

Serious Crime Act 2015

Commencement of Section 79: Offence of throwing articles into prisons

Elements of the Offence and Defences

1. Section 79 of the Serious Crime Act 2015 will commence on 10 November 2015. From that date it will be a criminal offence to throw any article or substance (not already specified in the Prison Act 1952 (“the Prison Act”) or Prison Rules 1999 (“the Prison Rules”)) into a prison without authorisation. The new offence will apply to prison establishments, Young Offender Institutions and Secure Training Centres within England and Wales only.
2. Section 79 of the Serious Crime Act 2015 inserts a new section 40CB into the Prison Act. Details of the offence are shown at Annex A.
3. Note that the definition of “throwing” set out in Section 40CB(2)(b) of the Prison Act, is designed to include a wide range of means of projecting or conveying items over or through the boundary of a prison (so as to land inside the prison) in addition to simply throwing in the item. This includes, but is not confined to, such actions as firing items into prisons with catapults or flying items into prisons attached to Unmanned Aerial Vehicles (UAVs or Drones) or the landing of a UAV itself within a prison.
4. In order to avoid overlap of offences, the new offence specifically excludes the throwing into prison of items in respect of which it is already an offence to convey into a prison under section 40A to 40C of the Prison Act (summarised at para 13 below).
5. A person who can be shown to have attempted to deliberately throw any article or substance into a prison, will also have committed an offence under new section 40CB(2)(b) of the Prison Act (by virtue of section 1(1) of the Criminal Attempts Act 1981).
6. It will be a defence for a person accused of an offence under new section 40CB of the Prison Act to show that he or she reasonably believed that he or she had authorisation to throw the article or substance into a prison, or in the circumstances there was an overriding public interest which justified the action.

Intended Purpose of Offence

7. Articles or substances which will be covered by the new offence will include, but are not limited to, new psychoactive substances (NPS) which are not already controlled drugs. These drugs (more commonly but misleadingly known as “legal highs”) are a significant and increasing problem within prisons. The new offence also captures the throwing into prison of other non-controlled drugs frequently abused by prisoners.
8. NPS can have a destructive impact on prison security and order, and the welfare of individual prisoners and staff. It is known that the throwing of packages containing

contraband, including NPS, is a key method of supply. In some cases, it is coordinated by criminal gangs involved in a wide range of criminality. While it is currently a criminal offence under the Prison Act to throw a number of items into a prison, including controlled drugs, non-controlled drugs are not covered by this legislation. As such, those caught throwing non-controlled NPS into prisons have been able to evade justice to-date.

9. The offence also captures other items that may be thrown or otherwise projected into a prison including the landing of UAVs (with or without contraband) within a prison. There is almost never a good reason for throwing anything over a prison wall and doing so creates security risks and operational pressures. Each case results in a security incident and seemingly innocent articles such as tennis balls are often thrown into prison containing drugs or mobile phones and as such would require investigation by the prison.

Penalties and authorisation

10. The new offence attracts a maximum sentence on conviction on indictment of two years' imprisonment, an unlimited fine or both, or, on summary conviction, to imprisonment for a term not exceeding six months¹, an unlimited fine, or both.
11. In a few rare cases there may be a need for an authorisation to throw something into a prison such as by emergency services or prison intervention teams in the case of riots, or for building work. These will be dealt with using the existing authorisation process as set out in the Prison Act or will be covered by Crown Immunity.

Current Offences

12. It is currently a criminal offence under the Prison Act to convey a range of items into or out of prisons (see sections 40A to 40C of that Act).
13. The Prison Act sets out three lists of items at reducing levels of seriousness with corresponding maximum penalties. Prohibited items are classified as List A, List B or List C items, as set out below:
 - **List A items** – controlled drugs, explosives, firearms or ammunition and any other offensive weapon – Maximum penalty: 10 years' imprisonment or unlimited fine or both.
 - **List B items** - alcohol, mobile telephones, cameras, sound recording devices (or constituent part of the latter three items) – Maximum penalty: two years' imprisonment or unlimited fine or both.
 - **List C items** - tobacco, money, clothing, food, drink, letters, paper, books, tools, information technology equipment. – Maximum penalty: level 3 fine (currently, £1,000).
14. While controlled drugs are included at List A, a significant number of NPS do not contain controlled substances and therefore do not fall under this definition.
15. Currently several hundred NPS are controlled drugs under the Misuse of Drugs Act 1971 and are therefore already covered by List A and it already an offence to throw

¹ Rising to 12 months once section 154(1) of the Criminal Justice Act 2003 is commenced.

them into a prison. However, it is known that there are many more NPS in circulation that are not controlled drugs and the number is increasing. Other than through this new offence, those who throw non-controlled drugs into prison cannot be prosecuted.

16. The new offence addresses this and provides a robust legislative framework to deter and punish such offences as well as the throwing of other items. It is vital that people who engage in this behaviour are able to face a criminal charge. Throwing items into prisons can pose a risk to security and safety in the prison and be used as a means of supplying drugs and other items which have a destructive impact on our prisons and the welfare of all those who live and work within them.

Referral of Offence

17. Not all suspected offences of throwing items into prisons will be referred to the police. All incidents in which items have been found to have been thrown into prison grounds must be investigated to determine the appropriate course of action to take and whether referral to the police is appropriate. Local arrangements for referral must be in place.
18. Prison managers must assess whether to report offences to the police based on an assessment of the particular circumstances including: the degree of threat posed by the item; the availability of evidence (such as CCTV footage) of the crime and the perpetrators; whether it believed there was intent for the item to come directly or indirectly into the possession of prisoners; as well as other agreements the prison may have on reporting crime with local police or CPS. In addition, cases should normally be referred to the police where there is evidence that the crime is part of, or linked to, organised criminal activity on a wider scale than the offence in question alone.

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Section 40CB of the Prison Act 1952, inserted by section 79 of the Serious Crime Act 2015

40CB Throwing articles into prison

- (1) A person who, without authorisation, throws any article or substance into a prison is guilty of an offence.
- (2) For the purposes of subsection (1)—
 - (a) the reference to an article or substance does not include a reference to a List A article, a List B article or a List C article (as defined by section 40A);
 - (b) the reference to “throwing” an article or substance into a prison includes a reference to doing anything from outside the prison that results in the article or substance being projected or conveyed over or through a boundary of the prison so as to land inside the prison.
- (3) 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.
- (4) 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 (or both).
- (5) 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.