

prison or to possess a mobile phone or similar, or a component part of a mobile phone, without authorisation. The meaning of authorisation for the purposes of section 40C and 40D is set out in section 40E.

5. Section 40E(1) provides that authorisation means authorisation given in relation to all prisons or prisons of a specified description by the Secretary of State or by the Prison Rules and in relation to a particular prison by the Secretary of State, by the governor or director of the prison, or by a person working at the prison authorised by the governor or director. Section 40E(1) therefore differs from authorisations in respect of List A articles under section 40B(3) in that, in relation to a particular prison, authorisations may be given by persons authorised by the governor or director, as well as by the governor or director. Authorisations may be given to persons generally or to specified persons or persons of a specified description and on such terms as may be specified (section 40E(2)).

6. The Secretary of State currently authorises the conveyance or possession of articles in relation to the existing offences through Prison Service Instruction PSI 10/2012 (Conveyance and Possession of Prohibited Items and Other Related Offences); these authorisations apply to all prisons¹. Authorisations in relation to individual prisons may also be given by governors or directors and, except in relation to the conveyance of List A articles, by a person working at the prison authorised by the governor or director.

7. As indicated above, new section 40CA(5) applies the existing authorisations framework in section 40E of the 1952 Act to the new offence. So possession of the specified articles may be authorised in relation to all prisons or prisons of a specified description by the Secretary of State or by the Prison Rules and in relation to particular prisons by the Secretary of State, the governor or director of the prison or by a person working at the prison who is authorised by the governor or director. The intention is that, consistent with current practice under section 40E, the Secretary of State will continue to issue authorisations in respect of all prisons, or prisons of a specified description, through Prison Service Instructions, and authorisations in respect of individual prisons will be issued where appropriate by governors or directors or a person working at a prison who is authorised by the governor or director.

8. The delegation is considered necessary to provide for the flexibility to deal with operational issues as they arise. It would not be appropriate to set out authorisations on the face of the Bill as it is important to ensure these can be developed in response to operational issues and the constantly changing prison environment. As mentioned above, the intention is that in most cases authorisations will be issued administratively by the Secretary of State through Prison Service Instructions. This administrative mechanism is considered appropriate given the operational focus of any authorisation. As with the existing authorisation regimes under sections 40B and 40D of the 1952 Act, the authorisations applicable to all prison establishments to be specified under new section 40CA(5) will be generally be routine and reflect the reality that, in some specified circumstances, it will be

¹ <http://www.justice.gov.uk/offenders/psis/prison-service-instructions-2012>

appropriate to allow identified individuals to possess items such as blades within the prison environment. For example, in relation to the existing offence of unauthorised conveyance into or out of a prison of an offensive weapon, paragraphs 7 to 11 of Annex 2 to Prison Service Instructions 10/2012 confers authorisation on a number of specified classes of person, namely Sikh members of the Chaplaincy carrying the Kirpan, delivery drivers conveying into a prison knives, tools or other items that might be deemed offensive and police officers carrying an extendable baton or items of personal protection equipment. It is envisaged that possession of such articles within a prison would also be authorised for the purposes of new section 40CA(5). In addition, there are a range of other bladed or sharply pointed articles with everyday usages which would need to be authorised for the purposes of new section 40CA, for example kitchen knives when used for the preparation of food, work tools when used for their intended purpose in prison workshops or to maintain the fabric of a prison building, and razor blades when used for shaving.

9. Section 40E(1)(ii) and (iii) of the 1952 Act, as applied by new section 40CA(5), enables an authorisation specific to a particular prison, to be given by the governor or director of the prison, or by a person working in the prison who is authorised by the governor or director to grant an authorisation on his or her behalf. There will be particular, usually occasional or one-off, circumstances where it will be necessary for a person visiting a prison to have in his or her possession a bladed or sharply pointed article or offensive weapon. In the interests of the efficient and effective management of individual prison establishments, it is appropriate that the decision to grant an authorisation in such cases is taken locally. Examples of such bespoke authorisations under the existing regime are setting out in Part E of Annex 2 to Prison Service Instructions 10/2012.

10. In the interests of consistency with the existing legislative framework, new section 40CA also enables general authorisations applicable to all prisons to be included in prison rules. The power in section 47 of the 1952 Act for the Secretary of State to make Prison Rules is subject to the negative resolution procedure (by virtue of section 66(4) of the Criminal Justice Act 1967) and it is not considered necessary to change this position.

Home Office
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