

TITLE **CRIMINAL JUSTICE AND COURTS ACT 2015 –
COMMENCEMENT OF SECTION 28 AND SCHEDULE 5**

From: Sentencing Policy Unit
Ministry of Justice

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Broad Subject Criminal Law
Commencement
Sentencing
Knife Crime

Sub Category Criminal Justice and Courts Act 2015

This circular is addressed to

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Introduction

The purpose of this circular is to inform criminal justice professionals and any other interested parties that the Criminal Justice and Courts Act 2015 (Commencement No. 2) Order 2015 brings section 28 of and Schedule 5 to the Criminal Justice and Courts Act 2015 into force in England and Wales on 17 July 2015.

Section 28: Minimum sentence for second strike knife possession

1. [Section 28](#) of and [Schedule 5](#) to the Criminal Justice and Courts Act 2015 (CJC Act) create a minimum custodial sentence for those aged 16 and over convicted of a second or subsequent offence of possession of a knife or offensive weapon, contrary to section 1 of the Prevention of Crime Act 1953 or sections 139 and 139A of the Criminal Justice Act 1988.
2. Section 28 does this by making amendments to the Prevention of Crime Act 1953 and the Criminal Justice Act 1988, which:
 - outline the length of appropriate sentences; and
 - define the necessary conditions, including the meaning of 'previous relevant conviction'
3. A previous conviction for threatening with a knife or offensive weapon, contrary to section 1A of the Prevention of Crime Act 1953 or section 139AA of the Criminal Justice Act 1988, counts as a 'first strike' (these offences carry the same minimum sentence provided for here).
4. A conviction in Scotland, Northern Ireland or another member state for an equivalent offence counts as a 'first strike'. A conviction for an equivalent service offence also counts as a 'first strike'.
5. The minimum custodial sentence is at least six months imprisonment for an offender aged 18 or over when convicted and at least a four month detention and training order (DTO) for 16 and 17 year olds.
6. The judge must impose the minimum sentence unless the court is of the opinion that there are particular circumstances which relate to the offence,

the previous offence(s), or the offender which would make it unjust in all circumstances.

7. Schedule 5 lays out consequential provisions. It includes provisions which mean certain actions may still be taken. For example, a hospital order can still be given and an early guilty plea may still give cause for reduction in sentence length.

Commencement Arrangements

8. Section 28 and Schedule 5 to the Criminal Justice and Courts Act 2015 will be commenced on 17 July 2015.
9. A minimum custodial sentence can only be given on conviction of a second or subsequent offence where that offence is committed on or after the date of the commencement of these provisions.
10. A relevant previous conviction for possession of a knife or offensive weapon, or threatening with a knife or offensive weapon, will satisfy the 'previous conviction' condition for the imposition of the minimum sentence, regardless of when that prior offence was committed.
11. The minimum sentences (six months imprisonment for adults and a four month detention and training order (DTO) for 16 and 17 year olds) provide the starting points for sentencing. Aggravating and mitigating factors are applied subsequently.

Armed Forces Act 2006

12. A conviction for an equivalent service offence counts as a 'first strike' for the purposes of the minimum sentence.

Extent

13. The introduction of a minimum custodial sentence for second or subsequent possession of a knife or offensive weapon will extend across England and Wales.

Helpful Links

- The Criminal Justice and Courts Act 2015 is available at:
http://www.legislation.gov.uk/ukpga/2015/2/pdfs/ukpga_20150002_en.pdf
- The Explanatory Note to Section 28 is available at:
<http://www.legislation.gov.uk/ukpga/2015/2/notes/division/3/1/14/1>
- The Criminal Justice and Courts Act Circular is available at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/428204/cjc-act-circular.pdf