



Isle of Man

Ellan Vannin

AT 15 of 2016

CUSTODY (AMENDMENT) ACT 2016

**Isle of Man***Ellan Vannin*

CUSTODY (AMENDMENT) ACT 2016

Signed in Tynwald: 19 July 2016
Received Royal Assent: 28 September 2016
Announced to Tynwald: 4 October 2016

AN ACT to amend the Custody Act 1995; to make provision for court security officers; to restrict the power to pass extended sentences of custody; and for connected purposes.

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows: —

Introductory

1 Short title

The short title of this Act is the Custody (Amendment) Act 2016.

2 Commencement

- (1) This Act (other than sections 1 and 3 and this section) comes into operation on a day appointed by order of the Department of Home Affairs.
- (2) Different days may be appointed for different provisions and different purposes.
- (3) An order under subsection (1) may make such transitional and saving provisions as the Department of Home Affairs considers necessary or expedient.

3 Interpretation

In this Act “**the Act**” means the *Custody Act 1995*.

4 Expiry

- (1) This Act expires —



- (a) on the day after its promulgation, if all of its provisions are in operation on its promulgation; or
 - (b) otherwise, on the day after the last provision is brought into operation.
- (2) The expiry does not —
- (a) affect the continuing operation of the amendments made by this Act; or
 - (b) revive any provision not in operation when the amendments took effect.

Amendments of the Custody Act 1995

5 Detention of persons under 18

For section 12(2) of the Act substitute —

- █ (2) The Department must secure that detainees under 18 years of age are, so far as practicable, detained in a separate institution or in separate accommodation within an institution. █.

6 Custody rules

- (1) Section 16 of the Act is amended as follows —
- (a) after subsection (2) insert —
 - █ (2A) Custody rules must make provision for healthcare for detainees.
 - (2B) Custody rules may authorise detainees of a class or description specified in the rules to be designated by a style or name there specified. █;
 - (b) at the end insert —
 - █ (4) The Department may give to any person, or to persons of any description, exercising functions under custody rules general directions or guidance as to the exercise of those functions. █.
- (2) In section 17(3) of the Act, after “in relation to” insert █ the operation of institutions, █.
- (3) The following provisions of the Act are repealed —
- (a) section 13(1)(b);
 - (b) section 22(5).

7 Independent monitoring of institutions and other premises

- (1) For section 18 of the Act substitute —

18 Independent monitoring of institutions

- (1) Custody rules must provide for the establishment for every institution of an independent body (a “**board**”) consisting of such persons appointed at such times, in such manner and for such terms as may be prescribed.
- (2) A board may be given such title as the Department thinks fit.
- (3) Custody rules must prescribe the functions of a board in respect of each institution for which it is established, and must in particular require members of the board —
 - (a) to pay frequent visits to the institution;
 - (b) to hear, in private or otherwise at their discretion, any complaints or requests which may be made by detainees; and
 - (c) to report to the Department any matter which they consider it expedient to report.
- (4) Custody rules may require the board for an institution to consider periodically the character, conduct and prospects of each of the detainees.
- (5) Custody rules may —
 - (a) provide for the procedure to be followed by a board in exercising any function; and
 - (b) enable the board (subject to any provision made under paragraph (a)) by rules or otherwise to regulate its own procedure.
- (6) Any member of the board for an institution may at any time enter the institution and must have free access to every part of it and to every detainee.

18A Independent monitoring of other premises

- (1) This section applies to the following premises —
 - (a) any cell or other place in a police station where persons in police detention are or may be held or interviewed;
 - (b) any part of a court building, being a part where defendants in criminal proceedings are or may be held before, during or after their appearance before a court.
- (2) The Department must make regulations providing for —
 - (a) the frequent monitoring by one or more members of a body established pursuant to section 18(1) of all premises to which this section applies;

- (b) the access to such premises to be granted to members of the body for the purpose of —
 - (i) carrying out such monitoring;
 - (ii) informing themselves of the treatment of persons held or otherwise dealt with in such premises; and
 - (iii) hearing, in private or otherwise at their discretion, any complaints or requests which may be made by such persons; and
- (c) the reports to be made by members of any such body to the Department on any matter referred to in paragraph (a) or (b), and any other matter on which they consider it expedient to report.

(3) Before making any regulations under subsection (2) the Department must consult the Chief Constable and such other persons as it considers appropriate.

(4) Regulations under subsection (2) do not have effect unless they are approved by Tynwald.

(5) In this section —

“**court building**” means any building where the business of a court is carried on;

“**police detention**” has the meaning given by section 81(2) of the *Police Powers and Procedures Act 1998*. .

(2) Section 42 of the *Criminal Justice, Police and Courts Act 2007* is repealed.

8 Appointment and functions of adjudicator

(1) After section 18A of the Act (inserted by section 7) insert —

18B Independent adjudicators

- (1) Custody rules must provide for —
 - (a) the appointment by the Appointments Commission, and the terms and conditions of office, of independent adjudicators; and
 - (b) the assignment to every institution of one or more adjudicators.
- (2) Custody rules may provide for —
 - (a) the reference to an adjudicator, in such cases as are prescribed, of any charge of an offence under the rules, and the hearing and determination (including the award of punishment or privation) of such a charge;

- (b) the review by an adjudicator, in such cases as are prescribed, of —
 - (i) a finding that a detainee is guilty of an offence under the rules;
 - (ii) a punishment or privation awarded for such an offence; or
 - (iii) both such a finding and such a punishment or privation.
- (3) Custody rules may —
 - (a) provide for the procedure to be followed by an adjudicator in exercising any function; and
 - (b) enable an adjudicator (subject to any provision made under paragraph (a)) by rules or otherwise to regulate his or her own procedure.
- (4) The Department may by order substitute another person or body in place of the Appointments Commission in subsection (1)(a) and such order must be laid before Tynwald as soon as may be after it is made. **22**.
- (2) In section 17(1) of the Act —
 - (a) in paragraph (b), for “the Independent Monitoring Board” substitute **23** an adjudicator **22**;
 - (b) omit paragraph (c).
- (3) In section 17(4)(c) of the Act, for “21” substitute **23** 18 **22**.
- (4) In section 26 of the Act, after “In this Act —” insert —
 - 23** “adjudicator” means an independent adjudicator appointed under custody rules; **22**.
- (5) In Schedule 3 to the *Legal Aid Act 1986*, in paragraph 13 of the Table —
 - (a) for “a board of visitors and the board determine” substitute **23** an independent adjudicator and the adjudicator determines **22**;
 - (b) for “The board of visitors” substitute **23** An independent adjudicator **22**.

9 Security of institutions

- (1) For section 19 of the Act substitute —

23 19 Security of institutions

- | Schedule 1A has effect for promoting the security of institutions. **22**.
- (2) Insert as Schedule 1A to the *Custody Act 1995* the Schedule set out in the Schedule to this Act.

10 Testing for drugs etc.

Section 19A of the Act is amended as follows —

- (a) in subsection (1), for “has any drug or alcohol in his or her body.” substitute **43** has in his or her body —

- (a) any drug, alcohol or tobacco; or
- (b) any residue, derivative or metabolite of a drug, alcohol or tobacco. **42**;

- (b) in subsection (5) —

- (i) for the definition of “drug” substitute —

43 “drug” means —

- (a) any substance which is a controlled drug within the meaning of the *Misuse of Drugs Act 1976*; or
- (b) any psychoactive substance (not being a controlled drug, alcohol or tobacco) which is prescribed, or of a description which is prescribed, for the purposes of this section; **42**;
- (ii) omit **43** and **42** following the definition; and
- (iii) at the end insert —

43 “psychoactive substance” means a substance which is capable, by stimulating or depressing a person’s central nervous system, of affecting his or her mental functioning or emotional state. **42**.

11 Early release of detainees

- (1) In section 23 of the Act —

- (a) after subsection (2) insert —

43 (2A) Custody rules may —

- (a) provide for the procedure to be followed by the Parole Committee in exercising any function; and
- (b) enable the Committee (subject to any provision made under paragraph (a)) by rules or otherwise to regulate its own procedure. **42**;

- (b) in subsection (2) omit **43** and proceedings **42**.

- (2) Schedule 2 to the Act is amended as follows —

- (a) after paragraph 8(4A) insert —

43 (4B) If, after a licence has been granted on the recommendation or direction of the Committee but before the detainee has been released, it appears to the Department that the circumstances which justified his or her release no longer obtain, the Department may revoke the licence.

(4C) On the revocation of a licence under sub-paragraph (4B) —

- (a) the detainee is liable to be detained in pursuance of his or her sentence and, if at large, is deemed to be unlawfully at large; and
- (b) the Department must forthwith refer the case to the Committee who must, within one month of the reference, review the case; and paragraph 3, 4 or 6, as the case may be, applies as if it had been referred to the Committee under the paragraph in question. **22**;

(b) omit paragraph 13A(7);

(c) in paragraph 13B, at the end insert —

- 23** (6) Without prejudice to sub-paragraphs (2) to (5), it is the duty of the Department to cause the release of the detainee on licence if it is of the opinion that the circumstances which justified his or her recall under paragraph 10(1) or (2) no longer obtain. **22**.

12 Release in case of overcrowding

After section 23 of the Act insert —

23A Release in case of overcrowding

- (1) If the Department is satisfied that so many detainees are or will be detained in an institution that the health of those persons or the security or operation of the institution is or will be prejudiced, it may authorise the temporary release from the institution of one or more detainees for such period and subject to such conditions as it may direct.
- (2) The following detainees may not be released under this section —
 - (a) a person serving a sentence of custody for life;
 - (b) a person serving a sentence of custody for a term of 4 years or more;
 - (c) a person serving a sentence in respect of a sexual offence or a violent offence (as defined in section 38 of the *Criminal Justice Act 2001*);
 - (d) a transferred life detainee (as defined in paragraph 5 of Schedule 2).
- (3) Subsections (2) and (3) of section 22 apply to a release under this section as they apply to a release under that section. **22**.

*Extended sentences***13 Restriction on extended sentences**

- (1) In section 38 of the *Criminal Justice Act 2001*, after subsection (4) insert —
- (4A) An extended sentence may not be passed unless the custodial term is at least 4 years.
- (2) Subsection (1) does not affect a sentence passed before the coming into operation of this section.

*Court security officers***14 Court security officers**

After Part 8 of the *Criminal Justice, Police and Courts Act 2007* insert —

PART 8A-COURT SECURITY OFFICERS**28A Court security officers**

- (1) The Chief Registrar may make arrangements for the appointment of persons to exercise the functions of court security officers under this Part.
- (2) Arrangements under subsection (1) may include entering into contracts with other persons for the provision by them of persons to exercise those functions.
- (3) Before making any arrangements under subsection (1) the Chief Registrar must consult the Department of Home Affairs and the Chief Constable, and may consult such other persons as he or she considers appropriate.
- (4) The Chief Registrar may designate a person appointed or provided under subsection (1) or (2) as a court security officer.
- (5) A person designated under this section, when exercising any function of a court security officer, must act under the direction and control of the Chief Registrar.
- (6) The Chief Registrar must not designate a person under this section unless he or she is satisfied that that person —
- (a) is a suitable person to carry out the functions of a court security officer;
 - (b) is capable of effectively carrying out those functions; and
 - (c) has received adequate training in the carrying out of those functions.

(7) For the purposes of sections 28B to 28E, a court security officer who is not readily identifiable as such (whether by means of uniform or badge or otherwise) is not to be regarded as acting in the execution of the officer's duty.

(8) In those sections —

“court building” means any building to which the public has access and where the business of any of the following courts is carried on —

- (a) the High Court;
- (b) a Court of General Gaol Delivery;
- (c) a court of summary jurisdiction;

“court security officer” means a person designated as such under this section.

28B Powers of search, exclusion, removal and restraint

(1) A court security officer acting in the execution of the officer's duty may search —

- (a) any person who is in, or seeking to enter, a court building; and
- (b) any article in the possession of such a person.

(2) Subsection (1) does not authorise a court security officer to require a person to remove any of the person's clothing other than a coat, jacket, headgear, gloves or footwear.

(3) A court security officer acting in the execution of the officer's duty may exclude or remove from a court building, or a part of a court building, any person who refuses —

- (a) to permit a search under subsection (1); or
- (b) to surrender an article in the person's possession when asked to do so under section 28C(1).

(4) A court security officer acting in the execution of the officer's duty may —

- (a) restrain any person who is in a court building; or
- (b) exclude or remove any person from a court building, or a part of a court building,

if it is reasonably necessary to do so for one of the purposes given in subsection (5).

(5) The purposes are —

- (a) enabling court business to be carried on without interference or delay;
- (b) maintaining order;

- (c) securing the safety of any person in the court building.
- (6) A court security officer acting in the execution of the officer's duty may remove any person from a courtroom at the request of a judge of the court in question.
- (7) The powers given by subsections (3), (4) and (6) include power to use reasonable force, where necessary.

28C Surrender, seizure and retention of knives and other articles

- (1) If a court security officer acting in the execution of the officer's duty reasonably believes that an article in the possession of a person who is in, or seeking to enter, a court building ought to be surrendered on any of the grounds given in subsection (2), the officer must ask the person to surrender the article; and, if the person refuses to surrender the article, the officer may seize it.
- (2) The grounds are that the article —
 - (a) may jeopardise the maintenance of order in the court building (or a part of it);
 - (b) may put the safety of any person in the court building at risk; or
 - (c) may be evidence of, or in relation to, an offence.
- (3) Subject to subsection (4), a court security officer may retain an article which was —
 - (a) surrendered in response to a request under subsection (1); or
 - (b) seized under that subsection,until the time when the person who surrendered it, or from whom it was seized, is leaving the court building.
- (4) If a court security officer reasonably believes that the article may be evidence of, or in relation to, an offence, the officer may retain it until —
 - (a) the time when the person who surrendered it, or from whom it was seized, is leaving the court building; or
 - (b) the end of the permitted period,whichever is the later.
- (5) In subsection (4) “**the permitted period**” means such period, not exceeding 24 hours from the time the article was surrendered or seized, as will enable the court security officer to draw the article to the attention of a constable.
- (6) Subsections (3) to (5) do not apply where a knife is —

- (a) surrendered to a court security officer in response to a request under subsection (1); or
- (b) seized by a court security officer under that subsection, but, instead, the knife must be retained in accordance with rules under section 28D(3) unless returned or disposed of in accordance with those rules or rules under section 28D(1).

(7) If a court security officer reasonably believes that a retained knife may be evidence of, or in relation to, an offence, nothing in subsection (6) prevents the officer retaining the knife for so long as necessary to enable the officer to draw it to the attention of a constable.

(8) In this section “**knife**” includes —

- (a) a knife-blade; and
- (b) any other article which —
 - (i) has a blade or is sharply pointed; and
 - (ii) is made or adapted for use for causing injury to the person.

28D Rules about retention of knives and other articles

(1) The Deemsters may by rules make provision as to —

- (a) the provision to persons —
 - (i) by whom articles have been surrendered in response to a request under subsection (1) of section 28C; or
 - (ii) from whom articles have been seized under that subsection,

of written information about the powers of retention of court security officers;

- (b) the keeping of records about articles which have been so surrendered or seized;
- (c) the period for which unclaimed articles have to be kept; and
- (d) the disposal of unclaimed articles at the end of that period.

(2) In subsection (1) “**unclaimed article**” means an article —

- (a) which has been retained under section 28C;
- (b) which a person is entitled to have returned;
- (c) which has not been returned; and
- (d) whose return has not been requested by a person entitled to it.

- (3) Without prejudice to the generality of subsection (1), the Deemsters must by rules make provision as to —
- (a) the procedure to be followed when a knife is retained under section 28C;
 - (b) the making of requests by eligible persons for the return of knives so retained;
 - (c) the procedure to be followed when returning a knife pursuant to a request made in accordance with the rules.
- (4) In subsection (3) —
- “**eligible person**”, in relation to a knife retained under section 28C, means —
- (a) the person who surrendered the knife under subsection (1) of section 28C or from whom the knife was seized under that subsection; or
 - (b) any other person specified in rules under subsection (3);
- “**knife**” has the same meaning as in section 28C.

28E Protection of court security officers

- (1) Any person who assaults a court security officer acting in the execution of the officer’s duty commits an offence.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to custody for a term not exceeding 12 months, or to a fine not exceeding £5,000, or to both.
- (3) A person who resists or wilfully obstructs a court security officer acting in the execution of the officer’s duty commits an offence.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding £1,000. **22**.

Prisoner escorts

15 Prisoner escorts

- (1) Section 1 of the *Prisoner Escorts Act 2008* is amended as follows —
- (a) after subsection (1) insert —
 - 22** (1A) Before making any arrangements under subsection (1) the Department must consult the Chief Registrar and the Chief Constable, and may consult such other persons as it considers appropriate. **22**;
 - (b) for subsection (3) substitute —
 - 22** (3) In subsection (1) “**relevant premises**” means —

- (a) an institution (within the meaning of the *Custody Act 1995*);
 - (b) a hospital;
 - (c) a police station;
 - (d) a building where the business of a court is carried on;
 - (e) any premises specified by the Department by order;
 - (f) premises situated in any part of the British Islands outside the Island which are of a similar description to premises within paragraph (a), (b), (c), (d) or (e). **22**.
- (c) after subsection (5) insert —
- 23**(5A) An order under subsection (3)(e) shall be laid before Tynwald. **22**.
- (2) Section 2 of that Act is amended as follows —
- (a) in subsection (1), for “The Independent Monitoring Board” substitute **24** A monitoring board **22**;
 - (b) in subsection (1)(b), for “inspect” substitute **25** monitor **22**;
 - (c) in subsections (2) and (3), for “Independent Monitoring Board” substitute **26** monitoring board **22**;
 - (d) for subsection (4) substitute —
- 27** (4) In this section “**monitoring board**” means a body established under section 18 of the *Custody Act 1995* and designated for the purpose of this section by the Department. **22**.

SCHEDULE

SCHEDULE 1A TO THE CUSTODY ACT 1995

SCHEDULE 1A

SECURITY OF INSTITUTIONS

Prohibited articles

1. (1) This paragraph defines the categories of articles which are referred to in paragraphs 2 and 3.

(2) A List A article is any article or substance in the following list (“**List A**”) —

- (a) a controlled drug (within the meaning of the *Misuse of Drugs Act 1976*);
- (b) an explosive substance (within the meaning of the *Explosive Substances Act 1883*);
- (c) any firearm or ammunition (within the meaning of the *Firearms Act 1947*);
- (d) any regulated weapon or ammunition (within the meaning of the *Shot Guns, Air Weapons and Cross-Bows Act 1994*);
- (e) any other offensive weapon (within the meaning of Part I of the *Police Powers and Procedures Act 1998*).

(3) A List B article is any article or substance in the following list (“**List B**”) —

- (a) liquor (within the meaning of the *Licensing Act 1995*);
- (b) a mobile telephone;
- (c) a camera;
- (d) a sound-recording device;
- (e) any article or substance prescribed for the purposes of this sub-paragraph by custody rules.

(4) In List B —

“**camera**” includes any device by means of which a photograph can be produced;

“**sound-recording device**” includes any device by means of which a sound-recording can be made;

and for this purpose —

“**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.

(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) The Department may by order amend this paragraph for the purpose of —

- (a) adding an entry to List A;
- (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.

(7) An order under sub-paragraph (6) does not have effect unless it is approved by Tynwald.

Conveyance etc. of List A articles into or out of institution

2. (1) A person who, without authorisation —
- (a) brings, throws or otherwise conveys a List A article into or out of an institution;
 - (b) causes another person to bring, throw or otherwise convey a List A article into or out of an institution;
 - (c) leaves a List A article in any place (whether inside or outside an institution) intending it to come into the possession of a detainee; or
 - (d) knowing a person to be a detainee, gives a List A article to him or her,

is guilty of an offence.

(2) In this paragraph “**authorisation**” means authorisation given for the purposes of this paragraph by the Department or by the officer in charge of the institution;

and in sub-paragraph (3) “**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;
 - (b) in relation to specified acts or acts of a specified description; or
 - (c) on such other terms as may be specified.
- (4) Authorisation given by the Department otherwise than in writing must be recorded in writing as soon as is reasonably practicable after being given.
- (5) Authorisation given by the officer in charge of an institution must —
- (a) be given in writing; and
 - (b) specify the purpose for which it is given.
- (6) A person guilty of an offence under this paragraph is liable on conviction on information to custody for a term not exceeding 10 years or to a fine, or to both.

Conveyance etc. of List B articles into or out of institution

3. (1) A person who, without authorisation —
- (a) brings, throws or otherwise conveys a List B article into or out of an institution;
 - (b) causes another person to bring, throw or otherwise convey a List B article into or out of an institution;
 - (c) leaves a List B article in any place (whether inside or outside an institution) intending it to come into the possession of a detainee; or
 - (d) knowing a person to be a detainee, gives a List B article to him or her,
- is guilty of an offence.
- (2) In proceedings for an offence under this paragraph it is a defence for the accused to show that —
- (a) he or she reasonably believed that he or she 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.
- (3) A person guilty of an offence under this paragraph is liable —
- (a) on conviction on information, to custody for a term not exceeding 2 years or to a fine, or to both;

(b) on summary conviction, to custody for a term not exceeding 12 months or to a fine not exceeding £5,000, or to both.

(4) In this paragraph “**authorisation**” means authorisation given for the purposes of this paragraph; and sub-paragraphs (2) to (5) of paragraph 2 apply in relation to authorisations so given as they apply to authorisations given for the purposes of paragraph 2.

Disposal of articles

4. (1) The officer in charge of an institution may destroy or otherwise dispose of, or arrange for the destruction or other disposal of —

(a) an article found in the possession of a detainee who is not authorised to have it in his or her possession; or

(b) an article found inside the institution or in an escort vehicle, otherwise than in the possession of a detainee, where —

(i) the owner of the article is a detainee who is not authorised to have it in his or her possession; or

(ii) the owner of the article cannot be ascertained.

(2) An article which a detainee is authorised to have in his or her possession is to be treated for the purposes of sub-paragraph (1) as not so authorised where the officer in charge of the institution reasonably believes that the article is being, has been or may be used for any of the following purposes —

(a) concealing an article which a detainee is not authorised to have in his or her possession;

(b) causing harm to the detainee or others;

(c) prejudicing the security or operation of the institution.

(3) Where a detainee is authorised to have an article in his or her possession in a particular part of the institution, sub-paragraph (1)(a) or (b)(i) applies only where the article is found elsewhere than in that part.

(4) In this paragraph —

“**article**” does not include cash;

“**authorised**” means authorised in accordance with custody rules or by the officer in charge of the institution;

“**escort vehicle**” means a vehicle used for taking a detainee to or from an institution or other place while in custody;

references to disposing of an article include selling it.

Seizure of cash

5. (1) An officer of an institution may seize and detain —
- (a) cash found in the possession of a detainee who is not authorised to have it in his or her possession;
 - (b) cash found inside the institution or in an escort vehicle, otherwise than in the possession of a detainee, where —
 - (i) the owner of the cash is a detainee who is not authorised to have it in his or her possession; or
 - (ii) the owner of the cash cannot be ascertained; or
 - (c) cash found inside the institution in the possession of a person other than a detainee, if it appears to the officer that —
 - (i) the person intends to convey it to a detainee who is not authorised to have it in his or her possession; or
 - (ii) it is intended to be used in the commission of an offence (including an offence under custody rules).
- (2) Custody rules must make provision (subject to any order made by a court of competent jurisdiction) for —
- (a) the safekeeping of cash detained under sub-paragraph (1);
 - (b) the making, hearing and determination of an appeal by a detainee against the detention of cash seized under sub-paragraph (1)(a) or (b);
 - (c) subject to any order made on appeal, the application of any cash seized under sub-paragraph (1)(a) or (b), either by its return to a detainee not later than his or her release, or otherwise as provided by the rules.
- (3) Where cash is seized under sub-paragraph (1)(c) and is not returned to the person concerned before or when he or she leaves the institution, the officer in charge of the institution must either —
- (a) as soon as practicable arrange for it to be —
 - (i) returned to that person; or
 - (ii) delivered to a constable; or
 - (b) apply to a court of summary jurisdiction for an order for its disposal.
- (4) On an application under sub-paragraph (3)(b) the court may make such order as appears to it to be just and expedient, including an order that the cash be forfeited.
- (5) In this paragraph “**authorised**” and “**escort vehicle**” have the same meanings as in paragraph 4.

Other offences relating to security in institutions

6. (1) A person who, without authorisation —
- (a) takes a photograph, or makes a sound-recording, inside an institution; or
 - (b) transmits, or causes to be transmitted, any image or any sound from inside an institution by electronic communication for simultaneous reception outside the institution,
- is guilty of an offence.
- (2) It is immaterial for the purposes of sub-paragraph (1)(a) where the recording medium is located.
- (3) A person who, without authorisation —
- (a) brings or otherwise conveys a restricted document out of an institution or causes such a document to be brought or conveyed out of an institution; or
 - (b) transmits, or causes to be transmitted, a restricted document (or any information derived from a restricted document) from inside an institution by means of electronic communication,
- is guilty of an offence.
- (4) In proceedings for an offence under this paragraph it is a defence for the accused to show that —
- (a) he or she reasonably believed that he or she 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 paragraph is liable —
- (a) on conviction on information, to custody for a term not exceeding 2 years or to a fine, or to both; or
 - (b) on summary conviction, to custody for a term not exceeding 12 months or to a fine not exceeding £5,000, or to both.

Interpretation of paragraph 6

7. (1) In paragraph 6 (and the following provisions of this paragraph) “**authorisation**” means authorisation given for the purposes of that paragraph —
- (a) by the Department;
 - (b) by the officer in charge of the institution;

(c) by a person working at the institution who is authorised by the officer in charge to grant authorisation on his or her behalf.

(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 sub-paragraph “**specified**” means specified in the authorisation.

(3) Authorisation given by or on behalf of the officer in charge of an institution must be in writing.

(4) In paragraph 6 “**restricted document**” means the whole or any part of —

- (a) a photograph taken inside the institution;
- (b) a sound-recording made inside the institution;
- (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 institution or its operation, if the disclosure of that information would or might prejudicially affect the security or operation of the institution.

(5) In sub-paragraph (4) —

“**personal record**” means any record which is required by custody rules to be prepared and maintained in relation to any detainee (and it is immaterial whether or not the individual concerned is still a detainee at the time of any alleged offence);

“**relevant individual**” means an individual who is or has at any time been —

- (a) a detainee or a person working at the institution; or
- (b) a member of such a person’s family or household.

(6) In paragraph 6 and this paragraph —

“**document**” means anything in which information is recorded (by whatever means);

“**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 in any medium from which the sounds may by any means be reproduced.

Use of CCTV and similar devices

8. Where this is necessary for one or more of the purposes mentioned in paragraph 9 and proportionate in view of those purposes the Department may install and use overtly, in or in the vicinity of any institution, apparatus for —

- (a) monitoring and observing the interior or exterior of the institution or any part of it, including its curtilage;
- (b) recording anything so monitored or observed.

CCTV: permissible purposes

9. The purposes are —

- (a) the interests of national security;
- (b) the prevention, detection, investigation or prosecution of crime;
- (c) the interests of public safety;
- (d) securing or maintaining security or good order and discipline in the relevant institution;
- (e) the protection of health or morals.

Disclosure of CCTV information

10. (1) Information obtained by means of apparatus referred to in paragraph 8 may be disclosed to —

- (a) an officer of the relevant institution;
- (b) an employee authorised for the purpose of this paragraph by the officer in charge of the institution;
- (c) the Department.

(2) Information obtained by means of apparatus referred to in paragraph 8 may not be disclosed to any other person unless the officer in charge of the relevant institution has authorised its disclosure.

(3) An authorisation under sub-paragraph (2) must be in writing, and may be given only where the officer in charge is satisfied that —

- (a) the disclosure is necessary for one or more of the purposes mentioned in paragraph 9; and

- (b) the disclosure is proportionate to what is sought to be achieved by it.

Destruction of CCTV information

11. (1) Any record of information obtained by means of apparatus referred to in paragraph 8 must be destroyed no later than 3 months after it was obtained unless the officer in charge of the relevant institution has authorised its retention.

(2) An authorisation under sub-paragraph (1) must be in writing, and may not be given unless the officer in charge is satisfied —

- (a) that the retention of the record is necessary for one or more of the purposes mentioned in paragraph 9; and
- (b) that the retention is proportionate to what is sought to be achieved by it.

(3) Where a record is retained under sub-paragraph (1) the officer in charge must review, at intervals of not more than 3 months, whether its retention remains in accordance with sub-paragraph (2).

(4) If, on a review under sub-paragraph (3), the officer in charge is not satisfied that the retention of the record remains in accordance with sub-paragraph (2), he or she must arrange for the information to be destroyed. **22**.