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## DIRECTIONS

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### Scottish Prison Rules (Use of Nicotine Vapour Products) Direction 2023

Made - - - -

14 June 2023

The Scottish Ministers make the following Direction in exercise of the powers conferred by section 39 of the Prisons (Scotland) Act 1989(a) and rules 36 and 156 of the Prisons and Young Offenders Institutions (Scotland) Rules 2011(b) and all other powers enabling them to do so.

#### **Citation, commencement and application**

1.—(1) This Direction may be cited as the Scottish Prison Rules (Use of Nicotine Vapour Products) Direction 2023 and comes into force on 19 June 2023.

(2) Unless otherwise stated, any reference in this Direction to a rule is a reference to the rule in the Prison Rules bearing that number.

(3) References in this Direction to prisoners are to be construed as including young offenders unless otherwise specified or the context otherwise requires.

#### **Interpretation**

2. In this Direction—

“non-vaping cell” means a cell or room designated by the Governor under rule 36(2)(b), and in accordance with this Direction, as a cell or room in which nicotine vapour products are not be used, in accordance with rule 36;

“the Prison Rules” means the Prisons and Young Offenders Institutions (Scotland) Rules 2011;

“vaping cell” means a cell or room in which nicotine vapour products may be used in accordance with rule 36.

#### **Designation of non-vaping cells**

3.—(1) Where two or more prisoners are required to share accommodation in a cell or room, the Governor shall take into account the criteria specified in sub-paragraph (2) before deciding whether to designate that cell or room as a non-vaping cell.

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(a) 1989 c.45; section 39 was amended by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9) (“the 1993 Act”), sections 24 and 25, schedule 5, paragraph 6(6)(b) and schedule 7, paragraph 1; the Criminal Justice and Public Order Act 1994 (c.33) (“the 1994 Act”), section 116(4); the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), schedule 4, paragraph 75(4)(a); and the Crime and Disorder Act 1998 (c.37), schedule 8, paragraph 71 and schedule 10, paragraph 1. Section 39 is to be read with the following sections of the Prisons (Scotland) Act 1989: 19 (as amended by S.S.I. 2015/39, article 2(8)), 20A (which was inserted by the 1993 Act, section 23); 41(2B) (which was inserted by the 1994 Act, section 153(3), and amended by the Criminal Justice and Licensing (Scotland) Act 2010, section 34(1)); 41B(1) (which was inserted by the 1994 Act, section 151(2), and amended by the Management of Offenders etc. (Scotland) Act 2005 (asp 14), section 16); and 41C(1) (which was inserted by the Crime and Punishment (Scotland) Act 1997 (c.48), section 42). The functions of the Secretary of State, insofar as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (c.46), section 53.

(b) S.S.I. 2011/331.

(3) The criteria referred to in sub-paragraph (1) are as follows:—

- (a) whether any prisoner wishes to be allocated to a non-vaping cell;
- (b) where any prisoner wishes to be allocated to a vaping cell and where the Governor is minded to designate the cell or room as a non-vaping cell, whether it is reasonably practicable, in the Governor's opinion, for that prisoner to be accommodated elsewhere;
- (c) where any prisoner wishes to be allocated to a non-vaping cell and where the Governor is not minded to designate the cell or room as a non-vaping cell, whether it is reasonably practicable, in the Governor's opinion, for that prisoner to be accommodated elsewhere.

#### **Review of the designation of non-vaping cells**

4.—(1) Where a prisoner who has indicated that he or she wishes to be accommodated in a non-vaping cell is subsequently accommodated in a vaping cell, the Governor must regularly review the decision not to designate the cell or room as a non-vaping cell in accordance with sub-paragraph (3).

(2) Where a prisoner who has indicated that he or she wishes to be accommodated in a vaping cell is subsequently accommodated in a non-vaping cell, the Governor must regularly review the decision to designate the cell or room as a non-vaping cell in accordance with sub-paragraph (3).

(3) A review under sub-paragraph (1) or (2) must be carried out by the Governor at least once a week.

(4) The Governor must maintain a record of all prisoners to whom sub-paragraph (1) or (2) applies.

#### **Notice of the designation of non-vaping cells**

5.—(1) Where, in accordance with paragraph 3, the Governor decides to designate a cell or room as a non-vaping cell the Governor must inform the prisoners who are, or are to be, accommodated in that cell or room.

(2) Where, following a review carried out by the Governor under paragraph 4(1) or (2), the Governor decides to—

- (a) designate the cell or room as a non-vaping cell; or
- (b) revoke the designation of the cell or room as a non-vaping cell,

the Governor must inform the prisoners who are, or are to be, accommodated in that cell or room.

#### **Specification of open air places where nicotine vapour products may be used**

6.—(1) For the purposes of rule 36(1)(c), the only open air places where the use of a nicotine vapour product is permitted are as follows—

- (a) in HMP Grampian, in the exercise yard for each hall with the exception of the football pitches;
- (b) in HMP Greenock, those open air places in which a prisoner is permitted to be in terms of rule 87 (exercise and time in the open air) with the exception of the artificial football pitches outside Chrisswell House;
- (c) in HMP Kilmarnock, all outdoor prisoner exercise areas, away from windows and doorways;
- (d) in HMP Castle Huntly—
  - (i) the paved area adjacent to the external door leading from the Wallace Wing corridor;
  - (ii) the hard standing area between the open air prisoners visit area and the prisoners reception, adjacent to the East Side of the Link Centre; and
  - (iii) the prisoners' walking route around the football field adjacent to the rear of Murray House;

- (e) in HMP & YOI Polmont, the exercise area for Blair House;
- (f) in HMP YOI Stirling, all garden areas of residential houses; and
- (g) in all other prisons to which this direction applies, those open air places in which a prisoner is permitted to be in terms of rule 87.

(2) Nothing in this paragraph authorises young offenders under the age of 18 to use a nicotine vapour product in an open air place.


**Revocation of previous directions**

7. The Scottish Prison Rules (Use of Nicotine Vapour Products) Direction 2018 made on 13<sup>th</sup> November 2019 is revoked.

This direction consisting of this and the two preceding pages is subscribed as follows—

It is signed for and on behalf of the Scottish Prison Service, an executive agency of the Scottish Ministers at Edinburgh on 14 June 2023 by Jim Kerr, Deputy Chief Executive, before this witness, Angela Archibald, Head of Chief Executive's Business Unit, One Lochside, 1 Lochside Avenue, Edinburgh, EH12 9DJ.

For the Scottish Prison Service:

A handwritten signature in black ink, appearing to be 'J Kerr', written over a horizontal line.

Witness:

A handwritten signature in black ink, appearing to be 'Angela Archibald', written over a horizontal line.

