

PRISONS (PROPERTY) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Prisons (Property) Bill as introduced in the House of Commons on 20 June 2012. They have been provided by the Ministry of Justice, with the consent of Stuart Andrew MP, the Member in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Bill creates a power for the governor or director of a prison to destroy or otherwise dispose of (including by way of sale) unauthorised property found in prisons. Unauthorised property includes items which it is generally unlawful to possess, such as controlled drugs and offensive weapons, items which it is illegal to possess inside a prison, such as mobile telephones, and items which may threaten prison security or safety or are otherwise inappropriate for a prisoner to have in his or her possession.
4. The power applies in relation to young offender institutions and secure training centres as it does in relation to prisons.

BACKGROUND

5. As discussed in paragraph 3 above, there are restrictions on the property that prisoners may bring into and possess in prison. Although provisions in the Prison Act 1952 and in rules made under that Act provide for the confiscation of unauthorised property, they do not provide for the destruction of confiscated property.

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6. This means that, at present, unauthorised property found in the possession of a prisoner and which is subsequently confiscated must be stored by the prison authorities and may be returned to the prisoner on release. The cost of storing property until a prisoners release is met by the National Offender Management Service (NOMS).
7. One of the most commonly confiscated items is mobile telephones, of which a large number are currently stored by NOMS. Many of the phones held in storage are not attributable to individual prisoners and, in any event, very few prisoners have sought the return of these items upon their release. Other commonly confiscated items include authorised items which have been adapted for unauthorised uses and items of property which have been smuggled into prison or stolen or coerced from another prisoner.
8. When controlled drugs and other illegal items such as weapons are found inside prisons, these are generally referred to the police (and are not therefore stored by NOMS). However there is currently no express power for the destruction or disposal of other property of the types described. The Bill is designed to address this situation and to ensure there is a clear legal basis for the destruction or other disposal of unauthorised or unattributable property.

TERRITORIAL EXTENT

9. The Bill extends to England and Wales only.

COMMENTARY ON CLAUSES

Clause 1: Power to destroy or otherwise dispose of property

10. *Subsection (1)* of clause 1 inserts new section 42A into the Prison Act 1952. New section 42A(1) gives the governor or director of a prison the power to destroy or otherwise dispose of, or arrange for the destruction or other disposal of, certain property. The power includes the ability to sell, or arrange for the sale, of the property (new section 42A(5)(c)).
11. The power in new section 42A(1) applies to any article found in the possession of a prisoner who is not authorised to have the article in his or her possession. The power also applies to any article found inside a prison or prisoner escort vehicle where the owner is a prisoner who is not authorised to have it in his or her possession, or where the owner of the article cannot be ascertained. “Prisoner escort vehicle” is defined in new section 42A(5)(b) as any vehicle used for taking a prisoner to or from a prison or other place while in custody.

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12. An article is authorised if it is authorised for the prisoner to have in his or her possession in accordance with rules made under section 47 of the Prison Act 1952 or if it is authorised by the governor or director of the prison (new section 42A(5)(a)). Where a prisoner is authorised to have an article in his or her possession in a particular part of the prison, the power in new section 42A(1) will apply if the property is found otherwise than in that part (new section 42A(4)).
13. New section 42A(2) and (3) provide that an article which a prisoner is authorised to have in his or her possession is to be treated as unauthorised where the prison governor or director reasonably believes that the article is being, has been or may be used to conceal an unauthorised article, to cause harm to the prisoner or others, or to prejudice the security or operation of the prison. This would include, for example, property such as a radio which is being used to store controlled drugs in the battery compartment.
14. It is intended that the exercise of the power will be subject to guidance in the form of a prison service instruction (PSI). Prison service instructions are statements of prison service policy; they are generally published on the Ministry of Justice website and are made available in prison libraries. Prison governors and directors must adhere to mandatory instructions contained in PSIs. It is envisaged that the PSI will specify a minimum period for which property must be retained before it is destroyed or otherwise disposed of, during which time prisoners or third parties may make representations regarding how the property is to be dealt with.
15. New section 42A(6) and (7) provide that the power in new section 42A(1) can be exercised in respect of a relevant article found before the day the new section comes into force if the article remains unclaimed six months after that day. Relevant articles are cameras and sound-recording devices (which by virtue of section 40B of the Prison Act 1952 it is unlawful to take inside a prison); and devices capable of transmitting or receiving images, sounds or information by electronic communications (including mobile telephones), which under section 40D of the Prison Act it is unlawful to possess within a prison. If the article is reclaimed within six months of commencement, it will be returned to the prisoner (if he or she has been released) or stored for him or her (if he or she remains in custody). It is intended that, before commencement of the Bill, notices will be displayed in all prisons advising prisoners of this power and explaining how property seized prior to commencement of the power can be reclaimed.
16. The effect of *subsection (2)* of clause 1 is that new section 42A applies in relation to young offender institutions and secure training centres as it does in relation to prisons.

COMMENCEMENT

17. *Subsection (2)* of clause 2 provides that the substantive provisions of the Bill will be

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brought into force by means of commencement order made by the Secretary of State.

FINANCIAL EFFECTS OF THE BILL

18. No financial obligations on the public sector are expected to result from the Bill.

EFFECTS OF THE BILL ON PUBLIC SECTOR MANPOWER

19. The provisions of the Bill are not expected to have an impact on public sector manpower.

SUMMARY OF IMPACT ASSESSMENTS

20. As the proposed policy changes are unlikely to lead to costs or savings for business, public or civil society organisations, regulators or consumers, a full impact assessment has not been completed.
21. An initial screening is being undertaken by the Ministry of Justice to determine whether a full Equality Impact Assessment is necessary. A Privacy Impact Assessment will also be undertaken.

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to be Printed, 20 June 2012.*

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