POLICY NOTE

THE PRISONS AND YOUNG OFFENDERS INSTITUTIONS (CORONAVIRUS) (SCOTLAND) AMENDMENT (NO. 2) RULES 2020

SSI 2020/264

1. The Prisons and Young Offenders Institutions (Coronavirus) (Scotland) Amendment (No. 2) Rules 2020 ("the Amendment Rules") were made in the exercise of the powers conferred by section 39 of the Prisons (Scotland) Act 1989. These Rules amend The Prisons and Young Offenders Institutions (Scotland) Rules 2011 ("the Prison Rules") and they are subject to negative procedure.

Policy Objective

2. The Prison Rules set out provisions relating to the regulation and management of Prisons and Young Offenders Institutions and various matters concerning those who are required to be detained in these institutions (such as their classification, treatment, discipline, employment and control).

3. These amendments extend the application of amendments made by the Prisoners and Young Offenders Institution (Scotland) Amendment Rules 2020 to the Prison Rules which came into force in April 2020. These amendments are designed to continue to support the Scottish Prison Service's (SPS) response to the exceptional pressures facing prisons during the current Coronavirus outbreak and the impact that staff shortages within prisons may have as prison staff require to self-isolate to prevent the spread of the virus. The amendments generally provide Governors with flexibility in regards to compliance with timescales and the provision of those services, which although important, are not critical to the security and health of SPS and NHS staff and those in our care. The amendments will only be in force until 31 March 2021.

4. Given the current uncertainty around further local and national 'lockdowns' as a result of the Coronavirus and the risks of further outbreaks, SPS considers it necessary to retain some of the flexibility afforded by the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2020, to ensure that we are prepared and able to focus on the immediate priorities arising from such outbreaks. Having reviewed the use of the flexibility afforded by the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2020, we have

determined that three of the provisions are no longer required, Rule 33A (Provision of clothing to prisoners – Coronavirus), Rule 34A (Personal hygiene – Coronavirus) and 35A (Prisoners food and drink – Coronavirus).

5. During this outbreak of Coronavirus, SPS has been able to provide catering and laundry services in compliance with the requirements of Rule 33 (Provision of clothing to prisoners and Rule 35 (Prisoners food and drink) and prisoners have been provided with an opportunity to bathe or shower every day or at least every other day as required by Rule 34 (Personal hygiene).

Impact Assessment

6. An Equality and Human Rights Impact Assessment was carried out which determined that without these measures the Article 3 rights (Prohibition of torture, or of inhumane or degrading treatment or punishment) of the prisoners in the care of SPS could be engaged. The assessment also recognised that the changes will engage the article 8 rights (the right to respect for private and family life, home and correspondence) of prisoners. SPS consider that these rule amendments are necessary for the protection of the health, safety and security of SPS staff, NHS staff and prisoners during this current Coronavirus outbreak. It remains the view of the SPS that the amendment rules can be applied in a proportionate way to have the least impact possible upon prisoners' article 8 rights.

Consultation

7. There has been consultation with operational managers and policy colleagues within the SPS and Scottish Government. SPS also advised NHS colleagues and HM Inspectorate of Prisons for Scotland and the Scottish Human Rights Commission of the intention to take forward these changes.

Financial Effect

8. The Cabinet Secretary for Justice confirms that no Business and Regulatory Impact Assessment is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

SCOTTISH PRISON SERVICE
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