

Title: SERIOUS CRIME BILL: INTRODUCTION OF NEW OFFENCE OF THE UNAUTHORISED POSSESSION OF KNIVES AND OFFENSIVE WEAPONS WITHIN THE PRISON ESTATE IA No: MoJ019/2014 Lead department or agency: Ministry of Justice Other departments or agencies: Home Office	Impact Assessment (IA)		
	Date: 20/10/2014		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: Emma Prince emma.prince@noms.gsi.gov.uk 0300 0476202			
Summary: Intervention and Options			RPC Opinion: RPC Opinion Status

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?
£m	£0m	£0m	No
			Measure qualifies as In/Out/zero net cost

What is the problem under consideration? Why is government intervention necessary?

Whilst possession of an offensive weapon or bladed article is a criminal offence in a public place and in a school, it is not currently a criminal offence in prison. This has led to a disparity between the penalties available to tackle this sort of crime in the community and those available within prison. Currently, finds of weapons in prison are dealt with via the internal adjudication process. However, the most serious cases of weapon possession would be better dealt with via the Criminal Justice System as it allows for longer custodial sentences to be imposed and ensures that the offence is recorded on the offender's criminal record. Government intervention is therefore necessary to address the disparity, and to secure the ability to pursue criminal prosecution in the most serious cases of possession in prison.

What are the policy objectives and the intended effects?

- To ensure that there are adequate measures available within prison to deal with such crimes with punishments which are proportionate to both the seriousness of the offence and comparable to that available in the community.
- To provide that those who commit offences can be held to account by having an appropriate criminal record which can be considered in any future sentencing and, through the criminal conviction, to ensure that the police have a record of a violent offence for that offender in case of future involvement in crime.
- Overall, to contribute to making prisons a safer place for both staff and prisoners.

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

Option 0 - Do nothing. Continue to rely on the existing prison adjudication process to punish all prisoners found to possess a knife, bladed article or offensive weapon whilst in prison custody.

Option 1 – Create an offence of the unauthorised possession within prison (including Young Offender Institutes (YOI)) of a knife, or bladed or pointed weapon or other offensive weapon (as defined in section 1(9) of the Police and Criminal Evidence Act 1984) - a triable either way offence with a maximum penalty of four years' imprisonment.

Option 1 is the preferred option as it meets the intended policy objectives set out in the previous section.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: June/2016					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 2.0 No	Small No	Medium No	Large 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 (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by: Andrew Selous, Parliamentary Under-Secretary of State for Justice

 Date: 20/10/2014

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0.25	N/A	N/A
High	£0.85	N/A	N/A
Best Estimate	N/A		

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

Any additional referrals and subsequent prosecutions for the proposed offence would have cost implications for Criminal Justice agencies (including the Police, the Crown Prosecution Service (CPS), Her Majesty's Courts and Tribunals Service (HMCTS), the Legal Aid Agency (LAA) and National Offender Management Services (NOMS)). Overall we estimate additional costs to the Criminal Justice System of between £250,000 and £850,000 per year (in 2013/14 prices, rounded to nearest £50k), including around 10 to 15 additional prison places.

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

There may be minimal one-off training and familiarisation costs to the police, the judiciary and NOMS.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A

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

It has not been possible to monetise the benefits.

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

This measure will close a loophole in the law with knives and offensive weapons, making it a criminal offence to possess such articles in prison, in line with possession of such articles in the community. This will allow longer sentences to be given for the more serious offences and may have general benefits in relation to public confidence in the fairness of the justice system. Criminalisation will also ensure that more serious weapon possession offences are punished through the Criminal Justice System ("CJS") rather than the adjudication system, which is sometimes less appropriate for punishing more serious offences. Punishing some incidents of weapon possession through the CJS will also ensure that these incidents appear on the offenders' criminal records, allowing the police to more adequately assess the risk of these offenders should they go on to reoffend. This information can also be used in any future sentencing decisions, where relevant. The new offence may also have general benefits as regards the safety of prisoners and staff in prison, although the magnitude of this is uncertain as the evidence on deterrence is mixed.

Key assumptions/sensitivities/risks

Discount rate (%)

N/A

We use internal NOMS operational data and published data from three existing offences to estimate: the volume of cases for the new offence referred to the police; the likely number of subsequent prosecutions; the proportion of cases tried in the magistrates' Court vs. the Crown Court; the proportion of defendants found guilty and the average custodial sentence length given. We assume a constant number of referrals/prosecutions over time. We assume that all convicted offenders will be given a custodial sentence, which will be served consecutively to their existing sentence. The main risks are that there are more referrals/prosecutions and that more are tried in the Crown Court where costs (including legal aid costs) tend to be higher. There is also the risk, that offenders are given longer custodial sentences. See the assumptions and risks section below for full details.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: £0m	Benefits: £0m	Net: £0m	No	Zero net cost

Evidence Base (for summary sheets)

Introduction

1. It is currently a criminal offence under the Prison Act 1952 to convey a range of items into or out of prisons, or to pass them to prisoners, or leave them in a place where they could come into the possession of prisoners. The Prison Act sets out three lists of items at reducing levels of seriousness with corresponding maximum penalties:

Prohibited items are classified as List A, List B or List C items, as set out below:

- **List A items** – controlled drugs, explosives, firearms or ammunition and any other offensive weapon – Maximum penalty: 10 years' imprisonment or unlimited fine
 - **List B items** - alcohol, mobile telephones, cameras, sound recording devices (or constituent part of the latter three items) – Maximum penalty: 2 years' imprisonment or unlimited fine.
 - **List C items** - tobacco, money, clothing, food, drink, letters, paper, books, tools, information technology equipment. – Maximum penalty: level 3 fine (currently, £1,000).
2. It is not currently a criminal offence to possess a knife, bladed or pointed weapon or other offensive weapon within prison. There are existing offences for possession of a knife or other offensive weapon in, (section 1 of the Prevention of Crime Act 1953 and sections 139 and 139A of the Criminal Justice Act (CJA) 1988,) but they are confined to public places or schools. Prisons do not fall within the definition of a public place. Currently, possession of such items is dealt with under the prison adjudication system.
 3. **The Prison Adjudication Process** deals with instances where offences against discipline are alleged to have been committed by prisoners or young offenders. The Prison Rules 1999 and the Young Offender Institution Rules 2000 sets out what constitutes an offence against discipline, the procedure and possible punishments for those found guilty.
 4. Adjudications may be conducted by the Governor of a prison (or Director of a private prison) or delegated to another suitably experienced and trained member of staff at operational managerial level. Where the disciplinary offence is also a crime the adjudicator may take a decision to suspend the adjudication and refer the case to the police. If the police (or CPS) decide not to proceed then the adjudication can be reconvened and the internal disciplinary processes continued. All but the most serious of crimes tend to be dealt with in this way as otherwise it is not possible to subsequently adjudicate if the police decline to pursue the case (where a prisoner is charged with an offence against discipline, the charge must be laid as soon as possible and save in exceptional circumstances within 48 hours of discovery of the offence). On a finding of guilt a Governor may award punishments including: loss of privileges; removal from work or from activities; stoppage of earnings; removal from a wing or cellular confinement for up to 21 days.
 5. In serious cases, a Governor can refer cases to Independent Adjudicators (IAs) as they have the powers to add days to a prisoner's sentence. An IA may award up to 42 added days for each offence. Added days do not add to the total sentence but are taken from the period the prisoner may have served on licence in the community and are added to the period they spend in prison. IAs are District Judges or Deputy

District Judges approved by the Lord Chancellor for the purpose of enquiring into charges referred to them.

Problem under consideration

Closing a loophole in existing law

6. It is not currently a criminal offence to possess a knife or an offensive weapon within prison. Section 1(4) of the Prevention of Crime Act 1953 and section 139(7) of the Criminal Justice Act 1988, the term “public place” includes any place to which the public have, or are permitted access. A prison does not fall within the definition of a public place in section 139(7). Prisons naturally have issues with violence at least equivalent to those experienced in the community, and so should adopt at least the maximum punishment available in the community.
7. Whilst possession of an offensive weapon is currently dealt with as a disciplinary offence within prison (for possession of an unauthorised item) the maximum penalty for the internal disciplinary offence is 42 added days served in prison compared to the four years’ custodial maximum for the equivalent offences in the community.¹ It is important that we address that disparity and strengthen the available options to punish offenders to ensure consistency with existing offences committed in public places.
8. Gang members in the community are more likely to carry weapons than other young people and the Ministry of Justice recognises that a tough legislative framework is vital to stop weapons’ carrying and supply in the community. The law has been strengthened by introducing new offences of threatening with a knife or offensive weapon possession for those who carry a knife or offensive weapon in a public place or in a school and go on to threaten and cause an immediate risk of serious physical harm to another person (Legal Aid, Sentencing and Punishment of Offenders Act 2012 which inserted section 139AA of the Criminal Justice Act 1988). Prison often mirrors society and gang and extremist activity is common within many prison and young offender establishments. As such, the culture of weapon-enabled violence in prisons needs to be tackled with strong action and an appropriate criminal offence.
9. Prisons already have in place a comprehensive range of robust searching techniques and security measures to detect weapons at the point of entry or concealed within the establishment and to provide a deterrent effect. Such measures include basic and enhanced rub down searching and full searching of prisoners, staff and visitors, as appropriate, the use of x-ray machines and CCTV surveillance cameras, the use of metal detectors and body orifice scanners which can detect metallic items concealed internally. Routine and intelligence-led searching of living accommodation and communal areas is also widely deployed.
10. NOMS does not tolerate violence of any kind in prison and takes any instance extremely seriously. Robust action is already taken by prisons, in instances in which weapons are found or assaults are committed. For example, prisoners may be subject to adjudication/disciplinary procedures and may be segregated, and criminal prosecution may be pursued where violence involving weapons is used, where possible. The introduction of the new offence will support these measures and help to ensure that appropriate action can be taken against offenders.

¹ There are several possession offences in the community including: possession of a knife or bladed instrument in a public place and possession of an offensive weapon without lawful authority in a public place.

Allowing more serious possession offences to be dealt with in the Criminal Justice System

11. There are various problems with dealing with some of the more serious possession offences via the adjudication system, which should not be seen as a replacement for the wider Criminal Justice System. The principal problems are:
 - a. Limit on the numbers of days that may be “added”.
 - b. Findings of guilt are not recorded as criminal offences so do not appear on the Police National Computer. This means that they cannot be taken into account as previous convictions during any future police investigation or sentencing at any future court appearance. It also means that they are not disclosable to future employers or others entitled to know of spent or unspent convictions.
 - c. There are also a range of prisoners who cannot receive additional days in custody including: Indeterminate Sentence prisoners such as those serving life sentences, those under 18 subject to Detention and Training Orders (DTO), and foreign nationals who have completed a determinate sentence and are now held solely under immigration powers.
 - d. Currently, unsentenced prisoners held on remand may only be given prospective added days but these do not come into effect if the prisoner is subsequently found innocent or given a non-custodial sentence.
 - e. A prisoner who has not had a further finding of guilt at an adjudication for six months (four months for young offenders) since the date of the offence for which additional days were imposed may apply for some of the days to be remitted (known within establishments as ‘Restoration of Remission’). This is usually up to 50% of any added days but can exceptionally be more and up to 100%.
12. It may be possible to amend the adjudication system so that it could provide for more added days. However, the adjudication system is designed as a quick and efficient way of dealing with relatively less serious offences within prison. For these reasons, the CJS is better placed to deal with the most serious cases of weapon possession.

Violence within prisons

13. Whilst there have been many improvements to prison safety, assaults and violence may still occur and, if left unchecked, can quickly destabilise a prison and threaten the safety of both staff and prisoners. Weapon-enabled violence, including intimidation, is not acceptable in any environment and those who continue to engage in this behaviour in prison should face a criminal charge, where possible. There is a strong public interest in doing more to deter knife crime in the prison environment where offenders are living in close proximity to one another.
14. Whilst assaults without weapons are more common², assaults with weapons still occur and inflict life-changing injuries on both staff and other prisoners. Control and order is a fundamental foundation of prison life and without it the rehabilitation of prisoners may not be effective because of constant disruptions to the regime caused by security incidents, the need to close down the prison to search for weapons, general violence, intimidation and other disruptive behaviour which is not conducive to

² In 2013 there were 14,125 assaults within prisons and YOIs in England and Wales and 2,278 (16%) involved use of a weapon with 828 (6%) involving use of a knife, blade or sharp/blunt instrument.

effective learning. It is vital that all those working and incarcerated in a prison feel as safe as possible in such a closed environment.

Response to Violence in Prisons

15. NOMS is committed to reducing levels of violence in prison. Prisons already have in place security measures to detect and deter weapons including metal detectors and wands, frequent searching programmes of both prisoners and locations within the prison, as well as intelligence systems used to target searches. There is a comprehensive programme of work underway to reduce violence and the effect of violence, including protection of staff – for example by use of stab resistant material in vests; or by deterring attacks - for example by introducing body cameras to record prisoner interaction.

Policy objective

16. The primary policy objective of making possession of an offensive weapon in custody a criminal offence is to close a gap in the existing possession laws; to ensure that the treatment and maximum punishment for possession whilst in prison is comparable to that available in the community.
17. Criminalising weapon possession in custody would also help to ensure that those prisoners committing serious offences can be dealt with by the CJS. This means that this offence will appear on the criminal record of those offenders who are found guilty of possession of such items. This will make knowledge of these serious offences available in future sentencing decisions but also to the police. Ensuring this information is available to the police may assist them in detecting potentially dangerous offenders.
18. The convictions will be recorded formally on national crime statistics. This will ensure that this type of crime is reflected in available national statistics and taken into account in any decision making on crime management.
19. The proposed measure is associated with a wider package of measures being implemented in prisons aimed at reducing violence and making prisons safer. The impact of introducing this offence may or may not serve as a deterrent for some prisoners but it will help to emphasise the message sent to prisons that violence in prison will not be tolerated. This in turn will be re-enforced by a range of other measures (as outlined in paragraph 12).

Rationale for intervention

20. In this case, the Government is intervening to address the anomalies in current legislation in dealing with more serious offences as outlined above.

Proposed reforms

21. A new clause will be tabled at Lord's Report of the Serious Crime Bill which will create a new criminal offence where a person possesses, without authorisation, a bladed or sharply pointed article (such as a knife) or other offensive weapon (as defined in section 1(9) of the Police and Criminal Evidence Act 1984). The clause will amend the Prison Act 1952 so that the maximum sentence available for commission of the offence in a prison mirrors the maximum sentence in the community.

22. It will be a triable either way offence with a maximum penalty of four years' imprisonment on conviction on indictment, or a fine, or both, or on summary conviction a maximum penalty of six months' imprisonment, or a fine, or both.
23. There are circumstances where it is necessary for persons in prison (including prisoners) to have possession of bladed or sharply pointed articles, particularly knives and other tools which may constitute offensive weapons in another context. Knives and bladed items are necessary in a limited range of circumstances such as in workshops and for preparing food. Security and risk-based assessments must be undertaken by prisons before anyone is permitted to work or have access to an environment where such articles are available.
24. Section 39 to 42 of the Prison Act 1999 set out existing that are specific to prison criminal offences, including offences around conveying certain articles into or out of prison, without authorisation. "Authorisation" in relation to all prisons may be given by the Secretary of State or by the Prison Rules 1999 and in relation to a particular prison by the Secretary of State, the Governor or the Director or by an authorised staff member. The powers around authorisation will be applied to the new offence.

Main affected groups

25. The following groups would be affected by this policy:
- Police
 - Crown Prosecution Service (CPS)
 - Her Majesty's Courts and Tribunals service (HMCTS)
 - Legal Aid Agency (LAA)
 - Lawyers
 - National Offender Management Services (NOMS)
 - Victims and potential victims

Costs and Benefits

26. This Impact Assessment identifies both monetised and non-monetised impacts from society's perspective, with the aim of understanding what the net social impact to society might be from implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact Assessments place a strong emphasis on the monetisation of costs and benefits. However there are important aspects that cannot sensibly be monetised. These might be distributional impacts on certain groups of society or changes in equity or fairness, either positive or negative.

Option 0 – Do nothing

27. This option would mean maintaining the status quo and not creating a new offence. This could have unquantifiable costs to prisons and prisoners because of the existing problem of violence and the presence of weapons within prisons. NOMS is committed to reducing violent crimes in prisons and ensuring that those crimes that are committed are dealt with effectively and robustly.
28. In the base case, prisoners found to possess these articles would continue to be dealt with via the internal adjudication system. Under the adjudication system some of the offenders found to possess an offensive weapon may have additional days added to their sentence. These additional days will impact on the number of prison places. As data on the outcome of adjudications for weapon possession in prison is not systematically collated, we have been unable to estimate the prison place impact of these additional days given. However, given the maximum number of days that may

be given is 42; that not all offenders will be given additional days and that some offenders may remit some of their additional days; we anticipate the impact is relatively small.

29. 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 – Creating an offence of possession of a knife, bladed article or offensive weapon in prison – an either way offence with a maximum penalty of four years imprisonment.

Costs

30. We estimate that the overall additional cost to the CJS will be between £250,000 and £850,000 per year (rounded to the nearest £50k, in 2013/14 prices). This includes costs to the police of investigating additional referrals and costs to the wider CJS (including the CPS, HMCTS, LAA and NOMS) of any subsequent additional prosecutions and convictions. Costs to both are set out in more detail below.
31. Estimates include around 10 to 15 additional prison places per year. Note that as some of these offenders would currently be given additional days through the existing adjudication system, this potentially overstates the impact on prison places. Without robust data on the outcome of adjudication, it is not possible to calculate the net impact on prison places, however overall we expect the impact will be similar to our estimate.
32. Using existing adjudication and incident reports, NOMS estimate that the new offence could lead to an additional 160 to 480 referrals to the police per annum for finds directly attributable to a prisoner. See **annex A** for a fuller outline of how this estimate was derived.

The police

33. These additional referrals would impose downstream costs on the police of investigating reported incidents. There is some uncertainty about how long these investigations would take, however police force estimates³ suggest that they could last between 8 and 14 hours. Assuming that all referrals directly attributable to an individual are investigated, we estimate yearly costs to the police of between £50,000 and £250,000⁴. This is based on the average hourly opportunity cost of a Sergeant's time.

Wider CJS (including the Crown Prosecution Service, Her Majesty's Courts and Tribunal Services, the Legal Aid Agency and National Offender Management Services).

34. A proportion of the defendants referred will be prosecuted and these additional prosecutions will have costs on the wider CJS as they progress through the system. Using the estimated number of referrals for knife/weapon possession (NOMS), and data from the proxy offence of possession of a mobile phone in prison, we estimate that there will be around 30 to 80 additional prosecutions per year for the proposed new offence. The remaining cases of finds of weapons would not be referred either because there is insufficient evidence to prove possession; because there are

³ Estimates are based on data and experience of one police force only and therefore may not be fully representative of all forces.

⁴ In 2013/14 prices, rounded to nearest £50,000

insufficient aggravating factors in the circumstances of the crime to warrant referral or there is likelihood that the case would be discontinued by the police or CPS on public interest grounds.

35. To estimate the progression of a case through the Criminal Justice system and the associated costs to each agency (including CPS, HMCTS, LAA and NOMS) we use three proxy offences:
- i. Offences relating to having an article with blade or point in public place,⁵
 - ii. Possession of offensive weapons in a public place without lawful authority or reasonable excuse,⁶
 - iii. Offence of unauthorised possession inside a prison of an item [mobile phone] specified in section 40D(3B) of the Prison Act 1952.
36. Using data for proxy offences one and two from 2013, we estimate that approximately 80% of all cases will be tried in the magistrates' court and 20% in the Crown Court where the CPS, HMCTS and LAA costs tend to be higher. Proxy offences one and two were used because experience suggests that the nature of the item possessed is likely to impact of the perceived seriousness of the offence, and will therefore have a greater on impact on where the defendant is tried than where the offence was committed.
37. Using data from proxy offence three, we estimate that approximately 80% of defendants will be found guilty. Offence three was used because experience suggested that where the alleged offence was committed would have a greater impact on the likelihood of conviction than the nature of the article possessed.
38. As the offence is committed whilst in custody, we assume that all convicted offenders will be given immediate custody and that custodial sentences are served consecutively. Using data from 2013 for proxy offences one and two, we assume that offenders will be given average custodial sentence length (ACSL) of approximately six months. We use proxy offences one and two because they have the same maximum penalty (four years imprisonment) as the proposed offence (offence three's maximum penalty is two years imprisonment).
39. Based on the above assumptions we estimate total yearly costs to the wider CJS (including the CPS, HMCTS, LAA and NOMS) of between £200,000 and £600,000.⁷
40. The estimated volumes include referrals and prosecutions for both adult and juveniles found to possess offensive weapons. We have not independently assessed the costs of additional proceedings and convictions in the youth estate as the proportion of under 18's in the estate is very small. It is worth noting that the cost of detaining an under 18 is likely to be substantially higher than the costs for an adult. However, given the relatively small number of under 18s in the estate, the additional costs of the new offence to the youth estate is expected to be minimal.
41. Further information on all cost estimates above can be found in the assumptions and risks section below.

⁵ In section 139 of the Criminal Justice Act 1988. Triable either way offence with a maximum penalty of four years' imprisonment.

⁶ In section 1 of the Prevention of Crime Act 1953. Triable either way offence with a maximum penalty of four years' imprisonment.

⁷ In 2013/14 prices and rounded to the nearest £50k.

42. There may also be some minimal one-off costs associated with training and familiarisation for the police, the judiciary and NOMs (i.e. prison staff), it has not been possible to quantify these.

Benefits

43. The main benefit of creating the proposed offence is that it will bring possession of knife and other offensive weapons in prison in line with possession in a public place.
44. Aligning the maximum penalties will allow longer custodial sentences to be given in more serious cases and in such cases will ensure that the offence goes onto the offender's criminal record. The possession of a weapon in prison is a serious offence and the internal adjudication prison system currently used is not always an adequate route for dealing with such cases, as outlined previously.
45. The new offence will mean that criminal proceedings may be brought against those in prison who habitually carry or use weapons or belong to criminal gangs. Once released from prison, these offenders will carry a criminal record for a violence-related offence which will be recorded on the Police National Computer and which will assist the police in future dealings with such offenders. Finally, if the offender is convicted of a further similar offence in the future then there will be a previous criminal record on file available to inform the court during sentencing.
46. Criminalising possession of a knife in prison may also decrease the incidents of knife possession and help protect potential victims of knife and other weapon crime in custody. However, it is unclear how substantial this benefit would be as we cannot be certain what the deterrent effect would be.

Enforcement of Proposed Reform

47. As with all criminal offences in prison, the prison may refer an alleged crime to the police who will decide whether to investigate and make a decision on referral to the CPS for prosecution. If the police or CPS decide not to proceed then the matter may revert to be considered for internal prison adjudication.
48. NOMS, the college of Policing and the CPS are developing guidelines for referring, investigating and prosecuting crimes in prison. Some offences (such as assaults on staff) are considered in more detail with specific aggravating and mitigating factors set out in Operational Guidance Documents for prisons and police to consider in making decisions on referral for investigation by the police. An Operational Guidance Document will be developed for this offence. Examples of typical aggravating factors in this offence will include previous history of possession of such weapons, threats to use the weapon, membership of known criminal gangs. Mitigating factors will include history of self-harm with blades.

Assumptions/Risks

Assumption	Risk
<p>Number of referrals to the police</p> <ul style="list-style-type: none"> As the statistics concerning weapon finds are not collected systematically, we are unable to determine long term trends. We therefore assume that the number of referrals will not change over time. 	<ul style="list-style-type: none"> The number of referrals increases over time.
<p>Costs to police of investigating referrals</p> <ul style="list-style-type: none"> Each referral would take between 8 and 14 hours to investigate. <p>Source: HO internal estimates (2014).</p> <ul style="list-style-type: none"> The opportunity cost of an officer ranking sergeant or below's time is approximately £35 per hour. This estimate is based on standard pay, hours, expenses, pensions, National Insurance contributions and police workforce statistics. <p>Source: HO internal estimates (2013/14)</p>	<ul style="list-style-type: none"> Estimates regarding the length of an investigation are based on data from one police force and their experience of investigating the existing offence of possession of a mobile phone in prison. There is a risk that the timings aren't representative of all police forces. Further police forces were not consulted due to time constraints. The length of an investigation will vary from case to case and the estimates presented are based on best judgement. The opportunity cost of an officer includes overhead costs (such as premise costs) and therefore is not strictly a marginal cost. The hourly estimate is an average for all police grades of 'sergeant and below' and the actual cost at each grade within this category is likely to differ.
<p>Number of referrals prosecuted by the CPS</p> <ul style="list-style-type: none"> The same proportion of referrals will be prosecuted as for the proxy offence of possession of a mobile phone in prison. <p>Source: NOMs internal estimates and further breakdown of Criminal Justice Statistics, Ministry of Justice (MoJ), 2013.</p>	<ul style="list-style-type: none"> Fewer/more cases will be prosecuted-either because more cases are referred or more cases are prosecuted. Every effort is made to ensure that the data used and figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used
<p><i>Progression of cases through the CJS</i></p>	

<p>Three proxy offences are used to estimate the progression of cases:</p> <ol style="list-style-type: none"> 1. Offences relating to having an article with blade or point in public place,⁸ 2. Possession of offensive weapons in a public place without lawful authority or reasonable excuse,⁹ 3. Offence of unauthorised possession inside a prison of an item [mobile phone] specified in section 40D(3B) of the Prison Act 1952. 	
<p>Proportion of cases tried in the magistrates vs. the Crown Court</p> <ul style="list-style-type: none"> • 82% of cases were tried in the magistrates', and 18% in the Crown (using 2013 data from proxy offence one and two). • We assume the proportions tried in each court for the proposed offence will be the same. <p>Source: Further breakdown of Criminal Justice Statistics, Ministry of Justice (MoJ), 2013.</p>	<p>More cases will be tried in the Crown where the costs tend to be higher.</p>
<p>Proportion of defendants found guilty</p> <ul style="list-style-type: none"> • Around 80% of defendants are convicted (from proxy offence three). We assume this will be the same for the proposed offence. <p>Source: Further breakdown of Criminal Justice Statistics, Ministry of Justice (MoJ), 2013.</p>	<ul style="list-style-type: none"> • Fewer/more defendants will be convicted.
<p>Disposals given:</p> <ul style="list-style-type: none"> • All offenders are given a custodial sentence. • All custodial sentences are served consecutively. <p>Average custodial sentence length:</p> <ul style="list-style-type: none"> • We use latest data from proxy offences 1 and 2 to estimate the ACSL give. This is because they have the same maximum penalty as the proposed offence. • Data from 2013 shows that across both offences the ACSL given was around six months, we assume this will be the same for the proposed offence. <p>Source: Further breakdown of Criminal Justice Statistics, Ministry of Justice (MoJ), 2013.</p>	<ul style="list-style-type: none"> • Risk that the time between charge and conviction means that some offenders are sentenced whilst out of custody and therefore are given a disposal other than a custodial sentence. • Possibility that custodial sentences are served concurrently and pose no additional costs on the prisons service. This is a judicial decision. • That the ACSL given is shorter or longer. • Offenders given less than 12 months in custody are not currently subject to supervision on release. Under the Offender Rehabilitation Act 2014 this will change but for the purposes of this IA we have based estimates of cost on current

⁸ In section 139 of the Criminal Justice Act 1988. Triable either way offence with a maximum penalty of four years' imprisonment.

⁹ In section 1 of the Prevention of Crime Act 1953. Triable either way offence with a maximum penalty of four years' imprisonment.

<ul style="list-style-type: none"> As the ACSL is less than 12 months we assume that offenders served half of their sentence in custody and have no post-release licence requirements. <p>Source: MoJ Internal Analysis 2014.</p>	<p>practice.</p>
<ul style="list-style-type: none"> Our analysis does not take into account the possible interaction with other policies that have not yet been commenced. 	<ul style="list-style-type: none"> There is the risk that such policies, once commenced, could have an impact on the base case set out in this impact assessment. As a result, the associated impacts may be under or over estimated.

Cost assumptions	
<p>CPS costs, advocacy costs:</p> <ul style="list-style-type: none"> The estimated CPS costs consist of two broad categories, advocacy costs and Activity Based Costings (ABC). The primary purpose of the ABC model is resource distribution, and has several limitations (see risks). The range of costs reflects the different ABC and advocacy costs for guilty plea and effective trials, as well as the assumption that 80% of the cases would be prosecuted in the magistrates' courts and 20% in the Crown Court. <p>Source: CPS 2014; MoJ internal analysis, 2014.</p>	<ul style="list-style-type: none"> The key limitation of the ABC model is that it is built purely on staff time and excludes accommodation and other ancillary costs (e.g. those associated with complex cases and witness care). It also relies on several assumptions. This could mean there is a risk that costs are underestimated. For further information about how CPS ABC costs are calculated please see the following CPS guidance (CPS, 2012): http://www.cps.gov.uk/publications/finance/abc_guide.pdf.
<p>HMCTS costs (magistrates):</p> <p>To generate the costs by offence categories, HMCTS timings data for each offence group were applied to court costs per sitting day. Magistrates' court costs are £1,100 per sitting day in 2013/14 prices. A sitting day is assumed to be five hours. The HMCTS costs are based on average judicial and staff costs, found at HMCTS Annual Report and Accounts 2012-13. HMCTS timings data from the Activity based costing (ABC) model, the Timeliness Analysis Report (TAR) data set and the costing process.</p>	<p>Timings data for offence categories:</p> <ul style="list-style-type: none"> The timings data are based on the time that a legal advisor is present in court. This is used as a proxy for court time. Please note that, there may be a difference in average hearing times as there is no timing available e.g. when a District Judge (magistrates' court) sits. The timings data are based on the time that a legal advisor is present in court. This is used as a proxy for court time. Please note that, there may be a difference in average hearing times as there is no timing available e.g. when a DJ(MC) sits. Timings do not take into account associated admin time related with having a case in court. This could mean that costings are an underestimate. There is some information is available on admin time, however we have excluded it for simplicity. The timings are collection of data from February 2009. Any difference in these timings could influence costings. The timings data also excludes any adjournments (although the HMCTS ABC model does include them), and is based on a case going through either one guilty plea trial (no trial) or one effective (not guilty plea) trial. However a combination of cracked, ineffective and effective trials could occur in the case route. As a result the costings could ultimately be underestimates. Guilty plea proportions at the Initial hearing from Q2 in 2012 are used, based on the

	<p>Time Analysis Report. As these can fluctuate, any changes in these proportions could influence court calculations (effective trials take longer in court than no trials (trials where there was a guilty plea at the initial hearing)).</p> <p>HMCTS average costs per sitting day:</p> <p>HMCTS court costs used may be an underestimate as they include only judicial and staff costs. Other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example juror costs.</p>
<p>HMCTS costs (crown):</p> <p>Timings data for types of case (eg, indictable only, triable either way) were applied to Crown Court costs per sitting day. This was added to the cost of the initial hearing in the magistrates' court, as all criminal cases start in the magistrates' courts. Crown Court cost is £1,500 per sitting day in 2013/14 prices, assuming a sitting day is five hours. The HMCTS costs are based on average judicial and staff costs, found at HMCTS Annual Report and Accounts 2012-13.</p>	<p>Timings data for types of cases:</p> <ul style="list-style-type: none"> • The average time figures which provide the information for the timings do not include any down time. This would lead to an underestimate in the court costing. • Timings do not take into account associated admin time related with listing a case for court hearings. This could mean that costings are an underestimate. • The data which informed the timings data excludes cases where a bench warrant was issued, no plea recorded, indictment to lie on file, found unfit to plead, and other results. • Committals for sentence exclude committals after breach, 'bring backs' and deferred sentences. <p>HMCTS average costs per sitting day:</p> <ul style="list-style-type: none"> • HMCTS court costs used may be an underestimate as they include only judicial and staff costs. Other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example juror costs. •
<p>Legal Aid Costs:</p> <p><i>Cases in the magistrates court</i></p> <ul style="list-style-type: none"> • We assume an eligibility rate for legal aid in the magistrates' court of 100%. • The average cost per case is £485, and that there is one defendant per case. This is based on the latest available legal aid statistics (Jan-Mar 2014), and is calculated by dividing total case value by total case volume. See: https://www.gov.uk/government/publications/legal-aid-statistics-april-2013-to- 	<p><i>Magistrates court</i></p> <ul style="list-style-type: none"> • Variance in the legal aid eligibility rate assumed for cases in the magistrates' courts would impact the costings. • More than one defendant prosecuted per case and therefore more solicitors and barristers per case than assumed thus understating the actual cost. <p><i>Crown Court:</i></p> <ul style="list-style-type: none"> • Assuming 100% eligibility for legal aid in the Crown Court carries several other risks.

<p><u>march-2014</u> (Main tables, table 2.3).</p> <p><i>Cases in the Crown Court</i></p> <ul style="list-style-type: none"> • The eligibility rate for legal aid is 100%. • The average cost per defendant is around £900 in 2013/14 prices (based on offence category H: Miscellaneous offences). • We assume one defendant per case. One defendant instructs one solicitor who submits one bill. As such, we use the cost per solicitor bill from the 2013/14 data as a proxy for the cost per defendant. <p>Source: https://www.gov.uk/government/publications/legal-aid-statistics-april-2013-to-march-2014</p>	<p>Firstly, an individual may refuse legal aid. Secondly, an individual may be required to contribute to legal aid costs. Lastly, the size of this contribution can vary.</p> <ul style="list-style-type: none"> • There is more than one defendant prosecuted per case and therefore more solicitors and barristers per case than assumed thus understating the actual cost.
<p>Prison costs:</p> <ul style="list-style-type: none"> • We assume that an offender serves half of their given custodial sentence (in this case that they serve approximately three months in prison, on average). • The cost per prison place is approximately £28,000. <p>Source: NOMS management accounts addendum (2012/13).</p>	<ul style="list-style-type: none"> • 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 relatively 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 would be significantly higher as contingency measures will have to be found.
<p>Probation costs:</p> <ul style="list-style-type: none"> • We assume there are no probation costs associated with this offence. This is because we assume all offenders are given a custodial sentence of less than 12 months imprisonment and therefore they are not subject to post custodial release licence conditions. 	<ul style="list-style-type: none"> • We have based our estimates on current practice. However the Offender Rehabilitation Act 2014 includes provisions to introduce post release licence conditions for offenders given a custodial sentence of less than 12 months. • After the commencement of these provisions, there will be costs associated with post release licence for offenders convicted of this offence who are sentenced to immediate custody. The wider costs of extending post-release supervision to any offenders released from short custodial sentences will be met through savings realised from the Transforming Rehabilitation reforms to probation services.

Estimating the number of referrals to the police

Referrals were estimated to be in the range of 160 to 480 per annum. The 160 is a minimum estimate based on those incidents where the weapon was used as part of an assault but those assaults are not currently referred to the police. The new offence would make this far more likely. The 480 figure draws from a wider range of incidents including more “passive” finds of such weapons where they can be attributed to an identified prisoner. The actual number of finds of weapons in prison is greater than this but in many cases they are not found in the possession of a person or possession cannot be proved. In other cases it would be inappropriate to refer to the police (self harm, for example).

The number of referrals was estimated using a variety of information, including:

- Published numbers of adjudications for possession of an unauthorised article and actual numbers of offensive weapons used in assaults to make inferences about the likely range of referrals to the police for possession of an offensive weapon;
- Data on the circumstances in which weapons were found, how many were attributable to prisoners, and the type of weapon found;
- Data on the differential referral rates of different incident and weapon types and using operational experience to indicate the likely percentages that might be referred and latest data on referrals and prosecutions for existing offence of possession of a mobile phone in prison.

Currently offences involving possession of weapons are dealt with using the prison disciplinary system. There is no specific disciplinary offence for possession of weapons – it is recorded under ‘possession of an unauthorised item’ which includes a large range of other items in addition to weapons. It is therefore not possible to estimate numbers of cases that might be referred to the police using just disciplinary system records.

Instead, over 60,000 records from the national Incident Reporting System (IRS) were analysed in 2013 to identify those which might be captured by the new offence. The vast majority of cases where weapons are found in prison will be recorded on IRS. Over 1,100 records involving weapons were identified and examined in detail, to screen out: those that could not be attributable to an individual; those that might not result in a referral to the police (for example, because the weapon was used in self harm only); or those in which the weapon was part of an incident (such as assault) already referred to the police.

In arriving at the estimated number of referrals, the following assumptions were made:

- The knife/offensive weapon found must be attributable to an individual prisoner for referral to be considered.
- Referral rates will vary depending on the nature/type of the weapon as some are more dangerous than others.
- It is estimated that 80% of cases involving a knife/bladed weapon would be referred to police, but fewer (20%) of other offensive weapons would be referred;
- If a more serious offence could be attributed to a case of possession (i.e. offences where weapons were found which related to assault, arson, hostage-taking etc), then that offence would be used in pursuit of prosecution.
- Where ‘improvised weapon’ or ‘home made weapon’ was mentioned in an incident report we assumed that half would be treated as knife/blade related weapons with an 80% referral rate.

The key **sensitivity** with the above is the percentage of cases that would be referred to the police. The volume of referrals is highly uncertain and estimates are based on the experience of NOMS staff. It is possible that numbers will fluctuate.