EXPLANATORY MEMORANDUM TO

THE PRISON (AMENDMENT NO.2) RULES 2007

2007 No. 3149

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 These rules amend the Prison Rules 1999 ("the 1999 Rules") as a consequence of changes to the powers and responsibilities of directors and controllers in contracted out prisons within the meaning of the Criminal Justice Act 1991 ("the 1991 Act"). Restrictions on the powers of directors to carry out certain disciplinary hearings relating to prisoners and to take specified measures relating to the segregation and restraint of prisoners were removed by an amendment to the 1991 Act made by section 19 of the Offender Management Act 2007 (c. 21).

2.2 The Prison (Amendment) Rules 2007 (S.I. 2007/2954) provided that, in relation to these functions, where references in the Prison Rules to a governor were previously to include reference to a controller, those references were to be read as references to a director.

2.3 Certain of those functions may where necessary continue to be carried out by a controller as well as a director and these Rules provide that references to a governor in relation to those functions include references to a director and a controller so that both may where necessary carry out these functions.

2.4 The amendment also removes rule 82(2), which referred to powers in s85(3)(b) of the 1991 Act, which was removed by the amendment to the 1991 Act.

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

3.1 Powers of directors to carry out certain disciplinary hearings relating to prisoners and to take specified measures relating to the segregation and restraint of prisoners are new to directors of contracted out prisons, and it is important that directors are adequately trained and resourced to be able to carry out these important duties. Certain contracted out prisons are not yet in a position to fully hand over functions in relation to adjudications from controllers to directors. However as the Rules are presently drafted controllers are prevented from continuing to carry out

this role. We regret that, to enable contracted out prisons to continue to maintain discipline and to operate safely and in accordance with the law, it is necessary to breach the 21 day rule.

4. Legislative and policy background

4.1 Section 84 of the Criminal Justice Act 1991 provides the Secretary of State with the power to enter into contracts with another person for the running of a prison.

4.2 Section 85 of the Act creates the role of a Director (akin to that of a Governor in a public sector prison) and a Controller (a Crown Servant who will monitor the delivery of the contract and perform certain duties relating to the disciplining and punishment of prisoners).

4.3 Section 19 of the Offender Management Act 2007 enable adjudication and segregation decisions that were previously the responsibility of Controllers by virtue of Section 85(3) of the 1991 Act to now be undertaken by a Director in a contracted out prison.

4.4 The Prison (Amendment) Rules 2007 (S.I. 2007/2954) amended references in the Prison Rules to controllers and directors to reflect the changes to the 1991 Act.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 No statement is required.

7. Policy background

7.1 The 1991 Act provides the legislative basis for the Secretary of State to enter into contracts for the private operation of prisons in England and Wales. It specifies the roles and responsibilities of the staff who work in such prisons and the circumstances in which their powers apply.

7.2 In the years since 1991 private sector involvement in the delivery of prisons has increased considerably and there are now eleven such establishments in operation.

7.3 The 1991 Act specifically prevented Directors from conducting adjudications or authorising the use of segregation in cases other than an emergency (such tasks were given to Controllers). The effective track record in delivering custodial services by the private sector since 1991 however means that the time is right to remove these restrictions and this was done via Section 19 of the 2007 Act.

7.4 Certain contracted out prisons are not yet in a position to fully hand over functions in relation to adjudications from controllers to directors, however as the Rules are presently drafted controllers are prevented from continuing to carry out this role. This amendment allows controllers to continue carry out these functions where necessary until they can be fully transferred over to the director in all contracted out prisons.

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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