



# Ministry of JUSTICE

National Offender Management Service

<b>Conveyance and Possession of Prohibited Items and Other Related Offences</b>		
<b>This instruction applies to</b>		<b>Reference</b>
NOMS staff (Headquarters) and Prisons		PSI 10/2012
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<b>Issued on the authority of</b>	NOMS Agency Board	
<b>For action by</b>	Governing Governors, Directors and Controllers of Contracted Prisons	
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<b>Associated documents</b>	PSO 1100 – Conveyance of Unauthorised Articles and Other Related Offences	
This PSI replaces PSO 1100, Conveyance of Unauthorised Articles and Other Related Offences.		
Audit/monitoring :  Compliance with this instruction will be monitored by Audit and Corporate Assurance.		

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## SECTION 1: EXECUTIVE SUMMARY

This PSI updates and replaces PSO 1100, Conveyance of Unauthorised Articles and Other Related Offences, which was issued in 2008 to describe amendments to the Prison Act and Prison Rules arising from sections 21-24 of the Offender Management Act 2007.

This updated PSI amends guidance and instruction to take into account the commencement of section 45 of the Crime and Security Act 2010 which amends the Prison Act and makes the possession of a device capable of transmitting or receiving images, sounds or information by electronic communication a criminal offence, together with any component part of such a device or article designed or adapted for use with such a device. The main amendments are as follows:

- Introduction of a new chapter (chapter 4) outlining the new possession offences
- Introduction of a new chapter (chapter 7) including comprehensive guidance on referring prohibited item offences to the police
- Revisions to the authorisation table at Annex 1 to take into account the possession offences – inclusion of section 4.7 and section 5 within the table at Annex 1.
- Inclusion at Annex 2, section B, of a central authorisation for solicitors to convey into and out of prisons and possess and use within prisons IT equipment necessary for legal visits – see also instruction at paragraph 5.19-5.28
- Inclusion at Annex 2, section C, of a central authorisation for police to convey into and out of prisons and possess within prisons certain restricted items on routine visits to prisons and on visiting prisons during incidents/operational emergencies – see also instruction at paragraph 5.30-5.32
- Inclusion at Annex 2, section D, of a central authorisation for escort contractors GEOAmev to convey into and out of prisons and use within these prisons data recording devices for operational purposes – see also instruction at paragraph 5.16.
- Inclusion at Annex 4 of example notices to staff, prisoners and social visitors and official visitors on the possession offences
- New wording for signage to be displayed outside prisons included at Annex 6
- Revisions to Prison Act to include new offences included at Annex 7
- New Annex 9 containing guidance on legal advisors bringing IT equipment into court

The PSI contains guidance on measures that Governors and Directors of contracted out prisons must take to implement the provision of both sections from the Offender Management Act and Crime and Security Act.

### Desired outcomes

That the measures introduced will ensure tighter control of items being brought into, taken out of and possessed within prisons. These measures also provide the option to pursue criminal charges against anyone in breach of the relevant sections of the Prison Act.

### Application

This PSI is applicable to all prison establishments.

### Mandatory Actions

*Governors and Directors of contracted out prisons must ensure that local arrangements take into account the new possession offences and are consistent with the guidance and instruction provided.*

In addition, Governors and Directors of contracted out prisons must ensure that:

- *briefing/information notices are produced for all Prison Act offences covered in this PSI and made available to prisoners, staff and social and professional visitors. Model information notices that may be adapted for local use are provided at Annex 4. Annex 5 lists organisations who have been advised of the provisions and offences;*
- *authorities for conveying and/or use and/or possession of items restricted by the Act are issued where appropriate in accordance with Chapter 5. The last column in Annex 1 lists some examples where Governors and Directors of contracted out prisons will need to consider issuing a local authorisation (or gaining agreement from the Deputy Directors of Custody to issue a local authorisation);*
- *consider any other legitimate activity which has not been authorised centrally (see Annex 1) and, if necessary, issue a local authorisation to cover this activity – see Chapter 5;*
- *ensure local lists of prohibited items, as set out in Local Security Strategies are considered to ensure that they are consistent with this legislation;*
- *consider producing local lists to clarify duties. Annex 1 flags areas where Governors and Directors of contracted out prisons might consider clarifying the duties of staff to explicitly state which staff would normally convey or use prohibited items and be covered by Crown Immunity and which staff would not – see Chapter 5 (paras 5.6 to 5.9);*
- *signs laying out penalties for committing offences under the Prison Act covered in this PSI are ordered and displayed outside the prison. The penalties have now changed and the new sign is shown at Annex 6. Coldingley prison are aware of the changes and prisons must ensure that they have ordered new signs from Coldingley to replace the existing signs and they are displayed on commencement of the new provisions;*
- *this issue is discussed at the Prison/PCT Partnership Board to ensure that the implications for staff employed by the NHS and other healthcare providers are fully considered and appropriate action taken where required;*
- *consider storage facilities available for professional visitors who may arrive by public transport with unauthorised items such as mobile phones. In addition, where staff lockers are just inside the gate lock, Governors of public sector prisons may wish to consider requesting an authorisation from the Deputy Director of Custody for staff to bring mobile phones into the prison up to the point where lockers are positioned (see section 5.14).*

Paragraph 5.40 provides further details on actions to be taken.

#### Resource Impact

The majority of the provisions contained within this PSI are derived from the Offender Management Act and should have been implemented at a local level on introduction of PSO 1100 in 2008. However, there will be some resource implications in implementing the new Crime and Security Act offences. Governors and Directors of contracted out prisons will need to appoint someone to review existing lists of unauthorised items to ensure consistency with the new Act and to communicate the implications of the new measures to the prison. Establishments will also need to ensure that local arrangements for referring prohibited item and other related offences to the police reflect guidance provided in chapter 7.

(signed)

**Digby Griffith,**  
**Director of National Operational Services, NOMS**

## SECTION 2: OPERATIONAL INSTRUCTIONS

### Chapter 1 – PURPOSE OF LEGISLATION

#### **Offences introduced by the Offender Management Act 2007**

- 1.1 Sections 21-24 of the Offender Management Act (OMA) 2007 came into force on 1 April 2008. They updated and introduced changes to the Prison Act which tighten prison security arrangements and controls, providing strong legislative support in our attempt to prevent illegal activities within a prison context. This part of the Act has several main functions:
- It sets out specific lists of items (see section 2.2) and makes the bringing in and/or taking out of prison without authorisation of these items a criminal offence;
  - It grades these items into one of three lists – A, B & C; with the unauthorised conveyance in/out of prison of list A items being the most serious criminal offence and list C the least serious (see chapter 2);
  - It makes the unauthorised use within prison of certain items a criminal offence, for example cameras and sound recording devices (see chapter 3);
  - It makes the conveying out of prison of “restricted documents” (e.g. most official documents and photographs even if unclassified) without prior authorisation a criminal offence, including prisoner files and photographs (see chapter 3).
- 1.2 These provisions were introduced primarily because of the weaknesses in the previous legislation (Prison Act and Rules). They are designed to enable prosecution in circumstances where unauthorised items are brought in and/or used within prisons and will also take into account new technology, particularly mobile telephones and other electronic media, such as cameras and sound-recording devices, given the potential threat to security that these pose within a prison environment.

#### **Offences introduced by the Crime and Security Act 2010**

- 1.3 Whilst the OMA made it a criminal offence to convey a mobile phone and other items into or out of prisons, it did not make it an offence to possess a mobile phone or component parts within a prison. This made it almost impossible to prosecute prisoners found in possession of these illicit items within a prison as there is rarely evidence that a prisoner has conveyed the item(s) into the prison.
- 1.4 Section 45 of the Crime and Security Act 2010, which came into force on 26 March 2012, introduced further changes to the Prison Act, making it a criminal offence within a prison for anyone to possess, without authorisation, devices capable of transmitting or receiving images, sounds or information by electronic communications (including a mobile phone). The new provisions strengthen the range of measures already in place to address the problem of the presence of mobile phones and their component parts within prisons. Also, given the development in technologies and associated risks, it was decided to make the possession of other IT devices that have the same capabilities of mobile phones a criminal offence. This includes devices that can send and receive text messages, photos and videos, have the potential to access the internet and to make telephone calls.
- 1.5 Annex 7 (Prison Act) and Annex 8 (Prison Rules) set out detailed changes to prison legislation that have been introduced by the OMA 2007 and C&S Act 2010.

## Chapter 2: CONVEYANCE OF ITEMS

### List A, B and C Items

- 2.1 The Offender Management Act replaced section 40A to 40F of the Prison Act 1952 with new sections 40A, 40B and 40C (see Chapter 3). These new sections clarified the previous law and made changes to the penalties for certain offences and create new offences of taking mobile phones, sound recording devices and cameras into a prison.
- 2.2 Prohibited items are now graded according to their seriousness and perceived threat to security and safety within a prison, and are classified as List A, List B or List C items, as set out below:
- **List A items** – drugs, explosives, firearms or ammunition and any other offensive weapon
  - **List B items** - are alcohol, mobile telephones, cameras, sound recording devices (or constituent part of the latter three items)
  - **List C items** - any tobacco, money, clothing, food, drink, letters, paper, books, tools, \*information technology equipment.

(see annex 8 for definition of IT equipment)

\*note that IT equipment is also subject to the provisions introduced by the Crime and Security Act and its possession within prison without appropriate authorisation is now a criminal offence – see Chapter 4.

### List A and B Offences and Penalties

- 2.3 A person (e.g. prisoners, staff, social and professional visitors) commits an offence if he/she carries out any of the following listed activities without obtaining prior authorisation:
- brings throws or otherwise conveys list A or B items in or out of a prison by whatever means;
  - causes another person to do so;
  - leaves a list A or B item in any place (in or out of the prison) intending it to come into the possession of a prisoner;
  - knowing a person to be a prisoner, gives a list A or B item to him/her.
- 2.4 The maximum penalty on conviction for committing offences in respect of list A items is 10 years imprisonment and/or an unlimited fine. The maximum penalty on conviction for committing offences in respect of list B items is 2 years imprisonment and/or an unlimited fine. All such offences attract a criminal record on conviction.

### List C Offences and Penalties

- 2.5 A person (e.g. prisoners, staff, social and professional visitors) commits an offence if he/she carries out any of the following listed activities without obtaining prior authorisation:
- brings, throws or otherwise conveys a List C item into a prison intending it to come into the possession of a prisoner;

- causes another person to bring, throw or otherwise convey a List C item into a prison intending it to come into the possession of a prisoner;
- brings, throws or otherwise conveys a List C item out of a prison on behalf of a prisoner;
- causes another person to bring, throw or otherwise convey a List C item out of a prison on behalf of a prisoner;
- leaves a List C item in any place (whether inside or outside a prison) intending it to come into the possession of a prisoner, or;
- while inside a prison, gives a List C item to a prisoner.

2.6 Offences relating to list C items are subject to a maximum penalty of a level 3 fine (currently £1000). All such offences carry a criminal record on conviction.

### **Defences**

2.7 Prison Act Section 40C (4) provides defences for individuals accused of committing offences connected with List B or List C items (but not List A). As part of subsequent proceedings, individuals would need to demonstrate that:

- “he reasonably believed that he had authorisation to do the act in respect of which the proceedings are brought, or
- in all the circumstances there was an overriding public interest which justified the doing of that act”.

The first defence above provides an important safeguard for those who genuinely believe that they are authorised to convey, etc List B or C items. Because of this it is important that there is no room for confusion as to who is and who is not authorised for conveying these items and passing them to prisoners. The second defence might, depending on the circumstances, be applicable where someone commits such an offence in order to expose a serious failure of a prison, such as the abuse of prisoners where this failing is not already in the public domain.



## Chapter 3: OTHER OFFENCES RELATING TO PRISON SECURITY

### Main Offences and Penalties

- 3.1 Section 40D of the Prison Act provides offences of - without authorisation:
- taking a photograph or making a sound recording within a prison;
  - transmitting any image or sound or information electronically from within a prison for simultaneous reception outside a prison;
  - conveying a “restricted document” (see definition below) out of a prison.
- 3.2 This clause is intended to minimise the potential for a camera or sound recording device already inside a prison being used to produce images or sound which can then be transmitted to outside the prison or documentation being released into the public domain, which could compromise security and could pose a threat to the safety or privacy of prisoners and staff.
- 3.3 For example, these provisions could be used to pursue prosecution of anyone who unlawfully leaked documents or photographs of infamous prisoners to the press for financial or other gain where it was not in the public interest for this to happen.
- 3.4 The maximum penalty on conviction for these offences is two years imprisonment or a fine or both. All such offences carry a criminal record on conviction.

### Definitions

- 3.5 Restricted documents are defined in the Prison Act as including:
- photographs or sound recordings taken/made inside the prison;
  - personal records of prisoner (serving or past);
  - information relating to an identified or identifiable individual (including families of prisoners or staff) if the disclosure of that information might prejudicially affect the interests of that individual;
  - information relating to any matter connected with the prison if the disclosure of that information might prejudicially affect the security or operation of the prison.

See Annex 7 (section 40E(4)) for more details.

### Defences

- 3.6 Prison Act Section 40D (4) provides defences for individuals accused of committing any of the above offences. These are similar to those for conveyance, etc of List B and C items (see section 2.7). As part of subsequent proceedings, the individual would need to demonstrate that:
- he reasonably believed that he had authorisation to do the act in respect of which the proceedings are brought, or
  - in all the circumstances there was an overriding public interest which justified the doing of that act.

## Chapter 4: POSSESSION OF PROHIBITED ITEMS

4.1 The Crime and Security Act 2010 amends the Prison Act to make the following an offence to possess within a prison without authorisation:

- a) a device capable of transmitting or receiving images, sounds or information by electronic communications (including a mobile telephone);
- b) a component part of such a device;
- c) an article designed or adapted for use with such a device (including any disk, film, or other separate article on which images, sounds or information may be recorded).

Maximum penalty on conviction – 2 years imprisonment and/or unlimited fine. All such offences carry a criminal record on conviction.

4.2 It is anticipated that the majority of offences will involve the possession of mobile phones or component parts of mobile phones (e.g. SIM cards or mobile phone chargers). However, the possession of other items, including wi-fi enabled devices such as the iPod-touch and any wi-fi enabled computer equipment plus disks, data sticks, memory cards, etc, also constitutes a criminal offence under (c) above.

4.3 Chapter 7 sets out guidance on referring possession of prohibited item offences to the police and the minimum evidential criteria that the police and CPS will require to enable these offences to be prosecuted. For possession of a prohibited item the minimum evidence required is the same as that for adjudication - presence, knowledge and control of that item.

## **Chapter 5: AUTHORISATIONS FOR LEGITIMATE CONVEYANCE, USE AND POSSESSION**

### **Types of Authorisation**

- 5.1 There will be instances in which there are legitimate reasons why staff or professional visitors may seek to convey a List A, B or C item into or out of a prison, take documentation or transmit information out of a prison, use cameras or sound-recording equipment within a prison or possess a device capable of transmitting or receiving images, sounds or information by electronic communications. In such instances an authorisation needs to be in place to enable an individual to convey or possess items or conduct activities which are prescribed and restricted by the Act.
- 5.2 There are three main situations in which criminal liability will not arise:
- a) when Crown Immunity for Crown Servants is available (para 5.4, below)
  - b) under an extension of Crown Immunity which is provided for by the Act for non-Crown Servants (para 5.5, below);
  - c) where there is an explicit written authorisation under Sections 40B (for list A items) or 40E (for other items) of the Prison Act (paras 5.10 to 5.12, below).
- 5.3 Authorisations may be given to specific groups or organisations or to specified individuals for a particular purpose, as appropriate. Although prisons are responsible for issuing authorisations in certain circumstances, individual written authorisations are not needed for all areas or instances in which individuals are required to carry out restricted activities. This is described more fully under the following headings.

### **Crown Immunity**

#### **Crown Servants**

- 5.4 Directly employed staff and other public servants (i.e. servants or agents of the Crown) can normally claim Crown immunity for offences under Section 40B to 40D of the Prison Act if they contravene the provisions of the Act whilst carrying out their normal, designated work-related duties. If conveying or use of specific items clearly falls within the scope of a staff member's job, then there need not be any further action for Governors/Directors to take in setting out authorisations for these cases. Examples of areas and activities which are part of certain staff member's normal duties are set out in Annex 1. These are circumstances in which it is clear to both management and staff that the act of conveyance or use or possession of the prohibited item is wholly within the normal duties of the individual concerned.

#### **Others Working in a Prison**

- 5.5 Staff working in a prison who are not Crown Servants can have Crown Immunity extended to them. Section 40F of the Prison Act allows for the Secretary of State to designate any persons who work at a prison, but who are not Crown Servants or Agents, to be treated as if they were Crown Servants. Once designated, they can claim on Crown Immunity but only for purposes of the offences specified in Section 40B to D of the Prison Act and if the conduct falls within the scope of their duties. A list of those people or groups of people granted this designation is shown at Annex 3. This includes all staff working at contracted prisons and all voluntary and contract staff working regularly in public sector prisons.

#### **Crown Immunity - Clarification of Duties**

- 5.6 The availability of Crown Immunity in respect of conveyance and/or use/and or possession prohibited items under this Act can avoid a multitude of local and central Prison Act

authorisations which otherwise would be necessary. In many instances where Crown Immunity is likely to be available to certain groups of staff by virtue of the duties they perform there will be little or no confusion over authorisations for other staff. For example, National C&R conveying incapacitant spray (PAVA) into the prison in emergencies would not need written authorisations because this is part of their normal job but this does not in itself authorise any other staff to do the same. Other activities may be less clear.

- 5.7 As an example, Crown Immunity is likely to apply to the circumstances where staff take out prisoner files to work on outside the prison where this is necessary for the fulfilment of their duties (prisoner files are “restricted documents” - see para 3.5). This removes the need for a written authorisation under the terms of the Prison Act whenever a member of staff needs to take out a prisoner file. Staff whose normal duties involve taking out these files will be covered; those whose duties do not involve this activity will be committing an offence if they take out a file without permission. Whilst this provides an effective and simple way of allowing normal activity it may leave open the possibility of uncertainty over whether other staff are in fact authorised for this activity which could impact on both innocent staff and be used by those seeking to exploit a legal loophole for criminal activity.
- 5.8 In these circumstances the governor may wish to issue a local instruction specifying whose duties do and do not include taking out prisoner files (in this example) if he or she feels that there is any room for confusion at that prison. It is not possible to be prescriptive about the need for such clarification in many of these examples since these will vary with local circumstances. Those activities that the governor/director may wish to consider are shown in the table in Annex 1 (marked with “note 2” in the Crown Immunity columns).
- 5.9 Local instructions should be issued to everyone (not just those to be authorised) and should make it clear who is and who is not authorised to carry out the particular activity as part of their normal duties. The instruction should mention that those who are not authorised should seek authorisation (governor to specify from whom – line manager, duty governor, etc and whether in writing or not) before carrying out the activity otherwise they risk committing a criminal offence. Those staff authorised to carry out the activity can be named individuals or groups such as all security department staff or duty governors, etc. Job specifications of authorised staff should be amended to describe the activity and the item the person is authorised to convey and/or use/ and/or possess. Establishments should not confuse this type of clarification of normal duties with the Prison Act authorisations described below in section 5.10).

## **Authorisations under Section 40B and 40E of the Prison Act**

### General Provision

- 5.10 Where the activity does not form part of a person’s normal duties (and therefore Crown Immunity would not be available), there will be a need for specific authorisation under the terms of section 40B (for list A items) or 40E (for other authorisations) of the Prison Act. Central S40B/E authorisation are already provided to a number of individuals and groups for specific purposes under this PSI on behalf of the Secretary of State. These are listed in the table in Annex 1 and the S40B/E authorisations themselves are shown in annex 2. *Other authorisations must be made locally by Governors and Directors of contracted out prisons for their individual establishments where considered appropriate or, for mobile phones, by the Deputy Director of Custody on behalf of the Secretary of State.*

### Format of S40B and 40E Authorisations

- 5.11 Authorisations need to be in writing and need to specify the provisions in the Act that they relate to. Authorisations are made either on behalf of the Secretary of State by a senior official (Deputy Director of Custody, Director) or on behalf of the Secretary of State through

a PSI (annex 4), or the Prison Act allows Governors and Directors of contracted out prisons to grant an authorisation themselves. In addition, Governors and Directors of contracted out prisons may nominate someone in the prison to make authorisations on their behalf for conduct covered by section 40C and 40D of the Act; that is, the conveyance and of List B and C items, the possession offences and other offences relating to prison security. However, only Governors or Directors may authorise the conveyance of List A items under section 40B - they can not nominate someone to authorise this conduct on their behalf. *Also, the Board agreed that mobile phones must be authorised by the Deputy Director of Custody – see paragraph 5.14. Examples of prison authorisation under S40B and 40E are shown in Annex 2.*

- 5.12 Authorisations can be as general or specific as needed and can be for a specified time or open-ended or on such terms as indicated. Governors and Directors of contracted out prisons may delegate responsibility to other members of their staff for providing authorisations, as deemed appropriate but not for authorisations for conveying, etc List A items.

### **Local Lists of Prohibited Items**

- 5.13 The authorisations provided in this PSI do not over-ride reasonable local rules and restrictions set down in individual prisons' Local Security Strategies concerning the bringing in and possession of a wider range of prohibited items. However, contravention of local regulations will not be a criminal offence unless there is also contravention of the Prison Act. For example, a prison may require a solicitor to declare in advance that they are bringing in a sound recording device. If the solicitor does not comply then administrative action may still be taken against the solicitor (assuming he/she was advised of the local regulation) but this doesn't also mean that the solicitor has committed a criminal offence as there is a central authorisation in place to make this action lawful in these circumstances.

*Governors and Directors of contracted out prisons must consider local restrictions set out in LSSs against the provisions of the revised Prison Act to ensure that they are comprehensive, clear and appropriate, and must ensure that local lists of prohibited items take into account as necessary all items covered by the introduction of these measures for prohibited items set out in Sections 40A to 40F of the Prison Act.*

### **Mobile Phones**

- 5.14 *Given the serious threat to security and good order that the presence of mobile phones pose within establishments, they must not be brought into or possessed within public sector or private sector closed prisons except in circumstances outlined in Annex 1 (2.2 mobile phones). Staff duties should be clarified to make it clear that the conveying of mobile phones in/out of the establishment or possession of mobile phones within an establishment is not part of the normal duties of staff and that where there is a legitimate use for mobile phones within prison this should be covered by a specific S40E authorisation. Those authorisations issued centrally are shown in Annex 1 and Annex 2. Deputy Directors of Custody and not Governors or Directors are responsible for agreeing and issuing other S40E authorisations for mobile phones in public and private sector prisons. Where staff lockers are positioned inside the prison (i.e. past the gate lock) but near the gate and away from the rest of the prison - Governors and Directors may wish to ask Deputy Directors of Custody to agree to them issuing a general authorisation that allows staff to take mobile phones into the prison but only on a clearly defined route to staff lockers and not beyond the room/corridor where lockers are positioned. This may not be feasible in prisons where staff are routinely searched on entry at the gate.*
- 5.15 Given the lower level of security concern in open prisons it has been agreed that these additional restrictions do not apply to fully open prisons. A central S40E authorisation for conveying and possession of mobile phones has been provided at annex 2 for staff or

professional visitors working at open prisons. This is subject to the local agreement of the Governor and if Governors/Directors of open prisons do not wish to allow staff and/or professional visitors to bring in mobile phones and/or possess them within prisons they should make this clear in a local Governor/Director instruction (outside of the Prison Act) if one is not already in force. In these circumstances it will not be a criminal offence for staff or professional visitors to bring mobile phones into open prisons or possess them within prisons if they disobey the local instruction.

- 5.16 NOMS Escort Contractors, GEOAmev, have been provided with a central section 40E authorisation (see Annex 2, section D) to bring into and out of all prisons and use within these prisons Blackberry devices for operational purposes. However, these devices must be voice-disabled so they can not function as a mobile phone to make telephone calls. Other restrictions that must apply are provided at Annex 2, section D. These devices are designed to improve efficiency and are used to log prisoners in and out of reception and to allow escort staff to record related prisoner-information such as potential security risks, self-harm issues and medical needs.

### **Passing of List C Items to Prisoners**

- 5.17 The bringing in of items listed under "List C" overleaf (tobacco, money, food, etc) is an offence and will only need authorisation under these rules if the intention is to give one of these items to a prisoner. For example, there is no offence committed by bringing in money but there is an offence if the intention is to pass money to prisoners or money is actually passed to prisoners. In addition, there may be local prison rules prohibiting the bringing in of some of these items or more than a certain quantity of these items. *These local rules must still be adhered to although non-compliance will not be a criminal offence.* However, for IT equipment, please note that it is an offence to possess within a prison any item within a prison which is capable of transmitting or receiving images, sounds or information by electronic communications without authorisation – see chapter 4. *Therefore, IT equipment which falls within this definition must be authorised by the Governor/Director in all cases.*
- 5.18 Giving any of these items to a prisoner is an offence unless authorised or your normal duties are to give/sell these items to prisoners. There may be occasions when individual members of staff may wish to pass one of these items to a prisoner to assist the prisoner in some way. *If staff need to give any list C item to a prisoner and it is not part of their normal job to do so they must seek specific authority from the governor (or person delegated to give authority by the Governor).* This authority need not be in writing as it is a simple clarification of normal duties and as such would mean that Crown Immunity should be available. However, if there is any risk of uncertainty or the act is one that will be a change of duties on an ongoing basis then it would be better to put this in writing. Governors and Directors of contracted out prisons may wish to delegate this authorisation to, for example, line managers. It should be noted that bringing these items in with the intent of giving them to a prisoner is not a new offence.

### **Special Cases**

#### **Solicitors/Legal Advisers**

- 5.19 Sound Recording Devices: Solicitors and other legal advisers to prisoners have been issued with central authority to bring and/or possess in prison sound recording devices to allow them to record interviews with their clients. They have also been given central authority to take sound recordings out of the prison. There is, therefore, no need for prisons to issue local authorisations for these devices. These recording devices can be digital or mechanical devices. They must not contain a camera, video recorder or mobile phone. These devices must not be passed to prisoners. They must be logged on entry and again on exit to the prison to ensure that they are not left behind. The Law Society and

Criminal Bar Association has been informed of this authorisation and associated restrictions.

- 5.20 Mobile Telephones: Solicitors do not have central authority to bring in and/or possess mobile telephones other than at open prisons and only then if the local open prison regulations allow this.
- 5.21 Computers/IT Equipment: It is a criminal offence to possess within a prison without authorisation computers/IT equipment which have the potential to transmit or receive images, sounds or information by electronic communications. It is also a criminal offence to possess component parts of such equipment without authorisation. While many items of IT equipment include capabilities which may pose a security risk, including in-built cameras and/or internet connectivity, legal advisers have been given central authorisation to bring such items into prisons when visiting clients given that (a) they will be used in a controlled environment and within the general sight of staff and (b) the Criminal Justice System as a whole is now moving towards a paperless system – it is no longer realistic to expect legal advisers to print off all documents that their clients may need to consider at legal visits.
- 5.22 The central authorisation (at Annex 2, section B) allows legal advisers to bring into legal visits IT equipment that is necessary for consultation with their clients and on those cases on which they are engaged with that particular client. This is provided that there is no intention on the part of the legal adviser for the prisoner to retain any part of the equipment or component part or data once the visit is concluded. It is not, therefore, a criminal offence for legal advisers to convey or possess a laptop, or associated computer media (i.e. data sticks, CDs) within a prison for these purposes. Annex 2, section B sets out the various restrictions on the types of computer equipment that can be brought into legal visits and the way it is used. Note that it is still a criminal offence for legal advisers to use such equipment in order to transmit in or out of the prison images, sounds or information by electronic communication or to take photographs or video images whilst in the prison.
- 5.23 Legal Advisers must not attempt to bring in any other items apart from the single computer and any necessary data media. Any spare SIM cards or other computer items must be left outside the prison. To do otherwise will risk the items being seized by the prison and it is also possible that the items may not be covered by the authorisation at Annex 2 and the conveyance and possession might then constitute a criminal offence.
- 5.24 However, the presence of an authorisation to bring such equipment into legal visits does not infer an automatic right to do so. It simply means that it is not a criminal offence to do so. Prisons may still impose additional administrative restrictions on items allowed into the prison where there are reasonable grounds to believe that these restrictions are necessary to prevent unauthorised communications by prisoners or other security breach. Unless there is good reason to suspect that this is the case then prisons should allow solicitors to bring necessary IT equipment into legal visits or implement alternative arrangements which allow solicitors to properly brief their clients electronically (such as use of specialised HMP laptops or remote docking points for solicitor laptops).
- 5.25 Prisons should put measures in place to minimise any associated risks where required. Any action taken should be proportionate to the potential risks in bringing the equipment into legal visits, taking into account factors such as the prisoner type involved and the category of prison in question. Any action must be defensible in case of legal challenge.
- 5.26 Legal visitors must check in advance of any prison visit to confirm local restrictions on items allowed into the prison in question. Prisons should be clear of any local regulations and must check all items in and out of the prison at the gate. Legal advisers are responsible for all equipment brought into the establishment and should ensure they have all items with them when they leave. Any requests for data, or IT equipment, to be passed permanently to

the prisoner should be declared to the prison and considered under "Access to Justice Laptop" arrangements within the prison.

- 5.27 Any disagreements between legal advisers and prison staff about authorised items at legal visits, and which cannot be resolved at the time, should be put in writing to the Governor/Director of the establishment concerned. Any complaints that still cannot be resolved at local level may then be escalated to the Deputy Director of Custody or equivalent. The Law Society holds details of DDC offices and the prisons they cover. General queries on national policy in these areas can be made to NOMS headquarters ([Emma.Prince@noms.gsi.gov.uk](mailto:Emma.Prince@noms.gsi.gov.uk)).
- 5.28 Solicitors and barristers will face increasing difficulty in court in producing printed copies of documents for purposes of consultation with their clients. Because of this it has been agreed to allow legal advisers to bring laptop computers or equivalent into court cells or holding areas. PECS escort contractors have been instructed to facilitate this from 1 March 2012. Similar restrictions and conditions to those applying in legal visits have been set out for court cell visits – see Annex 9.

#### Ombudsman and Inspectorate Staff

- 5.29 NOMS has asked the Ombudsman and Chief Inspector of Prisons to agree that they and their staff do not bring in mobile phones to closed prisons. They have also been asked to keep to the minimum that is essential for their work the bringing in of sound recording devices and cameras. Both the Ombudsman and HMCIP staff will of course wish to take away documents which may be considered "restricted documents" under this legislation. Subject to these voluntary restrictions both organisations have been granted authorisation outside of this PSI to convey in and out of the prison those items necessary for their work. This includes data storage devices where required.

#### Police

- 5.30 Police officers have been provided with a central authorisation (at Annex 2, section C) to convey into and out of prisons and possess within prisons certain restricted items on routine visits to prisons and on visiting prisons in response to operational emergencies. This includes periods of industrial action in instances where the police are called to work in a prison.
- 5.31 When visiting a prison on routine official business which is not an operational emergency, police officers are authorised to bring into, possess and take out of a prison: batons, Airwave radios (within integrated mobile phones) and other mobile communication devices where required or that may be needed for operational purposes. However, the presence of an authorisation does not infer a right to do so. It simply means that it is not a criminal offence to do so. Prisons may still impose additional administrative restrictions on items allowed into the prison on the grounds of security. Police officers are responsible for all equipment brought into the establishment and should ensure they have all items with them when they leave.
- 5.32 When visiting a prison in response to an operational emergency or incident, in addition to the items authorised at paragraph 5.28, police may also bring into and take out of a prison any firearm (including ammunition and explosives), Taser weapons and any item of personal protection equipment, including incapacitant sprays, where required or that may be needed for operational purposes. Police or Scenes of Crime Officers may also bring in, use and take out of a prison any camera or sound recording device for operational purposes and may convey out of prisons any photograph or sound recording they have produced with this equipment. In addition, a central authorisation has been provided for the possession of vehicle tracking devices held in police vehicles provided that they stay in the vehicle.



### Delivery Drivers

- 5.33 Delivery vehicles are often required to drive directly into prisons and as such may be conveying unauthorised items. Central authorisations have been issued (Annex 2, section A) to allow delivery drivers to bring in, for example, controlled drugs to pharmacy. In these cases the authorisation is valid where the driver has a legitimate delivery note for that item and the delivery note names the prison being entered.
- 5.34 Contractors have been asked to try and minimise the occasions when they enter prisons with other prohibited items on board their vehicles (which may be for delivery to a following customer). Delivery drivers may convey into the prison prohibited items intended for delivery at another address provided that there is no intention to bring those items out of the delivery vehicle whilst it is within the prison grounds (authorisation provided at Annex 2, section A).
- 5.35 Delivery vehicles will often have mobile phones. A central authorisation has been issued that allows these phones to enter prisons outside of the High Security Estate in the cab of the delivery van as long as the phone remains in the cab and the vehicle is under staff supervision whilst in the prison. It is for the prison to decide whether it wishes to take further action in, for example, stopping these phones entering the prison and storing them at the gate. For High Security prisons, mobile phones must be handed in at the gate and stored in lockers for the duration of the visit. It should be noted that the taking of a photograph whilst inside the prison (with a mobile phone or camera) is a criminal act unless authorised.

### Pest Control

- 5.36 On rare occasions prisons are granted authority to employ a licensed marksman to shoot pests where other pest control measures have failed. A local S40B authorisation will be needed to bring in firearms and ammunition. Deputy Directors of Custody should be asked to approve the use of a licensed marksman and to either issue a S40B authorisation themselves on behalf of the Secretary of State for the conveying of firearms and ammunition or to instruct the Governor/Director to do that themselves in their own right. Annex 2 provides an example of such an authorisation.

### Press

- 5.37 If members of the MoJ Press Office bring in cameras and sound recording devices on official business, Crown Immunity should normally be available. *The Governor/Director must issue a S40E authorisation for external press for bringing in these items to a prison and for using these items within a prison, in addition to taking out of the prison any sound recordings or photos taken in the prison (note - these are separate offences and all need to be authorised).*

### Medication

- 5.38 A central S40B authorisation has been provided for staff to bring in controlled drugs as part of prescribed medication subject to the member of staff seeking agreement from the Governor/Director or their nominated representative to do so. This is on the condition that (a) the controlled drug has been prescribed for their own use; and, (b) it is or may be necessary for them to take that drug whilst on prison premises for healthcare reasons; and, (c) they have followed any local rules and authorisations for bringing into prison such drugs.

5.39 Visitors will be covered by a central S40B authorisation for bringing in controlled drugs as part of medication. *Again this is subject to (a) the controlled drug having been prescribed for their own use; and, (b) the visitor must declare the drug on entry and state that it is necessary for them to take that drug whilst on prison premises; and, (c) the prison must be satisfied that this is the case (it is not for the prison to make a medical judgement about the need for the drug but they can insist the drug is not taken into the prison or refuse entry if there are suspicious circumstances); (d) the visitor must follow any local rules and authorisations for bringing into prison such drugs.*

### **Summary of Actions for Governors and Directors of Contracted Out Prisons**

5.40 Governors and Directors of contracted out prisons (COP) do not need to take any further action in authorising individuals or groups whose activities are covered under Crown Immunity, or Extension of Crown Immunity or centrally issued Prison Act authorisations (see Annex 1). Governors and Directors of COP should consider the following:

- Are there any instances where the normal duties of staff need to be clarified to specify whether these duties include the conveyance and/or use of items covered in this legislation? (paras 5.6 to 5.9);
- Are there any other activities which are prohibited by this legislation that now need local S40B/E authorisations by the Governor/Director of COP or Deputy Director of Custody? (paras 5.10 to 5.12 and right-hand column of table in Annex 1);
- Does the Governor/Director of COP wish to nominate staff for issuing S40B/E authorisations for all but List A items? (para 5.11);
- Are local lists of prohibited items in the LSS consistent with this legislation? (para 5.13);
- Are staff clear about which items they have no authorisation at all to convey into the prison or use in a prison, particularly mobile phones? (para 5.14);
- Fully open prisons are exempt from the restrictions in the Prison Act on conveyance of mobile phones. Do Governors/Directors of COP who are responsible for open prisons wish to issue any local instruction (if one does not exist) to bar the bringing in/possession of mobile phones? (para 5.15);
- Does the Governor/Director of COP need to delegate to line managers (or others) the informal authorisation for passing of List C items to prisoners for those who would not be covered by Crown Immunity? (para 5.17).

## **Chapter 6: COMMUNICATION AND LIAISON**

### **Referral to Police**

- 6.1 Arrangements have been put in place with ACPO and the CPS for the charging and prosecution of individuals under the revised Prison Act. The dedicated Police Intelligence Officer (PIO) of each establishment should be the first point of contact for pursuing criminal charges against a person who is found to be in breach of the Act. PIOs have been briefed on the new provisions and processes and are responsible for briefing other staff on charging and initiating criminal proceedings. They may also be contacted for general advice on the revised Act.
- 6.2 See Chapter 7 for comprehensive guidance on referring offences prohibited item and other related offences to the police.

### **Information Notices**

- 6.3 Model information notices on the prohibited item and related provisions of the Act can be found at Annex 4. *Governors and Directors of contracted out prisons must ensure that the relevant sheets, or local notices incorporating the details provided, are distributed to prisoners and staff and are made available to social, official and professional visitors.*
- 6.4 National organisations and official departments who work with and who are in regular contact with prisons, including HMCIP, have received this information and have been briefed and consulted with in respect of the introduction of these provisions (Annex 5). *However, notices should be made available to these groups as required and must be provided in visit rooms.*

### **Signs Outside Prisons**

- 6.5 It is a requirement of the Prison Act that each prison displays in a conspicuous place outside the prison a sign which lays out the penalties for committing offences under Section 40B to 40D of the Prison Act. The penalties were changed on introduction of the offences brought about by the Offender Management Act and the penalties for the new possession offences introduced in the Crime and Security Act now need to be added. The revised signs are shown at Annex 6. Coldingley prison, who make signs, are aware of the new changes with regards to the possession offences and prisons should order new signs from Coldingley to replace the existing signs as soon as possible but not to display the new signs before the commencement of the provisions of the Act.

## **Chapter 7: REFERRAL OF PROHIBITED ITEM OFFENCES TO THE POLICE**

### **Main Factors for Consideration in Decisions to Refer Incidents to the Police**

- 7.1. All suspected incidents of conveyance and/or possession of prohibited items must be investigated to establish whether there is a case for further action to be taken and the nature of that action. This will depend on a number of factors:
- (a) evidence that the conveyance or possession was deliberate (see 7.2 to 7.5, below), without any element of knowledge there is no prospect of securing a conviction - paras 7.23 to 7.36 below provide guidance on minimising problems that may arise in this area;
  - (b) seriousness of the alleged offence in light of all the circumstances and linked to any aggravating factors (see paras 7.13 to 7.15, below), some categories of case should always be referred to the police, regardless of the circumstances, whilst others may have aggravating factors which would indicate a referral is appropriate;
  - (c) local policy on pursuing prosecutions in different circumstances as agreed with local CJS partners (see paras 7.21 to 7.22), prisons should be discussing local crime reduction priorities with police and CPS partners and these may indicate referral of certain offences in addition to those indicated at (b) above;
  - (d) the availability of more effective administrative measures for prisoners, staff or visitors (see paras 7.6 to 7.12 below).

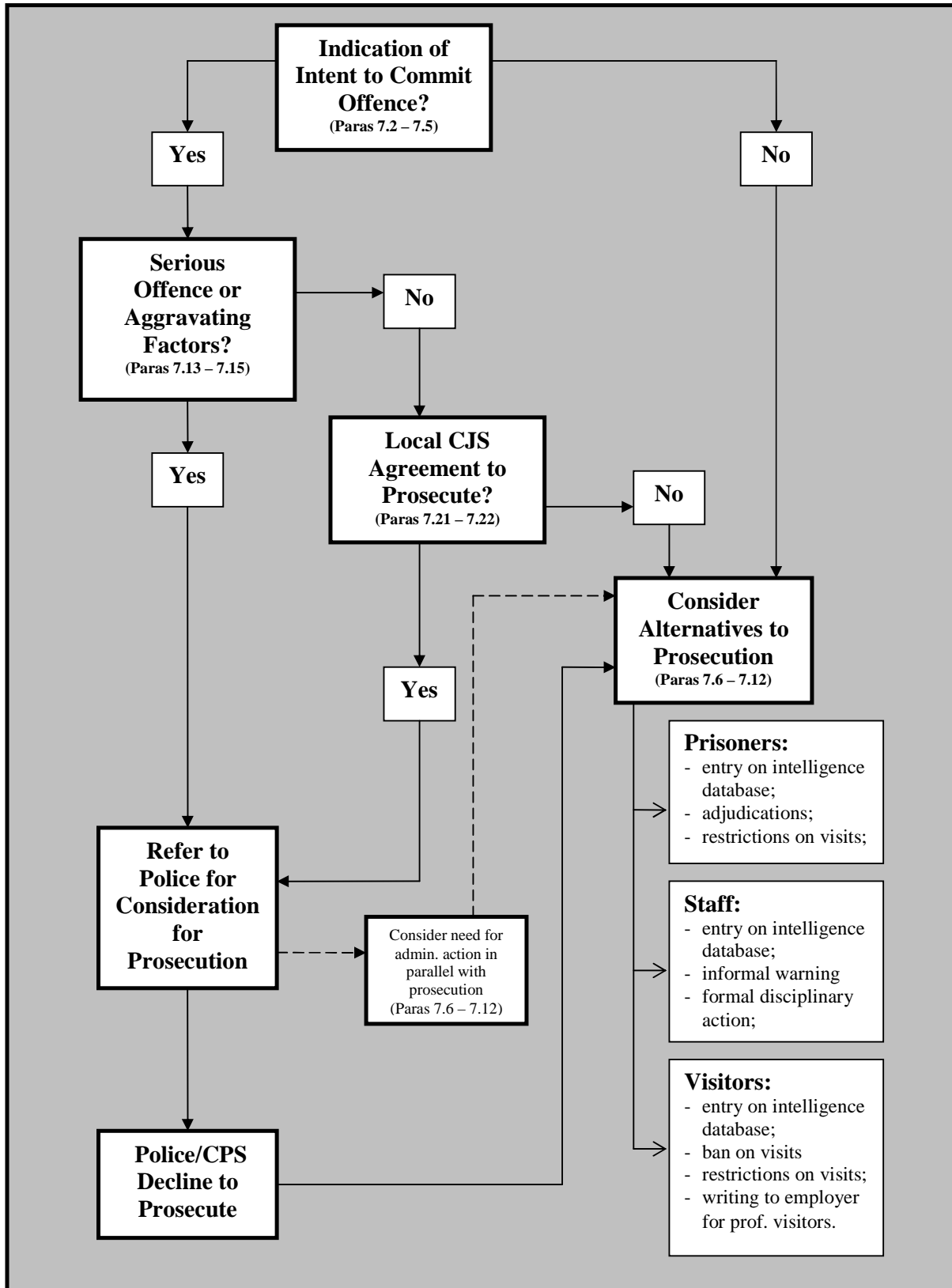
The overall process for reporting prohibited item offences to the police is outlined in figure 1 overleaf.

### **Necessary intent**

- 7.2. None of these prohibited item offences are strict liability offences. This means that to secure a conviction the person must have 'knowingly' possessed or conveyed the prohibited item – in other words the prosecution must disprove any claim that the person concerned genuinely believed that he/she was not in possession of the item.
- 7.3. It is also a defence to the offences under sections 40C and 40D for a person to show that he/she reasonably believed that he/she had authorisation to bring the item into prison. This is not the same as being ignorant of the law. Ignorance in itself is not a defence, but a person, particularly a member of staff, may genuinely believe that he/she had authority to bring in an item. This is one of the reasons why clarity on prohibited items, good quality briefing and clear signage is so important.
- 7.4. The prison, police and CPS, therefore, need to distinguish between those who make a genuine mistake in bringing prohibited items into prison and those who knowingly or deliberately try to bring prohibited items into prison. The guidance shown in paragraph 7.23 onwards is meant to provide best-practice advice to prisons on how to assess whether, in an individual case, further action should be taken and to minimise difficulties in dealing with this area.
- 7.5. If there is no evidence that the conveyance or possession of the prohibited item was deliberate then the prison should consider alternatives to referral to the police. Examples are highlighted in figure 1 and discussed below and will vary depending on the circumstances of the case and the person involved. At minimum an informal warning should be given together with consideration of whether to enter details of the incident onto

the intelligence database. If there is doubt about intent then prisons may still wish to refer to the police, particularly serious offences, and allow the police to determine the facts.

**Figure 1: Process for Reporting Prohibited Item Offences to the Police**



### Where it is Decided not to Notify the Police or the Police/CPS Decide not to Pursue a Prosecution

- 7.6. If it is decided that there is insufficient preliminary evidence of smuggling/possession to call the police then it is still possible to take other action; and some of the action below can also be taken in parallel with any pending prosecution unless issues of double jeopardy arise <sup>note<sup>1</sup></sup>.
- 7.7. All suspicions of smuggling/possession should be logged and entered onto the intelligence system.
- 7.8. Administrative action may be considered against visitors who are found to have a prohibited item, ranging from exclusion from that visit; permanent exclusion from the prison or exclusion from open visits. It is still possible to take administrative action in cases where it is decided not to refer the case to the police, although in cases involving visitors there should, nevertheless, be on balance a reasonable and defensible belief that the person excluded was attempting to smuggle in a prohibited item before this is done. See NSF Function 10.1 – Management of Security at Visits (PSI 15/2011) for further guidance.
- 7.9. Prisoners who are found in possession of a prohibited item may be subject to internal adjudication for possession of a prohibited item (see PSI 47/2011, Prisoner Discipline Procedures). If a prosecution is being considered the adjudication should still be opened but then adjourned to await a decision by the police or CPS on prosecution <sup>note<sup>1</sup></sup>.
- 7.10. Staff suspected of smuggling prohibited articles can be dealt with in line with internal disciplinary procedures regardless of whether the police have been informed (see PSI 2010/06 and AI 2010/05 – Conduct and Discipline). Depending on the circumstances, staff may be suspended from duty pending the outcome of any disciplinary investigation. Cases should always be reported to line management.
- 7.11. National Dog and Technical Support Group (NDTSG) must be notified of any mobile phones/ SIM cards that are found and they are also able to interrogate these items. All mobile phones/ SIM cards must be sent to NDTSG for interrogation if not referred to the police for investigation (see NSF 6.8 – Phone Interrogation Instructions (PSI 30/2011) for further information).
- 7.12. If a visitor or staff member is found in possession of a mobile phone or SIM card written consent must be sought before the item is sent to NDTSG for interrogation (see NSF 6.8 – Phone Interrogation Instructions (PSI 30/2011) for further information).

### Seriousness of the Alleged Offence

- 7.13. Whilst there should be discretion for prisons to agree with local CJS partners a local policy on when cases are referred for prosecutions (see paragraph 7.21-7-22), there will be those alleged prohibited item offences which must always be referred to the police for consideration for prosecution once consideration has been given to whether the person

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<sup>note 1</sup> Double jeopardy - where prosecution is under consideration then adjudication against prisoners for the same offence should await any decision on prosecution otherwise the CPS and/or courts may decide that this administrative action has interfered with the powers of the court to deal with the matter since it could result in the person being subject to two sets of punishments. In the case of adjudications the proceedings should be opened and immediately adjourned awaiting the police/CPS decision (PSI 47/2011). NOMS policy is to proceed with disciplinary action against staff in parallel with any criminal investigation (PSI 2010/06).

concerned had the necessary intent or knowledge. These are classified as “serious” offences (as set out in table 1, below). Prisons do of course have discretion to refer other prohibited item offences if there is local CJS agreement to do so or there are other aggravating factors in the particular case.

7.14. Aggravating factors for non-serious offences include:

- there are grounds for believing that the offence will be repeated – e.g. by a history of recurring conduct;
- the scale of the find (i.e. large quantity of drugs or SIM cards) and any other evidence that the accused was in possession of the item for supply or hire to others (such as drugs in multiple wraps);
- some evidence of a specific link with criminality or threat to prison good order and discipline (e.g. evidence that a mobile phone is linked to specific offences);
- the offence is suspected of being TACT-related or more generally related to serious or organised crime;
- the offence is linked in some way to staff corruption;
- type of prison and/or prisoner – prisons such as open and juvenile establishments, for example, may decide to channel resources into dealing with offences locally rather than pursuing prosecutions if it is believed that illicit items, such as mobile phones, are largely being used for non-criminal purposes; High Security prisons might chose to discuss with CJS partners the referral of all mobile phone offences to the police on the grounds that there is greater likelihood that such items are being used for criminal purposes;
- whether there are linked charges that the police will wish to pursue and whether referral will allow the package of charges to be pursued together. (e.g. smuggling of mobile phones with drugs);
- evidence of conspiracy to commit offence (e.g. more than one person operating together at visits);
- the likely sentence the offence will attract if found guilty at court; it may be that establishments decide to refer cases where there is a likelihood of a substantial sentence with a greater deterrent effect than punishments available through adjudication or other disciplinary action.

7.15. The main types of alleged prohibited item offences that should always be reported to the police are set out in the following sections and the summary table below:

**Table 1: Serious Prohibited Item Offences – Automatic Referral to the Police**

Prohibited Item	Prisoners	Visitors	Staff
<b><u>Drugs</u></b>			
With intent to supply	<b>Auto.</b>	<b>Auto.</b>	<b>Auto.</b>
Without intent to supply	Aggr.	<b>Auto.</b>	<b>Auto.</b>
<b><u>Weapons</u></b>			
Firearms/imitation firearms, explosives, ammunition	<b>Auto.</b>	<b>Auto.</b>	<b>Auto.</b>
Offensive weapons	Aggr.	<b>Auto.</b>	<b>Auto.</b>
<b><u>Electronic Items</u></b> (including mobile phones)			
Any type	Aggr.	Aggr.	Aggr.
<b><u>Documents</u></b>			
Any type	Aggr.	Aggr.	Aggr.

**Auto.** = Automatic Referral, regardless of aggravating factors. **Aggr.** = Refer if aggravating factors or local CJS agreement (see sections below for each offence type).

## **Detailed Guidance for Each Prohibited Item**

### 7.16. Drugs

Establishments should consider with their local police managers reporting all drug-related criminal offences to the police so that even if the police decide not to investigate the crime it can still be recorded on national crime statistics and thereby influence future local and national policing priorities. If this is done any adjudication may need to be adjourned until a decision on referral for prosecution is made by the police.

*The following must be referred to the police:*

- (a) alleged possession/conveyance of any type of controlled substance (class A, B or C) regardless of quantity by staff or visitors since in these cases the suspicion must be of an intent to supply, it is then for the police to investigate further;*
- (b) alleged possession/conveyance of class A, B or C drugs by prisoners where the quantity, packaging or other evidence (or intelligence) suggest possession with intent to supply;*
- (c) alleged possession/conveyance of class A, B or C drugs by prisoners without evidence of supply or intent to supply where there are (i) other aggravating factors (see below), or (ii) where there is support from the local police and CPS to pursue such prosecutions. Prisons must take every opportunity to highlight to the police and CPS the damage caused to prisons and society by the presence of drugs within their prison and press for a firmer line on referral for prosecution.*

Aggravating factors that might support a case for referral to the police for investigation of drug-related offences without an intent to supply would include: prisoners with a previous history of committing within prison drug-related offences; possession of drugs within drug-free wings; possession within prisons with particular problems with drugs or certain types of drugs (for examples where drug-related deaths have occurred).

### 7.17. Weapons

The following should be referred to the police:

- (a) alleged possession of firearms, imitation firearms, explosives or ammunition, by staff, prisoners or visitors;
- (b) alleged possession of offensive weapons (as defined in section 1(9) of the Police and Criminal Evidence Act 1984), knives, kitchen or workshop implements, home-made weapons etc) by prisoners if there is evidence to suggest that the weapon was intended for use in the commission of a further serious criminal offence (such as a serious assault or an escape);
- (c) all cases of alleged possession of offensive weapons by visitors or staff.

### 7.18. Electronic Items

Offences related to electronic items are as follows:-

Without authority:



- (a) Conveyance in or out of prison or possession within prison of devices capable of transmitting or receiving images sound or information by means of electronic communication. Examples include: mobile phones, pagers, wi-fi enabled laptops or game consoles or other IT equipment which has the potential for electronic communication, plus any component part of those devices (such as SIM cards) or any article designed or adapted for use with such a device such as data cards, data sticks, etc.
- (b) Conveyance of cameras.
- (c) Conveyance of sound recording devices.

The minimum level of reporting to the police for the above (a to c) is as follows:

For staff and visitors: refer any of these alleged offences to the police where there is prima facie evidence that the possession or conveyance was done in order to seriously undermine the security of the prison by, for example, evidence of deliberate passing of a mobile phone to a prisoner or intent to do so, or the use of the item to take photographs or gather material which might undermine the security of the prison, or where it is believed that there are other aggravating factors such as the person is believed to be a repeat offender (see 7.14 above).

For prisoners: refer alleged offence of possession or conveyance where there is prima facie evidence that the prisoner conveyed the item, or the item was in the possession of the prisoner, in order to assist in or commission a further criminal offence such as an escape attempt, supply of illicit drugs, harassment, or any other criminal offence or the prisoner is a repeat offender, or there are other aggravating factors (see 7.14, above).

Note: Possession or conveyance of electronic items without additional supporting evidence of a further criminal offence can still be referred but it is advisable to seek local agreement with CJS partners in these cases.

#### Evidence Required To Prove Possession

7.19 The minimum evidence required to prove possession of any unauthorised article is the same as that for adjudication - presence, knowledge and control of that item. For prisoners, in cases where it is not clear that the matter should be referred to the police, establishments may wish to firstly initiate disciplinary proceedings and take the alleged offence to adjudication. *If the adjudicator is of the view that the case warrants police involvement then the adjudication must be adjourned for referral to the police.*

#### 7.20 Documents

These offences are:-

Without authorisation:

- (a) Bringing or otherwise conveying a “restricted document” out of a prison or causing such a document to be brought or conveyed out of a prison. Note: in these terms a “restricted document” is not the same as a document with a security classification of restricted. The term covers a wide range of official documents, photographs, etc regardless of security classification. See the definition of “restricted document” in section 40E(4) of the Prison Act 1952 and para 3.5 of this instruction for further information.

- (b) Transmits, or causes to be transmitted any image or any sound or information from inside a prison by electronic communications for simultaneous reception outside the prison. This includes use of mobile phones, pagers and wi-fi devices.
- (c) Takes a photograph or makes a sound-recording inside a prison.

Note: in appropriate cases the police/CPS may consider it more appropriate to charge the equivalent offences relating to conveyance or possession of prohibited electronic items where there is evidence of this.

The minimum level of reporting to the police is as follows:

- (a) For staff and visitors: refer alleged offences to the police where there is prima facie evidence that the offence was committed in order to undermine the security of the prison by, for example, taking photographs of sensitive areas of the prison; or to publish restricted documents (as defined in section 40E(4) of the Prison Act) for example to publish without authorisation photographs or other personal details of prisoners, or where it is believed that there are other aggravating factors such as the person is believed to be a repeat offender.
- b) For prisoners: refer alleged offence of this nature where there is prima facie evidence that the offence was committed in order to assist in or commission a further criminal offence such as an escape attempt, supply of illicit drugs, harassment, or any other criminal offence or if the prisoner is a repeat offender, or where there is evidence that the prisoner intended to commit the offence in order to publish details of another prisoner.

Note: Offences without additional supporting evidence of a further criminal offence can still be referred to the police but it is advisable to seek local agreement with CJS partners in these cases.

### **Liaison with Local CJS Partners**

7.21 A criminal offence may have been committed by the simple possession and/or conveyance of the prohibited item concerned provided that the required knowledge or intent was present. However, the police and CPS will consider the merits of each individual case in accordance with the Codes and principles which apply to them. In particular they will consider whether prosecution is in the public interest depending on the specific circumstances of the case and the overall context of the crime in that particular prison/area. Prisons are encouraged to engage in local tri-partite discussions with CJS partners to explain the specific crime and control issues that these offences create in the prison and highlight any perceived need for prosecution over and above the action provided for by administrative measures or internal adjudication. Many areas have Local Criminal Justice Boards and prisons are invited to participate in these.

7.22 In addition to this, governors are able to provide Evidential Statements for any crime being considered for prosecution. These statements provide further information to the police for consideration and possible inclusion in any file passed to the CPS. They describe the wider issues and impact which have arisen as a result of that crime. For example, if a prison has particular examples it can put forward showing how use of illicit mobile phones in that prison has contributed to crime then this statement can be submitted to the CPS when the police refer the file for consideration for prosecution. The local PIO can assist in drawing up these Statements for different crimes in that particular location which will then simply need updating routinely.

## **Minimising Difficulties in Demonstrating the Required Knowledge or Intent in Prohibited Item Offences**

- 7.23 The prohibited item offences, listed above, are not strict liability offences. This means that to secure a conviction it must be proved that the person knowingly possessed or conveyed the prohibited item. It is therefore a defence if a person (whether visitor, staff or prisoner) genuinely believed that he or she was not in possession of the item. This requires the police and CPS to distinguish between those who make a genuine mistake in bringing into prison a prohibited article and those who deliberately try to bring prohibited items into prison. It is also a defence to the offences under section 40C and 40D for a person to prove that they reasonably believed a particular item is authorised. The guidance below is meant to provide best-practice advice to prisons on how to assess whether there is the necessary knowledge and to minimise difficulties in this area.
- 7.24 In general, if the guidance below on initial preparations is followed then it should be clear that anyone entering the prison would have been aware of the rules and regulations relating to prohibited items. Evidence gathered at the search area will then help to further interrogate the strength of a case against a person claiming that they were unaware they had a prohibited item on them.

### **Initial Preparations**

- 7.25 Ensure that all parties coming into a prison are aware of the items that are prohibited in the prison, the fact that it is a criminal offence to convey into and/or use certain items within prison and the penalties for doing so.
- 7.26 If possible, inform visitors of prohibited items before they get to the prison by way of, for example, inserts in visitor information, or leaflets in letters, or general circulars to professional visitors or delivery companies.
- 7.27 At the prison it is a legal requirement to display the detail of these offences and their penalties on a fixed sign at or near the entrance. However, this is not sufficient in itself. External visitor centres, for example, should be well signed and/or leafleted to explain in simple terms the items prohibited. It is worth considering the use of highly visual signage to address issues of literacy or non-English language speakers.
- 7.28 Professional visitors should have a similar opportunity to see clear guidance on what is and what is not allowed in the prison before they arrive at the search area.
- 7.29 Staff must be made aware, and reminded on occasions, of the items they are not allowed to bring into the prison and the consequences of breaching these rules. New staff in particular should be told of these restrictions in advance of coming to the prison and briefed again on arrival.

### **At the Search Area**

- 7.30 Ideally, before anyone is searched they should be advised of those items that are prohibited inside a prison and invited to check themselves and any baggage for these items.
- 7.31 Establishments should ensure, wherever it is practical to do so, that visitors are provided with lockers or other means in which to store prohibited items such as mobile phones.

These should be outside the visitor gate entrance, preferably in a visitor centre. Signs and instructions to visitors must make it clear that to bring these items into the visitor search area is a criminal offence.

- 7.32 Searching staff should be as careful and detailed as possible in dealing with someone who is found with a prohibited item. Staff should note all the circumstances of the find and the reaction of the person. This will all be important evidence if the case is referred to the police.
- 7.33 A supervisor should be called as soon as practicable to assist in dealing with the person and to act as a second witness to events.
- 7.34 The primary issue to be dealt with by gate staff is whether there is sufficient evidence to notify the police at this stage. Discussions with the person should be limited to determining this issue. If staff reasonably believe the person did know that they were in possession of the item at the relevant time and that the item was prohibited (i.e. that there was no authorisation in place in respect of the item), then this is a sufficient basis on which to call the police if the nature of the crime is such that it warrants police involvement (see section 3, above). All evidence should be preserved and the person should be held and isolated awaiting the arrival of the police or decision of the police to attend. Remember that prison officers have the powers of a constable in relation to their duties as a prison officer which includes the powers of arrest. It may be necessary to exercise these powers in cases where the person does not agree to be held pending the arrival of the police.
- 7.35 For cases which are less clear the factors to take into account include:
- where the item was found – was it found in an unusual place, did it appear to be deliberately concealed;
  - did the person attempt to hide or mask the item when searched;
  - what was the reaction of the person when the item was found;
  - what did they offer in way of explanation for bringing in the item;
  - was this the person's first visit to a prison and could they, therefore, have been unfamiliar with the procedures;
  - if persons are first asked to check themselves for prohibited items then why was this not discovered by the person;
  - what did they say when they were reminded of all the notices and verbal warnings they had just passed alerting them to prohibited items;
  - if the item was a component part of a prohibited article (mobile phone battery, SIM card, etc) then what was the explanation for having these in a disassembled form;
  - analysis of the data held on mobile phones and SIM cards may prove or disprove the evidence given by the person, for example, by showing patterns of usage and contacts;
  - if two or more persons are in possession of separate component parts and visiting the same prisoner, then the police and CPS may wish to consider whether they are involved in a joint enterprise, in these cases any information linking persons should be provided to the police;
  - what is the relationship of the person to any prisoner they were visiting – a credible professional visitor may be less likely to be smuggling than an unknown domestic visitor?
- 7.36 Any information of the type above will be valuable in directing police inquiries. All information should be passed to the police on arrival.

## Examples of Types of Authorisation

The following table lists examples of acts of conveyance, possession or use of items which are prohibited under Sections 40B, 40C and 40D of the Prison Act. This is not meant to be an exhaustive list. The various means of authorising these actions are indicated by the four columns. The final column indicates authorisations required under S40B or 40E of the Prison Act that Governors/Directors or Deputy Directors of Custody may need to issue.

√ = authorisation type applies. See notes at foot of table.

Example	For Whom	Crown Immunity (note 1,2)	Extended Crown Immunity (S40F) (note 3)	Central S40B/E Authorisation (note 4)	Local S40B/E Authorisation (notes 4,5)
<b>1. Conveying, etc List A Items (S40A&amp;B)</b>					
<b>1.1 Controlled Drugs</b>					
Conveying routine pharmacy, medical, veterinary, dental supplies from external store to Pharmacy.	Store staff bringing in from external store	√			
Conveying routine pharmacy, medical, veterinary, dental supplies into prison	Medical supply company/delivery driver			√	
Supply of medication to prisoners	Healthcare staff	√	√		
Conveying of confiscated drugs in/out prison.	Prison staff with designated duty	√ <sup>2</sup>			
Conveying of drugs for detection, training and testing purposes.	Prison staff with designated duty, NDTSG	√			
Emergency paramedics/ambulance	Emergency staff			√	
Approved medication prescribed to staff	Those working in prison			√	
Medication prescribed to visitors	Visitors			√	
<b>1.2 Explosives</b>					
Emergency incidents	Bomb disposal/armed Services	√			
Emergency incidents	Police			√	
<b>1.3 Firearms/Ammunition</b>					
Police during incidents/operational emergencies	Police			√	
Army during incidents/operational emergencies	Army personnel	√			
Pest control	Licensed marksman (Deputy Director of Custody)				√ (DDC)

Example	For Whom	Crown Immunity (note 1,2)	Extended Crown Immunity (S40F) (note 3)	Central S40B/E Authorisation (note 4)	Local S40B/E Authorisation (notes 4,5)
	authorisation)				
<b>1.4 Offensive Weapons</b>					
Extendable batons	Staff	√			
Extendable batons when visiting a prison during incidents/operational emergencies and on routine official business	Police			√	
PAVA or other incapacitant Spray	National C&R team/ Police	√			
Dummy weapons for testing of searching procedures and training	Prison Staff with designated duty	√ <sup>2</sup>			
National C&R kit	NDTSG/National C&R/ Prison staff as required	√			
Taser weapons when visiting a prison during incidents/operational emergencies	Police			√	
Any item of personal protection equipment required or that may be needed when visiting a prison during incidents/operational emergencies	Police			√	
Kirpan	Sikh chaplains			√	
Tools/equipment	Works staff	√			
Tools/equipment	Contractors		√ <sup>2</sup>		
Kitchen knives/utensils Workshop knives/equipment	Staff instructors passing to prisoners	√			
Kitchen knives/utensils Workshop knives/equipment	Contractor Instructors passing to prisoners		√ <sup>2</sup>		
Knives, tools or other items that might be deemed offensive	Delivery drivers bringing in to prison			√	
<b>2. Conveying/possessing, etc List B Items (S40A&amp;C)</b>					
<b>2.1 Alcohol</b>					
Communion wine or other liquid containing alcohol used in religious ceremonies	Chaplaincy – giving to prisoners or bringing in for these purposes. Store staff – bringing in from external store	√			
Communion wine or other alcohol used in religious ceremonies	Delivery driver bringing into prison			√	
Transport out of seized substance for testing	Prison staff with designated duty	√ <sup>2</sup>			
<b>2.2 Mobile Phones (Crown Immunity does not cover conveying or possession of mobile phones)</b>					
<b>Bringing in/out or possession within a prison of</b>					

Example	For Whom	Crown Immunity (note 1,2)	Extended Crown Immunity (S40F) (note 3)	Central S40B/E Authorisation (note 4)	Local S40B/E Authorisation (notes 4,5)
<b>mobile phones for:</b>					
Emergency services on emergency calls	Emergency services			√	
Prison Service escort staff escorting prisoners outside prison	Prison service escort staff			√	
Contracted escort staff with mobile phones in cabs if phone stays in cab in prisons outside of the High Security Estate	Contracted escort staff			√	
Delivery van drivers with mobile phones in cabs if phone stays in cab	Delivery van drivers			√	
Mobile phones needed to be brought in/out as part of live incidents/emergencies	Prison Service staff including NTRG			√	
Airwave radios (with integrated mobile phones) required or that may be needed to be brought in/out for live incidents/emergencies	NDTSG staff/emergency services/Police			√	
Airwave radios (with integrated mobile phones) and other mobile communication devices required or that may be needed on routine, non-emergency visits to prisons on official business	Police			√	
Staff and professional visitors working in open prisons (subject to local agreements)	Staff and official visitors to open prisons			√	
Samaritan phones	Prisoners using or staff giving to prisoners			√	
<b>2.3 Cameras<sup>3</sup></b>					
<b>Bringing in/out of cameras for:</b>					
Serious incidents/covert surveillance	NDTSG, National C&R	√			
Serious incidents/covert surveillance	Police			√	
Investigations	Prison Service staff	√			
Scenes of Crime work and assisting in interviewing prisoners	Police and Scenes of Crime officers			√	
Investigations	Trade Union Health and Safety Representatives (with prior authorisation)			√	
Inspections	Inspectorates	√	√		
Delivery of cameras into prison	Delivery drivers			√	

Example	For Whom	Crown Immunity (note 1,2)	Extended Crown Immunity (S40F) (note 3)	Central S40B/E Authorisation (note 4)	Local S40B/E Authorisation (notes 4,5)
Carriage of camera from external store	Store staff	√			
Dog handlers in High Security Estate	Dog handlers	√			
Press photographers	Prison Service Comm. staff	√			
Press photographers	External press				√ (Prison)
Trade Union Health and Safety Representatives for use in investigations (with prior permission from the Governor)	Trade Union Health and Safety Representatives			√	
<b>2.4 Sound-Recording Device</b>					
<b>Bringing in/out and/or possession of sound recording devices:</b>					
Serious incidents/covert surveillance	NDTSG other Prison Service staff	√			
Serious incidents/covert surveillance	Police			√	
Investigations	Prison Service staff	√			
Scenes of Crime work and assisting in interviewing prisoners	Police and Scenes of Crime Officers			√	
Inspections	Inspectorates	√	√		
Investigations	Ombudsman	√	√		
Delivery of sound-recording device into prison	Delivery drivers			√	
Staff for use in dictation away from prison	Prison Service staff	√ <sup>2</sup>			
Interviews with prisoners	Legal Advisers			√	
Press interview	Prison Service Comm. staff	√			
Press interview	External press				√ (Prison)
<b>3. Conveying, etc List C Items – with intent to pass to prisoner (S40A&amp;C)</b>					
<b>3.1 List C Items – supply to prisoners</b>					
Examples include canteen, shop, library, wages	Any member of staff (crown servant) legitimately supplying items to prisoners	√	√		
Supply of Access to Justice Laptops to prisoners	Staff or contractors legitimately supplying items to prisoners	√ <sup>2</sup>	√ <sup>2</sup>		
Supply of educational IT to prisoners	Staff or educational contractors legitimately supplying items to prisoners	√	√		
<b>4. Other Offences (S40D)</b>					



Example	For Whom	Crown Immunity (note 1,2)	Extended Crown Immunity (S40F) (note 3)	Central S40B/E Authorisation (note 4)	Local S40B/E Authorisation (notes 4,5)
<b>4.1 Taking a Photograph Inside a Prison</b>					
Serious incidents/covert surveillance	NDTSG and other Prison Service staff	√			
Scene of crime work/assisting with interviewing prisoners	Police officers/Scenes of Crime Officers			√	
Investigations	Prison Service staff	√			
Investigations	Police			√	
Inspections	Inspectorate	√	√		
Dog handlers in High Security Estate	Dog handlers	√			
Press photographers	Internal Comms. staff	√			
Press photographers	External press				√ (Prison)
Photographs of prisoners/families in visits	Prison Service staff with designated duty	√ <sup>2</sup>			
Photographs of prisoners on reception	Prison Service staff with designated duty	√ <sup>2</sup>			
Photographs of staff for ID cards and any other official and locally approved use of a camera for staff photographs	Prison Service staff with designated duty	√ <sup>2</sup>			
Trade Union Health and Safety Representatives for use in investigations (with prior permission from the Governor)	Trade Union Health and Safety Representatives			√	
<b>4.2 Making a Sound Recording Inside a Prison</b>					
Serious incidents/covert surveillance	NDTSG and other Prison Service staff	√			
Scene of crime work/assisting with interviewing prisoners	Police officers and Scenes of Crime Officers			√	
Investigations	Prison Service staff	√			
Investigations	Police			√	
Inspections	Inspectorate	√	√		
Investigations	Ombudsman	√	√		
Staff using dictation equipment	Prison Service staff with designated duty	√ <sup>2</sup>			
Interviews with prisoners	Legal Advisers			√	
Press interview	Prison Service Comms. Staff/Press Office staff	√			
Press interview	External press				√ (Prison)

Example	For Whom	Crown Immunity (note 1,2)	Extended Crown Immunity (S40F) (note 3)	Central S40B/E Authorisation (note 4)	Local S40B/E Authorisation (notes 4,5)
<b>4.3 Transmitting, etc Any Image Electronically from Inside Prison</b>					
Video link	Any authorised user	√			
Prisoner files on NOMIS, EXHIBIT, OASys, etc. and other official Prison Service, NOMS or CJS IT systems	Any authorised user	√			
Television broadcasts	MOJ Press Office staff	√			
Television broadcasts	External TV staff				√ (Prison)
<b>4.4 Transmitting, etc Any Sound Electronically from Inside Prison</b>					
Radio communication	Staff authorised to use radios/airwave radios	√			
Radio/mobile phone communication when attending on routine official business and in response to an incident/operational emergencies.	Police officers			√	
Mobile phone communication	MOJ Press Office staff	√			
Television or radio broadcasts	External radio/TV staff				√ (Prison)
<b>4.5 Conveys, etc a Restricted Document Out of a Prison</b>					
<b>Conveying Restricted Document:</b>					
Prisoner files on transfer	Prison Service staff	√			
Prisoner files on transfer	Contracted Escort staff			√	
Staff working outside prison	Prison Service staff with designated duty	√ <sup>2</sup>			
Criminal investigations	Police			√	
Prison Service investigations	Prison Service staff with designated duty	√			
Inspection purposes	Inspectorate	√	√		
Investigations	Ombudsman	√	√		
Prisoner management purposes	Offender Managers	√			
Legal papers	Legal Advisers			√	
Taking out of the prison any sound recordings or photographs (including moving pictures) produced within the prison	External press				√ (Prison)
Taking out of the prison any sound recordings or photographs (including moving pictures)	MOJ Press Office staff	√			

Example	For Whom	Crown Immunity (note 1,2)	Extended Crown Immunity (S40F) (note 3)	Central S40B/E Authorisation (note 4)	Local S40B/E Authorisation (notes 4,5)
produced within the prison					
<b>4.6 Transmits Any Information Electronically From Inside Prison</b>					
General Quantum and NOMIS systems and other official Prison Service, NOMS or CJS IT systems	Those registered users	√			
<b>4.7 Possesses Devices Capable of Transmitting or Receiving Images, Sounds or Information by Electronic Communication</b>					
In-cell televisions	Prisoners			√	
Radios	Prisoners			√	
Authorised IT equipment	Prisoners			√	
Pagers	Staff			√	
IT equipment	Solicitors			√	
Electronic hearing aids	Staff, visitors and prisoners			√	
Vehicle tracking devices held in cabs of escort contractor vehicles if stay in the cab	Contracted escort staff			√	
Vehicle tracking devices held in police vehicles provided that they stay in the vehicle	Police			√	
<b>5. Delivery Drivers Conveying and Possessing Prohibited Items For Delivery at Another Address</b>					
Delivery drivers conveying/possessing prohibited items intended for delivery at another address provided that there is no intention to bring those items out of the delivery vehicle whilst in prison grounds	Delivery drivers			√	

**Notes to table:**

1. Crown Immunity provides protection from criminal liability for Crown Servants who may commit a criminal offence as a consequence of carrying out their normal lawful duties.
2. The Governor may wish to consider issuing a local notice to clarify more precisely those staff who would be expected to undertake these duties and those staff the Governor would not expect to carry out these duties and who would therefore not be covered by Crown Immunity. Staff may be specified individually by name or by some other more general means such as by function or grade.
3. Extension of Crown Immunity. Section 40F of the Prison Act allows the Secretary of State to designate persons who work at a prison, but who are not Crown Servants or Agents, to be treated as if they were Crown Servants. Once designated, they are able to claim Crown Immunity but only for purposes of the offences specified in Section 40B to D of the Prison Act. A list of those people or groups of people granted this designation is shown at Annex 3.
4. Section 40B and 40E of the Prison Act provides powers for the Secretary of State (through this PSI or by a senior official such as Senior Civil Servant) to authorise any person or group of people to convey into or out of the prison or use or possession in the prison any item which may be

prohibited by Section 40B to 40D of the Prison Act from being so conveyed or used. A list of such authorisations provided by this PSI can be found at Annex 2.

“Authorised IT equipment” in Section 5 of the table means that the prisoner has use of the IT for specific purposes and in specific areas of the prison which have been agreed by the Governor/Director.

A central authorisation has been issued for legal advisers to bring into legal visits IT equipment that is necessary for consultation with their clients on the cases on which they are engaged with that particular client on certain conditions. See Annex 2, section B for information.

5. Section 40E of the Prison Act provides powers to Governors or Directors of contracted out prisons to grant authorisation to any person or group of people to convey into or out of the prison or use in the prison any item which may be prohibited by Section 40B to 40D of the Prison Act from being so conveyed or used or possessed. *Governors (or Deputy Directors of Custody) must authorise List A items. Other items may be authorised by any person working at the prison who the Governor or Director has authorised to grant S40E authorisations on his behalf.*

## AUTHORISATIONS UNDER SECTION 40B AND 40E OF THE PRISON ACT

### A) Secretary of State Central Authorisations

Section 40B (list A articles) and 40E (other articles) of the Prison Act allows the Secretary of State to authorise a person or persons to convey list A, B or C articles in and out of a prison; or to cause another person to do so; or to give such an article to a prisoner; or to leave it in a place where it may come into the possession of a prisoner.

Section 40E of the Prison Act allows the Secretary of State to authorise a person or persons to take a photograph or make a sound recording inside a prison; or to transmit or cause to be transmitted any image, sound or information electronically from inside a prison; or convey or cause to be conveyed a "restricted document" out of a prison; or possess a device capable of transmitting or receiving images, sounds or information by electronic communications, in addition to component parts of such a device or articles designed or adapted for use with such a device

***The following people are authorised by the Secretary of State in accordance with Section 40B of the Prison Act for the following purposes:***

#### Conveying in/out of Prison Controlled Drugs

1. Delivery drivers conveying pharmacy, medical, veterinary, dental supplies into prisons where there is a valid order for those supplies from the prison to whom the delivery is being made. Also, delivery drivers conveying such items intended for delivery at another address provided that there is no intention to bring those items out of the delivery vehicle whilst in prison grounds.
2. Staff who need to bring in controlled drugs as part of medication subject to them seeking agreement from the Governor/Director or their nominated representative to do so. This is on the condition that (a) the controlled drug has been prescribed for their own use; and, (b) it is or may be necessary for them to take that drug whilst on prison premises for healthcare reasons; and, (c) they have followed any local rules and authorisations for bringing into prison such drugs.
3. Visitors to prisons who need to bring in controlled drugs as part of medication. This is subject to (a) the controlled drug having been prescribed or legitimately purchased for their own use; (b) *the visitor must declare the drug on entry and state that it is necessary for them to take that drug whilst on prison premises;* (c) *the prison must be satisfied that this is the case;* (d) *the visitor must follow any local rules and authorisations required for bringing into prison such drugs.*

#### Conveying in/out of Prison Controlled Drugs and supply of these to prisoners

4. Emergency paramedic or ambulance or other emergency medical staff called to the prison.

#### Conveying in/out of Prison of Explosives

5. Police officers bringing in and taking out of prison explosives that are required or that may be needed during incidents/operational emergencies.

#### Conveying in/out of Prison of Firearms/Ammunition

6. Police officers bring in and taking out of prison firearms and or ammunition that are required or that may be needed during incident/operational emergencies.

#### Conveying in/out of Prison of Offensive Weapons

7. Sikh members of the Chaplaincy carrying the Kirpan
8. Delivery drivers bringing in to a prison knives, tools or other items that might be deemed offensive where there is a valid order for those supplies from the prison to whom the delivery is being made. Also, delivery drivers conveying offensive weapons intended for delivery at another address provided that there is no intention to bring those items out of the delivery vehicle whilst in prison grounds.

9. Police officers bringing in and taking out of prison extendable batons that are required or that may be needed on routine, official business and during incidents/operational emergencies.
10. Police officers bringing in and taking out of prison Taser weapons when visiting a prison during incidents/operational emergencies.
11. Police officers bringing in and taking out of prison any item of personal protection equipment that is required or may be needed when visiting a prison during incidents/operational emergencies.

***The following people are authorised by the Secretary of State in accordance with Section 40E of the Prison Act for the following purposes:***

Conveying in/out of Prison of Alcohol

12. Delivery drivers conveying communion wine or other liquid containing alcohol used in religious ceremonies where there is a valid order for those supplies from the prison to whom the delivery is being made. Also, delivery drivers conveying alcohol intended for delivery at another address provided that there is no intention to bring those items out of the delivery vehicle whilst in prison grounds.

Conveying in/out and Possession of Prison Mobile Phones

13. Emergency services whilst required to enter the prison on emergency calls (but not at other times).
14. Prison staff required to escort prisoners outside of prison
15. Drivers/Navigators of prisoner transport on condition that mobile phones stay within the cab of the vehicle whilst within the prison – applies to both Prison Service and contracted staff.
16. Delivery van drivers and delivery staff on condition that mobile phones stay within the cab of the vehicle whilst within the prison.
17. *Visitors and staff parking within an open prison on condition that mobile phones stay within the vehicle whilst within the prison. (NB Visitors and staff must not leave List A items in vehicles and should be discouraged from bringing and leaving other List B items in their vehicles.)*
18. Prison staff, including NTRG, who are engaged with emergency or live incidents and require mobile phones as an effective means of communication.
19. Prison Staff and Professional Visitors who are working at a fully open prison (i.e. not semi-open prison) or part of a prison which is fully open subject to local agreement by the governor.
20. NDTSG staff, emergency services and Police bringing in and taking out of prison Airwave radios (with integrated mobile phones) required or that may be necessary for live incidents/operational emergencies.
21. Police bringing in and taking out of prison Airwave radios (with integrated mobile phones) required of that may be necessary on routine, non-emergency visits to prisons on official business.

Giving to a Prisoner a Mobile Phone and Use and Possession by a Prisoner of a Mobile Phone to Transmit a Sound from Inside a Prison to Outside

22. Prison Staff passing a mobile phone to a prisoner if that mobile phone is only for the purposes of calling the Samaritans and has been modified to restrict it to that purpose only. Prisoners using the above phone to transmit a sound electronically from inside the prison to be received simultaneously outside of the prison.

Conveying in/out and Possession of Cameras or Sound Recording Devices

23. Delivery drivers conveying cameras or sound recording devices into prisons where there is a valid order for those supplies from the prison to whom the delivery is being made. Also, delivery drivers conveying/possessing such items intended for delivery at another address provided that there is no intention to bring those items out of the delivery vehicle whilst in prison grounds.

24. Trade Union Health and Safety representatives conveying cameras or sound recording devices into and out prisons for use in investigations with prior permission for the governor.
25. Legal Advisers to prisoners whilst conducting an official legal (not social) visit. *The sound recording device may be digital or mechanical but must not contain either a camera or mobile telephone.*
26. Police Officers or Scenes of Crime officers attending a prison for the purpose of scenes of crime work or to assist in interviewing prisoners.

#### Taking a Photograph inside a Prison

27. Police officers/Scenes of Crime Officers attending a prison for the purposes of scenes of crime work or to assist in interviewing prisoners or as part of investigations.
28. Trade Union Health and Safety Representatives for use in investigations, with prior permission from the governor.

#### Making a Sound Recording within Prison

29. Legal Advisers to prisoners whilst conducting an official legal (not social) visit on condition that the sound recording is not transmitted electronically from inside the prison for simultaneous reception outside the prison.
30. Police officers/Scenes of Crime Officers attending a prison for the purposes of scenes of crime work or to assist in interviewing prisoners or as part of investigations.

#### Conveying a Restricted Document Out of Prison

31. Legal Advisers to prisoners whilst conducting an official legal (not social) visit on condition that the documents are wholly connected with the case on which legal advice is being sought.
32. Contracted prisoner escort staff who are taking prisoner files out of the prison to travel with the prisoner to another prison or court.

#### Possessing Other Devices Capable of Transmitting or Receiving Images, Sounds or Information by Electronic Communications

33. Prisoners possessing approved in-cell televisions.
34. Prisoners possessing approved radios within their cells.
35. Prisoners possessing other items of IT equipment authorised by the Governor/Director in specific areas for specific purposes.
36. Solicitors possessing IT equipment that is necessary for consultation with their clients on the cases on which they are engaged with that particular client on certain conditions – see paragraphs 5.21 to 5.25.
37. Possession of hearing aids worn by staff, visitors and prisoners.
38. Vehicle tracking devices held in cabs of escort contractor vehicles provided that they remain in the cab of the vehicle.
39. Vehicle tracking devices held in police vehicles provided that they remain in the vehicle.

### **B) Authorisations For Conveyance and Possession Offences – Legal Advisers**

**On behalf of the Secretary of State, Legal Advisers are provided with a central authorisation under section 40E of the Prison Act 1952 to bring the following specified items into, possess in, and take out of any prison or Young Offender Institute for the sole purposes of advising their clients on the matter for which they are so engaged:**

- Lap-top computers or equivalent complying with the specifications set out at notes 1 to 4 below.
- Data media such as CD disks or data sticks containing material to be viewed by the prisoner or which is otherwise necessary for the purposes of the consultation.

This authorisation is subject to notes 1 to 8 below. The term prison below also refers to Young Offender Institutes.

### Notes:

1. Computers should be small, self-contained portable devices such as laptop computers or tablets. External devices such as external keyboards, printers or mice, etc are not authorised other than that external data media set out in the authorisation above.
2. Computer equipment which has built in Wi-Fi, 3G or other networking capabilities is allowed provided that the network capability is switched off, any external 3G dongle or SIM card is removed where practical and no attempt is made to transmit or receive images, sound or information in or out of the prison by electronic communications. Deliberate breach of this regulation will be considered a criminal offence.
3. Computer equipment may contain built in cameras but if so fitted the camera may not be used to take photographs or video within any prison. Deliberate breach of this regulation will be considered a criminal offence.
4. Computer equipment may contain a sound recording device. Legal advisers are authorised to make sound recordings of their clients for the purposes of advising them on the matter for which they are so engaged (and to take such recordings out of the prison with them), and in doing so may use computer equipment for this purpose rather than bringing in a separate sound recording device.
5. No data or items of equipment may be passed to the prisoner with the intention of this remaining in the possession of the prisoner. Separate procedures exist under "Access to Justice" laptop arrangements to enable the prisoner to have possession of IT equipment and legal documents in electronic format. Authorisation under these separate procedures must be obtained in advance by the legal adviser before any item is passed to the prisoner for purposes of the prisoner retaining this within prison.
6. The above authorisation relates only to the lawfulness of the conduct for the purpose of the offences in the Prison Act 1952. Individual prisons or groups of prisons may impose additional administrative restrictions on items allowed into the prison on grounds of security. Legal Advisers must check in advance with the prison they are visiting for details of items not allowed into that particular prison.
7. All items must be checked in and out of the prison at reception. Legal Advisers remain responsible for the safe keeping of items taken into a prison. Loss of such items within the prison is a serious matter and all losses must be reported to the prison immediately.
8. Any complaints about the operation of this process in particular prisons must be made in the first instance to the Governor of the prison concerned. If legal advisers remain dissatisfied disagreements may be escalated to the regional manager (Deputy Director of Custody or equivalent). General queries on national policy in these areas can be made to NOMS headquarters (Emma.Prince@noms.gsi.gov.uk).

### **C) Police Authorisations For Conveyance and Possession Offences**

**Police officers are provided with the following central authorisations under sections 40B and 40E of the Prison Act 1952 in respect of any prison or Young Offender Institute:**

#### **1) Routine Visits to Prisons**

When visiting a prison on official business which is not an operational emergency, police officers are authorised to bring into, possess in, and take out of the prison:

- batons;
- Airwave radios (with integrated mobile phones);



- other mobile communication devices;
- if required (or that may be necessary) for operational purposes:

Police officers are also authorised to use airwaves radios or other mobile communications devices referred to above to transmit sounds or information from inside the prison for simultaneous reception outside the prison if this is required for operational purposes.

NB The above authorisation relates only to the lawfulness of the conduct for the purpose of the offences in the Prison Act 1952. Individual prisons or groups of prisons may impose additional administrative restrictions on items allowed into the prison on grounds of security. All items must be checked in and out of the prison at reception. Police officers remain responsible for the safe keeping of items taken into a prison. Loss of such items within the prison is a serious matter and all losses must be reported to the prison immediately.

## **2) Response to Operational Emergencies or Incidents**

When visiting a prison in response to an operational emergency or incident, the authorisation in part 1 applies and, in addition police officers are authorised to bring into and take out of the prison:

- any firearms, including ammunition and explosives;
- taser weapons;
- any items of personal protection equipment, including incapacitant sprays; if required, or that may be necessary, for dealing with an operational emergency.

Acting in support of the prison in times of industrial action is deemed to be an operational emergency.

## **3) Cameras or Sound Recording Devices**

Police or Scenes of Crime Officers are authorised to bring into, operate within, and take out of any prison any camera or sound recording device for purposes of scenes of crime work or to assist in interviewing prisoners.

Police Officers or Scenes of Crime Officers are also authorised to convey out of the prison any photograph or sound recordings they have produced using the equipment referred to above.

## **4) Vehicle Tracking Devices**

A central authorisation has also been provided for the possession of vehicle tracking devices held in police vehicles provided that they stay in the vehicle.

## **D) NOMS Escort Contractor Authorisations for Conveyance, Possession and Use of Data Recording Devices within Prison Reception**

**NOMS Escort Contractors, GEOAmeY, undertaking delivery/collection of prisoners are provided with the following central authorisation under section 40E of the Prison Act 1952 in respect of any prison or Young Offender Institute with the exception of those High Security Prisons (listed at note 2, below):**

When visiting an establishment for the delivery or collection of prisoners NOMS escort contractors are authorised to convey into the prison, possess and use within the prison, and take out of the prison an approved device<sup>1</sup> such as a Blackberry device for logging details of prisoners and to allow escort staff to record related prisoner-information such as potential security risks, self-harm issues and medical needs.

Note 1: Only devices that have been agreed centrally by NOMS will be authorised to be brought into the prison.

These devices have been authorised provided that the following conditions are met:

- The voice element of the Blackberry or similar device is disabled;
- They are logged in and out by the prison at reception;
- Escort staff must log the devices in and out at the start and end of their shift and any devices found to be missing must be investigated and traced by the escort contractor;
- In the event of a device being lost or stolen, the contractor will ensure that the data function of the device is disabled remotely so that it can not be used.
- Normal mobile phones must be left in the cab of the escort vehicle in prisons outside of the High Security Estate. For High Security prisons, normal mobile phones must be handed in at the gate and stored in lockers for the duration of the visit.

Escort contractor are also authorised to use these devices referred to above to transmit information from inside the prison for simultaneous reception outside the prison if this is required for operational purposes.

Note 2: This authorisation does not extend to the eight High Security Prisons: Belmarsh, Frankland, Full Sutton, Long Lartin, Manchester, Wakefield, Woodhill and Whitemoor.

**All of the above authorisations set out in this annex remain in force until revoked.**

**E) Example of a Governor Written Authorisation under Section 40**

To: Mr X from Local Newspaper.

In connection with your visit on 12 March - Under Section 40E of the Prison Act both you and your cameraman Mr Y are authorised to bring into HMP Z and use and possess within the prison - cameras and sound recording equipment for the purposes of writing your article on prisoner rehabilitation. You are also authorised to take out of the prison any sound-recording or photographs (including moving images) that you have produced inside the prison. Add any conditions.

Signed – Deputy Governor on behalf of Governor (who has previously been authorised by the governor to make such authorisations).

To: Mr Jones

In connection with our request for you to visit HMP A to shoot pests. I authorise you to bring into the prison firearms and ammunition under Section 40B of the Prison Act. Conditions attached.

Signed – Governor/Director (only Governor/Director can issue 40B authorisation for list A items and for firearms this will need the prior approval of the Deputy Director of Custody. Note that if the Deputy Director of Custody were to issue the authorisation directly he or she would need to authorise the conveying in of firearms and ammunition on behalf of the Secretary of State since only the Governor or Director of the prison has the named authority to issue authorisations.

### **Extensions to Crown Immunity**

Crown Immunity provides protection from prosecution for Crown Servants who may commit a criminal offence as a consequence of carrying out their normal lawful duties.

Section 40F of the Prison Act allows the Secretary of State to designate persons who work at a prison, but who are not Crown Servants or Agents, to be treated as if they were Crown Servants. Once designated they assume Crown Immunity but only for purposes of the offences specified in Section 40B to 40D of the Prison Act.

***The following persons are designated by the Secretary of State under Section 40F of the Prison Act and as such shall be treated for the purposes of the application of Sections 40B to 40D of the Prison Act as if they were doing that work as a servant or agent of the Crown:***

1. All staff working in contracted out prisons who are employed by the contractor operating the prison or contracted to that contractor for the provision of services within the prison on a regular basis.
2. All Healthcare staff who are working in prisons and who are not Crown Servants.
3. All contract staff working in public sector prisons as part of a contract which is providing services within that prison on a regular basis.
4. All voluntary staff working in public or contracted out prisons who are providing services in that prison on a regular basis.

Note: In addition to the above, and outside of the powers of this Instruction, workers contracted to HM Inspectorate of prisons have been so designated as Crown Servants for the purposes of the offences specified in Section 40B to 40D of the Prison Act by the Secretary of State.

## Model Information Notices

### NOTICE TO PRISONERS AND SOCIAL VISITORS

It is a criminal offence under the Prison Act for certain items to be used, brought into, possessed within or taken out of prisons.

It is a criminal offence for any person without authority:

- i. - to bring or throw any of the following items in or out of a prison or to cause another person to do so, to leave any of the following items in any place (in or out of the prison) intending it to come into the possession of a prisoner or to give to a prisoner any of the following items:

(a) a controlled drug, an explosive a firearm or other offensive weapon;

**maximum penalty is 10 years imprisonment or an unlimited fine or both.**

(b) alcohol, a mobile telephone, a camera or a sound-recording device;

**maximum penalty is 2 years imprisonment or an unlimited fine or both.**

- ii. - to bring or throw any of the following items in or out of a prison with the intention of it coming into the possession of a prisoner or to cause another person to do so, or to leave any of the following items in any place (in or out of the prison) intending it to come into the possession of a prisoner, or to give to a prisoner any of the following items:

(c) tobacco, money, clothing, food, drink, letters, papers, books, tools, IT equipment and associated peripherals

**maximum penalty is a £1000 fine.**

- iii. - to possess inside a prison a mobile telephone or any device capable of transmitting or receiving images, sounds or information by electronic communications (or a component part of such a device or an article designed or adapted for use with such a device) or take a photograph or make a sound recording within a prison or convey a restricted document out of a prison.

**maximum penalty is 2 years imprisonment or an unlimited fine or both.**

**Criminal prosecutions will be pursued against those found to be in deliberate breach of the above provisions.**

## NOTICE TO STAFF

It is a criminal offence under the Prison Act for certain items to be used, brought into, possessed within or taken out of prisons.

It is a criminal offence for any person without authority:

- i. - to bring or throw any of the following items in or out of a prison or to cause another person to do so, to leave any of the following items in any place (in or out of the prison) intending it to come into the possession of a prisoner or to give to a prisoner any of the following items:

(b) a controlled drug, an explosive a firearm or other offensive weapon;

**maximum penalty is 10 years imprisonment or an unlimited fine or both.**

(b) alcohol, a mobile telephone, a camera or a sound-recording device;

**maximum penalty is 2 years imprisonment or an unlimited fine or both.**

- ii. - to bring or throw any of the following items in or out of a prison with the intention of it coming into the possession of a prisoner or to cause another person to do so, or to leave any of the following items in any place (in or out of the prison) intending it to come into the possession of a prisoner, or to give to a prisoner any of the following items:

(c) tobacco, money, clothing, food, drink, letters, papers, books, tools, IT equipment and associated peripherals

**maximum penalty is a £1000 fine.**

- iii. - to possess inside a prison a mobile telephone or any device capable of transmitting or receiving images, sounds or information by electronic communications (or a component part of such a device or an article designed or adapted for use with such a device) or take a photograph or make a sound recording within a prison or convey a restricted document out of a prison.

**maximum penalty is 2 years imprisonment or an unlimited fine or both.**

**Criminal prosecutions will be pursued against those found to be in deliberate breach of the above provisions.**

## **Notice to Staff (cont.)**

### **Authorisation for conveying or using or possessing items restricted by the above rules**

Staff whose normal duties require them to bring in or out of prison, or use or possess within prison, the items restricted by these rules will be covered by Crown Immunity and will be allowed therefore to continue these activities. Staff working in prisons who are not public servants (staff working in contracted out prisons, contractors and volunteers in public prisons, etc) are also covered in this way by a specific extension of Crown Immunity to them. However, this extension applies only to those activities outlined overleaf and not to other aspects of prison work.

There is no intention of prosecuting (or taking disciplinary action against) any member of staff who contravenes the prohibitions outlined overleaf whilst conducting their normal and lawful duties. The table attached to this notice [attach table similar to annex 1] provides an outline of the sorts of activities that are legitimately allowed for each of the items and who would be expected to carry them out. If you are in any doubt about bringing in or using one of these restricted items you should check with your line manager first.

Staff should be aware that the Prison Service has agreed that the bringing in to prisons and use within prisons of mobile phones will no longer be part of the normal duties of any member of staff or allowed for any visitor. Groups of staff and others who have specific authorisation to bring in and use and possess mobile phones within prison are shown under section 2.2 on the attached table. Any authorisation to bring in and/or use mobile phones within prison must be obtained from the DDC or equivalent and not the Governor/Director.

Staff are not normally allowed to bring in or use cameras or sound recording devices within prison. The categories of staff who are authorised to convey and/or use and/or possess these items are shown in the attached table. You *must* seek local authorisation from your governor for other uses.

In addition, each governor may publish additional restrictions and may prohibit by local rules the bringing in of any of these items or a wider range of items. The Governor's local prohibited list *must* be adhered to.

The bringing in of items listed under "List C" overleaf (tobacco, money, food, etc) is only a problem and will only need authorisation under these rules if the intention is to give one of these items to a prisoner. However, please note that the simple possession of any item of IT equipment capable of transmitting or receiving sounds or information within a prison a criminal offence. *Therefore, IT equipment which falls within this definition must be authorised by the Governor in all cases.* There may also be local prison rules prohibiting the bringing in of some of these items or more than a certain quantity of these items. These local rules *must* still be adhered to. Giving any of these items to a prisoner is an offence unless your normal duties are to give/sell these items to prisoner or you seek specific authority from your line manager or governor to do so.

## NOTICE FOR OFFICIAL VISITORS

It is a criminal offence under the Prison Act for certain items to be used, brought into, possessed within or taken out of prisons.

It is a criminal offence for any person without authority:

- i. - to bring or throw any of the following items in or out of a prison or to cause another person to do so, to leave any of the following items in any place (in or out of the prison) intending it to come into the possession of a prisoner or to give to a prisoner any of the following items:

(c) a controlled drug, an explosive a firearm or other offensive weapon;

**maximum penalty is 10 years imprisonment or an unlimited fine or both.**

(b) alcohol, a mobile telephone, a camera or a sound-recording device;

**maximum penalty is 2 years imprisonment or an unlimited fine or both.**

- ii. - to bring or throw any of the following items in or out of a prison with the intention of it coming into the possession of a prisoner or to cause another person to do so, or to leave any of the following items in any place (in or out of the prison) intending it to come into the possession of a prisoner, or to give to a prisoner any of the following items:

(c) tobacco, money, clothing, food, drink, letters, papers, books, tools, IT equipment and associated peripherals

**maximum penalty is a £1000 fine.**

- iii. - to possess inside a prison a mobile telephone or any device capable of transmitting or receiving images, sounds or information by electronic communications (or a component part of such a device or an article designed or adapted for use with such a device) or take a photograph or make a sound recording within a prison or convey a restricted document out of a prison.

**maximum penalty is 2 years imprisonment or an unlimited fine or both.**

**Criminal prosecutions will be pursued against those found to be in deliberate breach of the above provisions.**

**List of Organisations Consulted**

The following groups and organisations have been consulted with and are aware of the revised provisions of the Prison Act:

- HMCIP
- Probation Trust – Governance and Legislation
- UKBA
- Regional Managers of Custodial Services
- Serious Organised Crime Organisation
- Audit and Corporate Assurance
- Employment Relations – PMG
- Unions
- Equalities Group
- Independent Monitoring Board
- National Operations Group
- Prison and Probation Ombudsman
- HMRC
- Safer Custody Group
- Operational Policy Unit
- Police Advisors Section
- Extremism Unit
- Intelligence and Operations Unit
- Business and Service Development Group
- Chaplaincy Headquarters
- Health and Safety Policy Group
- Corporate Planning
- Learning and Development Group
- CPS
- MOJ Legal Services
- Offender Safety, Rights and Responsibilities Group
- Law Society



## Changes to Signs Outside Prisons

Section 42 of the Prison Act (amended by OM Act 2007) says: “The prison commissioners shall cause to be fixed in a conspicuous place outside every prison a notice of penalties to which persons committing offences under Sections 39 to 40D are liable. “

### Revised wording of sign on implementation of Prison Act revisions on \*

Under the Prison Act 1952 it is a criminal offence for any person:

- i. to assist a prisoner to escape or attempt to escape; the maximum penalty is 10 years imprisonment (s. 39)
- ii. without authorisation to convey or cause another person to convey in or out of the establishment, or to give to a prisoner, or to leave in a place intending it to come into the possession of a prisoner:
  - (a) a controlled drug, explosive, firearm, offensive weapon; maximum penalty is 10 years imprisonment or an unlimited fine or both (s. 40B)
  - (b) alcohol, mobile telephone, camera, sound-recording device; maximum penalty is 2 years imprisonment or an unlimited fine or both (s. 40C)
  - (c) tobacco, money, computer equipment or any other item listed in Prison Rule 70A/YOI Rule 74A; maximum penalty is a fine (s. 40C)
- iii. without authorisation to possess inside a prison a mobile telephone or any device capable of transmitting or receiving images, sounds or information by electronic communications or take a photograph or make a sound recording within a prison or convey a restricted document out of a prison; maximum penalty is 2 years imprisonment or an unlimited fine or both(s. 40D).

## Changes to the Prison Act Introduced by the Offender Management Act 2007 and the Crime and Security Act 2010

### 1. Summary of changes to legislation

The following sections of the Prison Act have been removed or replaced by the Offender Management Act (OMA) 2007:

- Section 40 – “Unlawful conveyance of spirits or tobacco into prison”
- Section 41 – “Unlawful introduction of letters and other articles”.

Section 40 of the Prison Act is replaced with a new Sections 40A to 40F which are described more fully in Chapters 2 to 7 and are listed at Annex 7.

New sub-sections (3A) and (3B) are introduced into Section 40D of the Prison Act by the Crime and Security Act 2010. These introduce the measures described above in Section 1.5.

#### Assisting a prisoner to escape

The OMA 2007 amended Section 39 of the Prison Act – “Assisting a prisoner to escape”. The terminology was updated and a new sub-clause introduced at 39 (1, b ii) of:

*“intending to facilitate the escape of a prisoner - ...*

*(ii) causes another person to bring, throw or otherwise convey anything into a prison”*

### 2. Wording of the Revised Prison Act Sections

#### Assisting a prisoner to escape

For section 39 of the Prison Act 1952 (c. 52) there is substituted—

#### **“39 Assisting a prisoner to escape**

- (1)** A person who—
- (a) assists a prisoner in escaping or attempting to escape from a prison, or
  - (b) intending to facilitate the escape of a prisoner—
    - (i) brings, throws or otherwise conveys anything into a prison,
    - (ii) causes another person to bring, throw or otherwise convey anything into a prison, or
    - (iii) gives anything to a prisoner or leaves anything in any place (whether inside or outside a prison),
- is guilty of an offence.

- (2) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding ten years.”

### **Conveyance/Possession of Prohibited Articles into or out of Prison**

- (1) For section 40 of the Prison Act 1952 there is substituted—

#### **“40A Sections 40B and 40C: classification of articles**

- (1) This section defines the categories of articles which are referred to in sections 40B and 40C.

- (2) A List A article is any article or substance in the following list (“List A”)—

- (a) a controlled drug (as defined for the purposes of the Misuse of Drugs Act 1971);
- (b) an explosive;
- (c) any firearm or ammunition (as defined in section 57 of the Firearms Act 1968);
- (d) any other offensive weapon (as defined in section 1(9) of the Police and Criminal Evidence Act 1984).

- (3) A List B article is any article or substance in the following list (“List B”)—

- (a) alcohol (as defined for the purposes of the Licensing Act 2003);
- (b) a mobile telephone;
- (c) a camera;
- (d) a sound-recording device.

- (4) In List B—

- “camera” includes any device by means of which a photograph (as defined in section 40E) can be produced;
- “sound-recording device” includes any device by means of which a sound-recording (as defined in section 40E) can be made.

- (5) The reference in paragraph (b), (c) or (d) of List B to a device of any description includes a reference to—

- (a) a component part of a device of that description; or
- (b) an article designed or adapted for use with a device of that description (including any disk, film or other separate article on which images, sounds or information may be recorded).

- (6) A List C article is any article or substance prescribed for the purposes of this subsection by prison rules.

- (7) The Secretary of State may by order amend this section for the purpose of—

- (a) adding an entry to List A or List B;
- (b) repealing or modifying any entry for the time being included in List A or List B;
- (c) adding, repealing or modifying any provision for the interpretation of any such entry.

#### **40B Conveyance etc. of List A articles into or out of prison**

- (1) A person who, without authorisation—

- (a) brings, throws or otherwise conveys a List A article into or out of a prison,

- (b) causes another person to bring, throw or otherwise convey a List A article into or out of a prison,
  - (c) leaves a List A article in any place (whether inside or outside a prison) intending it to come into the possession of a prisoner, or
  - (d) knowing a person to be a prisoner, gives a List A article to him,
- is guilty of an offence.

**(2)** In this section “authorisation” means authorisation given for the purposes of this section—

- (a) in relation to all prisons or prisons of a specified description, by prison rules or by the Secretary of State; or
- (b) in relation to a particular prison, by the Secretary of State or by the governor or director of the prison.

In paragraph (a) “specified” means specified in the authorisation.

**(3)** Authorisation may be given to specified persons or persons of a specified description—

- (a) in relation to specified articles or articles of a specified description;
- (b) in relation to specified acts or acts of a specified description; or
- (c) on such other terms as may be specified.

In this subsection “specified” means specified in the authorisation.

**(4)** Authorisation given by the Secretary of State otherwise than in writing shall be recorded in writing as soon as is reasonably practicable after being given.

**(5)** Authorisation given by the governor or director of a prison shall—

- (a) be given in writing; and
- (b) specify the purpose for which it is given.

**(6)** A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding ten years or to a fine (or both).

#### **40C Conveyance etc. of List B or C articles into or out of prison**

**(1)** A person who, without authorisation—

- (a) brings, throws or otherwise conveys a List B article into or out of a prison,
  - (b) causes another person to bring, throw or otherwise convey a List B article into or out of a prison,
  - (c) leaves a List B article in any place (whether inside or outside a prison) intending it to come into the possession of a prisoner, or
  - (d) knowing a person to be a prisoner, gives a List B article to him,
- is guilty of an offence.

**(2)** A person who, without authorisation—

- (a) brings, throws or otherwise conveys a List C article into a prison intending it to come into the possession of a prisoner,
- (b) causes another person to bring, throw or otherwise convey a List C article into a prison intending it to come into the possession of a prisoner,
- (c) brings, throws or otherwise conveys a List C article out of a prison on behalf of a prisoner,
- (d) causes another person to bring, throw or otherwise convey a List C article out of a prison on behalf of a prisoner,

- (e) leaves a List C article in any place (whether inside or outside a prison) intending it to come into the possession of a prisoner, or
  - (f) while inside a prison, gives a List C article to a prisoner,
- is guilty of an offence.
- (3)** A person who attempts to commit an offence under subsection (2) is guilty of that offence.
- (4)** In proceedings for an offence under this section it is a defence for the accused to show that—
- (a) he reasonably believed that he had authorisation to do the act in respect of which the proceedings are brought, or
  - (b) in all the circumstances there was an overriding public interest which justified the doing of that act.
- (5)** A person guilty of an offence under subsection (1) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine (or both);
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both).
- (6)** A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7)** In this section “authorisation” means authorisation given for the purposes of this section; and subsections (1) to (3) of section 40E apply in relation to authorisations so given as they apply to authorisations given for the purposes of section 40D.”
- (2)** In section 52 of the Prison Act 1952 (c. 52) (exercise of powers to make orders etc)—
- (a) in subsection (1) for “or section thirty-seven” there is substituted “, 37 or 40A”; and
  - (b) after subsection (2) there is inserted—
- “(2A) A statutory instrument containing an order under section 40A(7) which relates to List A (whether or not it also relates to List B) shall not be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.
  - (2B) A statutory instrument containing an order under section 40A(7) which relates only to List B is subject to annulment in pursuance of a resolution of either House of Parliament.”

### **23 Other offences relating to prison security**

- (1)** After section 40C of the Prison Act 1952 (as substituted for section 40 of that Act by section 22 above) there is inserted—

#### **“40D Other offences relating to prison security**

- (1)** A person who, without authorisation—
- (a) takes a photograph, or makes a sound-recording, inside a prison, or
  - (b) transmits, or causes to be transmitted, any image or any sound or information from inside a prison by electronic communications for simultaneous reception outside the prison,
- is guilty of an offence.
- (2)** It is immaterial for the purposes of subsection (1)(a) where the recording medium is located.
- (3)** A person who, without authorisation—

(a) brings or otherwise conveys a restricted document out of a prison or causes such a document to be brought or conveyed out of a prison,  
is guilty of an offence.

(3A) A person who, without authorisation, is in possession of any of the items specified in subsection (3B) inside a prison is guilty of an offence.

(3B) The items referred to in subsection (3A) are—

- (a) a device capable of transmitting or receiving images, sounds or information by electronic communications (including a mobile telephone);
- (b) a component part of such a device;
- (c) an article designed or adapted for use with such a device (including any disk, film or other separate article on which images, sounds or information may be recorded).

(4) In proceedings for an offence under this section it is a defence for the accused to show that—

- (a) he reasonably believed that he had authorisation to do the act in respect of which the proceedings are brought, or
- (b) in all the circumstances there was an overriding public interest which justified the doing of that act.

(5) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine (or both); or
- (b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both).

#### **40E Section 40D: meaning of “authorisation” and other interpretation**

(1) In section 40D (and the following provisions of this section) “authorisation” means authorisation given for the purposes of that section—

- (a) in relation to all prisons or prisons of a specified description, by prison rules or by the Secretary of State;
- (b) in relation to a particular prison—
  - (i) by the Secretary of State;
  - (ii) by the governor or director of the prison;
  - (iii) by a person working at the prison who is authorised by the governor or director to grant authorisation on his behalf.

In paragraph (a) “specified” means specified in the authorisation.

(2) Authorisation may be given—

- (a) to persons generally or to specified persons or persons of a specified description; and
- (b) on such terms as may be specified.

In this subsection “specified” means specified in the authorisation.

(3) *Authorisation given by or on behalf of the governor or director of a prison must be in writing.*

(4) In section 40D “restricted document” means the whole (or any part of)—

- (a) a photograph taken inside the prison;
- (b) a sound-recording made inside the prison;

- (c) a personal record (or a document containing information derived from a personal record);
- (d) any other document which contains—
  - (i) information relating to an identified or identifiable relevant individual, if the disclosure of that information would or might prejudicially affect the interests of that individual; or
  - (ii) information relating to any matter connected with the prison or its operation, if the disclosure of that information would or might prejudicially affect the security or operation of the prison.

**(5)** In subsection (4)—

- “personal record” means any record which is required by prison rules to be prepared and maintained in relation to any prisoner (and it is immaterial whether or not the individual concerned is still a prisoner at the time of any alleged offence);
- “relevant individual” means an individual who is or has at any time been—
  - (a) a prisoner or a person working at the prison; or
  - (b) a member of such a person’s family or household.

**(6)** In section 40D and this section—

- “document” means anything in which information is recorded (by whatever means);
  - “electronic communications” has the same meaning as in the Electronic Communications Act [2000 \(c. 7\)](#);
  - “photograph” means a recording on any medium on which an image is produced or from which an image (including a moving image) may by any means be produced; and
  - “sound-recording” means a recording of sounds on any medium from which the sounds may by any means be reproduced.”
- (1) Section 41 of the Prison Act 1952 (c. 52) (unlawful introduction of other articles) ceases to have effect.
- (2) In section 42 (display of notice of penalties) for “the three last preceding sections” there is substituted “sections 39 to 40D”.

**24 Offences under sections 40B to 40D of the Prison Act 1952: extension of Crown immunity**

After section 40E of the Prison Act 1952 (as inserted by section 22 above) there is inserted—

**“40F Offences under sections 40B to 40D: extension of Crown immunity**

**(1)** An individual who—

- (a) works at a prison;
  - (b) does not do that work as a servant or agent of the Crown; and
  - (c) has been designated by the Secretary of State for the purposes of this section,
- shall be treated for the purposes of the application of sections 40B to 40D as if he were doing that work as a servant or agent of the Crown.

**(2)** A designation for the purpose of this section may be given—

**(a)** in relation to persons specified in the designation or persons of a description so specified; and **(b)** in relation to all work falling within subsection (1)(a) or only in relation to such activities as the designation may provide.”

## Revised Prison Rules

### Prison Rule 70/YOI Rule 74

The former Prison Rule 70 ceases to have any relevance to criminal acts and has been amended as follows:

*“No person shall, without authority, convey into or throw into or deposit in a prison, or convey or throw out of a prison, or convey to a prisoner, or deposit in any place with intent that it shall come into the possession of a prisoner, any article whatever. Anything so conveyed, thrown or deposited may be confiscated by the governor.”*

YOI Rule 74 is already cast in these terms:

*“No person shall, without authority, convey into or throw into or deposit in a young offender institution, or convey to an inmate, or deposit in any place with intent that it shall come into the possession of an inmate, any article whatsoever. Anything so conveyed, thrown or deposited may be confiscated by the governor”.*

See Annex 7 for the new sections 40A to 40F of the amended Prison Act which provides for the criminal offences of the conveying or use of listed prohibited articles without authorisation.

### Prison Rule 70A/YOI Rule 74A)

Prison Rule 70A (YOI rule 74A) has been introduced to provide a List C of prohibited items, as follows:

#### **“70A. [74A] List C Articles**

*The List C articles prescribed in accordance with section 40A(6) of the Prison Act 1952 are any tobacco, money, clothing, food, drink, letters, paper, books, tools, information technology equipment.”*

Information Technology Equipment is defined as:

*“any laptop or notebook computer, desktop computer, gaming console, handheld computing device, personal organiser or any electronic device containing a computer processor and capable of connecting to the internet and any reference to information technology equipment includes a reference to:*

- (a) a component part of a device of that description; or*
- (b) any article designed or adapted for use with any information technology equipment (including any disk, film or other separate article on which images, sounds, computer code or other information may be stored or recorded).”*



**IT Equipment – Legal Advisers at Court**

While many items of IT equipment now include capabilities which may pose a security risk, including in-built cameras and/or internet connectivity, legal advisers have been given authorisation to bring such items into court holding cells/areas when visiting clients given that the Criminal Justice System as a whole is now moving towards a paperless system – it is no longer realistic to expect legal advisers to have paper copies of documents that their clients may need to consider at court.

Legal advisers are authorised therefore to bring into court holding cells/areas IT equipment that is necessary for consultation with their clients and on those cases on which they are engaged with that particular client. This is provided that the equipment and the use of it complies with the terms set out in notes 1 to 7 below. Note – separate procedures for allowing electronic briefing of prisoner clients at court may apply for Category A prisoners. Legal Advisers should check with escorting staff.

The presence of an authorisation to bring such equipment into court holding cells/areas does not infer an automatic right to do so in all cases. Staff supervising prisoners at court may still impose additional administrative restrictions on items allowed into court holding cells/areas where there are reasonable grounds to believe that these restrictions are necessary to prevent unauthorised communications by prisoners or other security breach. Unless there is good reason to suspect that this is the case then legal advisers will be allowed to bring necessary IT equipment into prisoner holding cells/areas at court or alternative arrangements will be implemented locally which allow solicitors to properly brief their clients electronically.

Staff supervising prisoners at court should put into place measures to minimise any associated risks where required. Any action taken should be proportionate to the potential risks in bringing the equipment into prisoner areas, taking into account factors such as the prisoner type involved and the category of prison in question. Any action must be defensible in case of legal challenge.

Staff should be clear of any local arrangements for monitoring such equipment or any alternative procedures and must brief legal advisers appropriately. *Staff must ensure that all items of electronic equipment are checked in and out of the prisoner area.*

**Notes:**

1. Computers should be small, self-contained portable devices such as laptop computers or tablets. External devices such as external keyboards, printers or mice, etc are not authorised other than that external data media set out in the authorisation above.
2. Computer equipment which has built in Wi-Fi, 3G or other networking capabilities is allowed provided that the network capability is switched off, any external 3G dongle or SIM card is removed where practical and no attempt is made to transmit or receive images, sound or information by electronic communications.
3. Computer equipment may contain built in cameras but if so fitted the camera may not be used to take photographs or video within the court cell/holding area.
4. Computer equipment may contain a sound recording device. Legal advisers are authorised to make sound recordings of their clients for the purposes of advising them on the matter for which they are so engaged and in doing so may use computer equipment for this purpose rather than bringing into the cell/holding area a separate sound recording device.

5. No data or items of equipment may be passed to the prisoner with the intention of this remaining in the possession of the prisoner. Separate procedures exist under "Access to Justice" arrangements to enable the prisoner to have possession within prison of IT equipment and legal documents in electronic format. Any requests for data, or IT equipment, to be passed permanently to the prisoner should be declared to the holding prison, and not NOMS staff or contractors at court, and then considered under "Access to Justice Laptop" arrangements within the prison.
6. Legal advisers are responsible for all equipment brought into the court holding cells/areas and should ensure they have all items with them when they leave. Loss of such items in prisoner areas is a serious matter and all losses must be reported to NOMS staff or contractors immediately.
7. Any complaints about the operation of this process that cannot be resolved with the Senior Custody Officer at court should be made via the appropriate escort contractor Regional Operational Manager. General queries on national policy in these areas can be made to NOMS headquarters.  
[\(\[Emma.Prince@noms.gsi.gov.uk\]\(mailto:Emma.Prince@noms.gsi.gov.uk\)\)](mailto:Emma.Prince@noms.gsi.gov.uk).

# HQ POLICY - EIA

PSI 10/2012

Revision of PSO 1100, Conveyance of Unauthorised Articles and Other Related Offences

## **Aims**

### **What are the aims of the policy?**

PSO 1100, Conveyance of Unauthorised Articles and Other Related Offences, has been reviewed and replaced with a PSI to take into account new offences introduced by the Crime and Security Act 2010, which amends the Prison Act.

Once implemented, the new provisions will make it an offence possess within a prison without authorisation:

- a) a device capable of transmitting or receiving images, sounds or information by electronic communications (including a mobile telephone);
- b) a component part of such a device;
- c) an article designed or adapted for use with such a device (including any disk, film, or other separate article on which images, sounds or information may be recorded).

The maximum penalty on conviction for committing an offence of possessing a prohibited item is 2 years imprisonment and/or unlimited fine. All such offences carry a criminal record on conviction.

These provisions will support existing Prison Act offences, introduced by the Offender Management Act, which made conveyance into/out of prison of mobile phones and other items an offence.

The inclusion of the offences in the Prison Act will strengthen the range of measures we already have in place to tackle the problem of mobile phones and their component parts within prisons. The changes will also make the possession of other devices that have the same functions and threats as mobile phones a criminal offence, such as those that can send and receive text messages, photos and videos, access the internet and make telephone calls.

Whilst the Offender Management Act made it a criminal offence to convey a mobile phone and other items into or out of prisons, it did not make it an offence to possess a mobile phone or component parts within a prison. This makes it very difficult to prosecute those found in possession of these illicit items within a prison as there is rarely evidence that the person conveyed the item(s) into the prison.

The PSI also includes a new chapter including enhanced guidance and instruction on referring prohibited item offences to the police. It requires prisons to investigate all suspected prohibited item offences to establish whether referral to the police is appropriate or whether internal disciplinary action should be taken instead. It sets out alleged offences which must always be referred to the police for consideration for prosecution. For other offences, prisons will be encouraged to engage with local CJS partners to agree a local policy on referral for prosecution, taking into account specific local crime and control issues. Overall the guidance will probably result in less

offences being referred to the police.

## Effects

### What effects will the policy have on staff, offenders or other stakeholders?

The revised policy will apply to everyone who enters a prison, including prisoners, staff, domestic visitors and professional and official visitors. The major impact, however, will be on prisoners as the existing legislation already covers the circumstances in which staff or visitors are caught in possession of mobile phones.

The introduction of the new possession offences will impact on the ability to prosecute prisoners who are caught in possession of mobile phones or other similar items. These are items which can undermine the safety and security of all persons within a prison. The availability of a severe maximum penalty will also serve as a deterrent to prisoners who consider trafficking mobile phones and other illicit items.

## Evidence

### Is there any existing evidence of this policy area being relevant to any equalities issue?

*Identify existing sources of information about the operation and outcomes of the policy, such as operational feedback (including local monitoring and impact assessments)/Inspectorate and other relevant reports/complaints and litigation/relevant research publications etc. Does any of this evidence point towards relevance to any of the equalities issues?*

No, the policy changes are applicable to all groups irrespective of race, gender, disability or any other irrelevant factor.

## Stakeholders and feedback

### Describe the target group for the policy and list any other interested parties. What contact have you had with these groups?

We haven't consulted with the following groups and organisations to make them aware of the revised provisions of the Prison Act and the revisions to PSO 1100:

- HMCIP
- Probation Trust – Governance and Legislation
- UKBA
- Regional Managers of Custodial Services
- Serious Organised Crime Organisation
- Audit and Corporate Assurance
- Employment Relations – PMG
- Unions
- Equalities Group
- Independent Monitoring Board
- National Operations Group
- Prison and Probation Ombudsman

- HMRC
- Safer Custody Group
- Operational Policy Unit
- Police Advisors Section
- Extremism Unit
- Intelligence and Operations Unit
- Business and Service Development Group
- Chaplaincy Headquarters
- Health and Safety Policy Group
- Corporate Planning
- Learning and Development Group
- CPS
- MOJ Legal Services
- Offender Safety, Rights and Responsibilities Group
- Law Society

**Do you have any feedback from stakeholders, particularly from groups representative of the various issues, that this policy is relevant to them?**

No issues in relation to equality have been raised by any of the groups consulted. The only related issue is that the CPS have asked for clarification that solicitors will be authorised to bring laptop computers into legal visits as the DPP and Attorney General are keen to see a move towards paperless legal files. NOMS have taken on board this request and have authorised solicitors to bring in laptop computers to visits.

### **Impact**

**Could the policy have a differential impact on staff, prisoners, visitors or other stakeholders on the basis of any of the equalities issues?**

We have assessed that the implementation of the new provisions will not impact negatively on any group or individual on equality grounds. It should be noted that there will be measures in place to allow for certain restricted items to be authorised if considered to be appropriate. For example, if a person needs to bring a normally restricted electronic or technical item into a prison to assist them with a particular disability, the Governor could authorise as appropriate. The possession of electronic hearing aids by prisoners, visitors and staff has been authorised centrally in the PSI.

## Local discretion

Does the policy allow local discretion in the way in which it is implemented? If so, what safeguards are there to prevent inconsistent outcomes and/or differential treatment of different groups of people?

The revised instruction provides discretion for prisons in determining local policies with CJS partners for referring some prohibited item offences for prosecution and in referring other cases where aggravating factors exist. For example, there is no discretion over the referral to the police of firearms but there is over mobile phones.

## Summary of relevance to equalities issues

Strand	Yes/No	Rationale
Race	No	The policy changes are applicable to all groups equally irrespective of any equality issue.
Gender (including gender identity)	No	As above.
Disability	No	As above.
Religion or belief	No	As above.
Sexual orientation	No	As above.
Age (younger offenders)	No	As above.
Age (older offenders)	No	As above.

If you have answered 'Yes' to any of the equalities issues, a full impact assessment must be completed. Please proceed to STAGE 2 of the document.

If you have answered 'No' to all of the equalities issues, a full impact assessment will not be required, and this assessment can be signed off at this stage. You will, however, need to put in place monitoring arrangements to ensure that any future impact on any of the equalities issues is identified.

## Monitoring and review arrangements

Describe the systems that you are putting in place to manage the policy and to monitor its operation and outcomes in terms of the various equalities issues.

N/A

State when a review will take place and how it will be conducted.

	Name and signature	Date
Policy lead	EMMA PRINCE	
Head of group	RICHARD PICKERING	

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