

## EXECUTIVE NOTE

**THE PRISONS AND YOUNG OFFENDERS INSTITUTIONS (SCOTLAND)  
RULES 2006 SSI 2006/94**

This Order is made in exercise of the powers conferred by section 39 of the Prisons (Scotland) Act 1989. The instrument is subject to negative resolution procedure.

It consolidates the Prisons and Young Offenders Institutions (Scotland) Rules 1994 that have been amended on a number of occasions since 1994 and at the same time incorporates some additional changes that are detailed below.

## Policy Objectives

The Prisons and Young Offenders Institutions (Scotland) Rules 1994 set out rules relating to the management and regulation of prisons and young offenders institutions and to many matters concerning those who are required to be detained in these institutions (such as their treatment, discipline and classification). Amendments to the Rules are required from time to time because of changing practices, legal requirements and the human rights climate. The current Prison Rules were made in 1994 and have been amended on a number of occasions since. This has resulted in a set of rules with multiple amendments and a distorted numbering sequence. Given the changes made to the rules since 1994, it has been decided to produce a consolidated version. Our aim in future is to undertake regular exercises to consolidate the Rules.

As well as consolidating the 1994 Rules (as amended) the present Rules include the following new rules:

### Smoking (Rule 31)

Prisons are not covered by the Smoking, Health and Social Care (Scotland) Act 2005 (the 2005 Act). However a commitment was given that Scottish Ministers would amend the Rules to conform with the principles of the 2005 Act. Rule 31 meets that commitment. It does so by providing that prisoners may only smoke in certain areas of the prison, and by creating a new disciplinary offence of smoking in an area where it is not permitted. This offence will be dealt with under the existing internal prisons discipline system, as provided for in Part 11 of the new Rules.

Smoking indoors will be limited to prisoners' cells. Where a prisoner is accommodated in a single occupancy cell, he or she will be permitted to smoke there (though convicted prisoners will only be allowed to possess tobacco as a privilege, and this may be withdrawn by the Governor in certain circumstances). Where prisoners are required to share a cell, they may only smoke in it if the Governor designates it as a smoking area. There is provision in the rule for a direction to be made by the Scottish Ministers which will set out the procedures by which Governors will consider whether to designate a cell as a smoking area. One factor will be the wishes of the prisoners concerned. All prisoners will be asked whether they wish to

have smoking or non-smoking accommodation, and where cells need to be shared efforts will be made to put smokers together.

Smoking outdoors will be restricted to areas specified by the Scottish Ministers in a direction to be made under rule 31(c).

### **Unescorted day release of prisoners assigned low supervision level (Rule 142)**

The purpose of this rule is to provide that Governors may permit eligible low supervision level prisoners, who would be required to meet appropriate selection criteria, to have unescorted leave of a maximum duration of one day to enable them to prepare for eventual release by establishing or developing family and community links or developing educational or employment opportunities. The intention is that this would permit, for example, visits home, visits to attend job interviews or to meet social work contacts, and would allow prisoners to undertake selected routine activities in the community.

### **Amendments to the 1994 Rules**

#### **Transfer to Hospital for Assessment or Treatment for Mental Disorder (Rule 39)**

This rule now reflects the arrangements in place following the commencement of the Mental Health (Care and Treatment) (Scotland) Act 2003 regarding the transfer to hospital of a prisoner for the assessment and treatment for mental disorder.

#### **Searching of visitors (Rule 102(4) (a))**

This rule now allows the visual examination, without the use of force or instruments, of a visitor's open mouth, by an officer of either gender. It is not considered necessary in the context of a visual examination to have that examination carried out by an officer of the same sex as the visitor.

#### **Searching of prisoners (Rule 106(3) (a))**

For the same reasons described above, this rule now allows the visual examination, without the use of force or instruments, of a prisoner's mouth by an officer of either gender.

### **Deletions from the 1994 Rules (as amended)**

The rules and parts of rules relating to the Awarding of Additional Days (ADAs) and the Forfeiture of Remission (FoR) by Governors as a punishment for a breach of discipline are not included in the 2006 Rules. ADAs and FoR have not been used since June 2001. This decision was made in light of strong indications that the awarding of ADAs by a prison Governor could be in breach of Article 6 of the European Convention on Human Rights.

**Minor textual changes**

These rules have been drafted in gender neutral terms. Consequently there have been a number of textual changes from the 1994 rules.

**Explanatory Note**

The Explanatory Note sets out the structure and summarises the 18 Parts that make up the 2006 Rules.

**Consultation**

As this instrument is mainly a consolidation exercise, only internal Scottish Prison Service stakeholders were consulted.

**Financial Effects**

The Instrument has no financial effects on the Scottish Executive, local government or on business.

Scottish Prison Service  
2 March 2006