EXECUTIVE NOTE

THE PRISONS AND YOUNG OFFENDERS INSTITUTIONS (SCOTLAND) AMENDMENT RULES 2012

SSI/2012/26

The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2012 ("the Amendment Rules") were made in the exercise of the powers conferred by sections 8, 11, 12, 33A and 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

The Prison Rules set out provisions relating to the management and regulation of prisons and young offenders institutions and various matters concerning those who are required to be detained in these institutions (such as their treatment, discipline and categorisation). The Prison Rules were recently comprehensively reviewed and this included a public consultation however as a new prison will open at Low Moss on 19 March 2012 we need to provide for a visiting committee for that prison. Due to timing we could not make provision for the opening of the new prison in the 2011 Rules. We have also taken the opportunity of making some minor changes to the Rules following feedback from Governors and the drafting of the Directions made under the Prison Rules.

HMP Low Moss and HMP Open Estate

In terms of section 8 of the 1989 Act, Rules made under section 39 must provide for the constitution of visiting committees. HMP Low Moss will be the first public sector prison built for almost 25 years and will take its first prisoners on 19 March 2012. Therefore Schedule 2 to the Prison Rules requires to be amended to reflect the opening of HMP Low Moss. Schedule 2 also requires to be amended in respect of HMP Open Estate as part of the open estate at Noranside closed in late 2011. The change to the number of visiting committee members reflects the reduced size of HMP Open Estate.

Interpretation and Registration and records of prisoners

The definition of biometric data in rule 2 has been clarified and provides that biometric data means fingerprints or any other data specified in a Direction. Rule 12 has been recast to set out more clearly the purposes for which data can be kept and makes provision about the destruction of biometric data taken from prisoners other than untried prisoners.

Elimination of discrimination

The title and content of rule 6 has been expanded to include harassment and victimisation as this terminology better reflects The Equality Act 2010.

Supervision level for untried prisoners

The Prison Rules currently provide that untried prisoners may be assigned a supervision level no lower than medium supervision. Supervision levels relate to the amount of supervision a prisoner requires within the prison. All prisoners on reception to prison are assigned high supervision level and within 72 hours that supervision level must be reviewed. It has been established that the regime available for untried prisoners is unaffected by the assignment of high or medium supervision, rather the categorisation of the prisoner as untried is the determining factor. Therefore the reassignment of supervision levels for untried prisoners has no practical effect but is resource intensive to achieve. The changes to rules 18 and 19 provide that untried prisoners are assigned high supervision level at all times; removing the need for the supervision level to be reviewed and reducing the administrative work involved in the prisoner supervision system without affecting the regime available for this category of prisoners.

Untried and civil prisoners wearing their own clothing

The amendment to rule 32 brings the wording of the rule into line with rule 31 – both rules contain provision for prisoners to wear their own clothing. The current drafting of rule 32 gives the Governor too wide a discretion and the amendment restricts the Governor's ability to refuse to allow civil or untried prisoners to wear their own clothes.

Restrictions on other correspondence to and from the prisoner

The Prison Rules currently provide that correspondence covered by the provisions of rule 55 could only be opened by officers or employees in certain situations. To ensure the safety and good order of the prison it is necessary to widen these provisions to enable officers and employees to open all correspondence. The amendments provide for this whilst retaining the restrictions on the ability of officers and employees to read such correspondence. Correspondence from courts (rule 56), legal advisers (rule 57), medical practitioners in certain circumstances (rule 58), and privileged correspondence (rule 59) are not affected by these amendments.

Prisoners' work and earnings

Amendments have been made to rules 82, 85 and 86 to expand the list of purposeful activities that can be undertaken in lieu of work; to revoke old rule 85(2) and encompass into rule 86 as amended and to redraft rule 86. Rule 86 has been redrafted to provide that prisoners may be paid earnings for work while on temporary release for work under Part 15; an educational class, counselling, rehabilitative programme and vocational training all in lieu of work as well as work carried out within the prison. New rule 86 also provides for payment of an allowance to prisoners in lieu of earnings where they are excused from work in terms of rule 82(2) (a) and (b). These amendments better reflect the range of activities carried out in prison that contribute to prisoners addressing their offending behaviour, rehabilitation and preparations for release as well as making provision for the payment of wages for those on temporary release for work in preparation for release and reintegration into the community.

Special escorted leave

The Direction making power in rule 100 has been amended to enable Governors to impose conditions on special escorted leave as well as the conditions set by Scottish Ministers in any Direction made under this rule. This amendment enables Governors to set conditions that are tailored to the individual risk that a prisoner may pose when on special escorted leave from the prison. The amendment also expands the Scottish Ministers' power to set conditions for special escorted leave by enabling types of conditions to be set as well as specified conditions.

Admission of visitors

The Prison Rules currently oblige Governors to display a notice in the entrance and visiting areas of the prison explaining the effect of rules 105, 106 and 107, together with section 41 of the 1989 Act and the Direction made by Scottish Ministers under rule 77. The amendment relaxes this obligation so as to enable Governors to decide how best to inform visitors of the effect of these provisions.

Temporary Release

The provisions of rules 135 and 138 have been expanded to enable Governors to impose conditions on unescorted temporary release from prison in addition to those set by Scottish Ministers in a Direction made under this rule. This allows conditions to be tailored to the specific or individual risks that the prisoner may pose in relation to unescorted temporary release from prison. In addition a further provision has been made at 135 that provides that an allowance may be paid to prisoners on temporary release to cover travelling expenses and the prisoner's general subsistence while on temporary release from prison. The amendment also expands the Scottish Ministers' power to set conditions for temporary release by enabling types of conditions to be set as well as specified conditions.

Consultation

The amendments have been brought forward following consultation and feedback from operational managers and policy colleagues within the Scottish Prison Service. The amendments in relation to Visiting Committees have been discussed with Scottish Government colleagues and the Association of Visiting Committees; relevant local authorities were also consulted in relation to these changes. The local authorities for the new prison at Low Moss have agreed the VC membership.

Impact Assessment

The Equality and Diversity impact assessment recognised that the main focus of the changes were around clarifying provisions for prisoners, staff and visitors and therefore the amendment Rules have no impact on equality and diversity matters apart from the changes to rule 6 which have a positive impact. The amendment to rule 6 expands the existing rule to include harassment and victimisation and provides that all prisoners will be dealt with equally with no discrimination, victimisation or harassment. The published impact assessment is at Annex 1.

Financial Effects

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. The payments described at the amendments to rules 85 and 86 and Part 15 of the Prison Rules are being brought to place all payments to prisoners on a formal footing and reflect current policy and practice.

Scottish Prison Service
February **2012**

ASSESSMENT PUBLISHING TEMPLATE Annex 1

ESTABLISHMENT / DIRECTORATE	Prisons Directorate
NAME OF POLICY / FUNCTION	Legal Services Branch
POLICY LEAD	Ruth Sutherland
AIMS OF POLICY or DESCRIPTION OF PRINCIPLES OF FUNCTION	The Prisons and Young Offenders Institutions (Scotland) Rules 2011 were made under section 39 of the Prisons (Scotland) Act 1989. The changes to the Rules made by the Amendment Rules areattached. The provisions relating to the Visiting Committee (VC) for Low Moss are made to comply with section 8 of the Prisons (Scotland) Act 1989.
IS THIS A PROPOSED OR EXISTING POLICY/FUNCTION?	Existing
IS THERE DISCRETION WITHIN THIS POLICY?	Some of the amendment Rules provide for the Governors discretion.
DATE OF ASSESSMENT	24 January 2012
REVIEW DATE	N/A se below
DATE REVIEW COMPLETED (The policy lead must ensure that the policy/function receives regular review and template updated and published).	N/A see below
DATE REPORT PUBLISHED & WHERE	February 2012 on the Scottish Prison Service (SPS) website.

Assessment	
A brief account of how you assessed the possible effects of the policy or function?	The proposed amendments to the Rules were discussed with relevant senior operational managers and policy leads. The Rules must comply with the law (including ECHR). The amendments were scrutinised for compliance with equality legislation and a formal impact assessment was carried out on the proposed amendments.
A summary of the results of your assessment, including the likely impact of the proposed policy promoting equality.	The assessment showed that there is a positive impact on E&D in relation to rule 6 and this amendment promotes equality. There was no E&D impact in relation to the other amendments. The change to rule 6 is to expand the rule to more accurately reflect the Equality Act 2010 by expanding the elimination of discrimination to include harassment and victimisation. Rule 6 is designed to provide that all prisoners will be dealt with equally with no discrimination, victimisation or harassment. The amendments to rules 18 &19 affects untried prisoners as they will be assigned High supervision on reception and will remain High supervision; however there will be no impact on their routine and there is no E&D impact. The amendment to rule 55 means that all correspondence covered by that rule may be

	opened. It was recognised in the assessment that the opening of all prisoner correspondence may constitute an interference with prisoners Article 8 rights however it was considered that the interference is justified and proportionate. The opening of such correspondence is necessary to ensure the good order of the prison and to ensure that prohibited or unauthorised articles are not contained within the correspondence. It is necessary to open all such mail to achieve these aims. There is no E&D impact in relation to any of the amendment Rules.
Any available technical reports, and how to get access to them.	N/A

Consultation	
Why you consulted?	Amendment Rules were required to make provision for a VC for the new prison that will open at Low Moss in March 2012. SPS took the opportunity of making some minor changes to the Rules following consultation and feedback from operational managers following the implementation of the Prisons and Young Offenders Institutions (Scotland) Rules 2011 on 1 November 2011. SPS also involved policy leads in the discussions about the changes and the impact of the changes.
How you went about it	Described above
A summary of the replies	N/A
Did the consultation lead to an amendment of the Policy?	N/A

Monitoring	
What monitoring processes have been put in place?	SPS and the Scottish Government Legal Directorate monitor relevant case law and where changes to the Rules are required this will be done.
List any systems or methods used (i.e. PR2, SPS People, corporate measure etc).	SPS retain a file relating to proposed changes and when amendments are required these will be taken forward.
Next Steps	
How do you intend to review this impact assessment?	We will keep the Prison Rules under review. We will listen to feedback from prisoners, staff and external stakeholders in considering any changes to the Prison Rules.

Once this Template is completed, please pass to Communications Branch at Calton House for publication on the SPS Web and Intranet sites.

Reasons for changes to the 2011 Prison Rules

Interpretation –There is a change to the definition of biometric data to explain that this means fingerprints and any other data specified in a Direction made by Scottish Ministers. This sets out more clearly what biometric data is.

Rule 6 – The title and content of the rule has been expanded to include "harassment and victimisation". This better reflects the terminology of the Equality Act 2010.

Rule 12 –There are 2 reasons for changing this rule (1) to recast the rule to set out more clearly the purposes for which data can be kept and (2) inserts in the rule provisions about the destruction of biometric data taken from prisoners other than untried prisoners.

Rules 18 & 19 –The changes to these 2 rules provide that untried prisoners are assigned High supervision on reception and that status is not reviewed unless or until the prisoner is convicted. These changes were at the request of operational managers. It has been established that it makes no difference to the regime or treatment of untried prisoners whether they have a Medium or High Supervision level. However there is a substantial amount of management time spent reviewing these supervision levels with no identified benefits.

Rule 32 –The amendments bring rule 32 into line with rule 31 and restricts the Governor's ability to refuse to allow civil or untried prisoners to wear their own clothes. The current drafting of rule 32 gives the Governor too wide a discretion.

Rule 55 – Amends rule 55 to provide that all non-privileged correspondence may be opened by an officer or employee. Previously non-privileged correspondence could only be opened by officers or employees in certain situations.

Rule 82(2) Expands the rule to encompass rehabilitative programmes and vocational training into the list of purposeful activities that can be undertaken in lieu of work.

Rule 85(2) is revoked and the provisions of old 85(2) have been encompassed into rule 86 as amended.

Rule 86 Has been redrafted to provide that prisoners may be paid earnings for work while on temporary release for work under Part 15; an educational class, counselling, rehabilitative programme and vocational training (all in lieu of work) as well as work carried out within the prison.

Rule 100 – the Direction making power for special escorted leave has been amended so that Governors may impose conditions in addition to those set by Scottish Ministers. This allows conditions to be tailored to the specific/individual risks that the prisoner may pose in relation to special escorted leave. The amendment also expands the Scottish Ministers' power to set conditions for special escorted leave by enabling types of conditions to be set.

Rule 105(7) – has been amended so as to oblige Governors to make visitors aware of the effect of certain rules and other provisions which apply to them. This gives the Governor control of how to achieve this rather than obliging Governors to display a notice in the visiting area.

Rule 135- Expands rule 135 to enable Governors to impose conditions in addition to those set by Scottish Ministers. This allows conditions to be tailored to the specific/individual risks that the prisoner may pose in relation to temporary release.

Rule 138 – As for rule 100, this amendment expands the Scottish Ministers' power to set conditions for temporary release by enabling types of conditions to be set. In addition a further provision has been made that provides that an allowance may be paid to prisoners on temporary release to cover travelling expenses and the prisoner's general subsistence while on temporary release.

Schedule 2 –There is a new entry for the Low Moss Visiting Committee (VC) and the number of VC members for HMP Open Estate has been reduced to reflect that HMP Noranside has closed.

Scottish Prison Service