EXPLANATORY MEMORANDUM TO

THE PRISON (AMENDMENT) RULES 2007

2007 No. 2954

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") to reflect changes to the powers and responsibilities of directors of contracted out prisons within the meaning of the Criminal Justice Act 1991 ("the 1991 Act"). The changes are made by section 19 of the Offender Management Act 2007 (c.21) so as to enable a director to conduct certain disciplinary hearings relating to prisoners and to take specified measures relating to the segregation and restraint of prisoners, whether or not the need for those measures is urgent.

2.2 They also amend the 1999 Rules to the Rules relating to independent monitoring boards.

2.2.1 To change the name of boards of visitors to independent monitoring boards. This name has been used in practice for some time but has been made official by the change to the Prison Act 1952 introduced by section 26 of the 2007 Act.

2.2.2 To 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 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 Rule 79(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.

4.5 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.

4.6 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.

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 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.

7.5 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.

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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