



The *Prisons (Property) Bill*

(Bill 18 of 2012-13)

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The *Prisons (Property) Bill* is a Private Members' Bill which had its first reading on 20 June 2012 but was not published until 9 September. It is due to have its second reading on 14 September 2012.

Stuart Andrew is the Member in charge of the Bill. It has government support, and the Ministry of Justice has provided [Explanatory Notes](#).

Currently prison governors can confiscate unauthorised items such as mobile phones or alcohol. They also have the power to sell or otherwise dispose of unclaimed items of prisoners' property. However, they do not have an express power to destroy prisoners' property. In 2009 the High Court rejected the argument that governors had a common law power to do this. There was speculation at the time that this could lead to compensation claims from other prisoners whose property had been destroyed. The Government was given leave to appeal, but did not do so.

The result is that items which are confiscated must be stored by the prison authorities and may be returned to the prisoner on release. The cost of storing such property is met by the National Offender Management Service (NOMS).

The Bill would allow a governor or director of a prison to destroy unauthorised property found in prisons, or dispose of it in other ways including selling it.

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1 Introduction and background

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The Bill would allow a governor or director¹ of a prison to destroy unauthorised property found in prisons, or dispose of it in other ways including selling it.

1.1 What powers do prison governors have to confiscate unauthorised items?

The history of prisoners seeking to get hold of things which those holding them prisoner do not want them to have is probably as long as the history of imprisonment itself. Much of the effort in maintaining the security of prisons is concerned with ensuring that prisoners do not gain access to things which might be used in a bid to escape or might otherwise jeopardise security. It has, for example, long been a criminal offence to bring tobacco or alcohol into a prison or unlawfully to introduce letters or other articles.

The Labour Government updated the law and introduced new explicit criminal offences of bringing various items such as drugs, firearms and mobile phones into prisons.² The *Offender Management Act 2007* made it a criminal offence to convey mobile phones and associated equipment into or out of a prison, or to transmit sounds or images from within a prison, without authorisation.³ [Library Research Paper 06/62](#), which was written for the Bill's second reading, discusses the provisions relating to prison security.⁴

It has long been a disciplinary offence under the *Prison Rules* to possess an "unauthorised article".⁵ Again, the Labour Government made it a criminal offence to possess an unauthorised mobile phone inside a prison.⁶

Under rule 43 of the *Prison Rules*, Governors have the power to confiscate unauthorised items. They also have the power to sell or otherwise dispose of unclaimed items of prisoners' property:

4) Any article belonging to a prisoner which remains unclaimed for a period of more than one year after he leaves prison, or dies, may be sold or otherwise disposed of; and the net proceeds of any sale shall be paid to the National Association for the Care and Resettlement of Offenders, for its general purposes.

(5) The governor may confiscate any unauthorised article found in the possession of a prisoner after his reception into prison, or concealed or deposited anywhere within a prison.

What they do not have, at present, is the express power to destroy property, even unauthorised property, which prisoners want back.

¹ Private prisons have "directors" rather than Governors

² The *Offender Management Act 2007*: [Library Research Paper 06/62](#), which was written for the Bill's second reading, discusses the provisions relating to prison security on pages 52-3

³ sections 21-22

⁴ pp52ff

⁵ Rule 51, *Prison Rules 1999* SI 1999/728; see also *Prison Rules 1964* SI 1964/388

⁶ [Section 45](#) of the *Crime and Security Act 2010*.. This is discussed in more detail in [Library Standard Note 6414, The Prisons \(Interference with Wireless Telegraphy\) Bill](#)

1.2 The Coleman Case

The position regarded prison governors' powers to dispose of unauthorised possessions was tested in the High Court in April 2009.⁷ A former prisoner had been found guilty under the prison rules of possessing an unauthorised mobile phone, and the phone was later destroyed. In the case, lawyers for the Secretary of State argued that the governor had the power in section 43 of the 1952 Act to confiscate the item, but also that the governor had a power at common law to destroy the phone. The Court found that the governor had no such power. Comments by human rights lawyers in the press speculated that the case could open the way for many other ex-prisoners to seek compensation for similar destruction of mobile phones and other property.⁸ At the time the judge gave leave to appeal the judgement, but no appeal was made.

1.3 The Government's explanation of the background to the Bill

The Explanatory Notes set this out as follows:

(..)there are restrictions on the property that prisoners may bring into and possess in prison. Although provisions in the Prison Act 1952 and in rules made under that Act provide for the confiscation of unauthorised property, they do not provide for the destruction of confiscated property.

6.This means that, at present, unauthorised property found in the possession of a prisoner and which is subsequently confiscated must be stored by the prison authorities and may be returned to the prisoner on release. The cost of storing property until a prisoners release is met by the National Offender Management Service (NOMS).

7.One of the most commonly confiscated items is mobile telephones, of which a large number are currently stored by NOMS. Many of the phones held in storage are not attributable to individual prisoners and, in any event, very few prisoners have sought the return of these items upon their release. Other commonly confiscated items include authorised items which have been adapted for unauthorised uses and items of property which have been smuggled into prison or stolen or coerced from another prisoner.

8.When controlled drugs and other illegal items such as weapons are found inside prisons, these are generally referred to the police (and are not therefore stored by NOMS). However there is currently no express power for the destruction or disposal of other property of the types described. The Bill is designed to address this situation and to ensure there is a clear legal basis for the destruction or other disposal of unauthorised or unattributable property.

2 The Bill

Clause 1 would insert a new section into the *Prison Act 1952* giving prison governors or directors the power to destroy or otherwise dispose of unauthorised property. The power applies to unauthorised articles found either in a prisoner's possession, or inside a prison or prisoner escort van where ownership cannot be ascertained. Authorised articles may also be destroyed or disposed of if the governor reasonably believes they are being (or have been, or may be) used for purposes such as concealing unauthorised items, causing harm or

⁷ *R. (on the application of Coleman) v Governor of Wayland Prison* [2009] EWHC 1005 (Admin). See

⁸ See for example "[Compensation floodgates may open after judge rules prison unlawfully destroyed inmate's smuggled mobile phone was destroyed](#)", *Daily Mail*, 3 April 2009 and "[Prison 'wrong' to destroy phone](#)", *BBC News*, 3 April 2009

prejudicing security. The Explanatory Notes say this would “include, for example, property such as a radio which is being used to store controlled drugs in the battery compartment”.

It is intended that the exercise of the power will be subject to guidance in the form of a Prison Service Instruction.⁹

⁹ Explanatory Notes, p3