EXPLANATORY MEMORANDUM TO

THE PRISON AND YOUNG OFFENDER INSTITUTION (CORONAVIRUS) (AMENDMENT) RULES 2022

2022 No. 4

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.

2. Purpose of the instrument

2.1 The purpose of the Prison and Young Offender Institution (Coronavirus) (Amendment) Rules 2022 is to allow prisons and young offender institutions (YOIs) to continue to manage the effects or likely effects of coronavirus, and to facilitate the effective running of prisons and YOIs for this purpose, by having the ability to deliver restricted regimes where necessary.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 (Prison Rules) and Young Offender Institution Rules 2000 (YOI Rules) set out a range of powers, duties and obligations that govern how prisons and YOIs are run on a day to day basis. Section 47(1) of the Prison Act 1952 allows for the Secretary of State to make Rules for the regulation and management of prisons and YOIs and the Prison Rules and YOI Rules are made using this power.

6.2 In light of the Coronavirus pandemic, modifications were made to the Prison Rules and YOI Rules by the Prison and Young Offender Institution (Coronavirus) (Amendment) (No. 2) Rules 2020 in May 2020, as described below:

- Prison Rule 2 and YOI Rule 2 have been modified to define “coronavirus”, “coronavirus period”, “the 2020 Act”, “transition period” and “transmission control period” as further described below;
- Prison Rules 14, 16 and 32, and YOI Rules 31, 33, 37, 38, 39 and 41, have been 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”;

- 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 and proportionate;
- Prison Rule 46 has been modified that during a "coronavirus period" placement in a close supervision centre shall be for an initial period not exceeding three months and may be renewed from time to time for a like period;
- Prison Rule 73, and YOI Rule 77, have been modified to allow the Secretary of State to prohibit visits by all visitors, or classes of visitors, other than members of the Independent Monitoring Board of the prison, a justice of the peace or a legal adviser, as the Secretary of State considers necessary as a result of the effects of coronavirus; and
- Prison Rule 53B and YOI Rule 58B have been added. Where a charge has been referred by a governor to an independent adjudicator (IA), these rules allow for the Chief Magistrate to refer a charge back to the governor 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 once referred back. The charge is to be treated as a charge inquired into by a governor and cannot receive a punishment set by an IA. The modification to Prison Rule 53A and YOI Rule 58A allows a governor to still refer a charge to the IA where it meets the sufficiently serious criteria.

6.3 The above modifications to the Prison Rules and YOI Rules apply only during a "coronavirus period", defined as the period of time of a "transmission control period" and a "transition period". A "transmission control period' is defined as per paragraph 5 of Schedule 21 to the Coronavirus Act 2020 and relates to a period declared by the Health Secretary where "the incidence or transmission of coronavirus constitutes a serious and imminent threat to public health in England". A "transition period" is defined paragraph 2(b) of Schedules 1 and 2 of The Prison and Young Offender Institution (Coronavirus) (Amendment) (No. 2) Rules 2020 and automatically applies at the end of the transmission control period for a fixed three-month period.

6.4 The Health Secretary revoked the declaration of the "transmission control period" on the 27th October 2021. The "transition period" began on this date.

6.5 This SI will extend the "transition period", during which the above modifications apply, until the 24th March 2022. It will revoke the amendments to Prison Rules 53, 53A and 82 and YOI Rules 58, 58A and 86.

7. Policy background

What is being done and why?

7.1 Her Majesty's Prison and Probation Service (HMPPS) continues to receive advice from the UK Health Security Agency (UKHSA) (formerly Public Health England) and Public Health Wales on its approach to managing and reducing risks associated with outbreaks of coronavirus in prisons and the clinical risks to vulnerable prisoners.

7.2 The National Framework for Prison Regimes and Services (the National Framework) sets out how HMPPS takes decisions on the introduction and easing of coronavirus-

related restrictions in prisons. As set out in the National Framework, HMPPS must balance the risk posed by coronavirus with the ongoing need to ensure the safety, stability and capacity of the estate, as well as the wider health and wellbeing of staff and prisoners.

7.3 Evidence of the risk posed by the latest variant of concern (Omicron), suggests the increased infectiousness, vaccine escape and reinfection. We have already taken steps under the National Framework to bring back some restrictions in prisons. Given the challenge from Omicron we anticipate we may need to go further. We continue to be guided by the advice of UK Health Security Agency (UKHSA) and Public Health Wales. Prisons have been asked to continue to prioritise the uptake of testing and vaccinations for both staff and prisoners.

7.4 In the expectation that restrictions may continue to be required when the "transition period" comes to an end on the 26th January 2022, the modifications to the Prison Rules and YOI Rules must be maintained for a slightly extended period. This extension until 24th March 2022, will allow HMPPS to respond to any restrictions that may be necessary over the winter period to manage the risk from coronavirus, reflecting the anticipated operational requirements of the prison service. The measures continue to be 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. The "transition period" will help to mitigate the practical challenge of reverting from more restrictive prison regimes to a business as usual regime, in accordance with the existing Prison Rules and YOI Rules, across the estate if the restrictions are still in place and following a significant period of change. Further UKHSA advice on the management of coronavirus in detention settings may differ to the community. Extending the "transition period" will ensure that the modifications continue to be available to HMPPS if this is the case. Where restrictions to regime are required, mitigations are in place to reduce the impact on prisoners, including the provision of video calls, additional PIN credit, virtual education provision and in-cell education packs.

7.5 The exception to this extension is the expiry of the changes to Prison Rule 53A and YOI Rule 58A, as well as Prison Rule 53B and YOI Rule 58B. Since the start of the pandemic, a new online system has been introduced which allows an IA to make inquiries and rulings on cases referred by governors during the adjudication process. As such, a mechanism for IAs to refer cases back to governors due to the impact of the pandemic is no longer required.

7.6 While an extension to the "transition period" will allow prisons and YOIs to deliver restricted regimes where necessary to respond to coronavirus, it does not *require* prisons and YOIs to do so. It is HMPPS policy to lift restrictions to enable regime delivery when it is possible to do so in line with public health advice. This SI would therefore not automatically mean that prisons will deliver restricted regimes up until the 24th of March 2022, but the intent is to support HMPPS to do so, should further restrictions prove necessary.

8. European Union Withdrawal and Future Relationship

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 The National Framework continues to govern the decision making for the introduction and removal of restrictions in prisons (at the date of laying this SI). Guidance continues to be regularly issued to governors to provide up to date details on restriction requirements and expectations on regime delivery.

12. Impact

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

12.2 There is no significant impact from this SI on the public sector. Where establishments are required to alter regime delivery in order to manage ongoing transmission risk, or a specific coronavirus outbreak, staff will continue to engage in other duties where their usual duties are impacted by regime modifications.

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 instrument does not include a statutory review clause.

15. Contact

15.1 Ella Jackson at Ministry of Justice, ella.jackson@justice.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Alfred Jackson, Deputy Director for the Joint Strategic Policy Unit, at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.

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