that order, cannot:

- a. be classified as suitable for open prison conditions; and
- b. be granted release on temporary licence.

2.2 The Amendment Rules also make minor amendments to remove references to terminology which has been repealed in other legislation.

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

Timing:

3.1 Because of security concerns about prisoners becoming unlawfully at large if the Amendment Rules do not come into force for 21 days after making, the Amendment Rules will come into force at 5pm on 13th August 2014 (which is fewer than 21 days after making).

3.2 The amendments apply to prisoners against whom a deportation order has been made and who have no further appeal rights within the UK in relation to that order. They provide that this group of prisoners will no longer be eligible for temporary release from prison or to be classified as suitable for open conditions. This affects prisoners currently in closed prison conditions who, until the Amendment Rules come into force, are eligible for temporary release and can be classified as suitable for open conditions. It also affects prisoners currently in open conditions who, once the Amendment Rules are in force, must have their classification reconsidered.

3.3 There are concerns that, if the Amendment Rules do not come into force immediately, then prisoners to whom the rules apply may abscond from open prison or fail to return from temporary release from closed conditions because they will be aware that they may not be eligible for open conditions or temporary release in future. That is, giving prisoners advance knowledge of the Amendment Rules before they come into force could create an incentive to abscond. Previous policy changes to eligibility for open conditions have led to multiple absconds over a short period. Were this to be repeated, not only would this have a serious impact on public confidence in the prison system but could result in the prisoners involved committing further crimes, for example of theft or violence, in order to stay at large. This risk is considered unacceptable and can only be avoided by the

Amendment Rules coming into force immediately. For the same reasons, the changes contained in the Amendment Rules have not been publicised prior to the making of the Rules.

- 3.4 The Ministry considered whether it would be possible to bring into force immediately only the provisions regarding temporary release, and for the amendments regarding classification for open conditions to be commenced later. However the risk of prisoners absconding from open conditions would remain as they would be aware that their classification would need to be reconsidered once the relevant rules regarding classification entered into force.
- 3.5 While the Ministry acknowledges the general desirability of observing the 21 day convention, it is considered that there will be no particular disadvantage to prisoners or staff caused by commencing the Amendment Rules immediately. Prisons will be briefed in confidence in advance so they are prepared to implement the changes. In addition a comprehensive communications package has been prepared to ensure that prisoners who are affected by the Amendment Rules will receive information on the day of commencement, both in writing and by verbal briefing.
- 3.6 The Ministry also considered making separate provision for the commencement of the provisions which make minor amendments to terminology. However these amendments simply remove already-redundant terminology from the 1999 Rules and 2000 Rules, consequential upon amendments made in other legislation which is already in force. The immediate commencement of these amendments will not disadvantage any party and, on balance, it was considered that it would be clearer for a single commencement provision to apply to the Amendment Rules.

4. Legislative Context

- 4.1 The 1999 Rules and 2000 Rules contain provisions regarding the classification of prisoners and their temporary release from prison.
- 4.2 The 1999 Rules and 2000 Rules also include references to terminology specific to provisions of the Criminal Justice Act 1991 which were repealed in the Legal Aid Sentencing and Punishment of Offenders Act 2010.

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 If a prisoner is classified as suitable for open conditions, he or she is able to be located in the open estate. Open conditions, and temporary release from prison, are designed to contribute to a prisoner's preparation for release and resettlement in the UK. The open estate provides conditions more akin to those that prisoners

will face upon release with no significant security barriers and access to unescorted release for resettlement activities such as work. Only prisoners assessed as suitable for open conditions and of low risk to the public are considered for open prisons. Progression to open conditions is not an automatic entitlement, and not all prisoners will spend time in open conditions before release. Prisoners allocated to open conditions will generally be no than 2 years from release or consideration for release.

- 7.2 Prisoners against whom a Deportation Order has been made and who have exhausted any appeal rights within the UK against that order are expected to be removed from the UK at the appropriate point in their sentence. They do not therefore require the resettlement opportunities which are an integral part of the open estate or temporary release. The open estate is a limited resource and is prioritised for prisoners who will gain most benefit in terms of their successful resettlement in the UK. In addition, the allocation of any prisoner to the open estate or temporary release carries with it some degree of risk of abscond, and it is considered inappropriate and unnecessary to take such a risk for prisoners who have no need for the resettlement opportunities associated with open conditions and temporary release. Provision for this group of prisoners in terms of rehabilitation and risk reduction will continue to be available in the closed estate. In addition, if a prisoner in this group needs to leave the prison for whatever reason (hospital, funeral, or contact with their children away from the prison) they will be provided with a secure escort when outside the establishment where appropriate.
- 7.3 The restrictions on being classified as suitable for open conditions and on temporary release set out in the Amendment Rules do not apply to prisoners who are already located in open conditions, although the Amendment Rules provide that those prisoners must have their classification reconsidered to ensure it is still appropriate for them to be classified as suitable for open conditions. This approach is considered fair and appropriate given that this group has already been tested in open conditions.
- 7.4 The Amendment Rules will be supplemented with a statement of Prison Service policy (set out in a Prison Service Instruction – see para 9.1, below). This will contain detailed guidance about implementation of the Amendment Rules and the associated policies and safeguards which will apply to those prisoners.
- 7.5 The amendments to terminology in the Amendment Rules remove redundant terms from the 1999 Rules and 2000 Rules, consequential upon the repeal of those terms in other legislation.

- 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 amendments in relation to provisions in the Amendment Rules regarding prisoners against whom a Deportation Order is in force and who have exhausted

any appeal rights within the UK in relation to that order have been the subject of wide consultation since November 2013 within the Ministry of Justice and Home Office and has included: the Prison and Probation Ombudsman, HM Inspectorate of Prisons and the Parole Board. As part of that process policy and operational colleagues have had the opportunity to comment on the proposals.

8.2 Formal consultation with external stakeholders has not taken place. For the reasons outlined in section 3, it was considered that to consult externally prior to the Rule and policy changes coming into force presented a real risk of absconds or temporary release failures by some prisoners. However, the Ministry considers that external consultation would be desirable once the Amendment Rules have come into force and this is planned to take place immediately on commencement of the Rules. Consultation will take place with external organisations who work with refugees, asylum seekers and foreign national offenders and women offenders. This will inform the initial review of the implementation of the Amendment Rules, as discussed in section 12 below.

8.3 As the amendments to terminology are consequential upon the coming into force of other legislation, no consultation was considered necessary.

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 implementation of provisions in the Amendment Rules regarding prisoners against whom a Deportation Order is in force and who have exhausted any appeal rights within the UK in relation to that order. The policy takes effect at the same time as the amendments to the Prison Rules and YOI Rules, on 13 August 2014. It will be available on the Ministry of Justice website.

9.2 No guidance is considered necessary in relation to the minor amendments to terminology.

10. Impact

10.1 The Statutory Instrument will impact on prisoners and inmates held in prison and young offender institutions in England and Wales. It will also impact on prison staff responsible for the classification and temporary release of prisoners, although the impact on the public sector is expected to be minimal. It is not expected that the instrument will have any impact on business, charities or voluntary bodies.

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 implementation of the provisions in the Amendment Rules regarding prisoners against whom a Deportation Order is in force and who have exhausted any appeal rights within the UK in relation to that order will be reviewed by the National Offender Management Service. An initial review will commence in

October 2014 following external consultation and a further review will commence within 12 months of implementing these changes.

12.2 As the amendments to terminology are entirely consequential upon the coming into force of other legislation, no monitoring or review is considered necessary.

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.

Keith Roberts of the National Offender Management Service's Security Group is able to answer any policy queries regarding the classification of prisoners. He can be contacted on: 0300 047 6206 or at Keith.roberts@noms.gsi.gov.uk

Chris Potter of the Ministry of Justice's Sentencing Policy and Penalties Unit is able to answer any policy queries regarding Temporary Release. He can be contacted on: 0203 334 3112 or at chris.potter2@justice.gsi.gov.uk