

# **SERIOUS CRIME ACT 2015**

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## **EXPLANATORY NOTES**

### **TERRITORIAL EXTENT**

#### **Part 6: Miscellaneous and General**

#### **Commentary on Sections**

#### ***Section 79: Throwing articles into prisons***

320. This section inserts new section 40CB into the Prison Act 1952 which provides for a new offence of throwing any article or substance into a prison without authorisation (new section 40CB(1) of the Prison Act 1952). The offence would not apply where the article or substance in question was one specified in List A (which covers controlled drugs, explosives, firearms, ammunition or any other offensive weapon), List B (alcohol, mobile phones, cameras and sound recording devices) or List C (tobacco, money, clothing, food, drink, letters, paper, books, tools and information technology equipment). Under sections 40A to 40C of the Prison Act 1952 it is already an offence for a person without authorisation to convey List A, B or C articles into a prison (which includes throwing them into prison). Articles or substances that may be caught by the new offence would include new psychoactive substances not already controlled under the Misuse of Drugs Act 1971 and other non-controlled drugs frequently abused by prisoners. By virtue of new section 40CB(4), and the transitional provision in section 86(14)(g), the maximum penalty on summary conviction of the offence will be six months' imprisonment. On the commencement of section 154(1) of the Criminal Justice Act 2003, the maximum sentence on summary conviction will rise to 12 months. The maximum penalty on conviction on indictment is two years' imprisonment.
321. Under subsection (1) of new section 40CB, the offence would only be committed where a person throws any article or substances into a prison "without authorisation". New section 40CB(5) would apply the provisions in section 40E(1) to (3) of the Prison Act 1952 which defines "authorisation" for the purposes of the offences relating to prison security in section 40D of that Act. Section 40E(1) to (3) of the Prison Act 1952 provides that authorisation for the purposes of section 40D means authorisation given in relation to all prisons or prisons of a specified description by Prison Rules or administratively the Secretary of State or, in relation to a particular prison, by the Secretary of State or the governor, director of the prison or by a person authorised by the governor or director for this purpose. Examples where authorisation might be given would include contractors doing building works where it may be necessary to throw articles into prison.
322. New section 40CB(3) provides for a defence where the accused individual reasonably believes that he or she had authorisation to throw the article or substance into prison or that there was an overriding public interest which justified the act.