



The *Prisons (Property) Bill* Committee Stage Report

(Bill 18 of 2012-13)

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Author: Pat Strickland

Section Home Affairs Section

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 had its second reading on 14 September 2012, and its committee stage on 7 November 2012, where it had cross party support and was not amended. It is due to have its report stage and third reading on 30 November 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

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 2012. It had its second reading on 14 September 2012 and its Committee Stage on 7 November 2012.

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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

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

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.

1.2 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

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](#)

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

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 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

3 Debate

The Bill had its second reading on 14 September 2012.¹⁰ Mr Andrew explained his reasons for introducing the Bill as follows:

I want to talk about why the Bill is needed and what the problem is. It will probably stagger the House to discover that there is a need for such a Bill. I am afraid to say that there is. Currently, there is nothing in law giving any power to governors to destroy property that prisoners should not have. As a result, astonishingly, any item seized has to be stored by governors and kept in safe keeping for the duration of the prisoner's term.¹¹

The Bill received wide support. The Conservative, Philip Davies, said more needed to be done to stop contraband getting into prisons:

That is the point I want to get to, because although I absolutely support what the Bill would do, I contend—I hope that the Minister will pay some attention to this—that we absolutely need to do more to stop such material getting into prisons in the first place, and perhaps the Bill can be amended in Committee to reflect that. Some of the checks are not what they should be. For example, there are what are known as BOSS chairs in prisons—body orifice scanners—that are used to try to stop prisoners bringing stuff into prison with them at the time they are sentenced by secreting it in ever more ingenious and, it seems to me, painful ways. The prisons have these body orifice scanners to try and detect that, but occasionally they will not be working properly or have not been working for a few months and no one has bothered to have them repaired. Alternatively, the prison officers may not have confidence that the scanners

⁹ Explanatory Notes, p3

¹⁰ [HC Deb 14 September 2012 c577-609](#)

¹¹ [Ibid c577](#)

can pick up everything that they should. We should do much more to stop the stuff from getting through in the first place.¹²

The Shadow Justice Secretary, Sadiq Khan, who also supported the Bill, argued for investment in prevention:

I want to address a couple of points raised by hon. Members during the debate, but I will keep my comments brief so that we can get the Bill through Second Reading. As is often the case, much to my embarrassment I agree with much of what was said by the hon. Member for Shipley. He mentioned the need to redouble efforts to stop unauthorised items getting into prisons, and although he was right to make reference to that, such things also happened under the watch of the previous Government. Unlawful items getting into prison is not a new phenomenon. However, if we want to have closed visits or full body detectors, to carry out more searches—including intimate searches—of visitors, staff and prisoners, and give prisons the technology to stop mobile phones being used, which is expensive although not particularly difficult, we need investment and to spend resources on those things. If the hon. Gentleman argues for proper investment in order to use technology and other means to prevent illicit items from entering prison, the Opposition will support him.¹³

4 Committee Stage

At the committee stage on 7 November 2012, Mr Andrew expressed gratitude for the support the Bill had received:

The support highlights the importance of the Bill, which creates a power for governors and directors of prisons to destroy or dispose of unauthorised property found in prisons or prison transport vehicles. As I said on Second Reading, it is odd that there is a need for the Bill, but there it is. There are restrictions, as we know, on the property that prisoners may possess in prison. Although the current rules allow for confiscation, there is nothing that provides for the destruction of the property, which means that the Prison Service has a great number of items to store at great cost. Bizarrely, it has to hand the confiscated property back to the prisoner once they are released, although many of them have never reclaimed anything, so the cost of storage alone is quite ludicrous. Of course, prisoners know about the situation, and that affects the morale of prison officers who work in our Prison Service. That is why the Prison Officers Association has expressed support for the Bill.

On Second Reading, we heard testimony from victims' groups that were also supportive of the Bill. I gave several examples of cases in which people were being intimidated, particularly through mobile phones, so anything we can do to crack down on that is important. There are now some 40,000 mobile phones in storage at great cost. Most of them are never reclaimed. That, and the support of the Prison Officers Association, Victim Support, the Government and the Opposition, demonstrate that there is a clear need for the Bill. I hope it will be supported today.¹⁴

The Shadow Justice Minister, Jenny Chapman, indicated her support before going on to ask about the beneficiaries from the sale of prison property:

Will the hon. Gentleman advise on whether he intends to determine, in the Prison Service instructions, who the beneficiaries of any such sale would be, or whether he intends there to be a deal with a recycling company? At the moment, the beneficiary is

¹² Ibid c584

¹³ Ibid c591

¹⁴ [PBC Deb 7 November 2012 c3](#)

Nacro, and I can see the logic for that, but will any consideration be given to Victim Support and others?¹⁵

For the Government, the junior Justice Minister, Jeremy Wright, said that the Bill would “plug a very important gap in the powers of prison governors and others who work in prisons—a gap that they need to have plugged if they are to do what their difficult and dangerous job entails.” On the question of the beneficiaries of the sale of any items, he said :

(...)further determination will be required as to which charities may benefit, but the clear intention is that charities will benefit from any sale of the items.¹⁶

The Bill was agreed to without amendment.

¹⁵ ibid c4
¹⁶ ibid c6