

Serious Crime Act 2015

Fact sheet: Offence of throwing articles into prisons

New Offence

1. Section 79 of the Serious Crime Act makes it a criminal offence to throw, or otherwise project, any article or substance (not already specified in the Prison Act 1952 or Prison Rules 1999) into a prison without authorisation. The new offence will apply to prison establishments within England and Wales only.
2. The new legislation will serve to criminalise the throwing into prisons of new psychoactive substances (NPS), more commonly but misleadingly known as “legal highs”, which are a significant problem within prisons.
3. The offence also captures other items that could pose a threat within a prison environment. 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 even a seemingly innocent article would require investigation by the prison.

Penalties and authorisation

4. 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 months, an unlimited fine, or both.
5. In a few rare cases there may be a need for an authorisation to throw something into a prison such as emergency services, prison intervention teams in the case of riots, or building work. These will be dealt with using existing authorisation process as set out in the Prison Act 1952 or will be covered by Crown Immunity.

Current position

6. It is currently a criminal offence under the Prison Act to convey a range of items into or out of prisons.
7. 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).

8. While drugs are included at List A, a significant number of NPS do not contain controlled substances and therefore do not fall under this definition.
9. Currently over 500 NPS are controlled by the Home Office under the Misuse of Drugs Act 1971 and are therefore already illegal to throw into a prison over the secure perimeter. However, it is known that there are many more NPS in circulation that are not controlled and the number is increasing as producers develop the chemical makeup of substances to evade contravening the 1971 Act. Those who throw non-controlled drugs into prison cannot be prosecuted.

Intended effects of the new offence

10. NPS in prisons is now a drug of choice amongst prisoners and is a significant and growing problem. NPS are having an increasingly destructive impact on prison security and order, and the welfare of individual prisoners and staff. Control and order is a fundamental foundation of prison life; without it, safety can not be guaranteed and the rehabilitation of prisoners can not take place. It is recognised that NPS has been linked to mental health problems and disturbed behaviour by prisoners, including violence.
11. 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. As indicated, while it is currently a criminal offence under the Prison Act to convey a number of items into a prison, including controlled drugs, non-controlled substances are not covered by this legislation. As such, those caught trafficking a range of NPS having been able to evade justice.
12. The new offence addresses this and provides a robust legislative framework to deter and punish such offences and also the trafficking of other items that can pose a security or safety risk. It is vital that people who engage in this behaviour are able to face a criminal charge. It is unacceptable that criminals are able to evade justice for supplying drugs and other items which have such a destructive impact on our prisons and the welfare of all those who live and work within them.

Ministry of Justice
March 2015