

Criminal Justice Committee

22nd Meeting, 2022 (Session 6), Wednesday, 29 June 2022

Subordinate legislation

Note by the clerk

Purpose of the paper

1. This paper invites the Committee to consider the following negative instrument:
 - [The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2022](#) (SSI 2022/194) [see page 3];
2. If the Committee agrees to report to the Parliament on the instrument, it is required to do so by **12 September 2022**.

Delegated Powers and Law Reform Committee Consideration

2. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 14 June 2022. The DPLR Committee agreed that it did not need to draw the instrument to the attention of the Parliament on any grounds within its remit.

Procedure for negative instruments

3. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. The annulment process would require a motion to be agreed in the Chamber.
4. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).
5. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.

6. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
7. If the Parliament resolves to annul an SSI then what has been done under authority of the instrument remains valid but it can have no further legal effect. Following a resolution to annul an SSI the Scottish Ministers (or other responsible authority) must revoke the SSI (make another SSI which removes the original SSI from the statute book.) Ministers are not prevented from making another instrument in the same terms and seeking to persuade the Parliament that the second instrument should not be annulled.
8. Each negative instrument appears on the Criminal Justice Committee's agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not *always* possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.
9. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Guidance on subordinate legislation

10. Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee's web page at:

<https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-delegated-powers-and-law-reform-committee>

- 11. The Committee is invited to consider the instrument.**

Clerks to the Committee
June 2022

Policy Note

The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2022

SSI 2022/194

1. The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2022 were made in exercise of the powers conferred by section 39 of the Prisons (Scotland) Act 1989. The instrument is subject to negative procedure.

This instrument supports the implementation of The Strategy for Women in Custody: 2021-2025 (The Strategy). The Strategy explains how the Scottish Prison Service (SPS) will work with partners, stakeholders and the women in prison themselves to achieve the following vision: women's time spent in custody will contribute to better outcomes for them, their families and Scotland's communities. The instrument does this by amending the Prisons and Young Offenders Institutions (Scotland) Rules 2011 (the Prison Rules).

Policy Objective

2. The instrument amends the Prison Rules. The Prison Rules set out provision 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.

3. The Scottish Government has been developing a new and different model to manage women in custody, The Strategy for Women in Custody: 2021-2025. The new model of custody offers opportunities for women to express and explore the life circumstances and/or choices which have led them to be in custody and will provide a range of evidence-based interventions aimed at maximising the opportunity for reflection and rehabilitation. The instrument supports the implementation of The Strategy.

4. Three new facilities to support the implementation of this new model of custody are being built by SPS, a new national facility for women- HMP & YOI Stirling- which is located adjacent to, and will replace, the existing HMP & YOI Cornton Vale, and two Community Custody Units (CCUs), one located in Maryhill in Glasgow and the other in the Hilltown area of Dundee.

5. The purpose of the CCUs will be to provide safe accommodation, which will support the needs of women located in them who will benefit from closer community contact and access to local services, and to help women create and sustain independence in preparation for successful community reintegration. Women located in the CCUs will have the opportunity to access, and will take responsibility for

accessing, in-reach and outreach services to develop the range of skills required for successful return to the community. Women will be supported to live independently in CCU accommodation based on a 'shared house' principle where they can develop a range of independent living and work skills, which reflect real life. This will include budgeting skills and skills relating to planning and preparing nutritionally balanced meals.

6. The amendments to the Prison Rules introduced by the instrument will enable prisoners located in certain prisons or parts of prisons: (1) to make purchases for and prepare their own meals: and (2) for those risk assessed as suitable for community access, provide extended opportunities to develop further or re-establish links with their family or community, and develop educational or employment opportunities, attend appointments, make food purchases outwith the institution or undertake wellbeing activities in the local community. The amendments may also be used by suitable and similar parts of the male estate.

Consultation

7. There has been extensive consultation undertaken with external stakeholders such as; Families Outside, Her Majesty's Chief Inspectorate of Prisons Scotland, COSLA and NHS boards, TUS colleagues, local communities, prisoners, SPS operational managers and policy colleagues, and Scottish Government in regards to The Strategy. The responses received to the various consultations were in the main supportive of the new model of custody for women.

Impact Assessment

8. An Equality and Human Rights Impact Assessment completed for The Strategy identified no potential for unlawful discrimination or human rights breaches.

Financial Effect

9. Cabinet Secretary for Justice and Veterans 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
May 2022