POLICY NOTE

THE PRISONS AND YOUNG OFFENDERS INSTITUTIONS (CORONAVIRUS) (SCOTLAND) AMENDMENT (No. 2) RULES 2021

SSI 2021/289

1. The Prisons and Young Offenders Institutions (Coronavirus) (Scotland) Amendment (No. 2) Rules 2021 are 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.

The purpose of this instrument is to extend the application of certain amendments and to revoke others made to the Prison Rules by the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2020 (SSI 2020/122).

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 certain modifications made to the Prison Rules in response to the coronavirus pandemic by the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2020 (SSI 2020/122) (extended and slightly amended by the Prisons and Young Offenders Institutions (Scotland) Amendment (No.2) Rules 2020 (SSI 2020/264) and the Prisons and Young Offenders Institutions (Coronavirus) (Scotland) Amendment Rules 2021 (SSI 2021/80)), and revoke other modifications which it is no longer necessary to retain. Given the continuing uncertainty regarding further local 'lockdowns' and the uncertainty around the increasing spread of new variants of COVID-19, SPS considers it necessary to take steps to retain some of the flexibility afforded by SSI 2020/122, SSI 2020/264 and SSI 2021/80 to ensure that we are prepared and able to focus on the immediate priorities arising from the pandemic.

4. The modifications to the Prison Rules are due to expire on 30 September 2021 and this instrument extends the application of the modifications detailed below until 31 March 2022:

- **Part 5 – Health & Welfare** - Rule 40A (Recommendation by healthcare professional – coronavirus) which allows a Governor, on the recommendation of a Healthcare Professional, to confine groups of prisoners to their cells or prohibit them from participating in activities such as exercise or recreational activities for a period of up to 14 days. The Governor may subsequently apply to Scottish Ministers for an extension of this period on the advice of a healthcare professional. In response to such a request, senior SPS HQ staff on the advice of a Healthcare Professional will be able to authorise, on behalf of Scottish Ministers, that the period be extended for further periods of up to 14 days. Rule 41A (Accommodation in specified conditions – coronavirus) which extends the timescales in Rule 41 (Accommodation in specified conditions) from 72 hours to a maximum of 14 days with regard to the length of time a prisoner can be accommodated in specified conditions on the advice of a healthcare professional. These modifications provide an effective means for SPS and NHS to ensure the compliance of prisoners with government advice regarding self-isolation for those who are symptomatic or who have been in contact with a person who is symptomatic.

- **Part 8 – Communications** - Rule 63A (Visits to prisoners – coronavirus) which allows the Governor to suspend prison visits. In doing so, the Governor may make different provision for different purposes including by reference to different types of prisoner and different types of visit. This means that provision can, for example, be made by the Governor for prisoners to continue to be entitled to receive a visit from a legal advisor.

- **Part 9 – Work, Education, Earnings and Recreation** - 84A (Purposeful activities – coronavirus), and 88A (Recreation – coronavirus) which allows the Governor to suspend or curtail work, educational activities, counselling, purposeful activities and recreation where it is necessary and proportionate to do so. The Governor must regularly review a suspension of visiting, work, educational activities, counselling and purposeful activities to assess whether it remains necessary and proportionate

- **Part 15 – Temporary Release -** Rule 136B (Extension of certain periods of temporary release – coronavirus) which enables Scottish Ministers to extend the period a prisoner is on home leave for up to 14 days from the normal 7 days. It is anticipated that this could be used where prisoners advise that they or someone in their home has developed

symptoms of the Coronavirus and in compliance with government advice they are required to self-isolate.

5. The modifications revoked by this instrument are: Rule 19A (assignment of supervision levels on review – coronavirus), Rule 20A (maintaining or lowering a supervision level on review – coronavirus), Rule 21A (assigning certain supervision levels on review – coronavirus), Rule 43A (prisoners' welfare – coronavirus), Rule 52A (supplies of books, newspapers, etc. to prisoners – coronavirus), Rule 81A (arrangements for work, education and counselling – coronavirus), Rule 111A (reporting breaches of discipline – coronavirus), Rule 116A (breaches of discipline committed in another prison or during transfer – coronavirus), rule 118A (disciplinary appeals – coronavirus), Rule 120A (requests to speak to certain persons – coronavirus), Rule 122A (complaints to the residential first line manager – coronavirus), Rule 123A (referral of complaints to the Internal Complaints Committee – coronavirus), and Rule 131A (healthcare assessment prior to transfer - coronavirus).

Consultation

6. Between 19 July and 6 August we conducted a targeted consultation with external stakeholders seeking views on the proposed extension and revocation of the modifications to the Prison Rules. There has also been consultation with Governors in Charge, operational managers and policy colleagues within the SPS, Trade Unions and Scottish Government.

7. Responses to the consultation were received from a range of stakeholders including Howard League Scotland, HM Chief Inspector of Prisons for Scotland and Families Outside. These stakeholders all recognised that some restrictions in prisons may be required in response to the pandemic. However, some responses raised concerns with the transparency and accountability of decisions made by governors under the provisions being extended.

8. Following consideration of the responses received, we consider that the provisions have sufficient safeguards in respect of their use. Their exercise is also subject to scrutiny by HM Chief Inspector of Prisons for Scotland.

9. SPS intends to publish the consultation, the responses received, and its response to the consultation responses on its website in October 2021.

Impact Assessment

10. 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 continue to engage the Article 8 rights (the right to respect for private and family life, home and correspondence) of prisoners.

Financial Effect

11. The Minister for Community Safety 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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