

2014 No. 2169

PRISONS, ENGLAND AND WALES

**YOUNG OFFENDER INSTITUTIONS, ENGLAND AND
WALES**

**The Prison and Young Offender Institution (Amendment) Rules
2014**

<i>Made</i>	- - - -	<i>12th August 2014</i>
<i>Laid before Parliament</i>		<i>13th August 2014</i>
<i>Coming into force</i>	- -	<i>5.00 p.m on 13th August 2014</i>

The Secretary of State makes the following Rules in exercise of the powers conferred by section 47 of the Prison Act 1952(a).

Citation and commencement

1. These Rules may be cited as the Prison and Young Offender Institution (Amendment) Rules 2014 and come into force at 5.00 p.m on 13th August 2014.

Amendment of the Prison Rules 1999

2.—(1) The Prison Rules 1999(b) are amended as follows.

(2) In rule 2(1)(c) (interpretation) omit the definitions of “short-term prisoner” and “long-term prisoner”.

(3) In rule 7 (classification of prisoners)—

(a) in paragraph (1) for “Prisoners” substitute “Subject to paragraphs (1A) to (1D), prisoners”; and

(b) after paragraph (1) insert—

“(1A) Except where paragraph (1D) applies, a prisoner who has the relevant deportation status must not be classified as suitable for open conditions.

(1B) If, immediately before the relevant time—

(a) a prisoner has been classified as suitable for open conditions; and

(b) the prison has received notice that the prisoner has the relevant deportation status,

(a) 1952 c.52. Section 47 was amended by section 6 of the Criminal Justice and Public Order Act 1994 (c. 33). There have been other amendments but none are relevant. Section 66(4) of the Criminal Justice Act 1967 (c. 80) provides that any instrument containing rules made under section 47 of the Prison Act 1952 is subject to annulment in pursuance of a resolution of either House of Parliament.

(b) S.I. 1999/728.

(c) There have been amendments but none are relevant.

the prisoner's classification must be reconsidered in accordance with this rule as soon as practicable after the relevant time.

(1C) If—

- (a) a prisoner has been classified as suitable for open conditions (whether before or after the relevant time); and
- (b) the prison receives notice after the relevant time that the prisoner has the relevant deportation status,

the prisoner's classification must be reconsidered in accordance with this rule as soon as practicable after the prison receives that notice.

(1D) This paragraph applies if a prisoner has been classified as suitable for open conditions and is located in open conditions immediately before the prisoner's classification is reconsidered, whether under paragraph (1B) or (1C) or otherwise.

(1E) For the purposes of this rule, a prisoner has the relevant deportation status if—

- (a) there is a deportation order against the prisoner under section 5(1) of the Immigration Act 1971(a); and
- (b) no appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002(b) ("the 2002 Act") that may be brought or continued from within the United Kingdom in relation to the decision to make the deportation order—
 - (i) could be brought (ignoring any possibility of an appeal out of time with permission), or
 - (ii) is pending (within the meaning of section 104 of the 2002 Act(c)).

(1F) In paragraph (1E), the reference to the decision to make the deportation order includes a decision that section 32(5) of the UK Borders Act 2007(d) applies in respect of the prisoner.

(1G) In this rule, "the relevant time" means 5.00 p.m on 13th August 2014."

(4) In rule 9(e) (temporary release)—

- (a) in paragraph (1) for "The Secretary of State" substitute "Subject to paragraph (1A), the Secretary of State";
- (b) after paragraph (1) insert—

"(1A) A prisoner who has the relevant deportation status must not be released under this rule unless the prisoner is located in open conditions immediately before the time of release.";

- (c) after paragraph (8) insert—

"(8A) If, immediately before the relevant time, a prisoner has been released under this rule and the prison has received notice that the prisoner has the relevant deportation status, the prisoner must be recalled unless—

- (a) the period for which the prisoner has been released is due to expire on 13th August 2014; or
- (b) the prisoner was released from open conditions.

(a) 1971 c. 77. There have been amendments but none are relevant.

(b) 2002 c. 41. Section 82(1) was amended by section 26(2) of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 (c. 19). It is also prospectively amended by section 15 of the Immigration Act 2014 (c. 41) but those amendments are not yet in force.

(c) Section 104 was amended by paragraph 20 of Schedule 2 to the Asylum and Immigration (Treatment of Claimants etc.) Act 2004, section 9 of the Immigration, Asylum and Nationality Act 2006 (c. 13) and paragraph 26 of Schedule 1 to S.I. 2010/21. It is also prospectively amended by para 47 of Schedule 9 to the Immigration Act 2014 but those amendments are not yet in force.

(d) 2007 c. 30.

(e) There have been amendments but none are relevant.

(8B) If a prisoner has been released under this rule (whether before or after the relevant time) and the prison receives notice after the relevant time that the prisoner has the relevant deportation status, the prisoner must be recalled unless—

- (a) the period for which the prisoner has been released is due to expire on the day on which the prison receives that notice; or
- (b) the prisoner was released from open conditions.”; and
- (d) in paragraph (11), after sub-paragraph (b) insert—
 - “(c) any reference to a prisoner who has the relevant deportation status is to be read in accordance with rule 7(1E) and (1F); and
 - (d) any reference to the relevant time is to be read in accordance with rule 7(1G).”.

(5) In rule 55A(1)(b)(a) (adjudicator’s punishments) omit “short-term prisoner or long-term prisoner or”.

(6) In rule 59(2)(b) (prospective award of additional days) omit “short-term or long-term prisoner or”.

Amendment of the Young Offender Institution Rules 2000

3.—(1) The Young Offender Institution Rules 2000(c) are amended as follows.

(2) In rule 2(1)(d) (interpretation), omit the definitions of “short-term prisoner” and “long-term prisoner”.

(3) In rule 4 (classification of inmates)—

- (a) for “Inmates” substitute “(1) Subject to paragraphs (2) to (5), inmates”; and
- (b) after paragraph (1) (as renumbered by the amendment in paragraph (3)(a) of this rule) insert—

“(2) Except where paragraph (5) applies, an inmate who has the relevant deportation status must not be classified as suitable for open conditions.

(3) If, immediately before the relevant time—

- (a) an inmate has been classified as suitable for open conditions; and
- (b) the young offender institution has received notice that the inmate has the relevant deportation status,

the inmate’s classification must be reconsidered in accordance with this rule as soon as practicable after the relevant time.

(4) If—

- (a) an inmate has been classified as suitable for open conditions (whether before or after the relevant time); and
- (b) the young offender institution receives notice after the relevant time that the inmate has the relevant deportation status,

the inmate’s classification must be reconsidered in accordance with this rule as soon as practicable after the young offender institution receives that notice.

(5) This paragraph applies if an inmate has been classified as suitable for open conditions and is located in open conditions immediately before the inmate’s classification is reconsidered, whether under paragraph (3) or (4) or otherwise.

(6) For the purposes of this rule, an inmate has the relevant deportation status if—

(a) Rule 55A was inserted by S.I. 2002/2116 and amended by S.I. 2005/3437.
(b) Rule 59(2) was amended by S.I. 2005/3437.
(c) S.I. 2000/3371.
(d) There have been amendments but none are relevant.

- (a) there is a deportation order against the inmate under section 5(1) of the Immigration Act 1971; and
- (b) no appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”) that may be brought or continued from within the United Kingdom in relation to the decision to make the deportation order—
 - (i) could be brought (ignoring any possibility of an appeal out of time with permission), or
 - (ii) is pending (within the meaning of section 104 of the 2002 Act).

(7) In paragraph (6), the reference to the decision to make a deportation order includes a decision that section 32(5) of the UK Borders Act 2007 applies in respect of the inmate.

(8) In this rule, “the relevant time” means 5.00 p.m on 13th August 2014.”.

(4) In rule 5(a) (temporary release)—

(a) in paragraph (1) for “The Secretary of State” substitute “Subject to paragraph (1A), the Secretary of State”;

(b) after paragraph (1) insert—

“(1A) An inmate who has the relevant deportation status must not be released under this rule unless the inmate is located in open conditions immediately before the time of release.”
;

(c) after paragraph (8) insert—

“(8A) If, immediately before the relevant time, an inmate has been released under this rule and the young offender institution has received notice that the inmate has the relevant deportation status, the inmate must be recalled unless—

- (a) the period for which the inmate has been released is due to expire on 13th August 2014; or
- (b) the inmate was released from open conditions.

(8B) If an inmate has been released under this rule (whether before or after the relevant time) and the young offender institution receives notice after the relevant time that the inmate has the relevant deportation status, the inmate must be recalled unless—

- (a) the period for which the inmate has been released is due to expire on the day on which the young offender institution receives that notice; or
- (b) the inmate was released from open conditions.”; and

(d) after paragraph (11) insert—

“(12) In this rule—

- (a) any reference to an inmate who has the relevant deportation status is to be read in accordance with rule 4(6) and (7); and
- (b) any reference to the relevant time is to be read in accordance with rule 4(8).”.

(5) In rule 60A(1)(b)(b) (adjudicator’s punishments) omit “short-term prisoner or long-term prisoner or”.

(6) In rule 65(1A)(b)(c) (adult female inmates: disciplinary punishments) omit “short-term or long-term prisoner or”.

(a) There have been amendments but none are relevant.
 (b) Rule 60A was inserted by S.I. 2002/2117 and amended by S.I. 2005/3438.
 (c) Rule 65(1A) was inserted by S.I. 2002/2117 and amended by S.I. 2005/3438.

Signed by the Secretary of State

12th August 2014

Chris Grayling
Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Prison Rules 1999 (S.I. 1999/728) (“the 1999 Rules”) and the Young Offender Institution Rules 2000 (S.I. 2000/3371) (“the 2000 Rules”).

The amendments in rule 2(3) and (4) apply to a prisoner who has the relevant deportation status. A prisoner has this status if:

- (a) there is a deportation order against the prisoner under section 5(1) of the Immigration Act 1971 (c. 77) (“the 1971 Act”); and
- (b) no appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (“the 2002 Act”) that may be brought or continued from within the United Kingdom in relation to the decision to make the deportation order could be brought or is pending.

For these purposes, the reference to the decision to make a deportation order includes a decision that section 32(5) of the UK Borders Act 2007 (c. 30) (“the 2007 Act”) applies in respect of the prisoner. This reflects the fact that, in cases to which that section applies, a deportation order must be made. In such cases, there is no appeal under section 82(1) of the 2002 Act against the decision to make the deportation order but there is a right to appeal against the decision that section 32(5) of the 2007 Act applies.

Rule 2(3) inserts new paragraph (1A) into rule 7 of the 1999 Rules to provide that, except where new paragraph (1D) applies, prisoners who have the relevant deportation status may not be classified as suitable for open conditions.

New paragraphs (1B) and (1C) require the classification of prisoners to be reconsidered in certain circumstances. New paragraph (1B) applies where, immediately before the relevant time (defined as the time at which the paragraph comes into force), a prisoner has been classified as suitable for open conditions and the prison has received notice that the prisoner has the relevant deportation status. In such cases, the prisoner’s classification must be reconsidered as soon as practicable after the relevant time. New paragraph (1C) applies to any prisoner who has been classified as suitable for open conditions (whether before or after the relevant time) and the prison receives notice after the relevant time that the prisoner has the relevant deportation status. In such cases, the prisoner’s classification must be reconsidered as soon as practicable after the prison receives that notice.

New paragraph (1D) applies if a prisoner has been classified as suitable for open conditions and is located in open conditions immediately before the prisoner’s classification is reconsidered, whether under new paragraph (1B) or (1C) or otherwise. In those circumstances, new paragraph (1A) does not apply and the prisoner may continue to be classified as suitable for open conditions.

Rule 2(4) inserts new paragraph (1A) into rule 9 of the 1999 Rules. The effect of this is to provide that prisoners who have the relevant deportation status must not be released temporarily from prison unless the prisoner is located in open conditions immediately before the time of release.

Rule 2(4) also inserts new paragraphs (8A) and (8B) into rule 9 of the 1999 Rules. These new paragraphs specify circumstances in which prisoners who have been released under rule 9 of the 1999 Rules and who have the relevant deportation status must be recalled. New paragraph (8A) applies if, immediately before the relevant time, a prisoner who has the relevant deportation status has been released. In such cases, the prisoner must be recalled unless the prisoner is due to return to prison on the day on which the paragraph comes into force or the prisoner was released from open conditions. New paragraph (8B) applies if a prisoner has been released (whether before or

after the relevant time) and the prison subsequently receives notice that the prisoner has the relevant deportation status. In such cases, the prisoner must be recalled unless the prisoner is due to return to prison on the day on which the prison receives that notice or the prisoner was released from open conditions.

Amendments equivalent to those in rule 2(3) and (4) are made to the corresponding provisions in the 2000 Rules by rule 3(3) and (4).

Rules 2(2), (5) and (6) make amendments to remove from the 1999 Rules terminology specific to provisions of the Criminal Justice Act 1991 (c. 53) which were repealed by the coming into force of provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10). Equivalent amendments are made to the 2000 Rules in rules 3(2), (5) and (6).

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

© Crown copyright 2014

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£6.00

UK201408137 08/2014 19585

<http://www.legislation.gov.uk/id/uksi/2014/2169>

ISBN 978-0-11-111990-7



9 780111 119907