

Title: Introduction of a minimum custodial sentence for a second (or further) conviction for knife possession IA No: MoJ014/2014 Lead department or agency: Ministry of Justice Other departments or agencies: N/A	Impact Assessment (IA)		
	Date: 03/07/2015		
	Stage: Introduction of Legislation		
	Source of intervention: Domestic		
	Type of measure: Primary Legislation		
Contact for enquiries: general.queries@justice.gsi.gov.uk			

Summary: Intervention and Options	RPC Opinion: N/A
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out? Measure qualifies as
Unknown	£0	£0	No Out of scope

What is the problem under consideration? Why is government intervention necessary?
 Custodial sanctions are too infrequent for those that are convicted for repeatedly carrying a knife or offensive weapon. Government intervention is needed to ensure that a minimum custodial sentence is imposed in such circumstances.

What are the policy objectives and the intended effects?
 This measure is intended to tackle the problem of repeated knife and offensive weapon possession, and ensure that sufficiently tough prison sentences are given to those who repeatedly carry knives.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

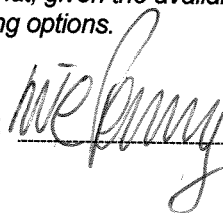
Option 0 - Do nothing
 Option 1 - Introduce a minimum custodial sentence of 6 months imprisonment for adults and a 4 month Detention and Training Order for 16 and 17 year olds where an offender has been convicted for a second (or further) time for one of the following offences:

- i. possession of offensive weapon in public place (section 1 Prevention of Crime Act 1953);
- ii. possession of bladed article in public place (section 139 Criminal Justice Act 1988);
- iii. possession of offensive weapon or bladed article on school premises (section 139A Criminal Justice Act 1988);

or where the individual is convicted of one of the above offences having already been convicted of an offence under section 1A Prevention of Crime Act 1953 or section 139AA Criminal Justice Act 1998, unless there are particular circumstances relating to the offence, the previous offence or the offender which would make such a sentence unjust.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: Month/Year					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro No	< 20 No	Small No	Medium No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A		Non-traded: N/A

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY:  Date: 2nd July 11

Summary: Analysis & Evidence

Policy Option 1

Description: To introduce a minimum custodial sentence of 6 months imprisonment for adults and a 4 month Detention and Training Order for 16 and 17 year olds where an offender has been convicted of a second (or further) offence of possession of a knife or offensive weapon unless there are particular circumstances which would make the imposition of such a sentence unjust.

FULL ECONOMIC ASSESSMENT

Price Base Year 13/14	PV Base Year 13/14	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate		Between £8m and £10m	

Description and scale of key monetised costs by 'main affected groups'

The introduction of a minimum custodial sentence of 6 months imprisonment for adults and a 4 month Detention and Training Order for 16 and 17 year olds where an offender has been convicted of a second (or subsequent) offence of possession of a knife or offensive weapon is likely to result in increased costs to the prison service. Most offenders who currently receive less than the proposed minimum or a non-custodial sentence will now be sentenced to the minimum. We also expect an increase in costs to HMCTS, the Crown Prosecution Service (CPS), and the Legal Aid Agency, as we have assumed that offenders who currently receive a caution having already been convicted of one or more knife possession offences will in the future be prosecuted and most will be sentenced to custody. We have modelled two scenarios to estimate the potential impacts. Overall, we estimate a **cost of approximately between £8m (scenario 2) and £10m (scenario 1) per year to the prison services, HMCTS, CPS and the Legal Aid Agency.**

Other key non-monetised costs by 'main affected groups'

None identified.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate		Between £4m and £5m	

Description and scale of key monetised benefits by 'main affected groups'

We expect a saving to the CJS from fewer community and suspended sentences as we have assumed that some of these offenders will be sentenced to immediate custody. We have also estimated that there will be a saving to the police and the CPS due to fewer cautions being issued to offenders who have one or more previous convictions for knife possession. Overall, we estimate a **saving of approximately £4m (scenario 2) and £5m (scenario 1) per year to the police and CPS.**

Other key non-monetised benefits by 'main affected groups'

Tougher sentencing for knife possession may increase public confidence in the justice system, and may act as a deterrent to further offending behaviour.

Key assumptions/sensitivities/risks

Discount rate (%) N/A

We assume that the number of offences remains unchanged in future years; that most (80% in Scenario 1 and 60% in Scenario 2) adult offenders who have one or more previous convictions for knife possession and would not previously have been sentenced to the minimum will now be sentenced to the minimum; sentences for the others, and all those who are currently "otherwise dealt with" will not change; 60% of offenders will receive a reduction in their sentence for pleading guilty early: one-fifth discount for adults, or a community sentence, if they are aged 16 or 17. However, given the uncertainty surrounding the number of offenders that this will have an impact on, unknown behavioural changes, and the potential interaction with other proposals, there is a risk that we may in fact have over or underestimated the impact on the CJS.

BUSINESS ASSESSMENT (Option 1)

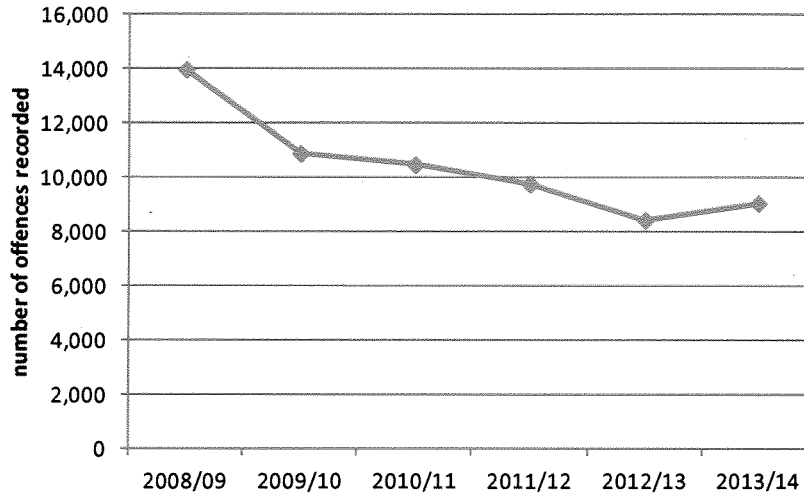
Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs:	Benefits:	Net:		
			No	OUT

Evidence Base

Trends in knife/offensive weapon offending and sentencing

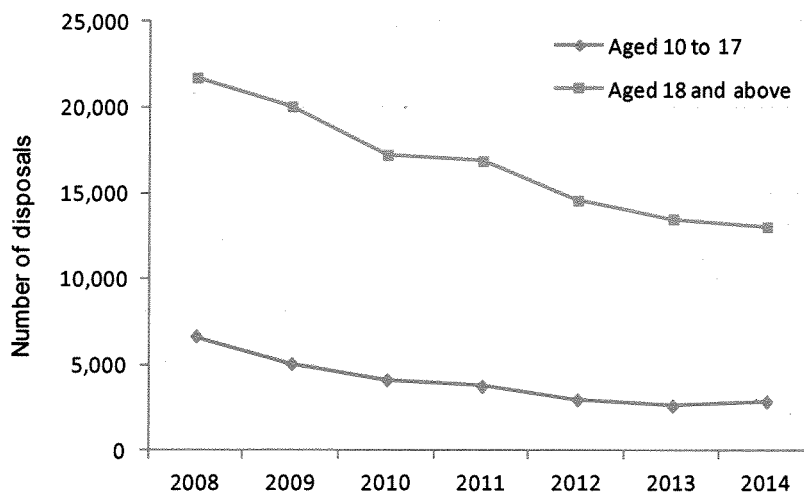
- Recent trends indicate that there has been a decline in the number of police recorded offences of possession of knives/offensive weapons. Chart 1 shows that possession of an article with a blade or point has fallen by around 35% from 2008/09 to 2012/13, but there was a 7% increase between 2012/13 and 2013/14.

Chart 1 – Police recorded offences of possession of article with a blade or point in England and Wales from 2008/09 to 2013/14¹



- There has also been a decline in the number of cautions and sentences for knife/offensive weapon possession. Chart 2 shows the number of disposals from 2008 to 2014³ by age group. We estimate the number of disposals to have fallen by approximately 60% for adults and 43% for juveniles over this time period.

Chart 2 – Number of disposals² given for knife and offensive weapon possession offences by age, England and Wales from 2008 to 2014³



¹ Crime in England & Wales, year ending December 2014 - Appendix tables, ONS April 2015. Figures prior to 2008/2009 are not available.

² The disposal given is only the most severe of the disposals given as a result of the offender being found guilty and may also be dependent on other offences committed at the same time.

³ Knife possession sentencing quarterly brief, Ministry of Justice, March 2015. Figures for 2014 are estimated based on historical data changes. Please note that these figures are on an offence level basis.

Public attitude towards knife crime

3. To the best of our knowledge, there is currently no evidence on public perception of knife/offensive weapon possession. However, an Ipsos MORI⁴ study suggests that public concern about knife crime has been persistently high, and most people consider knife crime as an issue. Moreover, findings from the Crime Survey for England and Wales indicate that the public increasingly perceive knife crime as an issue. In particular, 90% of the respondents perceived an increase nationally, whereas 27% perceived an increase locally⁵.

Knife possession statistics

Adult knife possession offenders

4. Table 1 shows the breakdown of disposals² received by these offenders. There were 12,125 adult offenders⁶ cautioned or sentenced for possession of a knife or offensive weapon in 2014. Of these offenders, 3,707 (31%) were sentenced to immediate custody.

Table 1 – Adult offenders⁶ cautioned or sentenced for possession of a knife or offensive weapon⁷, in England and Wales, 2014

Disposal type ²	Number of offenders	Proportion of offenders
Caution	1,595	13%
Absolute/Conditional discharge	440	4%
Fine	699	6%
Community sentence	2,692	22%
Suspended sentence	2,518	21%
Immediate custody	3,707	31%
Otherwise dealt with	474	4%
<i>Total</i>	<i>12,125</i>	<i>100%</i>

5. Table 2 below shows the breakdown of offenders by disposal and number of previous knife possession convictions. Of the 12,125 adult offenders cautioned or sentenced for the possession of a knife or offensive weapon in 2014, 9,161, or 76%, had no previous convictions for the same offence. In addition, of the 3,707 adult offenders sentenced to immediate custody, 1,510 (41%) had one or more previous convictions for knife possession. Of the 7,944 adult offenders who were either given a caution, a non-custodial sentence (excluding those offenders who were “otherwise dealt with”⁸) or a suspended sentence, 1,337 (17%) had at least one previous conviction for knife possession.

⁴ Ipsos MORI, May 2010, ‘What do the electorate think of the key crime policies?’

⁵ Home Office Statistical Bulletin, Crime in England and Wales 2009/10, Findings from the British Crime Survey and police recorded crime (third edition). This was the last year in which this question was asked in the Crime Survey.

⁶ MoJ extract of the Police National Computer. Figures are based on counting the number of cautioning and sentencing occasions for knife possession offences committed by offenders which were prosecuted by police forces in England and Wales including the British Transport Police. Offenders may appear more than once in the year, where they have been sentenced on multiple occasions for the same offence within the year.

⁷ Possession of a knife or offensive weapon is the sum of those convicted and cautioned for the possession of an offensive weapon in public place, the possession of a bladed article in public place, and for the possession of an offensive weapon or bladed article on school premises.

⁸ We have assumed that offenders who are currently “otherwise dealt with” will continue to be so, for example, offenders dealt with through secure mental health services. This is because there may be reasons for them to be “otherwise dealt with” which would continue to apply in the future.

Table 2 - Adult offenders⁶ cautioned or sentenced for possession of a knife or offensive weapon⁷ by disposal² and number of previous convictions for knife possession, 2014

Disposal type ²	Number of previous knife possession convictions					
	0	1	2	3 or more	Total	1 or more
Caution	1,529	44	13	9	1,595	66
Absolute/Conditional discharge	375	45	9	11	440	65
Fine	601	66	14	18	699	98
Community sentence	2,183	322	111	76	2,692	509
Suspended sentence	1,919	397	133	69	2,518	599
Immediate custody	2,197	810	372	328	3,707	1,510
Otherwise dealt with	357	69	28	20	474	117
Total	9,161	1,753	680	531	12,125	2,964

6. Table 3 shows the breakdown of those sentenced to immediate custody by sentence length and number of previous knife possession convictions. 798 adult offenders sentenced to less than six months for knife possession had one or more previous convictions for the same offence, whereas 710 of those sentenced to six months or more had at least one previous conviction.

Table 3 - Adult offenders⁶ sentenced to immediate custody for possession of a knife or offensive weapon⁷ by sentence length and number of previous convictions for knife possession, in England and Wales, 2014

Sentence length ⁹	Number of previous knife possession convictions					
	0	1	2	3 or more	Total ¹⁰	1 or more
Up to and including 3 months	861	319	148	132	1,460	599
Over 3 months and up to 6 months	268	104	48	47	467	199
6 months and over	1,065	385	176	149	1,775	710
Total	2,194	808	372	328	3,702	1,508

Knife possession offenders aged 16 and 17

7. Table 4 shows the breakdown of disposals¹¹ received by these offenders. There were 1,463 16 and 17 year old offenders⁶ cautioned or sentenced for possession of a knife or offensive weapon in 2014. Of these offenders, 184, or 13%, were sentenced to immediate custody.

⁹ The breakdown used in categories are not consistent in the amount of time covered, but have been chosen for modelling purposes and in order to analyse impacts. We have excluded those offenders sentenced to immediate custody of exactly six months as they would be unaffected by the policy change.

¹⁰ The custodial sentence length was not recorded for 5 of the offenders sentenced to immediate custody in 2014.

¹¹ The disposal given in this table is only the most severe of the disposals given as a result of the offender being found guilty and may also be dependent on other offences committed at the same time.

Table 4 - 16 and 17 year old offenders⁶ cautioned or sentenced for possession of a knife or offensive weapon⁷, in England and Wales, 2014

Disposal type ²	Number of offenders	Proportion of offenders
Cautions	241	16%
Absolute/Conditional discharge	30	2%
Fine	4	0%
Youth rehabilitation order	934	64%
Immediate custody	184	13%
Otherwise dealt with	70	5%
Total	1,463	100%¹²

8. Table 5 below shows the breakdown of offenders by disposal and number of previous knife possession convictions. Of the 1,463 16 and 17 year old offenders cautioned or sentenced for possession of a knife or offensive weapon in 2014, 1,280, or 87%, had no previous convictions for knife or offensive weapon possession. In addition, of the 184 16 and 17 year old offenders sentenced to immediate custody, 57 had one or more previous convictions for knife possession. In comparison, of the 1209 16 and 17 year old offenders who were cautioned or given non-custodial sentences, 111 offenders had one or more previous convictions for knife possession (this does not include offenders who were "otherwise dealt with". See "Risks and Assumptions" table).

Table 5 - 16 and 17 year old offenders⁶ cautioned or sentenced for possession of a knife or offensive weapon⁷ by disposal¹¹ and number of previous convictions for knife possession, 2014

Disposal type ²	Number of previous knife possession convictions					Total	1 or more
	0	1	2	3 or more			
Cautions	241	0	0	0		241	0
Absolute/Conditional discharge	27	2	1	0		30	3
Fine	3	1	0	0		4	1
Youth rehabilitation order	827	88	16	3		934	107
Immediate custody	127	43	10	4		184	57
Otherwise dealt with	55	11	3	1		70	15
Total	1,280	145	30	8		1,463	183

9. Table 6 below shows the breakdown of those sentenced to immediate custody by sentence length and number of previous knife possession convictions. Of the 86 16 and 17 year old offenders sentenced to immediate custody for exactly four months for knife possession, 29 offenders had one or more previous convictions for the same offence, whereas 28 of the 97 offenders sentenced to over four months had at least one previous conviction.

¹² Percentages may not sum to 100 due to rounding.

Table 6 - 16 and 17 year old offenders⁶ sentenced to immediate custody for possession of a knife or offensive weapon⁷ by sentence length and number of previous convictions for knife possession, in England and Wales, 2014

Sentence length	Number of previous knife possession convictions					Total	1 or more
	0	1	2	3 or more			
Exactly 4 months ¹³	57	25	4	0		86	29
Over 4 months and up to 6 months	30	5	3	1		39	9
Over 6 months	39	13	3	3		58	19
<i>Total</i>	126	43	10	4		183	57

Impact Assessment

Problem under consideration, Rationale for intervention and Policy Objective:

This measure was introduced by back bench amendment and accepted into the Criminal Justice and Courts Bill. The minimum sentence is provided for in the Criminal Justice and Courts Act 2015 which received Royal Assent in February 2015 and the Government has now decided to implement the relevant provisions. **Description of options considered:**

10. In line with standard practice, we have considered the following policy options to achieve the intended outcome of ensuring repeat offenders receive a custodial sentence:

- **Option 0 - Do nothing. Under this option there would be no change. This is the status quo, resulting in no extra costs or benefits. This will form the baseline.**
- **Option 1 - Introduce a minimum custodial sentence of 6 months imprisonment for adults and a 4 month Detention and Training Order for 16 and 17 year olds where an offender has been convicted for a second (or further) time for one of the following offences¹⁴:**
 - i. Possession of offensive weapon in public place (section 1 Prevention of Crime Act 1953);
 - ii. Possession of bladed article in public place (section 139 Criminal Justice Act 1988);
 - iii. Possession of offensive weapon or bladed article on school premises (section 139A Criminal Justice Act 1988),

or where the individual is convicted of one of the above offences having already been convicted of an offence under section 1A Prevention of Crime Act 1953 or section 139AA Criminal Justice Act 1998, unless there are particular circumstances relating to the offence, the previous offence or the offender which would make such a sentence unjust.

Monetised and non-monetised costs and benefits of each option:

11. It has not been possible to monetise all the identified impacts in this IA, in part due to a lack of data, and in part because the impacts are driven by a number of behavioural responses which are uncertain. Impacts have been quantified where possible.
12. The costs to the CJS outlined in this IA are based on the assumption that additional resources would be used to deal with an increase in knife possession related offences. The estimates reflect the cost of these additional resources. If, however, the increase in cases was absorbed using current resources, the actual financial costs to the CJS could be significantly lower.

¹³ No offenders aged 16 or 17 are currently given a Detention and Training Order of less than four months, as this is the minimum length of such an order.

¹⁴ A previous conviction for an equivalent offence committed in Scotland, Northern Ireland or another member state also counts; as does a previous conviction for an equivalent armed forces offence.

Option 0: Base case (do nothing)

13. Because the do nothing option is compared against itself, its costs and benefits are necessarily zero, as is its Net Present Value (NPV).

Option 1: Introduce a minimum custodial sentence of 6 months imprisonment for adults and a 4 month Detention and Training Order for 16 and 17 year olds where an offender has been convicted for a second (or further) time for the possession of a knife.

14. Judges will continue to have the discretion not to impose custody if there are particular circumstances where they deem it unjust to do so, and the court also has the ability to impose the minimum sentence and suspend it. There are, therefore, reasons to expect that not all of those affected will be sentenced to immediate custody. This is currently the case where other minimum sentences apply. We have therefore modelled two scenarios to demonstrate the potential impacts:

- Scenario 1: 80% of adult offenders who are currently given a caution, a non-custodial sentence, a suspended sentence or immediate custody of less than 6 months will be sentenced to exactly 6 months in immediate custody. As it is not clear which adult offenders may not receive an immediate custodial sentence we have assumed, for modelling purposes, that the remaining 20% of offenders have the disposal they would originally have received.
- Scenario 2: 60% of adult offenders who are currently given a caution, a non-custodial sentence, a suspended sentence or immediate custody of less than 6 months will be sentenced to exactly 6 months in immediate custody. As it is not clear which adult offenders may not receive an immediate custodial sentence we have assumed, for modelling purposes, that the remaining 40% of offenders have the disposal they would originally have received.

15. We have not assumed a deterrent effect of more severe sentences. Looking at the published evidence suggests that increasing the likelihood of being caught is likely to have the greater impact on deterring offending than increasing the severity of punishment. When the likelihood of being caught is high enough, making sentences more severe appears to have minimal impact on deterrence. However, senior police leaders have offered their view that this policy might have a deterrent effect.

16. It is also not clear how any changes in the prevalence of knife possession is mediated by police procedures (e.g. use of stop and search) to affect prosecutions and sentencing.

17. We cannot estimate the size of a deterrence effect for this assessment. If this change were to have a deterrence effect, however, it would lower the prison place impact. As an illustration, each 1% reduction in the number of sentences given from a potential deterrent effect will reduce the annual impact by about 3 prison places or a total saving to the CJS of around £50k per year.

Scenario 1

Adult knife possession offenders

Costs

18. Table 7 below shows the total number of adult offenders who may be eligible for a minimum sentence a total of approximately 2,100 adult offenders. Around 1,300 offenders currently do not currently receive an immediate custodial sentence.

19. The disposals received by these offenders in the base case are shown in Table 7. These offenders include all those who are currently cautioned or convicted for knife possession and have one or more previous convictions for the same offence. In scenario 1, we assume that 80% of them will now receive the minimum sentence. Around 1,000 offenders who do not currently receive an immediate custody sentence will receive the minimum sentence.

Table 7 - Adult offenders who will be affected by this proposal¹⁵

Groups of adult offenders with at least one previous conviction for knife possession by current disposal	Number of offenders (2014)
Offenders cautioned	66
Offenders given a non-custodial sentence ¹⁶ (of which are given a community sentence)	672 (509)
Offenders given a suspended sentence	599
Offenders sentenced to up to and including three month immediate custody	599
Offenders sentenced to over three and up to six months immediate custody	199
Total	2,135

20. We have assumed that, on average, offenders sentenced to up to and including three months and between three to six months received 1.5 and 4.5 months custody, respectively, as these are the midpoints of those ranges.

21. We have also assumed that a one-fifth discount for pleading guilty early is applied to 60%¹⁷ of the adult offenders affected by this proposal equivalent to a custodial sentence of 4.8 months. The remaining 40% of offenders receive a six-month custodial sentence.

22. Moreover, we have used the following 2013/14 unit costs:

- £25,000¹⁸ annually per prisoner¹⁹ and £2,620²⁰ for supervision on licence²¹;
- £620²² for HMCTS costs²³ per case at magistrates' courts;
- £160²⁴ for CPS costs²⁵ per case at magistrates' courts; and
- £470 for Legal Aid costs²⁶ per defendant at magistrates' court.

¹⁵ MoJ extract of the Police National Computer. Figures are based on counting the number of cautioning and sentencing occasions for knife possession offences committed by offenders which were prosecuted by police forces in England and Wales including the British Transport Police. Offenders may appear more than once in the year, where they have been sentenced on multiple occasions for the same offence within the year.

¹⁶ Offenders 'otherwise dealt with' are not included. See 'Risks and Assumptions' table.

¹⁷ Source: MoJ policy advice, 2013.

¹⁸ The cost of additional prison places is also dependent on the existing prison population, as if there is spare capacity in terms of prison places then the marginal cost of accommodating more offenders will be low due to existing large fixed costs and low variable costs. Conversely, if the current prison population is running at or over capacity then marginal costs may be significantly higher as contingency measures will have to be found to ensure that offenders who refuse to contribute towards their charge can be placed in custody.

¹⁹ Source: NOMS Management Account Addendum 2013/14.

²⁰ Probation trust unit costs: 2012/2013 (NOMS) uplifted to 2013/14 prices. Note that this cost is for licences of 12 months and over, and predate the creation of Community Rehabilitation Companies (CRC). New probation unit costs will be available in due course.

²¹ Additional licence costs are generated only for those who receive custody who previously did not.

²² Note that the CPS costs and HMCTS costs are subject to change pending further work to provide more robust costs estimates.

²³ The HMCTS costs are based on average judicial and staff costs, found at HMCTS Annual Report and Accounts 2012/13 and uprated to account for inflation. HMCTS timings data are from the Activity Based Costing (ABC) model, the Timeliness Analysis Report (TAR) data set and the costing process.

²⁴ At present, the CPS costs quoted throughout this assessment do not include several categories. Current CPS costs are based on Activity Based Costings (ABC), the primary purpose of which is resource allocation. The key limitation of the ABC model is that it is built purely on staff time (which accounts for about three quarters of the cost) and excludes accommodation and other ancillary costs (e.g. those associated with complex cases and witness care). It also relies on several assumptions. There is therefore a risk that costs are underestimated. For a full list of caveats please see the CPS guidance (CPS, 2012): http://www.cps.gov.uk/publications/finance/abc_guide.pdf.

²⁵ Source: MoJ internal analysis 2014.

²⁶ Source: MoJ internal analysis 2014 (based on Crime Lower Report and Crime Higher Report, Legal Aid Agency 2012/13).

23. Given the above assumptions, we estimated the following steady-state costs:

- Around 350 additional prison places, or approx. £9m per year, will be required;
- HMCTS, CPS and Legal Aid annual costs of around £30k, £10k, and £10k, respectively for those offenders who would have been cautioned following an initial conviction for possessing a knife that would now receive a custodial sentence under the new proposals²⁷;

24. This gives a **cost of around £9m per year** (figures may not sum due to rounding).

25. We assume that an offender's previous convictions for possession of a knife from before implementation are relevant when they are sentenced after the measure is commenced. We would expect to see an impact on prison places from around 4 months after commencement. Prison places would build steadily to reach a steady state after approximately a year from implementation,

Benefits

26. This policy sends a clear message to those who are considering carrying a knife or other offensive weapon that this is completely unacceptable behaviour. This will also ensure that sentences imposed for repeat offences involving possession of a knife or offensive weapon are appropriate and respond to public concerns. Wider society may also feel better served by the level of punishment delivered by the legislative framework resulting in an increase in public confidence in the justice system.

27. There are also some monetised benefits. We estimate that there will be a saving to probation providers as offenders who receive a community sentence in the base case will be sentenced to immediate custody under the new provision. We also expect there to be a saving due to fewer suspended sentences being given as we have assumed that all offenders who currently receive this disposal will in the future be sentenced to immediate custody. In addition, we estimate that there will be a saving to the police and the CPS as we expect the police to be less likely to just caution offenders with at least one previous conviction for knife possession.

28. Assuming that all offenders who are currently cautioned after being previously convicted for knife possession will be prosecuted under the new provision, and assuming the following 2013/14 unit costs:

- £4,300²⁸ for a community sentence or suspended sentence; and
- £300 for a caution²⁹,

we estimate the following steady-state savings:

- savings from fewer community sentences or suspended sentences given of approx. £4m per year; and
- savings from fewer cautions being issued of around £20k per annum.

29. Overall, we expect a **benefit of approximately £4m per year** (figures may not sum due to rounding).

²⁷ Additional costs of advice to court (pre-sentence reports) and case allocation for those who would not previously have come into contact with probation (those who received cautions or fines) have not been taken into account as they are small.

²⁸ Probation trust unit costs: 2012/2013 (NOMS) uplifted to 2013/14 prices. Note that these unit costs predate the creation of CRCs. New probation unit costs will be available in due course.

²⁹ The cost of a simple caution is a Home Office estimate calculated using data from the Annual Survey of Hours and Earnings (ASHE), Chartered Institute of Public Finance and Accounting (CIPFA) and uprated to account for inflation. The cost includes both the cost to the police and the costs to the CPS. Source: HO internal analysis, 2013.

Knife possession offenders aged 16 and 17

Costs

30. Table 8 below shows the total number of offenders aged 16 or 17 who may be eligible for a minimum sentence, approximately 110 offenders.

31. The disposals received by these offenders are shown in Table 8. Note that no offenders aged 16 or 17 are currently given a Detention and Training Order of less than four months, as this is the minimum length of such an order. In scenario 1, we assume all of these eligible offenders will receive the minimum sentence.

Table 8 – 16 and 17 year old offenders who will be affected by this proposal¹⁵

Groups of 16 and 17-year-old offenders with at least one previous conviction for knife possession by current disposal	Number of offenders (2014)
Offenders given a non-custodial sentence ³⁰ (of which community sentences)	111 (107)
Offenders cautioned	0
Total	111

32. We assume that 60%³¹ of offenders will receive a youth rehabilitation order³² under the new provision for pleading guilty early, and as a result there will be a cost to Youth Offending Teams. The remaining 40% are assumed to receive a four month custodial sentence.

33. We have also used the following 2013/14 unit costs:

- £65,000³³ for an annual YOI place³⁴ per offender and £2,300³⁵ for supervision on licence; and
- £4,300²⁸ for a youth rehabilitation order (as for adult offenders on a community sentence).

34. Given the above assumptions, we estimate the following steady-state costs:

- fewer than 10 additional YOI places, or approx. £500k, will be required per year³⁶; and
- costs to Youth Offending Teams of around £300k per year as a result of some of these offenders pleading guilty early.

35. This gives a **cost of around £800k per year.**

³⁰ Offenders 'otherwise dealt with' are not included. See 'Risks and Assumptions' table.

³¹ Source: MoJ policy advice, 2013.

³² The court may impose other non-custodial sentences, such as referral orders, if appropriate, or a fine, but the assumption for the IA is that those pleading guilty will get a youth rehabilitation order.

³³ The cost of additional YOI places is also dependent on the existing YOI population, as if there is spare capacity in terms of prison YOI places then the marginal cost of accommodating more offenders will be low due to existing large fixed costs and low variable costs.

³⁴ Source: MoJ internal analysis, 2013.

³⁵ Estimated from range quoted in 'The youth justice system in England and Wales: Reducing offending by young people' (NAO 10 Dec 2010) updated to account for inflation.

³⁶ For modelling purposes, we have assumed that all 16 and 17 year olds receiving custody will be sent to YOIs. Some of them are likely to be sent to Secure Training Colleges or Secure Children's Homes instead. However, we do not expect any significant changes to our cost estimates because of small numbers.

Benefits

36. This policy sends a clear message to those who are considering carrying a knife or other offensive weapon that this is unacceptable behaviour. This will also ensure that sentences imposed for repeat offences involving possession of a knife or offensive weapon are appropriate and respond to public concerns. Wider society may also feel better served by the level of punishment delivered by the legislative framework resulting in an increase in public confidence in the justice system.
37. There are also some monetised benefits. We estimate that there will be a saving to the probation providers as offenders who receive a community sentence in the base case will receive a Detention and Training Order under this provision. Assuming a 2013/14 unit cost of £4,300²⁸ for a community sentence, as for adult offenders, we estimate a steady-state **saving of approximately £500k per year**.

Net impact of policy under Scenario 1

38. We estimate overall net costs of approximately £5m and 350 prison places in relation to adult offenders, and £300k and fewer than 10 YOI places in relation to juveniles in scenario 1. Hence, **overall annual net costs are about £5m** (in 2013/14 prices, figures may not sum due to rounding).

Scenario 2

Costs

39. All the assumptions and unit costs for scenario 2 are the same as scenario 1 except that we assume 60% of potentially eligible adult offenders are given the minimum sentence. Around 800 offenders who do not currently receive an immediate custody sentence will receive the minimum sentence. For offenders aged 16 and 17, scenario 2 is the same as scenario 1.
40. Under this scenario, we estimate the following steady-state costs:
- Around 250 additional prison places, or approx. £7m per year in relation to adult offenders.
 - HMCTS, CPS and Legal Aid annual costs of around £20k, £10k, and £10k, respectively for those offenders who would have been cautioned following an initial conviction for possessing a knife that would now receive a custodial sentence under the new proposals.
 - Costs in relation to offenders aged 16 and 17 would remain the same as in scenario 1 as that the differences in scenario 2 apply only to adult offenders. Hence there would be fewer than 10 additional YOI places, or approx. £500k, per year³⁷; and costs to Youth Offending Teams of around £300k per year as a result of some of these offenders pleading guilty early. This would give a cost of around £800k per year.
 - **Overall costs would therefore be £8m per year.**
41. We expect that the build-up of prison places will be the same as described in scenario 1.

Benefits

42. Under this scenario, we estimate the following steady-state savings:
- Around £3m per year due to fewer adult community sentences and suspended sentences being given; and
 - Around £10k per annum from fewer cautions being issued.
 - Savings in relation to youth offenders would remain the same as in scenario 1 as we have assumed offenders aged 16 and 17 are treated exactly as in scenario 1. There will be a saving to

³⁷ For modelling purposes we have assumed that all 16 and 17 year olds receiving custody will be sent to YOIs. Some of them are likely to be sent to STCs or SCHs instead. However, we do not expect any significant changes to our cost estimates because of small numbers.

the probation providers as offenders who receive a community sentence in the base case will receive a Detention and Training Order under this provision. This is estimated to result in steady-state savings of approximately £500k per year.

- Overall savings would therefore be £4m per year.

Net impact of the policy under Scenario 2

Overall, we estimate a net cost of approximately £4m per year and 250 prison places in relation to adult offenders, and £300k and fewer than 10 YOI places in relation to juveniles under scenario 2. Hence, **overall net annual costs are about £4m** (in 2013/14 prices, figures may not sum due to rounding).

43. Summary of the preferred option with description of implementation plan:

44. The Criminal Justice and Courts Act 2015 provides that an offender who is convicted of an offence of possession of a knife or offensive weapon must, if the offender has previously been convicted of such an offence, be given a sentence of imprisonment of at least 6 months if they are aged 18 or above, or a 4 month Detention and Training Order if the offender is aged 16 or 17 unless there are particular circumstances relating to the offender or the offences which would make the imposition of such a sentence unjust.

45. Overall, we expect the implementation of this measure to result in additional net annual costs to the Criminal Justice System of approximately **£4m - £5m** (in 2013/14 prices).

Risks and assumptions:

Assumption	Risk
We have assumed that the overall level of knife possession offences will remain constant in future years despite the recent downward trend.	Over the long term there has been a fall in the number of knife possession offences recorded, although recent trends in sentencing for this offence are broadly flat. There is a risk that, if knife possession falls, we will have overestimated the costs associated with this policy. However, costs could also be higher if we see a rise in the number of offenders sentenced. If there were a sustained downward trend in sentences for second-time knife possession of 2% per year, this could result in a potential overestimation of prison places by approximately 15-25 prison places after 5 years.
We have not assumed a deterrent effect of more severe sentences in scenarios 1 and 2.	Identifying potential deterrent effects of mandatory minimum sentences is difficult. One issue is that it is challenging to disambiguate law enforcement response from public behaviour, so it is unclear how far deterrence or changes in law enforcement may be the cause of any changes in crime levels. Evidence overall suggests that three strikes legislation in the USA had inconsistent effects on crime rates across states where it was used (Austin et al., 2000; Kelly & Datta, 2009; Kovandzic et al., 2004). Differing law enforcement and implementation contexts may explain such inconsistency, although evidence of the impact of three strikes in California (where it was most famously used) alone is also mixed (e.g. Kessler & Levitt, 1998; Helland

	& Tobarrak, 2007; c.f. Marvell & Moody, 2001; Worrall, 2004).
As sentencers will have the discretion not to sentence offenders to immediate custody when this is deemed to be unjust or inappropriate, we have modelled two scenarios where either 20% or 40% of all adult offenders affected (i.e. those that would currently receive a sentence less than the new minimum), continue to have the disposal they originally would have received instead of being sentenced to immediate custody.	Given behavioural uncertainties it is difficult to quantify this impact and as a result the illustrative scenarios presented may over or under estimate the actual impact.
We have assumed that there will be no change in the sentencing of those offenders who are currently sentenced to 6 months or over in custody for the possession of a knife.	Given the uncertainty surrounding sentencing behaviour there is a risk that the introduction of a minimum custodial term sends a message to sentencers about the need to punish persistent offenders more severely. Therefore, this policy could affect a greater number of offenders through the upruffing of their sentences, thus resulting in additional costs to the CJS.
For modelling purposes we have assumed that 80% (scenario 1) or 60% (scenario 2) of offenders who are currently cautioned for knife possession and had one or more previous convictions for the same offence will be prosecuted and sentenced to custody.	Under the new provision, the police will still have discretion to caution offenders who have one or more previous knife possession convictions. There is therefore a risk that more cautions will be issued than we have assumed. However, we do not expect any impact to be considerable as statistics indicate that few offenders with at least one previous conviction for knife possession received a caution afterwards.
80% (scenario 1) or 60% (scenario 2) of those that receive a fine in the base case following at least one previous conviction for the possession of a knife or offensive weapon, will be given a custodial sentence under this policy.	We have not quantified the loss of fine income as a result of this and as a result overall costs could be higher than estimated.
We have assumed that offenders who are currently "otherwise dealt with" will continue to be so, for example, offenders dealt with through secure mental health services.	There is a risk that if this policy leads to more offenders being sentenced to custody there will be an increase in NOMS costs.
We have not considered any wider impacts on society from sentencing offenders to custody when they would not have received a custodial sentence in the base case.	There is the risk associated with sentencing offenders to custody who would not have received a custodial sentence otherwise. It is unclear what, if any, impact this policy may have on their future behaviour.
We have assumed that all those affected will be tried at magistrates' courts.	However, it may well be that some of these offenders will be tried at Crown Court as the new minimum sentences will be at the top of end of magistrates' sentencing power. There is therefore a risk that more cases will be tried at the Crown Court and as a result costs will be higher than assumed.

<p>We have assumed that 60% of offenders will receive a one-fifth discount on their sentence or a youth rehabilitation order if they are aged 16 or 17 for pleading guilty early.</p>	<p>We believe it is hard to demonstrate non-culpability for knife possession and hence it is in the interest of the offender to plead guilty and we expect a higher number of offenders to plead guilty. There is however a risk that either more or fewer offenders will receive a discount, if adults, or a community sentence, if aged 16 or 17, than we have estimated. If this is the case then there could be a reduction or an increase in the CJS costs assumed.</p>
<p>We have assumed that, on average, offenders sentenced to up to and including three months and between three to six months receive 1.5 and 4.5 months custody, respectively, as these are the midpoints of those ranges.</p>	<p>There is a risk that these assumptions do not materialise and as a result the costs to the CJS could be higher or lower than estimated.</p>
<p>We have assumed a legal aid eligibility rate of 50% for adults at the magistrates' courts</p>	<p>There is the risk that the actual legal aid eligibility rate is higher or lower than assumed and that, as a result, we have under or over estimated the actual impact of this proposal.</p>
<p>The base case uses 2014 data on the number of cautioning and sentencing occasions for knife possession offences and our estimates are based on this.</p>	<p>The number of cautioning and sentencing 'occasions' is lower than the total number of knife possession offences committed (as an offender can be prosecuted for two or more offences in the same occasion), but is higher than the number of offenders prosecuted for knife possession in a certain year (as offenders may appear in court more than once in the year, if they have been sentenced on multiple occasions for the same offence within the year). Given we have used this measure and there is uncertainty around the degree of recidivism of these offenders and sentencing timings there is a risk that we have under or over estimated the impact of this proposal.</p>
<p>At present, it is not possible to distinguish between simple and conditional cautions in the MoJ's copy of the Police National Computer (PNC) data. We have assumed that all offenders who are currently cautioned receive a simple caution.</p>	<p>As the cost of a conditional caution is greater than the cost of a simple caution, there is the risk that the savings from fewer cautions being issued due to this policy proposal will be higher than estimated. This is because we expect some of the offenders in the base case to receive a conditional rather than a simple caution. However, given that only 3% of approx. 4,600 cautions issued in 2012 were conditional, we do not expect any increase in savings to be considerable.</p>
<p>Our analysis does not take into account the interaction with other policies, such as the latest amendments to the Guidance on Simple Cautions for Adult Offenders³⁸</p>	<p>There is the risk that other policies have an impact on our base case, and that, as a result, we have under or over estimated the impact of this policy.</p>

³⁸ 'Simple Cautions for Adult Offenders', Ministry of Justice, 14 November 2013.