

**EXPLANATORY MEMORANDUM TO
THE PRISON (AMENDMENT) (No. 2) RULES 2005**

2005 No. 3437

1. This explanatory memorandum has been prepared by the Home Office in consultation with the Department of Health and is laid before Parliament by Command of Her Majesty.

2. **Description**

Health care amendments

- 2.1. The above Rules are made in exercise of the power conferred by section 47 of the Prison Act 1952. They modernise responsibilities which historically could be undertaken in prison only by a medical officer so that better use can be made of health care and other resources by matching skills more appropriately to tasks. The medical officer will be able to consult and delegate tasks to a doctor, nurse or other health care professional
- 2.2. Any doctor will be able to advise the governor if a prisoner's medical condition is likely to be damaged by continued imprisonment.
- 2.3. The requirement that doctors pay specific attention to mentally ill prisoners is removed.
- 2.4. Either a doctor or a nurse will advise on the use of restraints in individual cases and will assess a prisoner's fitness for work, for cellular confinement or for segregation.
- 2.5. The governor will have discretion to ask any appropriate member of staff periodically to inspect prisoners' food and report deficiencies.
- 2.6. It will no longer be necessary for the doctor to assess the fitness of all prisoners before they can engage in physical education.
- 2.7. Intoxicating liquor is no longer prescribed, so the proviso allowing prisoners to possess it on prescription is unnecessary, as is the defence to a disciplinary charge of unauthorised possession.

Interpretation amendments:

- 2.8. These rules make a number of minor amendments to aid the interpretation of the Prison Rules 1999.

Release on Temporary Licence amendments:

- 2.9. The Secretary of State will no longer be able to release a prisoner for the purpose of making a visit in the locality of the prison under the Incentives and Earned Privileges Scheme.
- 2.10. The amendments allow for multiple sentences ordered to be served consecutively or concurrently by a single prisoner to be treated as if those

sentences constitute a single term for the purposes of calculating eligibility for release on temporary licence. This principle applies, regardless of whether, or not, the whole sentences are required by the 1991 Act or 2003 Act to be treated as a single term for the purposes of any other form of release.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. None.

4. Legislative Background

4.1. Section 47 of the Prison Act 1952 empowers the Home Secretary to make rules for the regulation and management of prisons. These Rules amend the Prison Rules 1999.

4.2. Similar amendments are being made to the Young Offender Institution Rules 2000.

Health care amendments

4.3. Section 7(1) of the Prison Act 1952 requires every prison to have a “medical officer”. This is an outdated term and will be replaced in primary legislation by “doctor” when an opportunity arises. In the meantime, amendments to the Prison Rules already allow the medical officer’s functions to be delegated to a registered medical practitioner. This set of amendments extends the rationalisation to other health care professionals, including doctors and nurses.

Interpretation and Release on Temporary Licence amendments

4.4. Various provisions of the Criminal Justice Act 2003, commenced on 4th April 2005, introduce new arrangements relating to the administration of sentences and release. The amendments ensure that those prisoners who are subject to the new arrangements are subject to the Prison Rules in the same way as equivalent prisoners, whose sentences are subject to previously applicable legislation.

5. Extent

5.1. This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1. Baroness Scotland of Asthal, the Minister of State with responsibility for prisons, has made the following statement under section 19 (1) (a) of the Human Rights Act 1998:

In my view the provisions of the Prison (Amendment) (No 2) Rules 2005 are compatible with the Convention rights.

7. Policy background

Health care amendments

- 7.2 The rationalisation of medical officers' responsibilities is driven by the general modernisation of health services in prisons, responsibility for which is in the process of being transferred to the NHS.
- 7.3 The changes are designed to make the best use of health care resources. For example, a Registered Mental Nurse may be better qualified than a General Practitioner to assess the likely effect on a prisoner of being prevented from contact with other prisoners by a punishment of cellular confinement. Before imposing such a punishment, the governor or independent adjudicator must seek and take into account medical opinion whether the punishment is suitable. This also applies if, on review, cellular confinement is to be substituted for another punishment.
- 7.4 Instructions to staff will standardise practice by requiring completion of the Segregation Safety Algorithm for prisoners facing a punishment of cellular confinement or being segregated for the maintenance of good order or discipline, or in their own interests. There will also be a requirement for the health of all inmates in segregation to be checked at least once a day by a doctor or nurse. In deciding whether a prisoner should be allowed to resume contact with other prisoners, the Governor must fully consider any recommendations made by the doctor or nurse.
- 7.5 As NHS standards will apply to health services for all prisoners, a rule singling out those with mental illness is unnecessary. Limiting the care of the mentally ill to doctors is outdated.
- 7.6 In line with the procedures in the community for joining a gym, prisoners will complete a Physical Activity Readiness Questionnaire to be signed off by a member of the PE staff. Prisoners identified at risk by the questionnaire will be referred for medical examination before being allowed to participate in PE.

Interpretation amendments

- 7.7 Some of these amendments insert definitions and references so as to clarify that the rules apply to prisoners who are subject to the release provisions of the Criminal Justice Act 2003 ("the 2003 Act") as well as those prisoners who are subject to other release provisions, including those of the Criminal Justice Act 1991 ("the 1991 Act"). Other changes clarify that, where appropriate, the Rules apply to those classified as "fixed term prisoners" under the 2003 Act as well as those classified as "short-term prisoners" and "long-term prisoners" under the 1991 Act.

Release on Temporary Licence amendments

- 7.8 Visits in the locality of the prison were previously a privilege to be earned under the Incentives and Earned Privilege Scheme. In order to tailor activities to individual resettlement requirements, such visits will be considered as resettlement activities in accordance with the criteria in the Release on Temporary Licence Policy.

General

7.9 These amendments have been drafted by the National Offender Management Service, in conjunction with the Prison Service and the Department of Health, in consultation with the health service and prison service unions.

7.10 The changes are unlikely to attract significant public or media interest.

8. Impact

8.1. A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2. The amendments will not incur additional costs.

9. Contact

9.1. The following officials can answer questions about this instrument.

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