

EXTRACT FROM CHAPTER 5: AUTHORISATIONS FOR LEGITIMATE CONVEYANCE, USE AND POSSESSION

Solicitors/Legal Advisers

- 5.19 Sound Recording Devices: Solicitors and other legal advisers to prisoners have been issued with central authority to bring and/or possess in prison sound recording devices to allow them to record interviews with their clients. They have also been given central authority to take sound recordings out of the prison. There is, therefore, no need for prisons to issue local authorisations for these devices. These recording devices can be digital or mechanical devices. They must not contain a camera, video recorder or mobile phone. These devices must not be passed to prisoners. They must be logged on entry and again on exit to the prison to ensure that they are not left behind. The Law Society and Criminal Bar Association has been informed of this authorisation and associated restrictions.
- 5.20 Mobile Telephones: Solicitors do not have central authority to bring in and/or possess mobile telephones other than at open prisons and only then if the local open prison regulations allow this.
- 5.21 Computers/IT Equipment: It is a criminal offence to possess within a prison without authorisation computers/IT equipment which have the potential to transmit or receive images, sounds or information by electronic communications. It is also a criminal offence to possess component parts of such equipment without authorisation. While many items of IT equipment include capabilities which may pose a security risk, including in-built cameras and/or internet connectivity, legal advisors have been given central authorisation to bring such items into prisons when visiting clients given that (a) they will be used in a controlled environment and within the general sight of staff and (b) the Criminal Justice System as a whole is now moving towards a paperless system – it is no longer realistic to expect legal advisers to print off all documents that their clients may need to consider at legal visits.
- 5.22 The central authorisation (at Annex 2, section B) allows legal advisers to bring into legal visits IT equipment that is necessary for consultation with their clients and on those cases on which they are engaged with that particular client. This is provided that there is no intention on the part of the legal adviser for the prisoner to retain any part of the equipment or component part or data once the visit is concluded. It is not, therefore, a criminal offence for legal advisers to convey or possess a laptop, or associated computer media (i.e. data sticks, CDs) within a prison for these purposes. Annex 2, section B sets out the various restrictions on the types of computer equipment that can be brought into legal visits and the way it is used. Note that it is still a criminal offence for legal advisers to use such equipment in order to transmit in or out of the prison images, sounds or information by electronic communication or to take photographs or video images whilst in the prison.
- 5.23 Legal Advisers must not attempt to bring in any other items apart from the single computer and any necessary data media. Any spare SIM cards or other computer items must be left outside the prison. To do otherwise will risk the items being seized by the prison and it is also possible that the items may not be covered by the authorisation at Annex 2 and the conveyance and possession might then constitute a criminal offence.

- 5.24 However, the presence of an authorisation to bring such equipment into legal visits does not infer an automatic right to do so. It simply means that it is not a criminal offence to do so. Prisons may still impose additional administrative restrictions on items allowed into the prison where there are reasonable grounds to believe that these restrictions are necessary to prevent unauthorised communications by prisoners or other security breach. Unless there is good reason to suspect that this is the case then prisons should allow solicitors to bring necessary IT equipment into legal visits or implement alternative arrangements which allow solicitors to properly brief their clients electronically (such as use of specialised HMP laptops or remote docking points for solicitor laptops).
- 5.25 Prisons should put measures in place to minimise any associated risks where required. Any action taken should be proportionate to the potential risks in bringing the equipment into legal visits, taking into account factors such as the prisoner type involved and the category of prison in question. Any action must be defensible in case of legal challenge.
- 5.26 Legal visitors must check in advance of any prison visit to confirm local restrictions on items allowed into the prison in question. Prisons should be clear of any local regulations and must check all items in and out of the prison at reception. Legal advisers are responsible for all equipment brought into the establishment and should ensure they have all items with them when they leave. Any requests for data, or IT equipment, to be passed permanently to the prisoner should be declared to the prison and considered under "Access to Justice Laptop" arrangements within the prison.
- 5.27 Any disagreements between legal advisers and prison staff about authorised items at legal visits, and which cannot be resolved at the time, should be put in writing to the Governor/Director of the establishment concerned. Any complaints that still cannot be resolved at local level may then be escalated to the Deputy Director of Custody or equivalent. The Law Society holds details of DDC offices and the prisons they cover. General queries on national policy in these areas can be made to NOMS headquarters (Emma.Prince@noms.gsi.gov.uk).
- 5.28 Solicitors and barristers will face increasing difficulty in court in producing printed copies of documents for purposes of consultation with their clients. Because of this it has been agreed to allow legal advisers to bring laptop computers or equivalent into court cells or holding areas. PECS escort contractors have been instructed to facilitate this from 1 March 2012. Similar restrictions and conditions to those applying in legal visits have been set out for court cell visits – see Annex 9.

ANNEX 2

B) Authorisations For Conveyance and Possession Offences – Legal Advisers

On behalf of the Secretary of State, Legal Advisers are provided with a central authorisation under section 40E of the Prison Act 1952 to bring the following specified items into, possess in, and take out of any prison or Young Offender Institute for the sole purposes of advising their clients on the matter for which they are so engaged:

- Lap-top computers or equivalent complying with the specifications set out at notes 1 to 4 below.
- Data media such as CD disks or data sticks containing material to be viewed by the prisoner or which is otherwise necessary for the purposes of the consultation.

This authorisation is subject to notes 1 to 8 below. The term prison below also refers to Young Offender Institutes.

Notes:

1. Computers should be small, self-contained portable devices such as laptop computers or tablets. External devices such as external keyboards, printers or mice, etc are not authorised other than that external data media set out in the authorisation above.
2. Computer equipment which has built in Wi-Fi, 3G or other networking capabilities is allowed provided that the network capability is switched off, any external 3G dongle or SIM card is removed where practical and no attempt is made to transmit or receive images, sound or information in or out of the prison by electronic communications. Deliberate breach of this regulation will be considered a criminal offence.
3. Computer equipment may contain built in cameras but if so fitted the camera may not be used to take photographs or video within any prison. Deliberate breach of this regulation will be considered a criminal offence.
4. Computer equipment may contain a sound recording device. Legal advisers are authorised to make sound recordings of their clients for the purposes of advising them on the matter for which they are so engaged (and to take such recordings out of the prison with them), and in doing so may use computer equipment for this purpose rather than bringing in a separate sound recording device.
5. No data or items of equipment may be passed to the prisoner with the intention of this remaining in the possession of the prisoner. Separate procedures exist under "Access to Justice" laptop arrangements to enable the prisoner to have possession of IT equipment and legal documents in electronic format. Authorisation under these separate procedures must be obtained in advance by the legal adviser before any item is passed to the prisoner for purposes of the prisoner retaining this within prison.
6. The above authorisation relates only to the lawfulness of the conduct for the purpose of the offences in the Prison Act 1952. Individual prisons or

groups of prisons may impose additional administrative restrictions on items allowed into the prison on grounds of security. Legal Advisers must check in advance with the prison they are visiting for details of items not allowed into that particular prison.

7. All items must be checked in and out of the prison at reception. Legal Advisers remain responsible for the safe keeping of items taken into a prison. Loss of such items within the prison is a serious matter and all losses must be reported to the prison immediately.
8. Any complaints about the operation of this process in particular prisons must be made in the first instance to the Governor of the prison concerned. If legal advisers remain dissatisfied disagreements may be escalated to the regional manager (Deputy Director of Custody or equivalent). General queries on national policy in these areas can be made to NOMS headquarters (Emma.Prince@noms.gsi.gov.uk).

ANNEX 9

IT Equipment – Legal Advisers at Court

While many items of IT equipment now include capabilities which may pose a security risk, including in-built cameras and/or internet connectivity, legal advisers have been given authorisation to bring such items into court holding cells/areas when visiting clients given that the Criminal Justice System as a whole is now moving towards a paperless system – it is no longer realistic to expect legal advisers to have paper copies of documents that their clients may need to consider at court.

Legal advisers are authorised therefore to bring into court holding cells/areas IT equipment that is necessary for consultation with their clients and on those cases on which they are engaged with that particular client. This is provided that the equipment and the use of it complies with the terms set out in notes 1 to 7 below. Note – separate procedures for allowing electronic briefing of prisoner clients at court may apply for Category A prisoners. Legal Advisers should check with escorting staff.

The presence of an authorisation to bring such equipment into court holding cells/areas does not infer an automatic right to do so in all cases. Staff supervising prisoners at court may still impose additional administrative restrictions on items allowed into court holding cells/areas where there are reasonable grounds to believe that these restrictions are necessary to prevent unauthorised communications by prisoners or other security breach. Unless there is good reason to suspect that this is the case then legal advisers will be allowed to bring necessary IT equipment into prisoner holding cells/areas at court or alternative arrangements will be implemented locally which allow solicitors to properly brief their clients electronically.

Staff supervising prisoners at court should put into place measures to minimise any associated risks where required. Any action taken should be proportionate to the potential risks in bringing the equipment into prisoner areas, taking into account factors such as the prisoner type involved and the category of prison in question. Any action must be defensible in case of legal challenge.

Staff should be clear of any local arrangements for monitoring such equipment or any alternative procedures and must brief legal advisers appropriately. Staff must ensure that all items of electronic equipment are checked in and out of the prisoner area.

Notes:

1. Computers should be small, self-contained portable devices such as laptop computers or tablets. External devices such as external keyboards, printers or mice, etc are not authorised other than that external data media set out in the authorisation above.
2. Computer equipment which has built in Wi-Fi, 3G or other networking capabilities is allowed provided that the network capability is switched off, any external 3G dongle or SIM card is removed where practical and no attempt is made to transmit or receive images, sound or information by electronic communications.

3. Computer equipment may contain built in cameras but if so fitted the camera may not be used to take photographs or video within the court cell/holding area.
4. Computer equipment may contain a sound recording device. Legal advisers are authorised to make sound recordings of their clients for the purposes of advising them on the matter for which they are so engaged and in doing so may use computer equipment for this purpose rather than bringing into the cell/holding area a separate sound recording device.
5. No data or items of equipment may be passed to the prisoner with the intention of this remaining in the possession of the prisoner. Separate procedures exist under "Access to Justice" arrangements to enable the prisoner to have possession within prison of IT equipment and legal documents in electronic format. Any requests for data, or IT equipment, to be passed permanently to the prisoner should be declared to the holding prison, and not NOMS staff or contractors at court, and then considered under "Access to Justice Laptop" arrangements within the prison.
6. Legal advisers are responsible for all equipment brought into the court holding cells/areas and should ensure they have all items with them when they leave. Loss of such items in prisoner areas is a serious matter and all losses must be reported to NOMS staff or contractors immediately.
7. Any complaints about the operation of this process that cannot be resolved with the Senior Custody Officer at court should be made via the appropriate escort contractor Regional Operational Manager. General queries on national policy in these areas can be made to NOMS headquarters (Emma.Prince@noms.gsi.gov.uk).