

## **Serious Crime Act 2015**

### **Fact sheet: Offence of the Unauthorised Possession of Knives and Offensive Weapons within the Prison Estate**

#### **Background**

1. Section 78 of the Act makes it a criminal offence under the Prison Act 1952 to possess a knife or other offensive weapon in prison without authorisation.
2. It is not currently a criminal offence to possess a knife, or bladed or pointed weapon or other offensive weapon within a prison establishment. The criminal offences for possession of such items, as set out in section 1 of the Prevention of Crime Act 1953 and sections 139 and 139A of the Criminal Justice Act 1988, are limited to possession within a public place or school. The purpose of the new offence is to address this disparity in the criminal law.
3. Assaults and violence are a longstanding problem within the prison environment. If left unchecked, such behaviour can quickly destabilise a prison and threaten prison safety. Whilst assaults without weapons are more common, assaults with weapons are not infrequent and can inflict life-changing injuries on both staff and other prisoners. Prisoners most frequently manufacture weapons to attack other prisoners and to defend themselves, and also on occasion use weapons stolen from workshops or smuggled into the prison. In 2013, there were 14,125 assaults within prisons and Young Offender Institutions 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.
4. Weapon-enabled violence, including intimidation, is not acceptable in any environment and those who engage in this behaviour in prison should face a criminal charge, as appropriate. Control and order is a fundamental foundation of prison life; without it, staff, prisoner and visitor safety cannot be guaranteed and the rehabilitation of prisoners cannot take place.

#### **Current position**

5. It is currently only a criminal offence under the Prison Act 1952 to convey explosives, firearms or ammunition and any other offensive weapon (amongst other 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 possession of a weapon is currently dealt with through the prison adjudication system or, for staff, as part of internal disciplinary procedures.
6. A prisoner who is found to be in possession of an unauthorised item in prison, including a knife, or bladed or pointed weapon or other offensive weapon, may be guilty of an offence against discipline within the prison

(Rule 51(12)(a) of the Prison Rules 1999). A governor who finds a prisoner guilty of an offence against discipline may impose a caution, forfeiture of privileges for a period not exceeding 42 days, exclusion from associated work for a period of not exceeding 84 days, cellular confinement for a period not exceeding 21 days, forfeiture of property or removal from a wing or living unit for 28 days (Rule 55(1) of the Prison Rules 1999). An adjudicator who finds a prisoner guilty of an offence against discipline may impose any of the punishments that a governor may impose or an award of added days not exceeding 42 days, compared to the four years maximum for the equivalent criminal offence in the community.

## **Changes to the law**

7. Section 78 of the Act creates a new offence<sup>1</sup> where a person is in possession of a knife, or bladed or pointed weapon or other offensive weapon<sup>2</sup> in prison without authorisation. The offence carries a four year maximum sentence on conviction on indictment or a fine or both. Alternatively, on summary conviction it carries a maximum six month prison sentence or a fine or both, to mirror the penalties for such offences committed within the community.
8. There are circumstances where it is necessary for persons in prison (including prisoners) to have legitimate possession of bladed or sharply pointed articles, particularly knives and other tools which may constitute offensive weapons in another context. Provision is made in the Prison Act to enable authorisations to be provided in such circumstances.

## **Intended effects of the new offence**

9. The main aim of the new offence is to address the disparity in the criminal law and to secure the ability to pursue criminal prosecution in the most serious cases of possession of weapons in prison. This will allow longer sentences for more serious offences, a greater deterrence effect against prisoners possessing weapons, and stronger public confidence in the fairness of the justice system.
10. 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 such cases. Punishing more serious 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 re-offend. This information can also be used in any future sentencing decisions, where relevant.

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<sup>1</sup> Contained in new section 40CA of the Prison Act 1952

<sup>2</sup> The term "offence weapon" is defined in section 1(9) of the Police and Criminal Evidence Act 1984 as any article made or adapted for causing injury to persons or intended by the person having it with him for such use by him or some other person.

11. The new offence should also improve the safety of prison staff and prisoners by providing a deterrent effect, decreasing the incidence of weapons possession, and helping to protect potential victims of knife and other weapon crime in custody.

**Ministry of Justice**  
**March 2015**