



# Offender Management Act 2007

## 2007 CHAPTER 21

### PART 2

#### PRISONS

##### *Contracted out prisons and secure training centres*

#### **16 Power of search in contracted out prisons and secure training centres**

- (1) In section 86 of the Criminal Justice Act 1991 (c. 53) (powers and duties of prisoner custody officers in contracted out prisons)—
  - (a) in subsection (1)(b), after “search” there is inserted “in accordance with prison rules”; and
  - (b) in subsection (2), for the words from “remove” to the end there is substituted “submit to an intimate search (within the meaning of section 164(5) of the Customs and Excise Management Act 1979).”
- (2) In section 9 of the Criminal Justice and Public Order Act 1994 (c. 33) (powers and duties of custody officers in contracted out secure training centres)—
  - (a) in subsection (1)(b), after “search” there is inserted “in accordance with secure training centre rules”; and
  - (b) in subsection (2), for the words from “remove” to the end there is substituted “submit to an intimate search (within the meaning of section 164(5) of the Customs and Excise Management Act 1979).”

#### **17 Power of detention in contracted out prisons and secure training centres**

- (1) After section 86 of the Criminal Justice Act 1991 there is inserted—

**“86A Power of prisoner custody officers to detain suspected offenders**

- (1) A prisoner custody officer performing custodial duties at a contracted out prison shall have the following powers in relation to any person who is in or is seeking to enter the prison (other than a prisoner confined in the prison).
  - (2) Where the officer has reason to believe that the person is committing or has committed an offence under any of sections 39 to 40D of the Prison Act 1952, the officer may—
    - (a) require the person to wait with him for the arrival of a constable for such period as may be necessary (not exceeding two hours); and
    - (b) use reasonable force to prevent the person from making off while subject to a requirement under paragraph (a).
  - (3) A person who makes off while subject to such a requirement is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
  - (4) In subsection (2), a reference to an offence under a particular provision includes a reference to any offence consisting of an attempt to commit, incitement or conspiracy to commit, or aiding, abetting, counselling or procuring the commission of, an offence under that provision.”
- (2) In section 88A(2) of that Act (contracted out functions at a directly managed prison)—
- (a) for “Section 86” there is substituted “Sections 86 and 86A”; and
  - (b) for “it applies” there is substituted “they apply”.
- (3) After section 9 of the Criminal Justice and Public Order Act 1994 (c. 33) there is inserted—

**“9A Power of custody officers to detain suspected offenders**

- (1) A custody officer performing custodial duties at a contracted out secure training centre shall have the following powers in relation to any person who is in or is seeking to enter the centre (other than a person detained in the centre).
- (2) Where the officer has reason to believe that the person is committing or has committed an offence under any of sections 39 to 40D of the Prison Act 1952, the officer may—
  - (a) require the person to wait with him for the arrival of a constable for such period as may be necessary (not exceeding two hours); and
  - (b) use reasonable force to prevent the person from making off while subject to a requirement under paragraph (a).
- (3) A person who makes off while subject to such a requirement is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (4) In subsection (2), a reference to an offence under a particular provision includes a reference to any offence consisting of an attempt to commit, incitement or conspiracy to commit, or aiding, abetting, counselling or procuring the commission of, an offence under that provision.”

- (4) In section 11(2) of that Act (contracted out functions at directly managed secure training centres)—
- (a) for “Section 9” there is substituted “Sections 9 and 9A”; and
  - (b) for “it applies” there is substituted “they apply”.

## **18 Powers of authorised persons to perform custodial duties and search prisoners**

- (1) The Criminal Justice Act 1991 (c. 53) is amended as follows.
- (2) After section 86A (as inserted by section 17 above) there is inserted—

### **“86B Powers of authorised persons to perform custodial duties**

- (1) In this section—
- “restricted activity” means an activity which is (apart from this section) required by section 85(1) to be carried out by an officer of a contracted-out prison who is—
- (a) a prisoner custody officer authorised to perform custodial duties; or
  - (b) a prison officer temporarily attached to the prison; and
- “worker”, in relation to a contracted out prison, means a person who works at the prison, other than an officer mentioned above.
- (2) The Secretary of State may by order specify descriptions of restricted activity that may be the subject of authorisations under subsection (3) given to workers at a contracted-out prison.
- (3) A worker at a contracted-out prison may carry out any activity of a description specified under subsection (2), but only if and to the extent that he is for the time being authorised to do so by the director of the prison.
- (4) The director may give such authorisation—
- (a) in general or specific terms, subject to any limitations or conditions he considers appropriate; and
  - (b) to one or more particular workers or to any worker who is (or comes to be) within a specified description of workers at the prison.
- (5) Nothing in an order or authorisation under this section is to be taken as authorising the use of force.
- (6) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- (3) In section 85(1) (officers of contracted out prisons), after “shall”, in the words following paragraph (b), there is inserted “(subject to section 86B)”.

## **19 Powers of director of a contracted out prison**

Section 85(3) of the Criminal Justice Act 1991 (c. 53) (director of a contracted out prison not to exercise certain adjudication powers or order removal etc of prisoner) shall cease to have effect.

**20 Amendment of section 87 of the Criminal Justice Act 1991**

- (1) Section 87 of the Criminal Justice Act 1991 (modification of Prison Act 1952 in its application to a contracted out prison) is amended as follows.
- (2) For subsection (3) there is substituted—
- “(3) Section 8 (powers of prison officers) shall not apply (but this does not affect the powers of a prison officer who is temporarily attached to the prison).”
- (3) In subsection (4), after “sections” there is inserted “8A(3), (4) and (5)”.

*Offences relating to prison security***21 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.”

**22 Conveyance 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”)—

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- (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;

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- (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 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, or
  - (b) transmits, or causes to be transmitted, a restricted document (or any information derived from a restricted document) from inside a prison by means of electronic communications,is guilty of an 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 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.”

(2) Section 41 of the Prison Act 1952 (c. 52) (unlawful introduction of other articles) ceases to have effect.

(3) 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 purposes 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.”

*Other amendments of the Prison Act 1952***25 Removal of requirement to appoint a medical officer etc**

- (1) It is no longer a requirement for there to be a medical officer appointed under section 7(1) of the Prison Act 1952 for each prison (and, accordingly, in section 7(1) the words “and a medical officer” are omitted).
- (2) In section 128(5) of the Criminal Justice and Public Order Act 1994 (c. 33) (pay and conditions for the prison service), for paragraph (a) there is substituted—
  - “(a) hold any post, other than as chaplain or assistant chaplain, to which they have been appointed for the purposes of section 7 of the Prison Act 1952;
  - (aa) hold any post, other than as chaplain or assistant chaplain or as a medical officer, to which they have been appointed for the purposes of section 2(2) of the Prison Act (Northern Ireland) 1953;”.
- (3) Sections 17 (painful tests applied by the medical officer) and 28(5) (duties of the medical officer in relation to certain prisoners) of the Prison Act 1952 (c. 52) cease to have effect.

**26 Independent monitoring boards**

- (1) The boards appointed under section 6 of the Prison Act 1952 (boards of visitors) are renamed as independent monitoring boards.
- (2) Accordingly, in section 6 of that Act—
  - (a) for the sidenote there is substituted “Independent monitoring boards”;
  - (b) in subsection (2), for “board of visitors” there is substituted “group of independent monitors”;
  - (c) after subsection (2) there is inserted—

“(2A) The groups so appointed are to be known as independent monitoring boards.”; and
  - (d) in subsection (3), for “boards of visitors” there is substituted “independent monitoring boards” and for “a board of visitors” there is substituted “an independent monitoring board”.
- (3) In section 6(2) of that Act the words from “of whom” to the end cease to have effect.

**27 Amendment of section 8A of the Prison Act 1952**

- (1) Section 8A of the Prison Act 1952 (powers of search by authorised employees at a directly managed prison) is amended as follows.
- (2) In the side note, for “employees” there is substituted “persons”.
- (3) In subsections (1) and (2), for “employee” there is substituted “person”.
- (4) In subsection (3)—
  - (a) for “authorised employee” there is substituted “authorised person”; and
  - (b) for “an employee” there is substituted “a person working at the prison”.