EXPLANATORY MEMORANDUM TO

THE PRISON AND YOUNG OFFENDER INSTITUTION (CORONAVIRUS) (AMENDMENT) RULES 2020

2020 No. 508

1. Introduction

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

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

2. Purpose of the instrument

2.1 The purpose of the Prison and Young Offender Institution (Coronavirus) (Amendment) (No.2) Rules 2020 (hereafter referred to as 'The Amendment Rules') is to allow prisons and young offender institutions (YOIs) to manage the effects or likely effects of coronavirus, and to facilitate the effective running of prisons and young offender institutions for this purpose, by continuing to implement a restricted regime. It will also enable governors to inquire into charges which have been referred to an Independent Adjudicator (IA) where there are practical difficulties arising from coronavirus.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The instrument is subject to negative resolution procedure and will breach the 21-day rule for laying in Parliament. It will come into force on 15 May 2020. This is emergency legislation in response to the coronavirus crisis where policy has had to be developed at pace to respond to an emergent situation within the prison estate. The changes required in the instrument could not have been predicted to lay in time to meet the 21-day rule. The instrument needs to come into force immediately to ensure that the Prison Rules 1999 and Young Offender Institution Rules (YOI Rules) 2000 contain sufficient flexibility to allow for aspects of the continuing restricted regime in prisons and ensure that outstanding charges referred to IAs can be dealt with as soon as possible as a delay may result in dismissal of charges.

3.2 While the Ministry acknowledges the general desirability of observing the 21-day convention, in the current fast-moving circumstances of the spreading coronavirus and the urgent need to ensure prisons can continue to operate safely and protect prisoners and staff, the Ministry's view is that this power needs to be made available the day after the SI is made and cannot be delayed for 21 days.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.3 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The Prison Rules 1999 and YOI Rules 2000 set out a range of powers, duties and obligations that govern how prisons are run on a day to day basis.

6.2 Section 47(1) of the Prison Act 1952 allows for the Secretary of State to make Rules for the for the regulation and management of prisons and YOIs and the Prison Rules 1999 and YOI Rules 2000 are made using this power.

6.3 These modifications to the Prison Rules 1999 and YOI Rules 2000 will cease to have effect on 25th March 2022.

6.4 Prison Rule 9A and YOI Rule 5A will cease to have effect on 25th March 2022.

6.5 The modifications to the Prison Rules 1999 and YOI Rules 2000 only apply during a "coronavirus period". A "coronavirus period" is defined as the period of time of a "transmission control period" and a "transition period". A "transmission control period' is defined, via paragraph 5 of Schedule 21 to the Coronavirus Act 2020, as the incidence or transmission of coronavirus which constitutes a serious and imminent threat to public health in England, and the Secretary of State for Health and Social Care has made a declaration of risk to that effect. A "transition period" is defined in a new rule 2A and automatically applies for 3 months following the end of the transmission control period. The "transition period" can be extended for subsequent periods of up to 1 month by the Secretary of State where considered necessary due to the effects of coronavirus. The "transition period" cannot exceed a total of 6 months.

6.6 Prison Rules 14, 16, 32, and 46 and YOI Rules 31, 33, 37, 38, 39 and 41 are modified to provide that the prison must comply with the existing requirements contained in those rules to the extent reasonably practicable during a "coronavirus period".

6.7 Prison Rule 35 and YOI Rule 10 have been modified to allow the Secretary of State to suspend a prisoner's statutory entitlement to visits where considered necessary as a result of the effects of coronavirus. The Amendment Rules modify Prison Rule 73 and YOI Rule 77 to allow the Secretary of State to prohibit visits by all visitors, or classes of visitors, as the Secretary of State considers necessary as a result of the effects of coronavirus.

6.8 The Amendment Rules modify the Prison Rules 1999 and YOI Rules 2000 to add a new Prison Rule 53B and YOI Rule 58B. Where a charge has been referred by a governor to an IA, these rules allow for the Chief Magistrate to refer a charge back to a governor to inquire into where the Chief Magistrate determines that it is not reasonably practicable for the charge to be inquired into by an IA because of the effects of coronavirus. A governor will have 14 days to inquire into a charge from when the Chief Magistrate has determined that an IA cannot inquire into the charge. The charge is to be treated as a charge inquired into by a governor and cannot receive a punishment set by an IA. The Amendment Rules modify Prison Rule 53(A) to allow

a governor to still refer a charge to the IA where it meets the sufficiently serious criteria.

7. Policy background

What is being done and why?

7.1 Her Majesty's Prison and Probation Service (HMPPS) has taken advice from Public Health England (PHE) on reducing the risks associated with outbreaks of coronavirus in prisons and the clinical risks to vulnerable prisoners.

7.2 Following this advice, HMPPS has determined that there is a need to put in place mechanisms to allow the implementation of a restricted regime during the "coronavirus period". This is part of a package of measures that HMPPS has put in place for managing the prison population which balances the need to protect the public and maintain law and order, with protecting the health and safety of those working and detained in prison. The measures are necessary in order to: delay the spread of coronavirus within the prison system; protect the welfare of staff and prisoners; isolate and manage any prisoners infected; enhance social distancing protocols; reduce the risk of explosive outbreaks associated with closed settings; and, protect those in custody who are within vulnerable groups. Consequently, the Prison Rules 1999 and YOI Rules 2000 must be amended to reflect the various new operational requirements. The modifications to the Prison Rules 1999 and YOI Rules 2000 will cease to have effect two years after the introduction of the Coronavirus Act 2020 on 25th March 2022. This is in line with the fact that the majority of the Coronavirus Act 2020 will currently expire after two years.

7.3 Many of the modifications made in this SI provide flexibility to existing rules by ensuring that appropriate caveats are in place. For Prison Rule 35 and YOI Rule 10, a slightly more substantial modification is made to suspend a prisoner's entitlement to visits as a result of the effects of coronavirus, which is an operational necessity in order to prevent the spread of the virus in prisons. HMPPS recognise the importance of visits and are therefore putting in place alternative arrangements to help prisoners maintain contact with family and friends.

7.4 To maintain effective operation of the prison discipline system, the Government has also determined that Prison Rules 1999 and YOI Rules 2000 are modified to introduce new rules (Prison Rule 53B and YOI Rule 58B) to enable governors to review cases which have been referred to an IA but are unlikely to be considered by an IA due to coronavirus.

7.5 There is an increasing challenge in the ability for IA's to hear charges in the context of coronavirus. However, the existing legislation contains no express power which allows an IA to refer a case back to the governor. There is an increased risk that a significant number of serious cases will be dismissed because of the amount of time which will have passed before an IA is able to hear the charge. This could undermine the integrity of the adjudication system, send a message of impunity in prisons and risk employee relations. The new rule will therefore enable the Chief Magistrate to refer charges back to the governor, who will be able to respond in three ways (as they already can under the Prison and YOI Rules): i) a dismissal; ii) continue with the charge at governor adjudication level, or; iii) determine the charge is sufficiently serious that it must be dealt with by an IA and refer to the IA again.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

9.1 None

10. Consultation outcome

10.1 No consultation exercise was conducted.

11. Guidance

11.1 Guidance on the temporary restricted regime is being delivered to governors.

12. Impact

12.1 There is no impact on business, charities or voluntary bodies.

12.2 There is no significant, impact on the public sector. Staff within establishments will engage in other duties where their usual duties are impacted by the modifications. Further the modifications set out in this SI will only be in force for a limited time period and as such no definitive cost can effectively be monetised.

12.3 An Impact Assessment has not been prepared for this instrument because there is no adverse economic impact and will only be in force for a limited time period (it will expire alongside the Coronavirus Act 2020 on 25th March 2022).

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The changes set out in this legislation will be kept under review.

14.2 The regulation does not include a statutory review clause.

15. Contact

15.1 Katie Hewitt at the Ministry of Justice, katie.hewitt@justice.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Adam Bailey, Deputy Director for Reducing Reoffending and Cohorts, at Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister of State, Lucy Frazer at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.