



## **AMENDMENT TO SEGREGATION POLICY: REVIEW AND AUTHORISATION OF CONTINUING SEGREGATION**

### **FREQUENTLY ASKED QUESTIONS**

**(UPDATED APRIL 2022)**

#### **Q.1 What has been updated?**

The Secretary of State for Justice has given permission that the levels of authorisation required for prisoners who have been segregated beyond 42 days is amended.

An update to the policy has been made and a new minimum level of authority for Segregation Reviews has been introduced. See questions 12 to 20 for updated authorisations. This amendment comes into force immediately upon publication.

#### **Background to 2015 update**

##### **Q 2. Why were the Prison Rules changed in 2015?**

Up until 4 September 2015, Prison Rule 45(2) said that the Secretary of State (SoS) could authorise segregation of prisoners beyond 72 hours. This was always interpreted by HMPPS as meaning that the Governor could do this on behalf of the SoS. The Supreme Court judgment of 29 July 2015 stated clearly that Governors could not act on behalf of the SoS in this particular role. Because of this, we changed prison and YOI rules to allow the governor to lawfully segregate prisoners beyond 72 hours.

##### **Q 3. So, if the prison rules were amended to make this lawful why was the segregation review policy and procedures also changed?**

The Supreme Court Ruling was also critical of the procedural fairness in several areas of the segregation review system. In particular: (a) those prison managers who authorise initial segregation of prisoners can currently also chair segregation boards and review their own decisions; (b) prisoners are not always given enough information about why they have been segregated in order that they can make meaningful representations against it; (c) there is currently little in the way of review of segregation external to the prison. The 2015 amended policy rectified these procedural issues.

##### **Q 4. Can a governor still authorise initial segregation?**

Yes. The process of initial segregation has not changed. The SoS has given authority for this power to be delegated from the Governor to any "competent Operational Manager" in the prison.

##### **Q 5. When did the 2015 policy come into force?**

The amended 2015 policy came into force on Friday 4 September 2015. The further amendment to revise levels of authorisation comes into in April 2022.

##### **Q 6. Has PSO 1700 (Segregation) been withdrawn?**

No. The 2015 amended policy related only to those parts of segregation which deal with the timing and authorisation of reviews; the Segregation Review Board (SRB) process and also the authorisation for the use of Special Accommodation for more than 24 hours. The other parts of PSO

1700 remain unaffected. The policy in PSO 1700 that covers these specific areas is withdrawn and the policy issued in 2015 replaced it.

A Segregation Policy review is currently underway, and a revised Policy Framework will be provided in 2023.

## **Segregation Review Boards (SRBs)**

### **Q 7. Has the role of the SRB changed?**

No. The SRB remains the means by which continuing segregation is authorised and it is still the key mechanism by which assurance is given that segregation in individual cases is both safe and appropriate. The overall purpose of the SRB remains unchanged. The need for a first SRB within 72 hours of initial segregation followed by SRBs at a maximum of 14 day intervals afterwards, remains exactly as now.

### **Q 8. The 2015 policy says that a different governor to the one who authorised initial segregation must chair the subsequent SRBs. Does it have to be a different governor for each SRB?**

The aim here is that the person who authorised initial segregation (often the Duty Governor) should not be the same person who chairs the SRB at the crucial first two review boards (at 72 hours and 14 days). Otherwise the Chair is reviewing his/her own decision. This provides for a greater degree of what the Supreme Court called “procedural fairness”. Thereafter it is less important to have a Board Chair who was not involved in the initial decision to segregate as by then a number of operational staff will have authorised continuing segregation and reviewed the case.

### **Q 9. What happens if it is not possible to have a different person to the one who authorised initial segregation chairing the SRB?**

Where for exceptional reasons this is not possible then the SRB can still give authorisation to continue to segregate the prisoner but, the SRB paperwork must be reviewed and countersigned by a different operational manager as soon as possible afterwards.

### **Q 10. Has the role of the IMB member on the SRB changed?**

No. The role of the IMB member on the SRB remains exactly as at present. The IMB member is an important member of the SRB. Their role is to satisfy themselves that the proper process has been followed and that the decision reached is fair and reasonable on the basis of the information available to the SRB.

### **Q 11. Is it essential that a member of the IMB attends all SRBs?**

IMB member attendance at SRBs is very important and prisons must be proactive in enabling IMB members to attend and contribute either in person or by telephone or by reviewing papers. IMB members must be notified of and invited to attend every SRB.

It is recognised however, that the frequency and short notice, of 72 hour reviews in particular, may make it impractical for the IMB to attend in all cases. It is important though that the IMB attend 14 day reviews. These reviews are more predictable and there is greater scope to alter their timing (although not beyond 14 days) so that they can be scheduled to coincide with the IMB rota of visits. Establishments may also consider standardising the days on which 14 day SRBs are held so that the IMB can be provided with fixed or predictable dates for their diaries.

## **First (minimum Band 8), Subsequent (minimum Band 9) and Prison Group Director (PGD)/ Deputy Director (DD) Reviews**

## **Q 12. What is the purpose of the Reviews?**

These reviews provide independent oversight and assurance that the segregation of individual prisoners is appropriate and reasonable and that all other options for the prisoner's management have been fully considered. The Band 8 and 9 Senior Managers and PGD/DD or Band 8 Senior Manager from the Controller Team/ Band 8 Senior Manager, Band 9 Senior Manager from the Controller Team / Band 9 Senior Manager and Band 11 Head of Privately Managed Prisons, role is not to authorise continuing segregation but to consider giving leave to the SRB to continue doing so for a specified period.

These reviews must not be delegated to a grade below which is specified above and can continue to be undertaken at PGD and Executive Director grades in line with the previous policy if this is determined appropriate by the Executive Director for North or Executive Director for South.

## **Q 13. When do they happen?**

The First Review is undertaken by a Band 8 Senior Manager or Band 8 Senior Manager from the Controller Team in a privately managed prison, including a Controller at the same prison where the prisoner is segregated, or a Band 8 Senior Manager in the Head of Privately Managed Prisons Office for privately managed prisons, at or before the 6 week (42 day) point of continuous segregation – taken from the time of initial segregation.

Subsequent Reviews are then undertaken every 6 weeks by the Band 9 Senior Manager or Band 9 Senior Manager from the Controller Team or a Band 9 Senior Manager in the Head of Privately Managed Prisons Office for privately managed prisons, whilst segregation continues.

A PGD/DD or Band 11 Head of Privately Managed Prisons Review is then undertaken after 6 months of continuous segregation and every 6 months after that whilst segregation continues.

Different arrangements are in place for Young People reviews (see below).

## **Q 14. Why are there different types of Review?**

Reviews of adult prisoners are carried out at least every 42 days (6 weeks) of continuing segregation (see below for arrangements for Young People). Further details on each Review is provided below. For the level of authorisation in the Private Estate, please see question 15.

### **The First Review**

The First Review is carried out at or before 42 days of continuous segregation by a minimum of a Band 8 Senior Manager within the PGD's office or HQ. The PGD must determine the experience and competence of the senior official to ensure they are confident in their decision-making ability for these authorisations. The Reviews must be carried out by someone outside of the prison. This is designed to provide an initial oversight of the segregation case in a standard format.

In general, and unless the Band 8 Senior Manager directs otherwise, form OT030 and the OT026 needs to be forwarded to the Band 8 Senior Manager to consider. Exceptions to this are where there is additional relevant information that the prisoner has not had sight of or, where the case involves a vulnerable prisoner, including a prisoner on an open or post closure phase ACCT any relevant information such as healthcare reports. In addition, the Band 8 Senior Manager may request further information as required. The Band 8 Senior Manager may delegate this role to a suitable operational manager independent of the prison.

### **Subsequent Reviews**

Subsequent Reviews are carried out by a minimum of a Band 9 Senior Manager in the PGD's office/HQ at or before the 84 day (12 week) point in segregation and thereafter at least every 6 weeks (42 days).

The PGD must determine the experience and competence of the senior official to ensure they are confident in their decision-making ability for these authorisations. The Reviews must be carried out by someone outside of the prison.

Subsequent Band 9 Senior Manager Reviews are undertaken in the same way as the Band 8 Senior Manager First Review but (a) in addition to form OT030 and OT026, the Band 9 Senior Manager will receive all previous SRB reports, the initial segregation safety algorithm; any subsequent reports from healthcare; ACCT reports or any other reports relating to the prisoner's wellbeing; all prisoner representations to-date; any other documents which have been considered by the SRB as relevant to the decision to continue segregation. The Band 9 Senior Manager cannot delegate this review other than when he or she is on leave or away from duties for an extended period for other reasons. The difference between the first and subsequent reviews reflects the need to consider more fully longer term segregation decisions.

### **Prison Group Director (PGD)/Deputy Director (DD) Review Procedures**

Where a prisoner has been in continuous segregation for a period of 6 months (182 days) a review must be carried out by the PGD or DD.

The PGD/DD must undertake this review him or herself. This cannot be delegated other than where the Director is away from duties for an extended period of time such as annual leave when a deputy of the same or higher grade may be nominated to take on this role.

### **Q. 15 What is the level of authority for the Contracted Estate?**

The below outlines details of the reviews and level of authority provided for the contracted estate:

- First Review prior to 42 days of continuous segregation – A minimum of Band 8 Senior Manager from the Controller Team in a privately managed prison, including a minimum of a Band 8 from the Controller Team at the same prison where the prisoner is segregated, or a minimum of a Band 8 Senior Manager in the Head of Privately Managed Prisons Office.
- Subsequent Review if segregation is to continue beyond 84 days – A minimum of Band 9 Senior Manager from the Controller Team in a privately managed prison, including a minimum of a Band 9 from the Controller Team at the same prison where the prisoner is segregated, or a minimum of a Band 9 Senior Manager in the Head of Privately Managed Prisons Office.
- Review if segregation is to continue beyond 6 months – minimum of a Band 11 Head of Privately Managed Prisons.

The Head of Privately Manged Prisons must determine the experience and competence of the senior official to ensure they are confident in their decision-making ability for these authorisations.

### **Q 16. If the Senior Manager agrees to segregation continuing does the prison need to carry out further SRBs?**

Yes. The Reviews do not replace SRBs. A SRB must be held at least 14 days from the date of the last SRB – (not 14 days from the date of the Review) and at least every 14 days thereafter whilst segregation continues.

### **Q 17. What if the Band 8 or Band 9 Senior Manager doesn't agree to segregation continuing?**

The Band 8 or Band 9 Senior Manager may decide that it is not in the prisoner's best interests to continue in segregation. In this case, the Band 8 or Band 9 Senior Manager will specify on the OT030 form a timescale for the prisoner being removed from segregation. This will take into account the need for the prison to put in place arrangements for the prisoner's safe return to normal location, either within the same establishment or following transfer to another establishment.

Alternatively, the Band 8 or Band 9 Senior Manager may decide to allow the SRB to continue authorising segregation but the Band 8 or Band 9 Senior Manager may ask for the case to be referred back to him/her within a shorter period of time. This might, for example, be so that the Band 8 or Band 9 Senior Manager can visit the prison to discuss the case or until the next SRB has met.

### **Q 18. What should happen if authorised segregation expires before the Band 8 or Band 9 Senior Manager has made a decision in a particular case?**

The Band 8 or Band 9 Senior Managers Review must be completed on or before the 42 days point in the prisoner's segregation (and every 42 days after that) and it is for the prison to ensure that the necessary documentation is prepared and submitted to the relevant Band 8 or Band 9 Senior Manager in good enough time for this to be achieved. If an unavoidable delay should occur in the Senior Manager's office then the prison should seek verbal approval from the required Senior Manager or his designated deputy for segregation to continue pending the Senior Manager's formal written consideration of the case ASAP.

### **Q 19. Reasons for Continued Segregation**

The OT025 has been amended with a note that the reasons for continued segregation must be recorded on this form. This is to ensure that legal challenges can be defended.

## **Quality Assurance**

### **Q 20. What Quality Assurance is required?**

#### **Quality Assurance of First Review**

Quality assurance of 10% of First Reviews should be undertaken by an official more senior than a Band 8 who is working to the PGD or in HQ. Quality assurance should consider whether decisions are fair, consistent and taken without bias; whether segregation remains desirable under Prison Rule 45 (YOI Rule 49); and whether there are sufficient reasons for the segregation. Outcomes from the quality assurance must be recorded.

#### **Quality Assurance of Subsequent Reviews**

Quality assurance of 10% of Subsequent Reviews should be undertaken by an official more senior than a Band 9 who is working to the PGD or in HQ. Quality assurance should consider whether decisions are fair, consistent and taken without bias; whether segregation remains desirable under Prison Rule 45 (YOI Rule 49); and whether there are sufficient reasons for the segregation. The quality assurance must also consider the documents listed in 3.13. Outcomes from the quality assurance must be recorded.

## **Arrangement for Review of Young People**

### **Q.21 Has the authorisation changed for Young People (April 2022)**

No, the permission of the level of authority provided has only been issued in relation to adult prisoners. The Youth Custody Service has requested we make no amendment to the 2015 Policy in relation to children and Young People.

### **Q 22. How do the arrangements for reviewing placement of children and Young People in extended single separation arrangements differ from the arrangements for adults?**

The Young People's Estate already operate more rigorous procedures for reviews and this will continue with the new system with a new requirement for a Director Review.

- Children and Young People will be reviewed by the DDC at 21 day intervals using form OT031.
- The Director will review CSU placements at 3 month intervals using form OT033.

## **Prisoner Representations**

### **Q 23. When does the prisoner submit his/her representations?**

The prisoner will have been advised of the date of the next SRB and invited to attend. At this point he/ she should also be invited to submit any written representations on new form OT029 Prisoner Representations. The prisoner should be offered help with this if needed. Written representations can be provided to the SRB at the start of the review. If the prisoner is present he/she may also provide further oral representations during the review.

The prisoner should be advised of any forthcoming Band 8, Band 9 Senior Manager or PGD/DD Reviews and invited to submit representations (as previously).

### **Q 24. What happens if there is sensitive information or intelligence about the prisoner which is relevant to his/her segregation? Does this need to be disclosed to the prisoner?**

No. There is no requirement to disclose the primary source document to the prisoner. Paragraph 2.22 in the policy document sets out the circumstances in which information may be withheld from the prisoner. Where any sensitive information is relied on by the SRB in reaching its decision, the prisoner must be provided with a gisted version of that information, sufficient to understand what the reason for segregation is so that he can make representations against it if necessary. The Band 8, Band 9 Senior Manager or PGD/ DD must be advised of any withheld information when considering his or her review.

### **Q 25. Were any new forms introduced in 2015?**

A number of new forms were introduced in 2015 to support the amended policy, while two existing forms have been slightly amended as part of the March 2022 update (see Q. 26). See attachment for the revised forms which are also to be found in Annex D of the policy document.

### **Q.26 Are any new forms being introduced in April 2022?**

No new forms have been introduced to the policy as part of the April 2022 amendment. The following changes have however been made:

- The OT026 must be provided alongside the OT030. This is to evidence the reasons for why segregation is continuing a lack of which has been outlined in a number of legal challenges.

- The OT025 has been updated with a note that the reasons for the continued segregation must be recorded on this form.

All forms will be reviewed, with the terminology updated in a full review of the policy.

## **Special Accommodation**

### **Q 27. Why was it necessary to change arrangements for Special Accommodation?**

The arrangements for placing a prisoner in Special Accommodation - Prison Rule 48 (YOI Rule 51), Temporary Confinement - were also raised by the Supreme Court in 2015. This rule specifies that the Secretary of State should give approval for placing a prisoner in Temporary Confinement beyond 24 hours. The judgment meant that Governors may no longer act on behalf of the SoS in this and that the PGD/DD must authorise all placement in Temporary Confinement in Special Accommodation beyond 24 hours. The impact of this should be very minimal as it is rare for Special Accommodation to be used and extremely rare for it to be needed beyond 24 hours.

## **New or amended segregation forms (published separately)**

**D1. OT019: Location in Special Accommodation-24hr Case Review**

**D1.2 OT025: Authority for Continued Segregation**

**D2. OT027: Notification to Prisoner of Outcome of Segregation Review Board and Segregation Privileges and Behavioural Targets**

### **Forms issued in 2015 update**

**D3. OT029: Prisoner representations against segregation**

**D4. OT030: First and Subsequent review of segregation-adults**

**D5. OT031: DD review of separation – Children and Young People**

**D6. OT032: PGD/DD review of segregation-adults**

**D7. OT033: Director review of separation – Children and Young People**

**D8. Interim Area Monitoring Form for Segregation – pending national system**