

**The Prisons and Young Offenders Institutions (Coronavirus)
(Scotland) Amendment (No.2) Rules 2021**

Consultation Responses & Analysis

October 2021

CONTENTS

Introduction and Background	Page 1
Consultation	Page 2
Analysis of Consultation Responses	Pages 3 - 8
Copy of Consultation Letter	Annex A
Consultation Responses:	
• HM Inspectorate of Prisons for Scotland	Annex B
• Howard League Scotland	Annex C
• Families Outside	Annex D

INTRODUCTION

1. There is no obligation or requirement for the Scottish Prison Service (SPS) to consult before making amendments to the Prison Rules. However, in response to comments from the Justice Committee in the previous Parliament and external stakeholders about the lack of consultation on a previous Scottish Statutory Instrument (SSI), SPS decided to conduct a targeted consultation on the proposals for The Prisons and Young Offenders Institutions (Coronavirus) (Scotland) Amendment (No.2) Rules 2021.

BACKGROUND

2. The Prison Rules are a SSI - The Prisons and Young Offenders Institutions (Scotland) Rules 2011 (SSI No 331/2011) and are made under powers conferred on Scottish Ministers by section 39 of the Prisons (Scotland) Act 1989. Any amendments made to the Rules must also be made via a further SSI under the same powers.

3. SSIs involving the Prison Rules are subject to the negative parliamentary procedure, which means they will normally be laid before Parliament for at least 28 days before coming into force and can be annulled by the Parliament up to 40 days after they have been laid. They are also subject to parliamentary scrutiny which will include consideration by the Delegated Powers and Law Reform Committee and the Criminal Justice Committee, which are multi-party committees.

4. A copy of The Prisons and Young Offenders Institutions (Coronavirus) (Scotland) Amendment (No.2) Rules 2021 ('Amendment (No.2) Rules 2021') and the Policy Note that accompanied it, can be found at this link:
www.legislation.gov.uk/ssi/2021/289/contents/made.

5. The SSI was laid before Parliament on 30 August 2021 and came into force on 29 September 2021.

6. A number of rules were added to the Prison Rules in response to the pandemic. These rules mostly provide temporary modifications of other rules for the duration of a coronavirus outbreak. Amendment (No.2) Rules 2021 extended the application of certain amendments by amending the date set out in the definition of "for the duration of a coronavirus outbreak" to 31 March 2022 and revoked others. The powers extended allow prison governors to suspend or restrict (if necessary) visits, purposeful activity and recreation; Rule 40A which provides governors and local NHS colleagues with the means to comply with Public Health Scotland/Scottish Government advice in relation to the isolation of large groups of individuals who are symptomatic or who have been identified as close contacts of a person who is symptomatic or are new admissions that may present a COVID 19 risk. Rule 41A which extends the time scales from 72 hours to a maximum of 14 days with regard to the length of time a prisoner can be accommodated in specified conditions on the advice of a healthcare professional. The power for governors to extend

the period a prisoner is on home leave for up to 14 days from the normal 7 days where prisoners advise they or someone in their home has Coronavirus or has developed symptoms of Coronavirus was also extended.

7. Given the continuing uncertainty regarding further local 'lockdowns' and the uncertainty around the increasing spread of new variants of COVID-19, SPS considered it necessary to take steps to retain some of the flexibility afforded by previous SSIs made during the pandemic, to ensure that we are prepared and able to focus on any immediate priorities that may arise.

8. The SSI gives prison governors the flexibility of precautionary and responsive measures to prevent and limit the spread of the virus and crucially to ensure the safety and wellbeing of those who live, work and visit our prisons.

9. The amendments will only remain in force until 31 March 2022 and can be revoked earlier. They can also be extended by a further SSI.

CONSULTATION

10. SPS was keen to seek the views of a range of stakeholders and therefore undertook a targeted consultation on the proposed amendments to the Prison Rules. On the 19 July 2021, by way of written correspondence, SPS sought the views of the following 9 stakeholders: Children and Young People's Commissioner Scotland; Prison Reform Trust; Scottish Human Rights Commission; Scottish Prison Service Trade Unions; The Howard League (Scotland); Parole Board Scotland; Families Outside; HM Inspectorate of Prisons for Scotland and The National Prisoner Health Network Advisory Board. A full copy of the consultation letter issued can be found at Annex A. Consultees were asked to provide a response before the consultation period closed on 5 August 2021.

11. A total of 6 responses to the consultation were received. Of the 6 responses received 2 simply advised they had no comment to make, 3 have been published as part of the report and copies of the response can be found at Annex B – D. 1 of the respondents have chosen not to have their response published.

12. Detailed below is the list of organisations that responded and consented to their responses being published. Copies of their responses can be found at Annex B-D:

- Families Outside
- HM Inspectorate of Prisons for Scotland
- The Howard League (Scotland)

ANALYSIS OF CONSULTATION RESPONSES

13. Whilst SPS appreciated all the responses received, some of them were out with the scope of the SSI and for the purposes of this analysis we focused on the ones applicable to the SSI.

General Comments – Positive

14. HM Chief Inspector of Prisons for Scotland (HMCIPS)

- Believes that the amendments are a reasonable response to the impact of coronavirus.
- Stated it would be a high risk strategy to rely on speedy introduction of emergency legislation if an issue emerges.
- Praised SPS and the NHS's response to the pandemic in relation to prisons
- Thanked SPS for the provision of information requested by HMIPS regarding the ongoing measures in Scotland's prisons and the impact for prisoners, staff and families.

Howard League

- Supportive of measures necessary to underpin the SPS's response to the exceptional pressures facing prisons during the current and potential outbreaks of coronavirus.

Families Outside

- Understands that there is still significant risk in the prison estate that requires robust infection control measures.

General Comments – Notes of Concerns

15. HMIPS stated that, with time to prepare, it would not like to see the retained powers used without transparent, clear and sufficient justification. It also sought clarity on where decisions are taken on prisoners accessing visits, purposeful activity, and recreation.

16. Howard League Scotland noted that the flexibility afforded to governors by the rules being retained should be subject to appropriate external scrutiny. It also noted a concern that lockdown measures remain the main means of controlling infection in prisons.

17. Families Outside commented that it would be helpful to understand any specific guidance or principles the SPS is working within in order to judge whether the

amendments are an appropriate response and to allow them to communicate effectively and support families.

18. **SPS Feedback** - Governors can only use these powers where it is necessary and proportionate to do so and they must keep their decision under regular review. The use of the powers by prison governors is monitored by SPS Operations Directorate through regular discussions with prison governors and HMCIP through their remote monitoring framework and on-site liaison visits. SPS and HMCIP also meet on a regular basis to discuss the impact of the pandemic on the prison estate.

19. SPS is working closely with the Scottish Government, Health Protection Scotland and a range of other partners to manage the impact of the Pandemic in prisons. Centrally SPS have set up a National Coronavirus Response Group (NCRG) to support staff and establishments with their local planning and response. The NCRG is working with senior SPS staff, Scottish Government and NHS colleagues to ensure SPS Governors have the most up-to-date information available to inform their response to the pandemic. Each establishment has a Local Coronavirus Response Group (LCRG) which is a multi-disciplinary group that includes representation from NHS and often local public health colleagues.

20. Where there is a declared outbreak in the prison, an Incident Management Team (IMT) or local Health Protection Team, which comprise of NHS and Public Health Scotland staff will discuss and advise the governor on any protective measures which are required to be implemented and this can include restrictions on visits and regime.

21. As a critical public service, the continuity of our day-to-day operations is imperative. For SPS, the health & safety of our employees, partners and those in our care is of paramount importance. Like many organisations in the UK, we continue to closely monitor the Coronavirus (COVID-19) outbreak data and follow the advice provided by the Scottish and UK Governments and health authorities and we have had to make reasonable and defensible temporary alterations to daily regimes during the course of the pandemic to date to enable us to adhere to this advice. These alterations have aided us in the delivery of a prison regime which is compliant with evolving SG guidance and have helped us contain a number of infection outbreaks in several SPS establishments.

22. Lockdown measures have not been and are not our main means of controlling infection; our general operations are. Our general operations have reflected key government advice that the most effective way to prevent the spread of COVID is to maintain physical distance and follow good hand hygiene.

23. In our daily operations we have:

- **Enhanced hand hygiene and surface cleaning:** SPS have ensured appropriate hand washing facilities are available along with signage promoting hand hygiene. Access to hand sanitisers for staff and at all high traffic areas including entry to prison and visit areas has been provided. Additional cleaning schedules have been introduced which requires the regular cleaning of high touch surfaces such as light switches and door handles. Those in our care have been provided with antiviral wipes and appropriate cleaning products for cleaning their cells on a daily basis.
- **Promoted the use of good ventilation:** SPS have provided guidance to all areas of the SPS Estate on measures to improve good ventilation.
- **Face Coverings** –SPS staff are expected to wear a Type II Fluid Repellent mask at all times while on duty in doors and those in our care have also been provided with face coverings which they can, if they choose, wear at all times. Those in our care must wear their face coverings when leaving their residential accommodation area to attend activities such as education or visits.

24. SPS have actively considered the human rights of those in our care when the implementation of restrictive regime was necessary to avoid viral spread. To mitigate the negative impact of such restrictions, we developed and introduced meaningful alternative family contact arrangements like mobile telephony and virtual visits, provided in-cell support activities and re-crafted liberation arrangements for those in our care that are symptomatic or a close contact of someone that is symptomatic.

25. Although the SPS has been returning to a more open regime, we cannot yet return to 'business as usual' in the on-going face of this extraordinary public health threat.

CONCERNS REGARDING SPECIFIC RULES

Rules 40A and 41A - These rules require governors to follow recommendations from healthcare professionals to confine prisoners in their cells or accommodate them in specified conditions for up to 14 days.

26. Howard League Scotland raised concerns about the time limits in these rules and the potential for extensions to it. They considered that this could be a breach of prisoners' article 3 ECHR rights.

27. **SPS Feedback** - The time limits reflect SAGE advice in relation to coronavirus management in prisons and Public Health Scotland's COVID-19 Guidance for Prison Settings. Individuals on Rule 40A are offered outside exercise. They can also leave their

cells to use the communal phone or to use the communal showers where they do not have in cell shower facilities.

28. Families Outside recognised that rule 40A is still required but noted concerns about it being exercised in relation to new admissions to prison.

29. **SPS Feedback** - This application of the rule is necessary as governors and prison staff cannot compel prisoners to be vaccinated or take Covid tests, nor can they compel them to advise if they have been vaccinated or the result of any Covid test they have taken. To protect other prisoners and staff, it is necessary to retain this rule for this particular purpose.

- Current policy is that if a new admission refuses to take a Covid test, they are only placed in isolation if they display Covid symptoms.
- During an outbreak at a prison, a prisoner who refuses to take a Covid test may be placed in isolation.
- Isolating prisoners still have access to a regime which includes time out of cell and outside exercise.

Rule 63A - This rule allows governors to suspend prison visits at their prison.

30. In relation to the retention of rule 63A (suspension of visits), both Howard League Scotland and Families Outside raised concerns. Howard League Scotland was also concerned that a decision on suspending visits is left to the discretion of a governor.

31. **SPS Feedback** - Although the rule itself does not require a governor to take advice, in reality governors obtain advice from NCRG and LCRG multi-disciplinary teams on the exercise of this and other powers. Governors are also required to comply with the European Convention on Human Rights (ECHR) when exercising discretion like that in rule 63A. The exercise of the powers must have a legitimate aim, be necessary to achieve that aim, and the measures taken must be proportionate. They cannot be in place longer than they are necessary. The exercise of the discretion by Governors must meet other legal tests such as rationality. It should also be noted that even during national lockdowns, prison visits were still considered a reasonable excuse for not staying home or local. Rule 63A is concerned with allowing a local response to local circumstances.

32. Families Outside suggested amendments to rule 63A due to concerns raised about children contacting parents in custody. They raised a number of concerns in relation to rights protected under the UNCRC.

33. **SPS Feedback** - SPS did not consider the suggested amendments necessary. The rule as it currently stands allows governors the flexibility to only suspend visits for certain categories of prisoner or certain categories of visitor, including children. Exceptions could be made when a decision on suspending visits is taken. Decisions on suspending visits and who is exempt from it would be a decision which is based on advice available at the time of the particular circumstances applying at a prison. Decisions to suspend visits are kept under constant review. Adding time limits would not make a practical difference due to the legal obligation on governors only to have these measures in place for as long as they are necessary and proportionate to meet the aim of managing an outbreak.

34. SPS has taken a number of positive steps to offer alternatives to in-person visits and to ensure where possible access to prison visits was retained.

35. HMIPS noted in their response to the consultation that the alternatives to face to face contact such as in-cell telephony and virtual visits were an excellent response to mitigate the interference with prisoners' article 8 ECHR rights. Mobile phones have also been issued to prisoners to provide a further means of contact with family during the pandemic. When lockdown measures were in place, prison visits were exempted from the stay at home/stay local rules.

Rules 84A and 88A - These rules allow governors to suspend purposeful activity and recreational activities in their prison.

36. Similar concerns on the discretionary nature of the power afforded to governors by these rules were raised by Howard League Scotland as were raised in relation to rule 63A. Howard League Scotland also suggested that additional provision should be made on time limits, notification and extension as are provided by rule 40A.

37. **SPS Feedback** - In relation to the concern raised on the discretionary nature of the power our feedback is as above for our feedback to the comments on Rule 63A. SPS has offered alternative activities to those in our care impacted by regime restrictions due to COVID, these have included the provision of: distraction packs which contain puzzles and colouring in activities; resources from PTI's detailing in cell workouts; access to exercise DVDs and additional yoga packs; and educational and mindfulness products from Fife College.

38. In relation to the suggested additional provision, the time limit in rule 40A is designed to tie into specific SAGE advice. As this rule is intended to deal with a local outbreak and allow a local response we consider a wider discretion is required. As noted above, the exercise of that discretion will have to comply with the European Convention

on Human Rights and therefore will be kept under constant review to evaluate the necessity and proportionality of the measure of suspending these activities.

ANALYSIS CONCLUSION

39. SPS reviewed the comments received from stakeholders and determined that the responses did not require us to make any changes to the proposed amendments.

SCOTTISH PRISON SERVICE

October 2021



HEADQUARTERS
Calton House
5 Redheughs Rigg
EDINBURGH EH12 9HW

Tel: 0131 3303601

Sent by Email

19 July 2021

Dear

Consultation - The Prisons and Young Offenders Institutions (Coronavirus) (Scotland) Amendment (No.2) Rules 2021.

The Scottish Prison Service (SPS) has today launched a consultation on its proposals to extend the period which certain modifications to the Prisons and Young Offenders Institutions (Scotland) Rules 2011 (the Prison Rules) made in response to the coronavirus pandemic will apply and to revoke others. I am writing to invite you to respond to this consultation. I am keen to seek the views of a range of stakeholders and I would encourage you to respond before the consultation period closes on 6 August 2021. A list of those also invited to respond to the consultation can be found at Annex A.

Background

Given the uncertainty that remains around the need for further local lockdowns as well as the potential for further waves of the pandemic during Autumn/Winter 2021/2022, the SPS is considering taking forward further amendments to the Prison Rules to retain some limited flexibility afforded by the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2020 (SSI 2020/122), extended and slightly amended by the Prisons and Young Offenders Institutions (Scotland) Amendment (No.2) Rules 2020 (SSI 2020/264) and the Prisons and Young Offenders Institutions (Coronavirus) (Scotland) Amendment Rules 2021 (SSI 2021/80).

Proposed Amendments

The amendments detailed below provide an indication of the approach the SPS may take. It does not constitute our final position. You will note that the SPS intends on revoking a substantial number of the amendments detailed in SSI 2020/122, slightly amended by SSI 2020/264 and SSI 2021/80 and is only considering the retention of amendments in four areas until March 2022 and can be revoked earlier if the situation improves. The amendments SPS may be seeking to retain are:

- The ability of Governors to suspend or restrict visits (rule 63A), purposeful activity (rule 84A) and recreation (rule 88A) where they consider it is necessary and proportionate in response to the effects Coronavirus is having, or is likely to have on their prison. SPS consider that it may still be necessary for Governors to retain these powers to suspend/restrict purposeful activity to ensure that they are able to comply with Scottish Government and Public Health Scotland instructions and advice in regards to the management of a local outbreak or to comply with coronavirus protection measures. This power can only be used by Governors and can only be used in limited circumstances where it is

necessary and proportionate to the affects Coronavirus is having or is likely to have on their prison. Any suspension or restriction will be reviewed regularly to assess whether it remains necessary and proportionate;

- Rule 40A which provides SPS and local NHS colleagues with the means to comply with Public Health Scotland/Scottish Government advice in relation to the isolation of large groups of individuals who are symptomatic or who have been in close contact with a person who is symptomatic identified as close contacts or are new admissions that may prevent a Coronavirus risk;
- The changes to the timescales in Rule 41 to enable SPS and NHS to better manage any negative impacts that Coronavirus may have on a prisoner's mental health; and
- The ability for Governors to extend the period a prisoner is on home leave for up to 14 days from the normal 7 days, where prisoners advise they or someone in their home has Coronavirus or has developed symptoms of Coronavirus (rule 136B).

SPS is proposing to revoke all other amendments to the Prison Rules made in response to the pandemic namely, rule 19A (assignment of supervision levels on review – coronavirus), rule 20A (maintaining or lowering a supervision level on review – coronavirus), rule 21A (assigning certain supervision levels on review – coronavirus), rule 43A (prisoners' welfare – coronavirus), rule 52A (supplies of books, newspapers, etc. to prisoners – coronavirus), rule 81A (arrangements for work, education and counselling – coronavirus), rule 111A (reporting breaches of discipline – coronavirus), rule 116A (breaches of discipline committed in another prison or during transfer – coronavirus), rule 118A (disciplinary appeals – coronavirus), rule 120A (requests to speak to certain persons – coronavirus), rule 122A (complaints to the residential first line manager – coronavirus), rule 123A (referral of complaints to the Internal Complaints Committee – coronavirus), and rule 131A (healthcare assessment prior to transfer - coronavirus).

Consultation Questions

The questions set out below, seek your views on the proposed amendments that may be taken forward.

Question 1: Do you agree that the proposed amendments are an appropriate response to ensure that the SPS is able to comply with its duty of care in terms of protecting the health and safety of SPS and NHS staff, those in our care and visitors to our establishments, given the continuing requirement for there to be protective measures and sensible precautions taken to suppress the current wave of

Coronavirus and to mitigate against the impact of further waves of the pandemic during Autumn/Winter 2021/2022?

Question 2: Do you consider there to be any gaps in the amendments?

Question 3: Do you have any other comments to make on the amendments?

Responding

Responses are invited to this consultation by 6 August 2021. Consultation responses should be sent by email within this time to Claire McArthur (Legal Services Team Manager), email address: Claire.McArthur@sps.pnn.gov.uk.

Data Protection

We need to know how you wish your response to be handled and, in particular, whether you are content for it be published or whether you want us to treat it as confidential, and we will treat it accordingly. However, you should be aware that the Scottish Prison Service is subject to the provisions of the Freedom of

Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach final decisions on the draft amendment Rules. If we decide to go forward with the draft amendments, they will be required to be put before the Scottish Parliament at the end of August 2021.

Yours sincerely



TERESA MEDHURST

Chief Executive (Interim), SPS

List of key stakeholders invited to respond to the consultation:

- Children and Young People's Commissioner Scotland
- Families Outside
- HM Inspectorate of Prisons for Scotland
- The Howard League (Scotland)
- Parole Board for Scotland
- Prison Reform Trust
- Scottish Human Rights Commission
- Scottish Prison Service Trade Unions
- The National Prisoner Health Network Advisory Board

CONSULTATION RESPONSES:

- HM Inspectorate of Prisons for Scotland.
- Howard League Scotland.
- Families Outside.

Wendy Sinclair-Gieben
HM Chief Inspector of Prisons for Scotland

Saughton House
Broomhouse Drive
Edinburgh
EH11 3XD

T: 0131 244 8481 | E: Wendy.Sinclair@gov.scot

Via email: Claire.McArthur@sps.pnn.gov.uk

Claire McArthur,
Legal Services Team Manager,
Scottish Prison Service
Calton House
5 Redheughs Rigg
Edinburgh
EH12 9HW

3 August 2021

Dear Claire,

Consultation - The Prisons and Young Offenders Institutions (Coronavirus) (Scotland) Amendment (No. 2) Rules 2021

Throughout the pandemic we have made every effort to continue our scrutiny of Scotland's prisons and Court Custody Units focussing our attention in particular on the response to COVID-19. Focussing aspects of these outcomes in a human rights based approach allows us to target our scrutiny response specifically to ensure staff and prisoners are safeguarded, and provide assurance to The Scottish Parliament and the wider public that we are compliant with our legislative duty to monitor and inspect the treatment and conditions in which prisoners are held or transported.

In all our inspections and monitoring we have been impressed by the continued commitment and resilience of staff and prisoners to the restrictions imposed by a global pandemic. I have requested and received information throughout this period from colleagues at the Scottish Prison Service (SPS) regarding ongoing measures to prevent the spread of COVID-19 in Scotland's prisons and the subsequent impact for prisoners, staff and families. Please pass on my thanks to all of your staff.

When COVID-19 became an absolute reality the predictions were ominous and predicted critical results. In reality, despite large and worrying outbreaks, the number of deaths from COVID-19 has been impressively low especially when considering the population as analogous to care homes. The response to the pandemic by the SPS and the NHS deserves praise for this achievement.

However, I have repeatedly mentioned and been concerned by the tensions that have occurred between the European Convention on Human Rights (ECHR) Articles 2, 3 and 8 and the impact that restrictions have posed. I am sure I have no need to rehearse them further in this response. The initial response with the introduction of the Act raised serious concerns and I do need to reiterate my ongoing concerns about the SPS meeting the Council of Europe Statement of Principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic. During outbreaks the restrictions imposed clearly breached a number of human rights principles (for example, HMP Dumfries was unable, over a prolonged period, to even allow access to virtual visits) whether this is occasioned by the fabric of the building or an inability to have in-cell virtual visits is one for the Scottish Government and the SPS to resolve.

I am aware, The Scottish Parliament has been recalled on 3 August 2021 for a statement from the First Minister to confirm next steps in the easing of restrictions. It is expected the decisions taken by Cabinet and announced on 3 August will be within the parameters set out in the Scottish Government's COVID-19: Scotland's Strategic Framework update – June 2021 and this response may therefore be redundant.

Staff prisoner relations and the tolerance of prisoners to the very restricted regime has been notably positive and frequently reported by Independent Prison Monitors (IPMs) and inspectors throughout the pandemic. Undoubtedly, this has been supported by the introduction of in-cell telephony and virtual visits. The risk of an adverse reaction if restrictions are not eased in line with the community remains.

HMIPS's response to your Consultation Questions as set out in your letter of 19 July is as follows:

Question 1: Do you agree that the proposed amendments are an appropriate response to ensure that the SPS is able to comply with its duty of care in terms of protecting the health and safety of SPS and NHS staff, those in our care and visitors to our establishments, given the continuing requirement for there to be protective measures and sensible precautions taken to suppress the current wave of Coronavirus and to mitigate against the impact of further waves of the pandemic during Autumn/Winter 2021/2022?

HMIPS Response: HMIPS believes that it is reasonable for the SPS to seek to extend the proposed amendments in order to retain the flexibility to rapidly respond if the situation deteriorates in the coming autumn and winter, particularly if a new more virulent mutation of the virus appears. It would be a high risk strategy to rely on speedy introduction of emergency legislation if/when an issue emerges. Should there be no requirement to make use of the additional flexibility HMIPS would expect the SPS to reduce restrictions fully in line with the community.

In addition, with time to prepare, HMIPS would not like to see those powers used without transparent, clear and sufficient justification. Our monitoring and inspections had already indicated that there was insufficient purposeful activity available prior to the pandemic, we would be very concerned if the harsh pandemic restrictions initially imposed were to be imposed again without alternative options being developed in the interim. As an example, the in-cell telephony and virtual visits was an excellent alternative response to Article 8 requirements.



HMIPS are concerned that the powers should not be invoked without establishing clear, transparent and written assurance mechanisms, including guidance for their use, an impact assessment and central monitoring. Monitoring the use of the powers by HMIPS is actively being considered should the powers be invoked.

Question 2: Do you consider there to be any gaps in the amendments?

HMIPS Response: HMIPS are clear that the amendments do not provide clarity on where decisions are taken that impact on prisoners accessing visits, purposeful activity and recreation that may have a national impact. Consequently, HMIPS thinks the Act should state that central oversight of individual Governors-in-Charge planning and decision making in these areas should have an approval or endorsement by SPS HQ for modifying prison regimes. Further, the legislation should require the SPS to maintain effective communications with external stakeholders such as HMIPS, Howard League Scotland, Families Outside, etc, when changes are being made including providing information to explain and justify any changes introduced. The legislation should make clear the inalienable rights set out in the Council of Europe Statement of Principles and that any deviation from these rights and principles should trigger the best possible alternative solutions.

Secondly, HMIPS believes that the amendments should be further extended to allow greater in-cell technology options with, for example, opportunities to continue education, allow virtual visits, receive phone calls from professional bodies (for example the NHS, CHSW, HMIPS) and undertake transactional work (book visits, canteen, request appointments, etc) in-cell.

Question 3: Do you have any other comments to make on the amendments?

HMIPS Response: HMIPS believe that the opportunity exists at present to undertake a full review of the Prison Rules that are currently clearly not wholly fit-for-purpose. HMIPS would be delighted to be consulted on this issue.

As mentioned in previous correspondence, I am keen to understand the SPS's current thinking on the next phase of response and recovery to the COVID-19 pandemic, particularly in relation to the planning for the anticipated population expansion and COP 26, and the planning for purposeful activity expansion under the easing of restrictions proposal by the First Minister and the effect this will have on the prison regimes.

Yours sincerely,

Wendy Sinclair-Gieben

Wendy Sinclair-Gieben
HM Chief Inspector of Prisons for Scotland (HMCIPS)

Copy to Teresa Medhurst, Interim Chief Executive, Scottish Prison Service
Cat Dalrymple, Justice Directorate, Scottish Government
Lisa Taylor, Justice Directorate, Scottish Government
Stephen Sandham, HMIPS



CONSULTATION – THE PRISONS AND YOUNG OFFENDERS INSTITUTIONS (CORONAVIRUS)
(SCOTLAND) AMENDMENT (NO.2) RULES 2021 (PROPOSED DRAFT NOT YET AVAILABLE)
SUBMISSION FROM HOWARD LEAGUE SCOTLAND
6 AUGUST 2021

Introduction

Howard League Scotland is grateful for the opportunity to be included in the consultation on proposals to extend the period in which certain modifications to the Prisons and Young Offenders Institutions (Scotland) Rules 2011 (the Prison Rules) made in response to the coronavirus pandemic will apply, and to revoke others.

Our consultation response acknowledges the advice that the proposed amendments do not constitute SPS's final position and that the retention of amendments in four areas "can be revoked earlier if the situation improves". Nonetheless, in the scrutiny of these proposals, we do not consider it appropriate to place any reliance on the possibility of earlier revocation, and our response has been prepared on the basis that agreed amendments may continue unchanged until March 2022.

We feel that it is important to note that most of the Covid restrictions in Scotland will be lifted on Monday 9 August 2021, when the country moves "beyond the current level zero rules". In the absence of an updated SPS Covid Route Map¹, and having regard to advice on the SPS website that "it may be the case that the SPS will have to move at a different pace from wider society", it is imperative that Covid restrictions in prisons are applied proportionately, for the least time required, with robust monitoring and transparent oversight, to ensure their legality and legitimacy. Whilst SPS's organisational progress and establishment regime development are said to be premised on "having the appropriate level of staff resource available to safely make these changes for all who live, work and visit [the] prison estate", we do not accept that excessive restrictions can be justified by a lack of staff in the prison estate.

If SPS does not have the appropriate level of staff resource available to ensure the safety of all who live, work and visit the prison estate *except by imposing excessive restrictions upon prisoners*, then consideration must be given to the release of low-risk and vulnerable prisoners as a matter of urgency. We return to this issue further below.

¹ The current version of the SPS Covid 19 Route Map is dated 26 June 2020. It is said to be "a dynamic document subject to flex dependent upon changes in guidance and advice", but it does not yet include details of the transition from Phase 3 to the final Phase 4 in terms of the Scottish Government's own plan.

1: Do you agree that the proposed amendments are an appropriate response to ensure that the SPS is able to comply with its duty of care in terms of protecting the health and safety of SPS and NHS staff, those in our care and visitors to our establishments, given the continuing requirement for there to be protective measures and sensible precautions taken to suppress the current wave of Coronavirus and to mitigate against the impact of further waves of the pandemic during Autumn/Winter 2021/2022?

General comment:

Howard League Scotland is supportive of measures necessary to underpin the SPS's response to the exceptional pressures facing prisons during the current and potential outbreaks of coronavirus, but we would argue that the flexibility that they afford individual prison Governors must be subject to appropriate external scrutiny.

Whilst it is understandable that SPS has had to focus on operational matters throughout the pandemic, it is important that any restrictions to the prison regime are not seen purely through an operational capacity lens, rather than one shaped by the human rights framework through which we have all agreed to view and judge the acceptability of the experience of imprisonment in Scotland.

As we previously raised with the Justice Committee, who in turn raised it with SPS, the Policy Note which accompanied the Prisons and Young Offenders Institutions (Coronavirus) (Scotland) Amendment Rules 2021 (SSI 2021/80) was written by SPS itself and the legislation involved no consultation with NHS Scotland; Public Health Scotland; HM Inspectorate of Prisons for Scotland or the Scottish Human Rights Commission.

The Policy Note cited that the extension of amendments from 31 March 2021 to 30 September 2021 was required in "response to the exceptional pressures facing prisons during the current Coronavirus outbreak and the impact that staff shortages within prison may have, as prison staff required to self-isolate to prevent the spread of the virus", apparently without regard to the pressures on prisoners. As a result, the exceptional pressures have not been alleviated, they have simply been transferred from prison staff to prisoners. It appears that these proposed amendments would be predicated on the same basis, despite this being expressly forbidden in the revised set of European Prison Rules² adopted by the Council of Europe's Committee of Ministers on 1 July 2020, which clearly states that prison conditions that infringe prisoners' human rights are not justified by lack of resources.

At the start of the pandemic, laudable efforts were made to reduce the prison population and to achieve single-cell occupancy. Our prison population is currently back to 93% of its pre-pandemic level, with 9 out of 15 of our prisons over capacity. Unsurprisingly, and

² Recommendation Rec (2006)2-rev of the Committee of Ministers to member States on the European Prison Rules (Adopted by the Committee of Ministers on 11 January 2006, at the 952nd meeting of the Ministers' Deputies and revised and amended by the Committee of Ministers on 1 July 2020 at the 1380th meeting of the Ministers' Deputies). Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809ee581

unacceptably, lockdown measures therefore remain the main means of controlling infection in prisons.

We strongly recommend that the imposition of continued restrictions must be linked to a corresponding commitment to achieve single cell occupancy.

Specific comment:

Rule 40A 'Recommendations by healthcare professionals – coronavirus' and Rule 41A 'Accommodation in specified conditions – coronavirus'.

As Howard League Scotland has repeatedly pointed out, all prisoners should receive at least two hours of meaningful human contact each day and at least one hour of daily outdoor exercise.

The current restrictions – which, at their worst, authorise all prisoners to be confined to their cells for periods of up to 14 days at a time, with unlimited extensions, for the duration of the coronavirus outbreak – are plainly capable of amounting to inhuman and degrading treatment, in breach of Article 3 of the European Convention on Human Rights, as raised both by HMIPS and the Scottish Human Rights Commission.

Given the wider context of the lifting of restrictions across the general population, the continuing application of the extended timescales provided in these rules requires particularly strong justification.

We are not persuaded that any such explanation has been advanced, or that the extended timescales remain strictly necessary. The basis of the assertion that “[t]he changes to the timescales in Rule 41 [are] to enable SPS and NHS to better manage any negative impacts that Coronavirus may have on a prisoner’s mental health” is not clear or sufficient in this regard, when it might be reasonably assumed that increased time in isolation itself would negatively impact a prisoner’s mental health.

Accordingly, we consider that the extended timescales should no longer apply, and that periods of up to “14 days” should be substituted with periods of “72 hours”. Rule 40A should be amended to that extent, and rule 41A would fall to be revoked.

If, however, the extended timescales are to continue to apply, the application of the rules should, at the very least, be subject to greater scrutiny and accountability for the same reasons. To this end, we strongly recommend that data on actions taken under these rules as a result of coronavirus should be published immediately following upon notification to Scottish Ministers of those actions being taken by individual Governors, or notification to Governors of any extension of those actions being authorised by Scottish Ministers.

In addition, we consider that Scottish Ministers should be entitled to extend the period of any such restrictions, on the basis of the extended timescales continuing to apply, only where they are satisfied, not only that it is ‘necessary’ to do so (rule 40A(6)), but also that ‘there is no less intrusive measure that could be used to achieve the same objective’, including the imposition of restrictions for a shorter period. If satisfied that both tests are met, Scottish Ministers may be entitled to extend the period ‘for a period

of no more than 14 days *and in any event only for the minimum period necessary*'. In other words, it ought not to be the case that restrictions are imposed, or extended, for a 14-day period as a matter of course. Specific and weighty justification must be required in order for the maximum 14-day period to be authorised.

Moreover, we consider that, where the period has been extended by Scottish Ministers on one occasion, it should be further extended for periods of no more than 14 days at a time (rule 40A(7)) 'but only where they are satisfied that all reasonable steps have been taken by the Governor during the period of extension to avoid the need for a further application'.

Such amendments would be consistent with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) 'Statement Of Principles Relating To The Treatment Of Persons Deprived Of Their Liberty In The Context Of The Coronavirus Disease (COVID-19) Pandemic':

Statement (7): "While it is legitimate and reasonable to suspend non-essential activities, the fundamental rights of detained persons during the pandemic must be fully respected. This includes ... the right of daily access to the open air (of at least one hour) ..."

Statement (8): "In cases of isolation or placement in quarantine of a detained person who is infected or suspected of being infected by [COVID-19], the person concerned should be provided with meaningful human contact every day".

Rule 63A 'Visits to prisoners – coronavirus'.

The application of Rule 63A should no longer be left up to the discretion of individual Governors, and assurances should be contained within the Prison Rules that measures have been put in place to mitigate these restrictions e.g. should visits be suspended, additional minutes on mobile phones and/or increased number of virtual visits, should therefore be made available at no additional cost.

This would be consistent with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) 'Statement Of Principles Relating To The Treatment Of Persons Deprived Of Their Liberty In The Context Of The Coronavirus Disease (COVID-19) Pandemic':

Statement (7): "... any restrictions on contact with the outside world, including visits, should be compensated for by increased access to alternative means of communication (such as telephone or Voice-over-Internet Protocol communication)".

Given the discretionary nature of the restrictions, which do not depend upon the recommendations or advice of healthcare professionals, we would expect to see, not only a duty of review (rule 63A(4)), but also a duty upon the Governor to provide compensatory measures for the duration of any period of suspension.

Again, in order to ensure an appropriate level of accountability, data on the imposition of suspensions and the nature of compensatory measures per prison should be published as soon as reasonably practicable, which ought also to ensure that family and friends are suitably informed of practical arrangements for visits or alternative means of communication with prisoners.

Rule 84A 'Purposeful activities – coronavirus' and Rule 88A 'Recreation – coronavirus'.

The application of Rules 84A and 88A should no longer be left up to the discretion of individual Governors and assurances should be contained within the Prison Rules that measures have been put in place to mitigate these restrictions.

For clarity, a [Liaison Report](#) by HMIPS from HMP Low Moss defined purposeful activity as “access to fresh air; education; religious services; gym and fitness; and communication”.

With a Parliamentary Question (S5W-31781) from Liam McArthur MSP during the last parliamentary session revealing that in some prisons this was as low as an average of 5 hours per week per prisoner i.e. 43 minutes per day, this requires significantly more detailed monitoring and reporting than at present; and underlines quite how far from upholding our human rights obligations we are.

We consider that the severity of the current situation merits the imposition of additional protective measures, and we would suggest that similar restrictions as to time, notification, and extension, ought to apply as in the case of measures taken under rule 40A.

In addition, given the discretionary nature of the suspensive power, without the need for any basis in the recommendations or advice of healthcare professionals, and our ongoing concerns as to the overwhelming impact of operational factors, such as staff shortages, we consider that there ought, also, to be a duty to give reasons in support of any application for extension of the initial period of suspension.

Again, we consider that data on the imposition of suspensions and any extensions thereof ought to be published as soon as reasonably practicable.

2: Do you consider there to be any gaps in the amendments?

In addition to those gaps outlined in Question 1 above, the amendments make no reference to those on remand and whom account for circa 25% of all prisoners. Whilst we understand that it is not within the scope of this legislation or consultation to suggest ways to reduce the number of people held on remand, it is clearly unconscionable that people who have not been found guilty of any crime can be held in de-facto solitary confinement – particularly when we know that the period of time someone can be held on remand has been increased by 6 months through other legislation.

There is also no reference to children. It is shameful that we are holding 18 or so children aged 16 and 17 in prisons in Scotland, made more so by the Prison Rules under which they can be held in conflict with some elements of the United Nations Convention

on the Rights of the Child (UNCRC). On average this year to date, over 85% of the children in custody have been on remand, spending less than 60 days in custody, which raises the question of why they were remanded in the first place, and if this really was a last resort (article 39 UNCRC).

In April 2021, 94% of children held in custody were on remand, only reducing slightly to 89% in May 2021, and 83% in June 2021. That cannot be acceptable.

It is of great concern that children aged 16 and 17 year old in Scotland continue to be detained when it has been acknowledged that these settings are not appropriate for children; in both the Independent Care Review in 'The Promise' and in the Expert Review of Mental Health Services at HMP YOI Polmont, both of which the Scottish Government has agreed to implement. Whilst we have seen significant reductions in the number of children held in prison or YOIs over the past five years or so, the proportion of children held there on remand has escalated, highlighting the gap in relation to remand of children in the amendments suggested.

3: Do you have any other comments to make on the amendments?

- a) We note that the National Prisoner Health Advisory Board (NPHAB) has also been asked to submit a consultation response. As we understand it, the NPHAB is made up of health professionals and members of SPS. (According to the latest publicly available minutes, its Vice-Chair was Teresa Medhurst, SPS Interim Chief Executive.) It is the expert body on prisoner healthcare from a health perspective, but perhaps not necessarily on matters of public health and pandemic response.

Given that the amendments are intended to allow compliance with Public Health Scotland (PHS) advice, we would respectfully suggest that, if they have not already done so, PHS be consulted on whether the amendments are necessary for that purpose, or to raise any fundamental issues or concerns from their perspective.

- b) We note that all consultation responses "will be analysed and considered along with any other available evidence to help [SPS] reach final decisions on the draft amendment Rules" and that "[i]f we decide to go forward with the draft amendments, they will be required to be put before the Scottish Parliament at the end of August 2021".

Please could you advise when all consultation responses will be made publicly available as per the usual consultation process, and similarly whether a consultation report will be available to help illuminate the decision-making process.

Families Outside

Response to The Prison and Young Offender Institutions (Coronavirus) (Scotland) Amendment (No.2) Rules 2021 Consultation



Families Outside is a national independent charity that works solely on behalf of children and families affected by imprisonment in Scotland. We do this through provision of a national freephone helpline for families and for the professionals who work with them, as well as through development of policy and practice, delivery of training, and face-to-face support.

We welcome the opportunity to feed in to this consultation on planned amendments to the Prison Rules. During the pandemic, a number of urgent decisions were taken due to the nature of the pandemic response, which did not allow for consultation. We are pleased that, as the Scottish Prison Service and Scottish Government begin to take decisions to move out of lockdown and wider restrictions, the views of stakeholders are being sought.

At the outset, Families Outside would be keen to gain an understanding on the SPS's wider planning for the next phase of the pandemic response. At present, in the community we are following the Scottish Government's Strategic Framework with the expectation that the success of the vaccination programme will allow for a low level of mitigations to remain in place such as face coverings and self-isolation. However, at time of submission, it is not clear to us what the impact of the updated guidance will be in a prison setting.

We understand that there is still significant risk in the prison estate that requires robust infection control measures. It would be helpful to understand any specific guidance or principles the SPS is working within in order to communicate effectively and support families.

Where this consultation response states the "Consultation Letter," this refers to the letter received by Professor Nancy Loucks, Chief Executive, Families Outside from Teresa Medhurst, Interim Chief Executive, on 19th July 2021.

Question 1

Having a wider understanding of the SPS's wider planning as stated above would help Families Outside judge whether the proposed amendments are an appropriate response. We have shared our views on particular Rules below for the SPS to take in to account.

Rule 63A

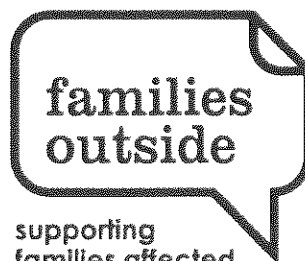
Families Outside is concerned that the SPS is proposing to retain Rule 63A. Rule 63A provides Governors with the ability to restrict visits to prisoners where a Governor "considers it necessary and proportionate in response to the effect coronavirus is having, or is likely to have on or in relation to the prison."¹ The consultation letter states that the power can only be used in "limited circumstance," and that any "suspension or restriction will be reviewed regularly."

Rule 63A challenges a number of human rights of both people in prison and their families. The retention of this rule would challenge a number of Articles of the United Nations Convention on the Rights of the Child² including Article 5 (parental guidance and a child's

¹ The Prison and Young Offenders Institutions (Scotland) Rules 2011, Rules 63A. Available at: <https://www.legislation.gov.uk/si/2011/331/article/63A>

² 1989, United Nations. "Convention on the Rights of the Child." Available at: <https://downloads.unicef.org.uk/wp-content/uploads/2016/08/unicef-convention-rights-child->

Families Outside



supporting
families affected
by imprisonment

evolving capacities), as it restricts a person in prison from performing their duties and fulfilling their responsibilities as parents; Article 9 (separation from parents), as it prevents a child from maintaining personal relations and direct contact with both parents on a regular basis; Article 18 (parental responsibilities and state assistance), as the state is not fulfilling a means of direct contact with children during the operation of Rule 63A; and Article 20 (children unable to live with), as the state is not protecting the needs of children affected by imprisonment to direct contact with both parents during the application of this Rule.

Families Outside is also concerned the current wording of Rule 63A falls short of recommendation 30 of the 2018 Council of Europe recommendations,³ as it is open to interpretation by individual Governors, does not contain a time limit, and has no associated guidance regarding when its use is necessary and proportionate.

If Rule 63A must remain in place, Families Outside would welcome modifications to the current wording of the Rule. We feel the following modifications would help retain the extraordinary powers for Governors to use where required, learn from well managed COVID outbreaks that have taken place within the prison estate to date, and would better support the human rights of people in prison and their families.

Firstly, we would like to see the scope of Subsection 2 narrowed to give clearer direction to Governors on when Rule 63A can be used and give comfort to families on the very limited circumstances that visits can be suspended. Families Outside would suggest that visits should only be suspended where a) a person held in prison has tested positive for COVID-19 and has been directed to self-isolate by a public health authority; b) where a person held in prison has been identified as a close contact of someone who has tested positive for COVID 19 and has been directed by public health to self-isolate in line with the relevant policy at that time; or c) to suppress the transmission of COVID-19 during an outbreak.

Secondly, in Subsection 3 we would welcome the inclusion of the protection of visits for children and young people. This would ensure that the importance of retaining visits for children and young people in line with the UNCRC is recognised.

Finally, we would welcome a time limit on the use of Rule 63A. Given more recent experience of prison outbreaks where the use of mass testing within prisons has helped to suppress transmission of COVID19 much earlier during an outbreak compared with earlier experience, we believe a time limit would be appropriate. This would be in line with recommendation 30 of the Council of Europe recommendations that the suspension of visits should be for the shortest length of time possible.

While our strong preference would be for these amendments to be on the face of the Prison Rules, we appreciate that supporting guidance could also achieve the above aspirations.

Rule 40A

[uncrc.pdf?_ad=www.uncrc.org.uk.1597140360559&_ad_ca=so%3DGoogle%26me%3Dorganic%26ca%3D\(not%2520set\)%26co%3D\(not%2520set\)%26ke%3D\(not%2520set\).1597140360559&_ad_cw=1596716964410.1597140360559&_ad_id=a2a78a19-b795-4761-8f44-24bf4fbb0412.1596716964.3.1597140357.1596716964.56c41c82-6004-4f34-b621-0136e1165c53.1597140360559&_ga=2.221778843.2030880991.1597140356-339403836.1582731365](https://www.uncrc.org.uk/uncrc.pdf?_ad=www.uncrc.org.uk.1597140360559&_ad_ca=so%3DGoogle%26me%3Dorganic%26ca%3D(not%2520set)%26co%3D(not%2520set)%26ke%3D(not%2520set).1597140360559&_ad_cw=1596716964410.1597140360559&_ad_id=a2a78a19-b795-4761-8f44-24bf4fbb0412.1596716964.3.1597140357.1596716964.56c41c82-6004-4f34-b621-0136e1165c53.1597140360559&_ga=2.221778843.2030880991.1597140356-339403836.1582731365)

³ 2018, Council of Europe. "Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents." Available at: <https://rm.coe.int/cm-recommendation-2018-5-concerning-children-with-imprisoned-parents-e/16807b3438>

Families Outside

families
outside

supporting
families affected
by imprisonment

Families Outside recognises that this Rule is still required to comply with public health directions on self-isolation as set out in the Consultation Letter. However, in line with previous comments, we are keen to ensure the Prison Rules reflect the most up-to-date practice and tools available to suppress COVID-19 transmission within the prison estate. We are concerned that Rule 40A could still apply to “new admissions that may prevent a Coronavirus risk”. When Rule 40A was implemented, regular/daily testing was not available but could now be deployed to any new admission to detect COVID infection. We see no reason why someone should have to self-isolate purely on the basis that they are a new admission or have been transferred now that comprehensive is available.

The First Minister's Statement to Parliament on the 3rd August 2021⁴ confirmed that there will be amendments to guidance on self-isolation for fully vaccinated adults who are identified by public health as a close contact. We would encourage the SPS to consider the impact of this evolution of self-isolation guidance and whether amendments to Rule 40A and associated rules on self-isolation are now appropriate.

Rule 41

Families Outside would welcome clarity that this extension is only to facilitate the self-isolation of a person in prison where directed by a public health authority.

We remain concerned about the length of time people in prison have had to spend in their cell at points during the pandemic and the impact of this on their mental health. Between 22nd March 2020 and 2nd August 2021, 7.3% of issues raised with our Helpline related to concerns over the mental health of a family member in prison. During the same period, there were ten enquiries relating to suicide risk.

We welcome the comments from Her Majesty's Inspectorate of Prisons for Scotland from her visit to HMP Glenochil in December 2020⁵ and more recently to HMP Greenock⁶ regarding the importance Governors and prison staff place on protecting and treating mental health issues. Further clarity on the necessity of this Rule would be welcome to ensure the mental health of people in prison is not adversely affected by the continuation of this extension.

Rule 136B

Again, Families Outside understands that this Rule enables public health directions on self-isolation, and we support this amendment remaining in place.

We would encourage the SPS to consider if this extension or a longer extension could also be used in a reverse situation, ie where a person is on home leave but there is a significant outbreak at the prison. Families Outside believes taking this action would help increase the

⁴ Scottish Government, 2021. “Coronavirus (COVID-19) update: First Minister's statement – 3 August 2021.” Available at: <https://www.gov.scot/publications/coronavirus-covid-19-update-first-ministers-statement-3-august-2021-1/>

⁵ HMIPS, 2021. “REPORT ON A LIAISON VISIT TO HMP GLENOCHIL, 2-3 DECEMBER 2020.” Available at: https://www.prisonsofscotland.gov.uk/sites/default/files/publication_files/HMIPS%20-%20COVID-19%20-%20Report%20on%20Prison%20Liaison%20Visit%20-%20HMP%20Glenochil%20-%202020-3%20December%202020.pdf

⁶ HMIPS, 2021. “REPORT ON A LIAISON VISIT TO HMP GREENOCK, 9-10 MARCH 2021.” Available at: https://www.prisonsofscotland.gov.uk/sites/default/files/publication_files/HMIPS%20-%20COVID-19%20-%20Report%20on%20Prison%20Liaison%20Visit%20to%20HMP%20Greenock%20on%209%2610%20March%202021.pdf

Families Outside



options available to Governors to suppress COVID-19 transmission during an outbreak and protect the health and wellbeing of people on home leave.

Questions 2 and 3

There are a few areas Families Outside feels are missing from this consultation, as detailed below in this response.

Rule 2

The Consultation Letter states that these amendments will be retained until March 2022. Families Outside welcomes the confirmation in the Consultation Letter that the amendments can be revoked sooner if the situation improves.

We welcome this consultation and ask the SPS to consider how it will engage with stakeholders on the impact these Rules have and on possible mitigation. While reporting on COVID-19 legislation to the Scottish Parliament takes place every two months, this is limited to a factual confirmation on the status and operation of the legislation and not the impact on people held in prison and families affected by imprisonment. Families Outside would welcome further reporting and monitoring from the SPS on the ongoing need for these amendments, taking in to account the impact on people in prison custody, their families, and on human rights.

Scottish Statutory Instrument (SSI) 2020/175⁷

The Consultation Letter makes no reference to the amendments that were made to the Prison Rules by SSI 2020/175. This SSI enabled virtual visits and in-cell telephony to be implemented across the prison estate. While we welcome that there are no current plans to alter or revoke the amendments as they stand, we are concerned about the longer-term status of the amendments.

Our understanding is that the SSI was implemented by Scottish Ministers under powers set out in emergency coronavirus legislation. As a result, the SSI is reported on by the Scottish Government bi-monthly to Parliament. Families Outside is keen to ensure that there is a solid legal basis for retaining these vital forms of communication beyond March 2022.

Families Outside considers SSI 2020/175 to be enabling legislation which was required very quickly to enable the implementation of virtual visits and in-cell telephony in prisons. However, we would welcome a wider discussion on confirming the future of these new communications and how we can further utilise this technology to support family contact.

Impact Assessment

Families Outside would recommend that the final proposals are subject to an Equality Impact Assessment, including a Children's Rights and Wellbeing Impact Assessment (CRWIA). These should be published alongside the SSI. Carrying out an Impact Assessment would ensure that all human rights are considered, in particular the impact on children's rights.

Prison Rules

There have been a number of significant developments over the last eighteen months, which mean it may now be timely to review the Prison Rules in their entirety. The pandemic has seen the introduction of new ways of working, some of which may be beneficial to retain. As

⁷ 2020, Scottish Government. "SSI: No 175." Available at: <https://www.legislation.gov.uk/ssi/2020/175/contents/made>

Families Outside

well as introducing new methods of family contact such as virtual visits and telephones in cells, the SPS has trialled association for smaller groups of people held in prison. Meanwhile the Scottish Government has passed legislation to incorporate the UNCRC in to domestic law, with significant implications for children with imprisoned parents and 16- and 17-year olds in custody and parents held in custody. A full review of the Prison Rules would allow the SPS and Scottish Government to ensure that human and children's rights are embedded and would provide a mechanism to secure the long-term legal basis for virtual visits and in-cell telephony. Carrying out this Review in the coming months would also ensure that the Prison Rules reflect the new Justice Vision that is due to be set out by the Scottish Government in the coming months.

Families Outside is grateful for the opportunity to respond to this consultation on the Prison Rules. We are more than happy to discuss this response in more detail with the SPS if required.

For more information contact: Adam Wilson, Policy and Public Affairs Officer, adam.wilson@familiesoutside.org.uk

