

OFFENDER MANAGEMENT ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Prisons

Section 16: Power of search in contracted out prisons and secure training centres

92. *Subsection (1)* amends section 86(2) of the 1991 Act which prevents prisoner custody officers performing custodial duties at a contracted-out prison from conducting anything more than a “rub-down” search of a visitor. The amendment removes this restriction and allows a prisoner custody officer to require a visitor he wishes to search to remove an item of clothing which is not only an outer coat, jacket or gloves. However, the amendment makes clear that a prisoner custody officer shall not be able to require that an intimate search (within the meaning of section 164(5) of the Customs and Excise Management Act 1979) is carried out. This subsection also amends section 86 by clarifying that the power to search will be exercised in line with relevant Prison Rules and Young Offender Institution Rules.
93. *Subsection (2)*, amends section 9 of the Criminal Justice and Public Order Act 1994 by removing an equivalent restriction placed upon a custody officer at a secure training centre and expands his power to search in line with *subsection (1)*. *Subsection (2)(a)* provides that the power to search will be exercised in accordance with relevant Secure Training Centre Rules.

Section 17: Power of detention in contracted out prisons and secure training centres

94. *Subsection (1)* amends the Criminal Justice Act 1991 (“the 1991 Act”) by inserting a new section 86A. This gives a prisoner custody officer the power to require a visitor to wait with him where that officer believes the visitor has committed an offence under sections 39 to 40D of the Prison Act 1952 or an offence of attempting, inciting, conspiring or aiding, abetting, counselling or procuring the commission of such an offence.
95. The new section 86A enables the requirement to wait to be imposed solely in order to enable a constable to arrive. It also makes clear that the period for which a visitor may be required to wait shall be for so long as is necessary for a constable to arrive and, in any event, shall not exceed two hours. Section 86A also enables the prisoner custody officer to use reasonable force to prevent the visitor whom he has detained from making off. Further, it provides that a person who makes off when required by a prisoner custody officer to wait with him will be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
96. *Subsection (2)* ensures that the new power to detain extends to a prisoner custody officer performing contracted out functions at a directly managed prison.

*These notes refer to the Offender Management Act 2007
(c.21) which received Royal Assent on 26 July 2007*

97. *Subsection (3)* amends the Criminal Justice and Public Order Act 1994 by inserting a new section 9A which gives a custody officer in a secure training centre a power to detain, equivalent to that in the new section 86A of the 1991 Act.
98. *Subsection (4)* makes clear that the new section 9A power extends to a custody officer performing contracted out functions at a directly managed secure training centre.

Section 18: Powers of authorised persons to perform custodial duties and search prisoners

99. *Subsection (2)* of this section amends the 1991 Act further by inserting a new section 86B.
100. Section 86B provides a mechanism for authorising a person working at a contracted out prison who is not a prisoner custody officer to perform restricted activities. Such activities are those that would involve the performance by the worker of a custodial duty. A custodial duty can only be performed by prisoner custody officers, owing to the effect of section 85(1) of the 1991 Act.
101. The new section 86B enables the Secretary of State to specify in an order subject to negative procedure the activities that a worker may be authorised to carry out. The director of a prison in which that worker is working may then authorise a worker to carry out one or more of the listed restricted activities. Any authorisation may be limited or given in general or specific terms and be given either to individuals or a defined class of persons. Finally, none of the powers conferred by the section permit the use of force by a worker when carrying out a restricted activity. That will not prevent the use of force in circumstances where it is authorised by another enactment or the common law.
102. *Subsection (3)* provides that section 85(1) of the 1991 Act, which requires custodial duties to be performed only by a prisoner custody officer, takes effect subject to the new section 86B.

Section 19: Powers of director of a contracted out prison

103. This section removes the prohibition in section 85(3) of the Criminal Justice Act 1991 that prevents a director in a contracted-out prison from exercising certain adjudication and segregation functions. The effect of this amendment is that a director, rather than a controller (who is employed by the Ministry of Justice and currently exercises the functions in question) will be able to inquire into a disciplinary charge laid against a prisoner, conduct the hearing of a charge or make an award in respect of any charge. All such proceedings will take place in accordance with the Prison Rules or the Young Offender Institution Rules, as appropriate. By virtue of the amendments made by this section a director will also be able to segregate prisoners, temporarily confine prisoners or apply special controls or restraints on a routine basis. At present, these powers are available to a director only in an emergency.

Section 20: Amendment of section 87 of Criminal Justice Act 1991

104. This section makes two small amendments to section 87 of the Criminal Justice Act 1991. The principal effect of the Section is to enable the search powers vested in “authorised employees” under section 8A of the 1991 Act, together with the mechanism for authorising those searches, to apply in a contracted-out prison. Accordingly a director of such a prison will be able to authorise employees who are not prisoner custody officers to carry out “rub down” searches in accordance with section 8A.

Section 21: Assisting a prisoner to escape

105. This section replaces section 39 of the Prison Act 1952 with a new section 39 to bring the terminology up-to-date and in line with the terminology used in the new offences on the conveyance of prohibited articles in and out of prisons contained in section 22.

Section 22: Conveyance of prohibited articles into or out of prison

106. This section replaces section 40 of the Prison Act 1952 with new sections 40A, 40B and 40C. These new sections clarify the existing law, make changes to the penalties and mode of trial for certain offences and create new offences of taking mobile phones, sound recording devices and cameras into a prison.
107. New section 40A defines the categories of article which are referred to in sections 40B and 40C. There are 3 groups (described as List A, List B and List C) of prohibited items. *Subsection (2)* provides for List A (dangerous articles and controlled drugs). *Subsection (3)* provides for List B articles (alcohol, mobile telephones, cameras and sound-recording devices). *Subsection (4)* defines “camera” and “sound-recording device”. *Subsection (5)* provides that the reference in list B to a mobile telephone, a camera or a sound-recording device includes component parts and articles designed or adapted for use with those articles as well as the articles themselves. *Subsection (6)* provides that a list C item is an article or substance that has been prescribed as such by the prison rules.
108. *Subsection (7)* enables the Secretary of State to amend new section 40A by adding, repealing or modifying an entry to List A or B or any provision for the interpretation of the section. An Order relating to List A articles is exercisable by statutory instrument and is subject to the affirmative procedure. Where an amendment is made to the list of List B articles then the order is subject to the negative resolution procedure. Section 22(2) makes the necessary consequential amendments to section 52 of the Prison Act 1952 which deals with the Secretary of State’s power to make orders under that Act.
109. New section 40B makes it an offence to convey List A articles into or out of prison without authorisation. *Subsection (1)* details the type of conduct which is covered by the new offence. *Subsections (2) to (5)* define “authorisation” and detail how the authorisation may be given and by whom. *Subsection (6)* sets out the maximum penalty and mode of trial for the new offence.
110. New section 40C makes it an offence to convey List B or C articles into or out of prison. *Subsections (1) (List B) and (2) (List C)* detail the type of conduct which is prohibited by the new offences. A person commits an offence if he carries out a listed activity without authorisation. *Subsection (4)* provides for defences where the accused individual reasonably believed he had authorisation or where there was an overriding public interest which justified the doing of the prohibited act. *Subsections (5) (List B) and (6) (List C)* set out the maximum penalty and mode of trial for the new offences.

Section 23: Other offences relating to prison security

111. This section inserts new sections 40D and 40E to the Prison Act 1952. These new sections create new offences of taking a photograph or making sound recordings within a prison or transmitting images or sounds from a prison without authorisation. It also creates an offence of taking a restricted document out of a prison.
112. New section 40D creates the offence of taking a photograph or making sound recordings in a prison or transmitting any image or sound by electronic communications. *Subsection (3)* creates offences designed to prohibit the conveyance or transmission of restricted documents out of a prison. *Subsection (4)* provides for defences where the accused individual reasonably believed he had authorisation or where there was an overriding public interest which justified the doing of the prohibited act. *Subsection (5)* sets out the maximum penalty and mode of trial for the new offences.
113. New section 40E gives details of how an authorisation may be given and by whom. It also provides definitions of terms used in the new sections and makes minor repeals of, and consequential amendments to, the Prison Act 1952.

Section 24: Offences under sections 22 and 23: extension of Crown immunity

114. New section 40F extends Crown immunity in relation to offences under new sections 40B, 40C and 40D to designated persons working at a prison. This ensures that all relevant staff can be treated the same in relation to the new offences.

Section 25: Removal of requirement to appoint a medical officer etc

115. Historically, prison health services were provided via a requirement in the Prison Act 1952 for each prison to appoint a medical officer. From April 2003, prison health services became the responsibility of the Secretary of State for health under separate existing legal provisions. This section removes the original requirement in the Prison Act 1952.
116. The original medical officer role is at odds with modern professional management of health services and the development of multi-disciplinary clinical teams and the role as envisaged by the original legislation has become defunct. As the NHS, in the form of Primary Care Trusts, have now assumed statutory responsibility for local prison health services, the original medical officer role is no longer required.

Section 26: Independent Monitoring Boards

117. **Section 26** provides for the change of name from “Boards of Visitors” to “Independent Monitoring Boards” and replaces references to “Boards of Visitors” in the Prison Act 1952 with the title “Independent Monitoring Boards”. It also removes the requirement in section 6 of the Prison Act 1952 that at least two members of the Board must be magistrates.

Section 27: Amendment of section 8A of the Prison Act 1952

118. This section makes a small amendment to section 8A of the Prison Act 1952 by providing that a person who is not necessarily an employee of a prison, but who is working there can be authorised to carry out a “rub down search” under section 8A.