PARLIAMENTARY DEBATES

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OFFICIAL REPORT

First Delegated Legislation Committee

PRISON AND YOUNG OFFENDER INSTITUTION (AMENDMENT) RULES 2015

Tuesday 10 November 2015

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STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chair: Mrs Madeleine Moon

† Argar, Edward *(Charnwood)* (Con)
† Burns, Sir Simon *(Chelmsford)* (Con)
† Chapman, Jenny *(Darlington)* (Lab)
† Doyle-Price, Jackie *(Thurrock)* (Con)
† Drummond, Mrs Flick *(Portsmouth South)* (Con)
† Hanson, Mr David *(Delyn)* (Lab)
† Herbert, Nick *(Arundel and South Downs)* (Con)
† Jenrick, Robert *(Newark)* (Con)
† McGinn, Conor *(St Helens North)* (Lab)
† Matheson, Christian *(City of Chester)* (Lab)
† Paterson, Mr Owen *(North Shropshire)* (Con)
† Redwood, John *(Wokingham)* (Con)
† Rees, Christina *(Neath)* (Lab)
† Selous, Andrew *(Parliamentary Under-Secretary of State for Justice)*
† Spellar, Mr John *(Warley)* (Lab)
† Trevelyan, Mrs Anne-Marie *(Berwick-upon-Tweed)* (Con)

Anne-Marie Griffiths, *Committee Clerk*

† attended the Committee

The following also attended, pursuant to Standing Order No. 118(2):

Jones, Gerald *(Merthyr Tydfil and Rhymney)* (Lab)

First Delegated Legislation Committee

Tuesday 10 November 2015

[Mrs Madeleine Moon *in the Chair*]

Prison and Young Offender Institution (Amendment) Rules 2015

8.55 am

Jenny Chapman (Darlington) (Lab): I beg to move,

That the Committee has considered the Prison and Young Offender Institution (Amendment) Rules 2015 (S.I. 2015, No. 1638).

It is a pleasure to serve under your chairmanship, Mrs Moon. The statutory instrument was brought to our attention by Members in the other place who felt that the House should be made aware of the changes. I share their concerns, and will briefly explain the changes. They are the Government's reaction to a court judgment, and I think that they have done their best and have tried hard to react in a way that is proportionate and contains safeguards. The amendment we are considering increases the period before which a review of the decision to segregate a prisoner, independent of the prison, is required, from 72 hours to 42 days. After the first external authorisation, the amended rules require the Secretary of State's authorisation to be sought only every 42 days, which seems a rather long time.

Although I concede that the Government have done their best, the Opposition have some concerns that are not addressed. We are seriously concerned that the amendment goes beyond what was clearly intended in the enabling legislation. There are well-known risks of solitary confinement to which we want to draw the Government's attention and there has been a lack of external consultation on the measures. I appreciate that that is because the amendment is in response to a court judgment and that there has not been time, but we need assurances that such external consultation will take place. The Government need to be more mindful of the big difference between internal and external authorisation of solitary confinement.

Given their experience, I am sure that members of the Committee will be familiar with some of our concerns about solitary confinement. The judgment to which the Government responded considered evidence from both international and domestic experts about the risks to the physical health, mental health and life of a prisoner who is subjected to prolonged periods of solitary confinement. The evidence included the disproportionate number of self-inflicted deaths in segregation—there were 28 such deaths between 2007 and 2014. It also included the harmful psychological effects of isolation which, experts estimate, can become irreversible after about 15 days. The symptoms of solitary confinement range from insomnia and confusion to hallucinations and psychosis, and the negative health effects can occur after only a few days, increasing with each additional day in confinement.

It is impossible to see how an extended period of 42 days, which surpasses even the 28-day review period in Scotland, can be justified, in light of the purpose of the mechanism and the risks associated with segregation. There is a risk that the 42-day period will be too long for the most vulnerable prisoners. I have some case studies from the prisons and probation ombudsman on deaths in segregation units, which suggest that many of those who die would not get to 42 days.

It is important to remember that the rules will apply to young offenders as well as to adults. One case study, from the Howard League, shows how in Feltham, in October 2014, a 17-year-old boy disclosed that he had been segregated for good order and discipline for eight days. He reported being confined to his cell for 23.5 hours a day. I appreciate that the rules proposed by the Government require visits from health and other professionals, but although healthcare visitors had seen this person every day, that involved just opening the door to his cell and not going in to spend time with him. He said he felt depressed but had not reported that to healthcare visitors. He also said he thought he was segregated because he had had too much canteen, but had no knowledge of any formal investigation or adjudication charges.

There is a danger that although the Government's proposals look good on paper, because they are not consolidated into a single set of rules—they amend things all over the place—they will not be implemented as I am sure the Minister hopes they will be. He will know that there is a real difference between issuing a Prison Service order and what happens in practice. We need assurances that the implementation will be closely monitored.

In another case study at Werrington prison in January, a 15-year-old boy with learning difficulties was placed in a segregation unit for over a month and simultaneously placed on closed visits. He was confined to his cell for 22 to 24 hours a day. The deterioration in his behaviour was one of the reasons that led to his segregation, which is often, if not always, the case. That was a direct consequence of the prison's failure to provide him with his prescribed medication for attention deficit hyperactivity disorder and the failure to provide the correct quantities of his medication at the correct intervals. This young person ended up in segregation and his already fragile mental health became more damaged.

I turn to examples from reports by the independent monitoring board and Her Majesty's inspectorate of prisons. HMIP's annual report 2013-14 concluded:

"Too many prisoners in crisis were held in segregation in poor conditions and without the exceptional circumstances required to justify this."

The IMB's report into Whitemoor prison criticised the way in which the segregation unit is run, describing it as

"the warehousing of the mentally vulnerable."

The IMB report into Highpoint prison for 2013-2014 said:

"The Board still has grave concerns regarding prisoners with quite severe mental health problems being located on the"

unit,

"sometimes for long periods of time whist they are assessed for transfer to a more appropriate placement. This often involves having to be sectioned under the Mental Health Act, and this involves securing funding and specialist treatment from the appropriate Healthcare Authority"—

that obviously takes time, but the

"Board continues to stress that these situations are intolerable, both for the staff who have to deal with these very disturbed individuals and the prisoners themselves."

Staff working in segregation units do outstanding work in the most difficult circumstances. Seg is the first place I ask to see when I visit a prison because it is a good indicator of the overall health of a prison to look at the board to see how many people are in seg and how long they have been there, and to talk to staff about the circumstances.

The IMB report into Lancaster Farms prison for young adults reported frustration at its view that at times the segregation

"unit holds a number of problematic or vulnerable prisoners, needing careful management, who are difficult to relocate on normal residential units. The time taken to transfer some of these prisoners to other prisons providing the required interventions is unacceptably long."

There is a direct relationship between overcrowding in an establishment and understaffing and use of seg. It is about not just wanting to use the bed space in the seg, but the regime not being able to deal with unruly prisoners in a more desirable way, and having to remove them and keep them somewhere else.

In a case study from the prisons and probation ombudsman, Mr A was moved to the segregation unit after he was found in an off-limits part of the prison, arousing staff suspicions that he was smuggling in illegal items. The staff who found him reported that he seemed frightened and was shaking. When moved to the seg, he quickly began to protest about his situation. He became disruptive and, shortly afterwards, started self-harming using a plastic knife. Staff began the assessment, care in custody and teamwork—or ACCT—procedure, but did not consider it necessary to move him to another location. As a result of further threats to smash up his cell and to self-harm, prison staff removed all non-fixed furniture from his cell, leaving him with only a mattress. All his clothing and standard bedding were removed and he was given a tear-proof tunic and blanket. After the removal of furniture from his cell, prison staff failed to follow the proper protective arrangements including failing to observe Mr A with the required regularity. Later that evening, he was found hanging in his cell, having made a ligature from his tear-resistant blanket. That case demonstrates that even with the best internal safeguards in place, these things are not always carried out in the way the Minister would like. I have my doubts about whether, without the external scrutiny, we will see the kind of implementation we all want to see.

I have one last case study. Upon arrival in prison, Mr D requested vulnerable prisoner status because of his size—he was 5 feet tall and weighed 6 stone—and because other prisoners knew about his background. He was housed in the segregation unit while his suitability for the vulnerable prisoner unit was assessed, which was not ideal. A week later, he was moved to the vulnerable prisoner unit but, following an incident in which he threatened to jump from a landing, he was moved back to the seg. While he was in the seg, staff opened ACCT procedures twice. On both occasions, staff filled in a form with details of the exceptional circumstances that justified keeping him in segregation while subject to ACCT procedures. Both times, the reason given was that no other location was suitable. No details were given about which other locations—for example, the healthcare unit—had been considered and why they were unsuitable. Two days later, he was moved to the seg unit for the second time and found hanged in his cell.

It would help if we had a little more information about how some form of external monitoring of these measures could be done quickly, even before the Government consult externally, which I assume the Minister intends to do. Paragraph 7.6(e) of the explanatory memorandum says that prisons must do all they can to "facilitate involvement" of the independent monitoring boards in the segregation review boards. I want to know exactly how that will happen, because it is a very easy thing to say. We are aware that IMBs vary in their—how shall I put this?—challenge and scrutiny of regimes with which they have perhaps been associated for a great number of years. We need to ensure that the external challenge is a real challenge.

The explanatory memorandum also says that offenders concerned in the seg will be able to "make representations" to the review board. Will they get any support to do that? If a prisoner has been in solitary for some time, their capacity to represent themselves and make their case would be enhanced by some form of assistance. What does the Minister think that might look like?

As I have said, we need to look at consolidating the rules, because it will not be straightforward for governors or staff to implement the changes if they are not presented in a user-friendly way. I am not aware of any intention to provide additional training on the measures. If that were possible, it would be incredibly helpful, in order to ensure that the changes are implemented in the way we would like them to be.

The big issue, however, is the lack of external consultation and challenge. It is all very well presenting what seems a quite reasonable response to a court judgment, saying, "We will do this properly. We will involve professionals. We will involve healthcare. We will be mindful of the impact on mental health," but if the Minister is prepared to see people held for 42 days without external challenge, it is only right that Members are made aware and given the opportunity to challenge him and, hopefully, elicit some reassurance and commitments to which we can hold him in future.

9.10 am

The Parliamentary Under-Secretary of State for Justice (Andrew Selous): It is a pleasure to serve under your chairmanship, Mrs Moon. I will do my best to address the various concerns raised quite properly by the shadow Minister.

This measure will amend the prison and young offender institution rules on the removal of prisoners from association—known as segregation—for the maintenance of good order or discipline or in the prisoner's interests. It provides that the removal for more than 72 hours must be authorised by the governor, and that the governor must obtain leave from the Secretary of State for longer-term segregation beyond 42 days. The changes were proposed in response to the findings of the Supreme Court's judgment in the Bourgass case on 29 July, which held that, under the previous rules, the governor could not lawfully authorise segregation beyond 72 hours.

[Andrew Selous]

Prisoners may be placed in segregation for two main reasons: under prison rule 55, as a punishment following an adjudication, or under prison rule 45, for purposes of good order and discipline or the prisoner's protection. The measure applies only to rule 45 and its equivalent rule for young offender institutions. The purpose of segregation under rule 45 is to temporarily remove from general association with their peers any prisoner whose behaviour presents a risk to the good order and safety of the establishment. Prisoners may also be segregated in their own interests.

Of course, segregation must be a last resort and for the least time necessary. The prisoner must be returned to the normal location as soon as it is safe and practicable to do so. Every effort is made to keep prisoners out of segregation and to ensure that, where they are segregated, they can be managed out again as quickly as possible. Various alternative schemes have been developed to manage disruptive prisoners without recourse to segregation, ranging from behavioural management systems on normal location to a series of close-supervision centres for the most disruptive prisoners. Despite the alternatives, many prisons could not function without a system for segregating prisoners.

Segregation under prison rule 45 is never used as a punishment. Discipline issues, including disruptive and violent behaviour, may be dealt with through a range of sanctions under the separate internal prison disciplinary system, or through application of the incentives and earned privileges scheme. Prisoners may be segregated under prison rule 45 only where their behaviour or the risk to them is such that it cannot safely be managed on normal location.

The initial decision to segregate a prisoner for up to 72 hours is taken by a prison governor, with advice from a healthcare professional who has assessed the prisoner's health and wellbeing with regard to their being segregated. That must be done within two hours of the prisoner first being segregated.

Jenny Chapman: Will the Minister explain what a healthcare professional's assessment should entail?

Andrew Selous: I am not a clinician, but, as I will explain, the assessment involves a nurse and a doctor seeing the prisoner every three days to assess their mental state, wellbeing and ability to function well under the segregation regime. If the shadow Minister will allow me, I will say more about the healthcare aspects of segregation in due course.

The prisoner may be returned to the normal location at any time within the initial 72-hour period, if that is considered appropriate, but if they are to remain segregated, a segregation review board must be convened before the 72-hour period elapses to determine whether that is needed. The segregation review board is a multidisciplinary board, comprising an experienced prison governor, who chairs the board, a healthcare professional, and, if the prisoner is at risk of self-harm or suicide, the appropriate case manager. The prisoner will also normally attend. The board should also be attended by a member of the independent monitoring board and other prison staff who know the prisoner and his or her circumstances, as well as a member of the chaplaincy team, the prisoner's offender manager and a psychologist, if necessary.

The purpose of the segregation review board is to consider and discuss fully all the factors in favour of or against the prisoner's continuing segregation and, if necessary, to continue to authorise segregation for further periods of up to 14 days at a time. Prisoners held in segregation are not kept in isolation and meaningful contact with other prisoners and staff in the unit is actively encouraged. While a prisoner is segregated, he or she must be visited daily by the governor with responsibility for the segregation unit, by a member of the healthcare team, by a doctor every three days, by the chaplaincy team and by segregation unit staff. At other times, the prisoner will be visited by and have the opportunity to speak to the independent monitoring board member and the governor in overall charge of the prison.

As far as possible, segregated prisoners have access to a regime that is comparable to that on normal location. This includes the usual basic entitlements to social and legal visits, religious services, access to the telephone, showers and exercise in the open air and, where possible, access to a gym. Where possible, association with other segregated prisoners will be facilitated. In addition, they are provided with reading and hobby materials and, where appropriate, in-cell work and education. All prisoners have access to a dedicated Samaritan phone and access to Listeners—the peer support scheme where prisoners help each other on such issues, which is very effective. Access to privileges under the incentives and earned privileges scheme is also possible, depending on the prisoner's IEP level and compliance with behavioural targets while in segregation. This can include additional facilities, such as in-cell television and radio or CD players.

Prisoners entering segregation are screened to pick up any physical or mental health issues and to assess a prisoner's ability to cope with segregation. Prisoners are seen daily, as I have said, by a healthcare professional and, every three days, by a doctor. Alternatives to segregation are always sought for prisoners with mental health problems. Location in a healthcare centre or closer management on normal location may be possible. As a last resort, those prisoners with mental health problems placed in segregation will be supported by a mental health in-reach team, and prisoners at risk of suicide or self-harm will have a mental health assessment if placed in segregation and will be observed in line with their individual assessment, care in custody and teamwork plan. The amended rules and new policy introduced following the Supreme Court ruling provide further safeguards.

Rule 45, as amended, provides that governors will need permission from the Secretary of State to segregate for a period longer than 42 days—in practice, from deputy directors of custody—and these reviews continue at 42-day intervals. After six months, a director of the National Offender Management Service must review continuing segregation. For young people, we have halved those time periods to 21 days and three months through policy changes.

We have made other changes to the segregation policy, strengthening guidance to ensure that prisoners are given sufficiently detailed reasons for their segregation and have the opportunity to make meaningful representations against their segregation.

Jenny Chapman: I do not recognise the picture that the Minister paints of life in a segregation unit, but that is not the point. Why does he think that, prior to the judgment, it was seen as desirable, even though it was not implemented in reality—which, I guess, underlines the point I am making—that external authorisation should be sought after 72 hours?

Andrew Selous: As I am saying, there is a whole series of checks: at 72 hours, at 14 days, after another 14 days, at 42 days and at six months. In addition to the daily healthcare visits and the visits from a doctor every three days, there is monitoring and oversight of the policy by various other members of prison staff, which I shall come on to.

The Government consider the changes to prison rules and the associated changes to the National Offender Management Service policy on prisoner segregation to be essential, not only to the smooth and safe running of our prisons, but to assuring the wellbeing of those prisoners whom it is necessary to segregate. The Supreme Court judgment of 29 July held that the existing practice whereby a prison governor authorised the segregation of a prisoner beyond 72 hours on behalf of the Secretary of State to be unlawful, given the construction of the prison rules. Up to that point, governors had always authorised segregation beyond 72 hours.

Following the Supreme Court judgment, we considered two broad options to comply with it. The first option was to implement an independent review process under the then existing rule 45(2) that would allow an official, who was external to the prison, on behalf of the Secretary of State, to authorise segregation beyond 72 hours and each subsequent period up to 14 days. Consideration was given to these decisions being taken by someone external to the prison, such as the independent monitoring board, the independent adjudicators, the deputy director of custody, or a central committee of caseworkers. There are a number of problems with that option. It would mean that a person who is detached from the detailed circumstances of the case and the day-to-day prison environment would be taking a decision. Such a system would not allow the prisoner the opportunity of making real-time representations against his or her segregation.

Each option would present considerable logistical and resource problems, given that approximately 24,000 segregation decisions of this kind are made every year. It is clear that any decision taken by a body independent of the prison at this stage, with such large numbers of reviews, would need to be taken on paper alone, given the sheer volume of cases, and therefore would add little to the quality of decision making.

The decision to segregate a prisoner can often be a fine balance between what is in the best interests of the individual prisoner, and the interests and safety of the wider population of the prison. That decision is often informed by a detailed, hands-on knowledge of the dynamics of the prison at a particular period and how a prisoner's behaviour may be safely managed within that specific dynamic. The existing system of internal authorisation by the governor is taken on the advice of the segregation review board, which consists of a range of people who know the prisoner and the prison, and to which the prisoner is able to give a first-hand account of his or her views, which is particularly important given that prisoners often have poor written and language skills.

The second option considered how greater procedural fairness could be achieved within the existing authorisation process, including by amending the prison and YOI rules to allow governors to authorise segregation beyond 72 hours for periods of up to 14 days.

After careful evaluation of all the evidence, it was decided that the second option—a decision taken by the governor on the advice of the multi-disciplinary segregation review board—provides the best and safest system of ensuring that segregation decisions are fair and proportionate, and protects the interests of the prisoner concerned as well as the wider population of the establishment. Further safeguards and enhancements to the procedural fairness of the overall system were also made, as I described earlier, including two additional layers of review by experienced senior officials outside the prison. That provides important additional safeguards. This is a comprehensive system of review with the necessary checks and balances in place to ensure that both prisons and prisoners are safeguarded.

Following the Supreme Court judgment in July, the Government have taken immediate action to ensure that a lawful and procedurally fair system is in place. We are confident that it is the best and safest system for prisoners in segregation. It was decided that, because of the urgency of the situation, it was not possible to undertake consultation widely before the rules came into force. The shadow Minister and others will be pleased to know that a consultation process began on 9 September, with a closing date of the end of October. I assure Members that their comments will be taken into account fully during the current segregation policy review and will inform the need for any possible further amendments to that policy or the prison and YOI rules. Any amendments that are necessary, including further possible amendments of the rules, will be taken forward as part of that work.

It is vital that prisons can manage the most challenging behaviour from prisoners through a safe, fair and lawful system of segregation. These amending rules and the supporting NOMS segregation policy provide such a system. I hope that Members agree that these measures provide a sensible, safe and proportionate response to the Supreme Court judgment.

The shadow Minister asked how we will ensure that the rules are adhered to. There is significant external monitoring. The NOMS audit team will monitor adherence to the process. The deputy directors of custody—in effect, the immediate line manager of governing governors of prisons—regularly visit segregation units, in addition to the 42-day check that they must make. The independent monitoring boards—which are, of course, external to prison—and volunteers from the local community also regularly visit. The governing governor will visit care and separation units weekly at the very least.

The shadow Minister also asked me about support for making representations. Our policy requires an officer or governor to support a prisoner in making representations, particularly where there are language problems or learning disabilities. That support will involve sitting down with them and helping them to write a statement, if that is

[Andrew Selous]

needed. I hope that hon. Members can see that we are taking a fair and proportionate approach to this serious issue. These are serious matters, and we need to get them right. I commend the rules to the Committee.

Question put and agreed to.

Resolved,

That the Committee has considered the Prison and Young Offender Institution (Amendment) Rules 2015 (S.I. 2015, No. 1638).

9.26 am

Committee rose.