



National Offender Management Service

DISPOSAL OF PRISONERS UNAUTHORISED PROPERTY		
This instruction applies to: -		Reference: -
NOMS Headquarters Prisons		AI 09/2015 PSI 14/2015
Re-Issue Date	Effective Date	Expiry Date
27 January 2020 – Revision	26 March 2015	29 April 2016
Issued on the authority of	NOMS Agency Board	
For action by	All staff responsible for the development and publication of policy and instructions <input checked="" type="checkbox"/> NOMS HQ <input checked="" type="checkbox"/> Public Sector Prisons <input checked="" type="checkbox"/> NOMS Immigration Removal Centre's (IRCs) <input checked="" type="checkbox"/> Contracted Prisons* <input checked="" type="checkbox"/> Governors <i>* If this box is marked, then in this document the term Governor also applies to Directors of Contracted Prisons</i>	
Instruction type	Service Specification Support	
For information	All staff in prison establishments	
Provide a summary of the policy aim and the reason for its development / revision	January 2020 – References to IEP have been changed to the Incentives Policy Framework (IPF), which came into force on 13 January 2020 This Instruction has been published to provide guidance in relation to the new powers that governors have to destroy or otherwise dispose of unauthorised or unattributable property found in the possession of a prisoner, inside prison or in prison escort vehicles.	
Contact	NLT functional mailbox - nlt@justice.gov.uk	
Associated documents	Prisoner Property Services and Discharge Specifications, found at: https://www.gov.uk/government/collections/noms-directory-of-services-specifications PSO 4600 - Unconvicted, Unsentenced and Civil Prisoners PSI 51/2010 - Dealing with Evidence Incentives Policy Framework PSI 12/2011 – Prisoners' Property PSI 30/2011 - Instructions on Handling Mobile Phones and SIM Card Seizures PSI 51/2011 - Faith and Pastoral Care for Prisoners PSI 64/2011 - Management of prisoners at risk of harm to self, to others and from others (Safer Custody) PSI 72/2011 - Discharge PSI 01/2012 - Manage Prisoner Finance PSI 02/2012 - Prisoner Complaints PSI 10/2012 - Conveyance and Possession of Prohibited Items and Other Related Offences PSI 23/2013 - Prisoner Retail PSI 37/2013 – AI 15/2013 - NOMS Finance Manual	

Replaces the following documents which are hereby cancelled: None

Audit/monitoring: - Deputy Directors of Custody and Controllers will monitor compliance with the mandatory actions set out in this Instruction.

Introduces amendments to the following documents: Paragraph 3.3 in this instruction replaces paragraph 2.76 in [PSI 12/2011 – Prisoners’ Property](#).

This instruction should also be read in conjunction with [PSI 51/2010 - Dealing with Evidence](#) and [PSI 30/2011 - Instructions on Handling Mobile Phones and SIM Card Seizures](#).

Notes: *All Mandatory Actions throughout this instruction are in italics and must be strictly adhered to.*

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1. Executive Summary

Background

- 1.1 This Instruction provides guidance on the new power introduced by the Prisons (Property) Act 2013, which amends the Prison Act 1952, giving Governors (and Directors of private prisons) the power to destroy or otherwise dispose of certain property found in the possession of prisoners, in prisons or in prison vehicles. The new powers come into effect from 26 March 2015. This Instruction outlines the new procedures for the disposal of prisoners' unauthorised or unattributable property. This will include unauthorised property found in the possession of a prisoner, authorised property which has been modified for an unauthorised use, and property found in a prison or prison escort vehicle which appears to have no legitimate owner or cannot be attributed to an individual prisoner.

Desired Outcomes

- 1.2 Governors are aware of their new powers to destroy or otherwise dispose of unauthorised/unattributable property as appropriate, and that prisoners are aware of the new power to destroy/dispose of items, the option to claim back property and the option to make representations.

Application

- 1.3 This Instruction applies to all prisons in England and Wales, including Young Offender Institutions. The term 'prisoner' used in this Instruction applies to young people in custody.
- 1.4 All outputs contained within this Instruction apply to both unconvicted and convicted prisoners unless otherwise stated.
- 1.5 *Governors must ensure that all relevant staff are familiar with the procedures for the management and control of prisoners' personal property.*

Mandatory Actions

- 1.6 *Governors must ensure that all prisoners are made aware of the new powers that allow Governors to authorise the destruction of unauthorised and unattributable property and their opportunity to make representations under the Prisoner Complaints policy [PSI 02/2012 – Prisoner Complaints](#).*
- 1.7 *Governors must be aware of their power to destroy or otherwise dispose of unauthorised or unattributable property.*
- 1.8 *Staff must be made aware of and comply with the disposal arrangements for unclaimed property.*

Resource Impact

- 1.9 This Instruction requires Governors to make prisoners aware of the new power to destroy or otherwise dispose of unauthorised or unattributable property.

(Signed)

Digby Griffith
Director of National Operational Services, NOMS

2. Property that may be destroyed

- 2.1 Prison Service Instruction (PSI) [12/2011 – Prisoners’ Property](#) sets out the process for handling prisoners’ property. This Instruction supplements [PSI 12/2011 – Prisoners’ Property](#) and provides guidance on the new powers that governors have to destroy or otherwise dispose of unauthorised or unattributable property.
- 2.2 Unattributable property (for the purposes of this PSI) is property which is found inside the prison or in a prison escort vehicle and appears to have no legitimate owner or cannot be attributed to an individual prisoner.
- 2.3 Unauthorised property (for the purposes of this PSI) is property which an individual prisoner is not authorised to possess, in accordance with the Prison Act 1952, Prison Rules 1999, Prison Service Instructions or as determined by the Governor. *Unauthorised property may vary depending on a prisoner’s incentive level; the items must also be permitted under the facilities list in place at the prison.* See details highlighted in the [Incentives Policy Framework](#)
- 2.4 Unauthorised property also includes property that was authorised in its original format, but has since been modified by a prisoner or prisoners for an unauthorised purpose.
- 2.5 Governors have the power to destroy unauthorised or unattributable property which is found or confiscated **on or after** 26 March 2015. *Governors must determine procedures which require such property to be retained for a minimum of three months after it is found during which period a prisoner may make representations regarding how the property is to be dealt with.*
- 2.6 Disposal in this context includes destroying or selling unauthorised property.
- 2.7 Prisoners may make representations about the destruction or disposal of the property through the existing Prisoner Complaints policy [PSI 02/2012 – Prisoner Complaints](#) which includes a process for appeal.
- 2.8 Guidance on the handling of property belonging to prisoners who are deceased, and prisoners who are mentally or terminally ill can be found in [PSI 12/2011 - Prisoners’ Property](#) and [PSI 64/2011 - Management of prisoners at risk of harm to self, to others and from others \(Safer Custody\)](#) respectively.

3. Property confiscated before commencement

- 3.1 Governors have the power to destroy or otherwise dispose of relevant articles which were confiscated before 26 March 2015. Relevant articles include cameras, sound-recording devices, mobile phones and other devices capable of transmitting or receiving images, sounds or information by electronic communications.
- 3.2 *Governors must ensure that relevant articles are not destroyed for a six month period, from [26 March to 26 September 2015] within which prisoners are able to make a claim for the return of relevant articles which were confiscated before 26 March 2015.*
- 3.3 *During this six month period, the Governor must ensure that there is a procedure in place for a prisoner to make representations regarding how the property is dealt with, including for the return of their property and ensure that prisoners are made aware of the procedure. The prisoner must be able to prove ownership and demonstrate that the return of the property is appropriate. This replaces paragraph 2.76 as set out in [PSI 12/2011 – Prisoners’ Property](#).*
- 3.4 *If a prisoner makes a successful claim for the return of their property it must be held in storage and returned to the prisoner on release in accordance with [PSI 12/2011 – Prisoners’ Property](#). This may include mobile phones and other electronic equipment confiscated from the prisoner.*
- 3.5 The Governor has the power to destroy or otherwise dispose of any relevant articles (as described above) confiscated before 26 March 2015 that have not been successfully claimed by 26 September 2015.
- 3.6 *All other articles confiscated before the 26 March 2015 must continue to be stored unless claimed or their continued storage would present a proven health hazard.*

4. Communications to Prisoners

- 4.1 *All prisoners must be made aware that from 26 March 2015 Governors will have the power to destroy or otherwise dispose of unauthorised property or unattributable property that is confiscated or found on or after 26 March 2015.*
- 4.2 *Prisoners must also be made aware that “relevant” unauthorised property (see paragraph 3.1 above), which includes mobile phones confiscated prior to 26 March 2015, will be retained for a period of six months from the date of commencement (26 March-26 September 2015). At the end of this six month period, the Governor will have the power to destroy or otherwise dispose of the property if no claim has been made.*
- 4.3 *Prisoners must also be made aware that successfully ‘claimed’ attributable property will continue to be stored until the prisoners’ release from custody, in line with [PSI 12/2011 – Prisoners’ Property](#).*
- 4.4 This information will be disseminated to prisoners through internal communications.
- 4.5 A process map and detailed questions and answers are contained in [Annex A](#) and [B](#) at the end of this Instruction.

5. Property confiscated after commencement

- 5.1 Governors have the power to destroy or otherwise dispose of unauthorised or unattributable property which is found or confiscated on or after 26 March 2015. This power is in addition to the Governors' powers to destroy property where possession would constitute a criminal offence; the item is inherently dangerous or would constitute a proven health hazard as set out in paragraph 2.17 of [PSI 12/2011 – Prisoners' Property](#).
- 5.2 Drugs and drug paraphernalia will continue to be disposed of through the Police, and mobile phones will continue to be disposed of by National Dog and Technical Support Group (NDTSG). Some items may have to be kept if they need to be used in evidence, please refer to [PSI 51/2010 - Dealing with Evidence](#), for guidance.
- 5.3 *Unattributable and unauthorised items which the Governor decides to dispose of under the new power must be retained for a minimum of **three months** before they are destroyed or otherwise disposed of.* An item cannot be destroyed or disposed of while there is an outstanding dispute in relation to how it will be dealt with. The prisoner may use the complaints process to make representations about the decision. See [PSI 02/2012 Prisoner Complaints](#).
- 5.4 The disposal of such items should take place in accordance with existing property disposal systems that have been set up in accordance with [PSI 12/2011 – Prisoners' Property](#). Current property disposal systems include controlling and tracking the receipt, possession, storage and disposal of prisoners' property, including valuable property, taking account of security needs, volumetric control requirements and the local incentives scheme.

6. Mobile Phones

- 6.1 [PSI 30/2011 – Instructions on Handling Mobile Phones and SIM Card Seizures](#) sets out the process and guidance for confiscating illicit mobile phones in custody and the requirement to send all phones to NDTSG for interrogation.
- 6.2 Given the significant risk mobile phones pose to the safety and security of prisons we would expect Governors to direct NDTSG to arrange for the mobile phone to be destroyed or otherwise disposed of, except in exceptional circumstances where the Governor considers that the phone should be stored, returned to its owner upon their release or returned to a third party. All confiscated mobile phones that are sent to NDTSG should be held for a minimum period of three months during which time prisoners or third parties can make representations about how the phone is to be dealt with. Any claim that is made in relation to ownership of a mobile phone may be used as evidence in an Adjudication hearing.
- 6.3 Under the Prison Act 1952 it is a criminal offence to convey an unauthorised mobile phone or component parts into and out of a prison, to possess those items in prison or to use a mobile phone in prison.
- 6.4 Governors have the power to destroy unauthorised or unattributable property including mobile phones which are found or confiscated on or after 26 March 2015.

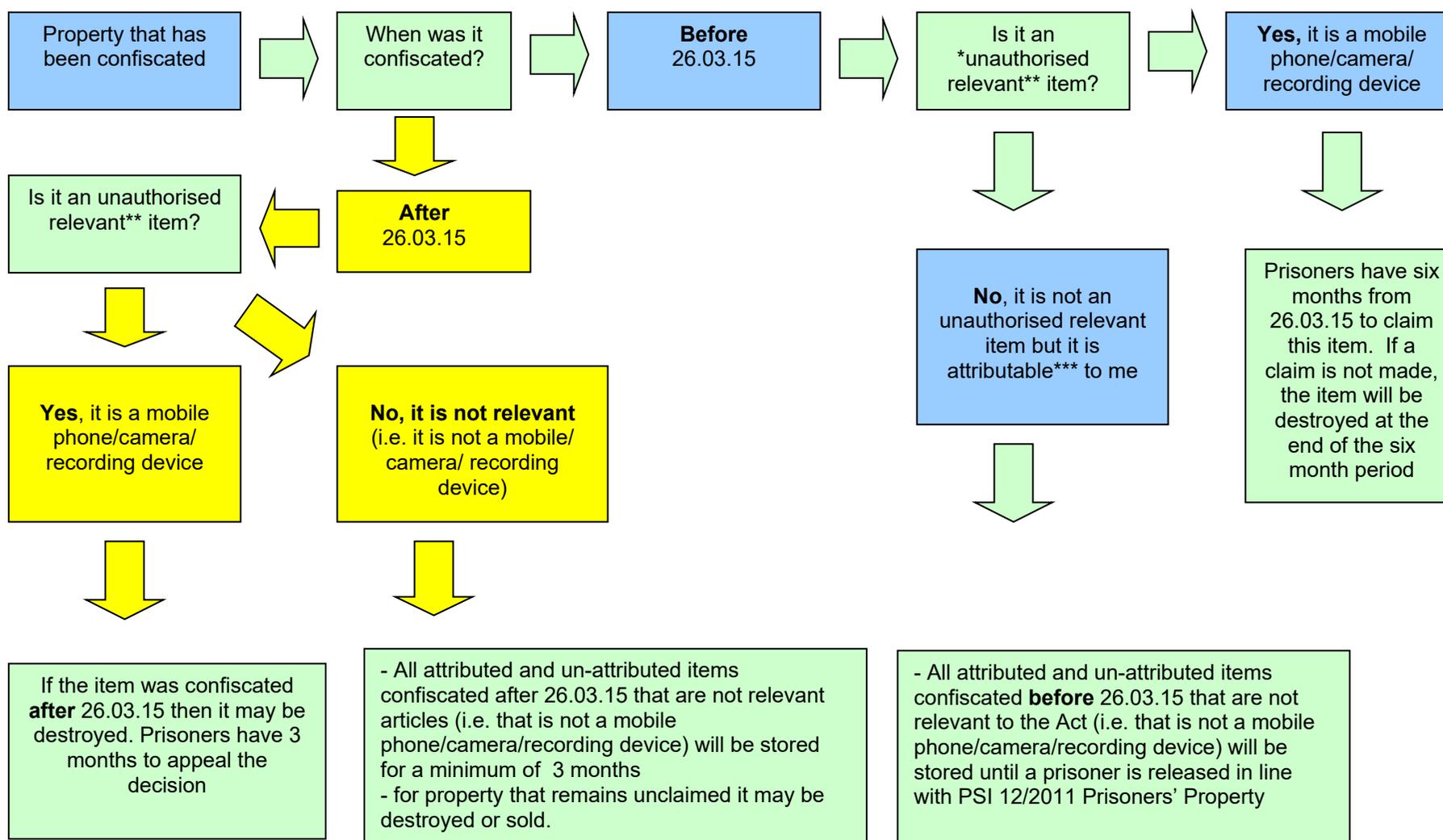
Mobile phones confiscated prior to 26 March 2015

- 6.5 Governors have the power to dispose of mobile phones which are found or confiscated prior to 26 March 2015 if certain conditions are met.
- 6.6 *Governors must ensure prisoners are aware that they have six months (until 26 September 2015) to claim back a mobile phone that was confiscated or found prior to 26 March 2015. [PSI 30/2011 - Instructions on Handling Mobile Phones and SIM Card Seizures](#) sets out the process by which prisons can claim phones from NDTSG at a prisoner's request. If phones are legitimately reclaimed by a prisoner they will be returned to them on their permanent release in accordance with [PSI 12/2011 – Prisoners' Property](#).*
- 6.7 *If the prisoner chooses to make representations against the destruction of the phone, the item must be retained until the outcome is known. The prisoner may use the complaints process to appeal a decision. See [PSI 02/2012 - Prisoner Complaints](#).*
- 6.8 Bio-hazardous phones will not be returned to prisoners under any circumstances. *Governors must, however, be certain that the phone is a bio-hazardous item in order to refuse return on these grounds.*

Mobile phones confiscated on or after 26 March 2015

- 6.9 All phones that are sent to NDTSG after commencement of the Prisons (Property) Act 2013 (26 March 2015) should be destroyed or otherwise disposed of in accordance with paragraph 6.2.
- 6.10 Phones will be retained by NDTSG for at least 12 months, to allow for further interrogation or investigation by NOMS and/or law enforcement agencies.
- 6.11 Where the Governor determines that a confiscated mobile phone is to be destroyed, this will be done in accordance with NDTSG policy. Confiscated mobile phones can be made available to law enforcement agencies for further investigation for up to 12 months after they have been confiscated. Confiscated mobile phones cannot be returned to prisoners in the secure estate.
- 6.12 Any queries about mobile phones should be directed to NOMS HQ Security Group.

Property Disposal Process Map



* **Unauthorised property** includes items which it is generally unlawful to possess, items which it is illegal to possess inside a prison, such as mobile telephones, and items which may threaten prison security or safety or are otherwise inappropriate for a prisoner to have in his or her possession.
 ** Relevant to the Prisoners (Property) Act, also called relevant articles. In this context it is used to describe a mobile phone/camera/recording device.
 *** Attributable = property that has a legitimate owner

Detailed Q and A

Commencement of the Prisons (Property) Act 2013

1. What is the Prisons Property Act 2013?

The Prisons (Property) Act 2013 (the Act) provides the Governor of a prison with the power to 'destroy or otherwise dispose of' unauthorised property found in a prisoner's possession, and unattributable property found in a prison or prison escort vehicle. The power applies to young offender institutions as well as prisons.

2. Why is it necessary to have this power?

In 2009, the Administrative Court held that a prison Governor had no authority under the Prison Rules or other powers to destroy an unauthorised mobile phone possessed by a prisoner. As a result confiscated items were stored to enable them to be returned to the prisoner on his or her release. This is at a cost to the public purse.

This is a particular problem in relation to mobile phones. Around 800 phones are confiscated every month and the cost of storing them is in the region of £20,000 per annum.

This power will end the presumption that confiscated unauthorised items, such as mobile phones, or unattributable items must be stored indefinitely as Governors will have the power to destroy such items. Very few prisoners actually reclaim their phones on release and around half of the phones stored are unattributable.

3. What does this all mean?

From 26 March 2015, (the date the Act is commenced) Governors will lawfully be allowed to dispose of a range of unauthorised items currently in storage, subject to a six month 'grace period' for "relevant" items.

It is important to be aware that the powers of this Act will apply to:

- "relevant" articles confiscated *before* commencement of the Act (before 26 March 2015), which may be destroyed or disposed of following the six month period (until 26 September 2015) in which prisoners may apply to claim this property back. "Relevant articles" are defined in the Prisons (Property) Act 2013 and include cameras, sound-recording devices, mobile phones and other devices.
- All other attributed items confiscated *before* commencement will continue to be stored or returned to the prisoner upon their release or disposed of under existing powers.
- All other unattributed items that are not 'relevant articles' will continue to be stored or may be destroyed.
- unauthorised items confiscated *after* the commencement, which can be destroyed following a three month period during which prisoners can make representations.

4. What is authorised property?

Authorised property is that which the prisoner has been allowed to retain in their cell or in storage and which is listed on their 'property card'. Mobile phones that are declared by a prisoner on

reception into custody from court will be stored by the prison and returned to the prisoner on release – the mobile phone is not illegally held unless it is found or confiscated in the prison.

5. What is unauthorised property?

Unauthorised property is that which a prisoner is not authorised, in accordance with Prison Rules, relevant PSIs or the Governor, to have in their possession. Unauthorised property may vary depending on a prisoner's incentive level . It includes items that are illegal to possess in the community such as illicit drugs and offensive weapons, items that are illegal to possess in prisons such as mobile phones, property that has been used to conceal illicit items (e.g. drugs), and items that are otherwise inappropriate for a prisoner to have in his or her possession, such as items which may have been smuggled into the prison or coerced from another prisoner.

6. What is unattributable property?

Unattributable property is property found in prison or in a prison vehicle and which appears to have no legitimate owner or cannot be assigned to an individual prisoner.

7. What is a “relevant” article?

The term refers to items of property that are relevant articles for the purposes of the Prisons' (Property) Act 2013 and are unauthorised items. For example cameras, sound-recording devices, mobile phones, and other devices capable of transmitting or receiving images, sounds, or information by electronic communications, etc. Articles that are confiscated before 26 March 2015 cannot be destroyed unless they are 'relevant articles'. 'Relevant articles' can only be destroyed if there is no claim by the end of the six month grace period from 26 March 2015 – 26 September 2015.

8. I am a prisoner; can I claim my unauthorised property back?

If, for example, your mobile phone is confiscated before 26 March 2015, the phone can be destroyed if a representation as to ownership is not made within the six month grace period 26 March – 26 September.

If the mobile phone is confiscated after 26 March 2015, it can be destroyed, or otherwise disposed of, under the new powers of the Act. *The mobile phone must not be destroyed for 3 months to allow the prisoner or a third party to make representations in respect of how the mobile phone is dealt with.*

9. Will there be penalties for claiming unattributable unauthorised property?

Possession of an unauthorised item is against prison rules; therefore you may face an adjudication charge if you wish to claim for an item that has been confiscated.

10. What happens to items which are destroyed/disposed of under this Act

Unclaimed or unattributed property will either be destroyed or sold, following NOMS' current policy 12/2011 where proceeds of property sales can be donated to National Association for the Care and Resettlement of Offenders (NACRO).

11. What is a legitimate claim?

In line with [PSI 12/2011 – Prisoners' Property](#), prisoners can make a claim to property that is listed on the prisoner's property card.

A legitimate claim might be if the prisoner can prove that the item is listed on their property card. However, where property is unattributed and therefore not listed on a property card, a prisoner may

still be able to make a claim for the item. Where a claim is successful, the item can be added to the prisoner's property card and placed in local storage until the point at which the prisoner is permanently released. *Prisoners must be aware that they may face an adjudication charge for possession of unauthorised property.*

12. Can I claim back property after I have been permanently released from prison custody?

You have until 26 September 2015 to claim "relevant" items confiscated before commencement. Other (non "relevant") items confiscated before commencement will remain in storage until claimed or disposed of under existing powers ([PSI 12/2011 – Prisoners' Property](#)).

Prisoners may make representations regarding how "relevant" items confiscated after commencement (26 March 2015) are dealt with within three months. Other (non "relevant") items confiscated after commencement can be claimed in accordance with the three month period detailed in this PSI.

For other items under [PSI 12/2011 – Prisoners' Property](#), when a prisoner is released at the end of their custodial term, they are asked to sign a disclaimer form confirming they are aware that any property they leave behind will only be kept for 12 months before being disposed of or sold. The form also provides prisoners an opportunity to state whether they wish for item(s) of their property to be sold or destroyed. This will remain.

13. Can prisoners appeal?

Prisoners will be able to make representations against destruction of items up to three months after the item is found/confiscated through the existing complaints procedures in [PSI 02/2012 – Prisoner Complaints](#). This also provides an avenue of appeal up to the Prisons and Probation Ombudsman.

14. How should prisons dispose of unclaimed property?

As described in [PSI 12/2011 – Prisoners' Property](#), disposal can either be by resale, where proceeds of property sales can be donated to NACRO, or destruction where resale is not appropriate. It is up to Governors to decide the most appropriate course of action for property disposal within the guidelines of the PSI.

15. What about drugs, drug related equipment and mobile phones?

This PSI excludes drugs and drug paraphernalia, which will continue to be disposed of through the Police.

The physical destruction or disposal of mobile phones will be managed centrally by the National Dogs and Technical Support Group (NDTSG) who currently interrogate and store all illicit mobile phones confiscated from across the estate.