

PRISONS (PROPERTY) ACT 2013

EXPLANATORY NOTES

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

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

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.