

PRISONS (PROPERTY) ACT 2013

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Prisons (Property) Act 2013 which received Royal Assent on 28 February 2013. They have been prepared by the Ministry of Justice in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Act 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.
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 Act 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 Act extends to England and Wales only.

COMMENTARY ON SECTIONS

Section 1: Power to destroy or otherwise dispose of property

10. *Subsection (1)* of section 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.
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 Act, 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 section 1 is that new section 42A applies in relation to young offender institutions and secure training centres as it does in relation to prisons.

*These notes refer to the Prisons (Property) Act 2013 (c.11)
which received Royal Assent on 28 February 2013*

COMMENCEMENT

17. *Subsection (2)* of section 2 provides that the substantive provisions of the Act will be brought into force by means of commencement order made by the Secretary of State.

HANSARD REFERENCES

18. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

<i>Stage</i>	<i>Date</i>	<i>Hansard reference</i>
House of Commons		
Introduction	20 June 2012	Vol. 546 Col. 882
Second Reading	14 September 2012	Vol. 550 Col. 577
Committee	7 November 2012	Hansard Public Bill Committee
Report and Third Reading	30 November 2012	Vol. 554 Col. 502
House of Lords		
Introduction	3 December 2012	Vol. 741. Col. 441
Second Reading	18 January 2013	Vol. 742 Col. 891-97
Order of Commitment discharged	6 February 2013	Vol. 743 Col. 264
Third Reading	13 February 2013	Vol. 743 Col. 662
Royal Assent	28 February 2013	Lords: Vol. 743 Col. 1155 Commons: Vol. 559. Col. 491