

EXPLANATORY MEMORANDUM TO
THE YOUNG OFFENDER INSTITUTION (AMENDMENT NO. 2) RULES
2007

2007 No. 3220

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 These rules amend the Young Offender Institution 2000 (“the 2000 Rules”) as a consequence of changes to the powers and responsibilities of directors and controllers in contracted out prisons within the meaning of the Criminal Justice Act 1991 (“the 1991 Act”). Restrictions on the powers of directors to carry out certain disciplinary hearings relating to inmates and to take specified measures relating to the segregation and restraint of inmates were removed by an amendment to the 1991 Act made by section 19 of the Offender Management Act 2007 (c. 21).

- 2.2 The Young Offender Institution (Amendment) Rules 2007 (S.I. 2007/2953) provided that, in relation to these functions, where references in the Young Offender Institution Rules to a governor were previously to include reference to a controller, those references were to be read as references to a director.

- 2.3 Certain of those functions may where necessary continue to be carried out by a controller or a director and these Rules further amend the Young Offender Institution Rules to provide that references to a governor in relation to those functions include references to either a director or a controller so that either may where necessary carry out these functions.

- 2.4 The Rules also allow directors to delegate their functions in relation to these responsibilities to another officer. The consent of the Secretary of State is required for any delegation. This will allow appropriately qualified officers to carry out these functions on behalf of the director.

- 2.5 The amendment also removes rule 86(2), which referred to powers in s85(3)(b) of the 1991 Act, which was removed by the amendment to the 1991 Act.

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

- 3.1 Powers of directors to carry out certain disciplinary hearings relating to inmates and to take specified measures relating to the segregation and restraint of inmates are new to directors of contracted out prisons, and it is important that directors are adequately trained and resourced to be able to carry out these important duties. Certain contracted out prisons are not yet in a position to fully hand over functions in relation to adjudications from controllers to directors. However as the Rules are presently drafted controllers are prevented from continuing to carry out this role. We regret that, to enable contracted out Young Offender Institutions to continue to maintain discipline and to operate safely and in accordance with the law, it is necessary to breach the 21 day rule.
- 3.2 As the Instrument has been brought into force at short notice and has been laid after it has taken effect, in accordance with Section 4 (1) of the Statutory Instruments Act 1946 letters have been sent to the Speakers of both the House of Commons and the House of Lords on 12th November 2007 in advance of the Instrument being laid.

4. Legislative and policy background

- 4.1 Section 84 of the Criminal Justice Act 1991 provides the Secretary of State with the power to enter into contracts with another person for the running of a prison.
- 4.2 Section 85 of the Act creates the role of a director (akin to that of a Governor in a public sector prison) and a controller (a Crown Servant who will monitor the delivery of the contract and perform certain duties relating to the disciplining and punishment of prisoners).
- 4.3 Section 19 of the Offender Management Act 2007 enables adjudication and segregation decisions that were previously the responsibility of controllers by virtue of Section 85(3) of the 1991 Act to now be undertaken by a director in a contracted out prison.
- 4.4 The Young Offender Institution (Amendment) Rules 2007 (S.I. 2007/2953) amended references in the Young Offender Institution to controllers and directors to reflect the changes to the 1991 Act.

5. Extent

- 5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

7. Policy background

- 7.1 The 1991 Act provides the legislative basis for the Secretary of State to enter into contracts for the private operation of prisons in England and Wales. It specifies the roles and responsibilities of the staff who work in such prisons and the circumstances in which their powers apply.
- 7.2 In the years since 1991 private sector involvement in the delivery of prisons has increased considerably and there are now eleven such establishments in operation.
- 7.3 The 1991 Act specifically prevented directors from conducting adjudications or authorising the use of segregation in cases other than an emergency (such tasks were given to controllers). The effective track record in delivering custodial services by the private sector since 1991 however means that the time is right to remove these restrictions and this was done via Section 19 of the 2007 Act.
- 7.4 Certain contracted out prisons are not yet in a position to fully hand over functions in relation to adjudications, removal from association and restraint from controllers to directors, however as the Rules are presently drafted controllers are prevented from continuing to carry out this role. This amendment allows controllers to continue carry out these functions where necessary until they are fully transferred over to the director in all contracted out prisons.

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.

9. Contact

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